



Australian Government

Commonwealth Contract – Consultancy Services

Reference ID: FIM283

Customer

Customer Name: Department of Industry, Science and Resources
Customer ABN: 74 599 608 295
Address: GPO Box 2013
Canberra ACT 2601

Supplier

Full Name of the Legal Entity: Integrity Partners Australia Pty Ltd
s47G

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date or the date this Contract is executed, whichever is the latter, and continues for the Contract Term unless it is terminated earlier.

| Event | Details |
|----------------------------|--|
| Contract Start Date: | Monday, 6 February 2023 |
| Contract Term: | This Contract will remain in force for a period of Until the services are completed. |
| Contract Extension Option: | The Contract Term will not be extended. |

C.A.2 The Requirement

Integrity Partners will conduct an assessment of a complaint received by the department and identify if there's any indicators of fraud or corruption evident with the department's processes. The assessment will be conducted in accordance with Australian Government Investigation Standards (AGIS), and departmental operating procedures.

Integrity Partners will:

- Assess available evidence (and collect additional evidence if required)
- Identify any indications of fraud or corruption
- Consider risk and control environment, and other relevant guidance (via relevant Departmental policies, PGPA Fraud Rule, Commonwealth Procurement Rules, ANAO guidance), and
- Provide a report (consistent with AGIS obligations) recommending which actions (if any) are warranted and appropriate.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards and any Australian and international standards specified in this Statement of Work. The Supplier must ensure that it obtains copies of all relevant certifications and maintains records evidencing its compliance with those standards. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with those standards.

Web Content Accessibility

As applicable, the Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at:

<https://www.w3.org/WAI/intro/wcag>.

Australian Government Investigation Standards

In relation to assessment of allegations

Performance Measures

The PGPA Fraud Rule

Performance Measures

Professional Writing Standards

Government Style guide

Performance Measures

Department Standard Operating Procedures and policies (as appropriate)

- Conduct
- Information Management
- Privacy
- Fraud Awareness

Performance Measures

Procedural fairness approach (as required)

Performance Measures

Mental health awareness, including sensitively handling matters with persons who may be dealing with mental illness

Performance Measures

To demonstrate progress towards achievement of the Requirement, the Supplier is required to comply with the following performance measures:

C.A.2(b) Security Requirements

Supplier personnel are required to be cleared to a minimum level of NV1 .

The cost of obtaining each security clearance will be borne by the Supplier. The Supplier must ensure that its Specified Personnel promptly provide to the Customer relevant details to assist with the security clearance process, and the Supplier must notify the Customer promptly in writing of any change in circumstances which is likely to affect the Customer’s assessment of the Specified Personnel’s entitlement to hold a security clearance.

C.A.2(c) Work Health and Safety

Prior to commencement of this Contract, the Customer’s Contract Manager and the Supplier’s Contract Manager will identify any potential work health and safety (WHS) issues anticipated to arise during the term of this contract and assign management of each issue identified to the party best able to manage it. For all issues assigned to the Supplier, the Supplier will provide the Customer with a WHS plan for approval and no work will commence until the plan is approved unless agreed in writing by the Customer.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any WHS issues that arise.

C.A.2(d) Delivery and Acceptance

Where the Customer rejects any deliverables under Clause C.C.11 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier’s cost, so that the deliverables meet the requirements of this Contract. The Supplier must comply with any such requirement. Rectified deliverables are subject to acceptance under Clause C.C.11 [*Delivery and Acceptance*].

The Supplier will refund all payments related to the rejected deliverables unless the relevant deliverables are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer’s timeframe, the Customer may terminate this Contract in accordance with Clause C.C.16 [*Termination for Cause*].

| Milestone Description | Contact for Delivery | Delivery Location/Email | Due Date |
|--|----------------------|-------------------------|-----------|
| Provide a final report recommending which actions (if any) are | s22 | s22 @industry .gov.au | 6/03/2023 |

| | | | |
|----------------------------|--|--|--|
| warranted and appropriate. | | | |
|----------------------------|--|--|--|

C.A.2(e) Meetings

The Supplier is required to attend meetings as follows:

| Meeting Type | Position Required | Frequency | Mode | Location |
|--------------|-------------------|-------------|------------------|-------------------------|
| Update | s47F | as required | Video conference | online - Industry House |

C.A.2(f) Facilities and Assistance Offered by the Customer

The department will provide a laptop and access to the department's protected network. This will allow Integrity Partners to securely email, access and review departmental information and records related to the work order.

C.A.2(g) Customer Material

All relevant and requested departmental records related to the compliant, access to key stakeholders and any other departmental records and policies required.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has no Conflicts of Interest relevant to the performance of its obligations under this Contract.

C.A.2(i) Public Interest Disclosure

For information about how to make a public interest disclosure, please refer to the information provided on the department's website - <https://www.industry.gov.au/about-us/what-we-do/public-interest-disclosure>.

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should sent to: Procurement.Complaints@industry.gov.au.

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$22,000.00** as set out below.

Fixed Price (including all expenses)

| Due Date | Milestone Description | Total Price GST Exclusive | GST Component | Total Price GST Inclusive |
|-----------|-----------------------|---------------------------------|------------------|------------------------------------|
| 6/03/2023 | Final Report | \$20,000.00 | \$2,000.00 | \$22,000.00 |

Total Fixed Price for Services \$22,000.00 GST Inclusive

C.A.3(a) Payment Schedule

The Total Fixed Fees and Charges will be made as a single payment on completion of contracted deliverables.

C.A.4 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

C.A.4(a) Customer’s Contract Manager:

The person occupying the position of: Investigator
Currently: s22
Telephone: s22
Mobile:
Email Address: s22 @industry.gov.au
Postal Address: GPO Box 2013

Canberra ACT 2601

C.A.4(b) Customer’s Address for Invoices:

Addressee Name/Position Title: Department of Industry, Science and Resources. Attention: AusIndustry/Entrepreneurs' Programme
Telephone:
Peppol ID: s22
Email Address: @industry.gov.au
Postal Address: PO Box 2013

Canberra ACT 2601

The Customer’s preferred method of invoicing is by email.

C.A.4(c) Supplier’s Contract Manager:

Name: s47F
Position Title:
Telephone:
Mobile:
Email Address:
Postal Address:

C.A.4(d) Supplier’s Address for Notices

Name: s47F
Position Title:
Email Address:
Postal Address:

C.A.5 Specified Personnel

| Position/Role | Name | Current Security Clearance Level | Percentage of Total Project Time |
|---------------|------|----------------------------------|----------------------------------|
| s47F | | | %100 |

C.A.6 Subcontractors

None Specified

Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

C.B.1 Intellectual Property

The Customer owns the Intellectual Property Rights in the Material created under this Contract.

To the extent the Supplier or a third party holds any Intellectual Property Rights in any existing Material, the Supplier hereby agrees to licence the Customer to enable the Customer to exercise full rights and interests in the Intellectual Property Rights in any Material provided under this Contract. The Supplier agrees to create, execute or sign any documents and perform all acts which may be necessary to allow the use of those rights by the Customer for any purpose.

The Customer grants to the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence for this Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under this Contract. The licence in this clause is subject to any conditions or limitations of third parties that the Customer notifies to the Supplier.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of this Contract.

Pre-Existing Intellectual Property of the Supplier

Not Applicable

C.B.2 Confidential Information of the Supplier

Not Applicable

C.B.3 Payment Terms

Where the Customer and the Supplier both have the capability to deliver and receive e-Invoices through the Peppol framework and have agreed to use e-Invoicing, following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

In all other circumstances following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a Business Day, on the next Business Day.

Where the Customer fails to make a payment to the Supplier by the Business Day it is due, the Customer will pay the unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate as published on the Australian Taxation Office website [https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

| |
|------------------------------------|
| Commonwealth Contract Terms |
|------------------------------------|

C.C.1 Background

- 1.1 The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Requirement.
- 1.2 Some terms used in these Commonwealth Contract Terms have been given a special meaning. Their meanings are set out in the Commonwealth Contracting Suite (CCS) Glossary and Interpretation or in the Contract.

C.C.2 Relationship of the Parties

- 2.1 By virtue of this Contract, neither Party is the employee, agent, officer or partner of the other Party nor authorised to bind or represent the other Party.
- 2.2 Each Party must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the other Party.
- 2.3 In all dealings related to the Contract, the Parties agree to:
- a) communicate openly with each other and cooperate in achieving the contractual objectives
 - b) act honestly and ethically
 - c) comply with reasonable commercial standards of fair conduct
 - d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces, and
 - e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflicts of Interest

- 3.1 The Supplier warrants that, other than as previously declared in writing to the Customer at the commencement of the Contract, no Conflicts of Interest exist, relevant to the performance by the Supplier of its obligations under the Contract.
- 3.2 At any time during the term of the Contract, the Customer may require the Supplier to execute a Conflicts of Interest declaration in the form specified by the Customer.
- 3.3 As soon as the Supplier becomes aware that a Conflict of Interest has arisen, or is likely to arise during the term of the Contract, the Supplier will:
- a) immediately report it to the Customer
 - b) provide the Customer with a written report setting out all relevant information within three (3) Business Days, and
 - c) comply with any reasonable requirements notified by the Customer relating to the Conflict of Interest.

- 3.4 If the Supplier fails to notify the Customer as set out in this clause or does not comply with the Customer's reasonable requirements to resolve or manage Conflicts of Interest, the Customer may terminate or reduce the scope of the Contract in accordance with C.C.16 [Termination for Cause].

C.C.4 Precedence of Documents

- 4.1 The Contract is comprised of:
- a) Additional Contract Terms (if any)
 - b) if the Contract is issued under a DoSO, the Contract Details Schedule
 - c) Statement of Work
 - d) Commonwealth Contract Terms
 - e) CCS Glossary and Interpretation, and
 - f) additional Contract annexes (if any), unless otherwise agreed in writing between the Parties.
- 4.2 If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- 4.3 The Contract may be signed and dated by the Parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law

- 5.1 The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement

- 6.1 The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was executed.
- 6.2 Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM or the RFQ as relevant remain correct.
- 6.3 Any agreement or understanding to vary or extend the Contract will not be legally binding upon either Party unless in writing and agreed by both Parties.
- 6.4 If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival

- 7.1 All Additional Contract Terms (if any), plus clauses: C.C.14 [Liability of the Supplier] C.C.17 [Supplier Payments] C.C.20 [Transition Out], and C.C.21 [Compliance with Law and Policy], survive termination or expiry of the Contract.

C.C.8 Notices

- 8.1 A Notice is deemed to be delivered:
- a) if delivered by hand - on delivery to the relevant address
 - b) if sent by registered post - on delivery to the relevant address, or

| |
|------------------------------------|
| Commonwealth Contract Terms |
|------------------------------------|

- c) if transmitted by email or other electronic means when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.
- 8.2 A Notice received after 5:00 pm, or on a day that is not a working day in the place of receipt, is deemed to be delivered on the next working day in that place.
- C.C.9 Assignment**
- 9.1 The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.
- 9.2 To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty (20) Business Days, or such other time as agreed between the Parties, of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.
- C.C.10 Subcontracting**
- 10.1 Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.
- 10.2 The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services specified in the Contract. The Supplier must not subcontract any part of its obligations under the Contract, or replace approved Subcontractors, without prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.
- 10.3 At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.
- 10.4 The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.
- 10.5 The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).
- C.C.11 Delivery and Acceptance**
- 11.1 The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.
- 11.2 The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the Contract and advise the Customer when it will be able to do so.
- 11.3 Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the Contract.
- 11.4 The Customer may reject the Goods and/or Services within ten (10) Business Days after delivery or such longer period specified in the Contract ("Acceptance Period"), if the Goods and/or Services do not comply with the requirements of the Contract.
- 11.5 If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).
- 11.6 If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.
- 11.7 If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.
- C.C.12 Licences Approvals and Warranties**
- 12.1 At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.
- 12.2 The Supplier must provide the Customer with all relevant third party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.
- 12.3 To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.
- C.C.13 Specified Personnel**
- 13.1 The Supplier must ensure that the Specified Personnel set out in the Contract (if any) perform

| |
|------------------------------------|
| Commonwealth Contract Terms |
|------------------------------------|

the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

- 13.2 At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:
- a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer
 - b) is not a fit and proper person, or
 - c) is not suitably qualified to perform the Services.
- 13.3 Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier

- 14.1 The Supplier will indemnify the Customer for any damage claim, cost or loss resulting from any negligent or wilful breach of its obligations or representations under the Contract by the Supplier or its officers, employees, agents or Subcontractors.
- 14.2 The Supplier's obligation to indemnify the Customer will reduce proportionally to the extent that the Customer has contributed to the claim, cost or loss.
- 14.3 Where the Supplier is a member of a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002 (ACT)*, or any corresponding Commonwealth, State, Territory or legislation that limits civil liability arising from the performance of their professional services, and where that scheme applies to the Goods and/or Services delivered under the Contract, the Supplier's liability under this clause shall not exceed the maximum amount specified by that scheme or legislation.
- 14.4 The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience

- 15.1 In addition to any other rights either Party has under the Contract,
- a) the Customer acting in good faith, may at any time, or
 - b) the Supplier, acting in good faith, may notify that it wishes to,
- terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.
- 15.2 If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.
- 15.3 If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in

accordance with the Notice and comply with any reasonable directions given by the Customer.

- 15.4 In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with C.C.11 [Delivery and Acceptance] and the Contract before the effective date of termination or reduction.
- 15.5 If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.
- 15.6 Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause

- 16.1 The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:
- a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract
 - b) the Customer rejects the Goods and/or Services in accordance with C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection
 - c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy
 - d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier, or
 - e) subject to the Customer complying with any requirements in the *Corporations Act 2001 (Cth)*, the Supplier:
 - i. is unable to pay all its debts when they become due
 - ii. if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001 (Cth)*, or
 - iii. if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966 (Cth)*.
- 16.2 Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

| |
|------------------------------------|
| Commonwealth Contract Terms |
|------------------------------------|

C.C.17 Supplier Payments

- 17.1 If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.
- 17.2 The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.
- 17.3 Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.
- 17.4 If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution

- 18.1 For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (e) of this clause sequentially:
- a) both Contract Managers will try to settle the dispute by direct negotiation
 - b) if unresolved within five (5) Business Days, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution. The date the dispute Notice is issued will be the date of the Notice ("Notice Date")
 - c) if the proposed solution is not accepted by the other Contract Manager within five (5) Business Days of the Notice Date, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation
 - d) failing settlement within twenty (20) Business Days of the Notice Date, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within thirty (30) Business Days of the Notice Date or such other period as agreed by the Parties, and
 - e) If the dispute is not resolved within sixty (60) Business Days of the Notice Date, either the Supplier or the Customer may commence legal proceedings or, by agreement, continue the mediation process for a period agreed by the Parties.
- 18.2 Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant Party and act in good faith to genuinely attempt to resolve the dispute.
- 18.3 The Supplier and the Customer will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

18.4 Despite the existence of a dispute, the Supplier will continue their performance under the Contract unless requested in writing by the Customer not to do so.

18.5 This procedure for dispute resolution does not apply to action relating to C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In

19.1 The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out

20.1 If the Contract expires or is terminated under C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Law and Policy

21.1 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with all laws applicable to the performance of this Contract and warrants that it will not cause the Customer to breach any laws.

21.2 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with any Commonwealth policies relevant to the Goods and/or Services.

21.3 The Supplier agrees to provide such reports and other information regarding compliance with applicable law and Commonwealth policy as reasonably requested by the Customer or as otherwise required by applicable law or policy.

21.4 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in 21.A to 21.J below, or any other applicable law or Commonwealth policy, it must:

- a) immediately report it to the Customer and provide a written report on the matter within three (3) Business Days unless otherwise set out in these Terms, and
- b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

21.A Access to Supplier's Premises and Records

A.1 The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

A.2 The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's or its Subcontractor's premises, personnel, computer systems, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under

| |
|------------------------------------|
| Commonwealth Contract Terms |
|------------------------------------|

the Contract, including in connection with a request made under the *Freedom of Information Act 1982* (Cth) or an audit or review by the Australian National Audit Office.

- A.3 Unless the access is required for an urgent purpose, the Customer will provide reasonable prior notice to the Supplier.
- A.4 If requested by the Supplier, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request, unless the access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents or Subcontractors.
- A.5 The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

21.B *Privacy Act 1988* (Cth) Requirements

- B.1 In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and Subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.

21.C Notifiable Data Breaches

- C.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract, the Supplier must:
- a) immediately report it to the Customer and provide a written report within three (3) Business Days, and
 - b) carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- C.2 Where the Supplier is aware that there has been an Eligible Data Breach in relation to the Contract, the Supplier must:
- a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates
 - b) take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and
 - c) take any other action as reasonably directed by the Customer.

21.D Personal Information

- D.1 The Supplier agrees to provide the Customer, or its nominee, relevant information (including personal information) relating to the Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to a Contract.

- D.2 When providing personal information of a natural person under this clause, the Supplier warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).

- D.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).

21.E Confidential Information

- E.1 The Supplier agrees not to disclose to any person, other than the Customer, any Confidential Information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer.
- E.2 This obligation will not be breached where:
- a) the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or
 - b) the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information, but any such request must be reported by Notice to the Customer without delay and the text of the disclosure provided in writing to the Customer as soon as practicable.
- E.3 The Customer may at any time require the Supplier to arrange for its officers, employees, agents or Subcontractors to give a written undertaking relating to nondisclosure of the Customer's Confidential Information in a form acceptable to the Customer.
- E.4 The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential.
- E.5 The Customer will not be in breach of any confidentiality agreement if the Customer discloses the information for the purposes of managing the Contract or if it is required to disclose the information by law, a Minister or a House or Committee of Parliament, or for accountability or reporting purposes.

21.F Security and Safety

- F.1 When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and Subcontractors are aware of, and comply with, such security and safety requirements.
- F.2 If directed by the Customer, the Supplier and its officers, employees, agents and Subcontractors are required to undertake a security briefing prior to being able to work inside a Commonwealth office, area or facility.
- F.3 The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

Commonwealth Contract Terms

F.4 The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including the *Criminal Code Act 1995 (Cth)*) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

21.G Criminal Code

G.1 The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995 (Cth)*.

G.2 The Supplier must ensure that its officers, employees, agents and Subcontractors engaged in connection with the Contract are aware of the information contained in this clause.

21.H Fraud

H.1 The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

H.2 If an investigation finds that the Supplier or its officers, employees, agents or Subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse or compensate the Customer in full.

21.I Taxation

I.1 The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

21.J Public Interest Disclosure

J.1 The Supplier must familiarise itself with the *Public Interest Disclosure Act 2013 (Cth)* and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013 (Cth)*.

J.2 Information for disclosers is available at <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>.



The Commonwealth Contract Terms are licensed under the Creative Commons [Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/) (CC BY NC ND 4.0 INT).

Commonwealth Contracting Suite Glossary and Interpretation

Glossary

In the Commonwealth Contracting Suite (CCS):

“**Additional Contract Terms**” means the terms and conditions set out in the section of the Approach to Market, RFQ or the Contract as relevant with the heading ‘Additional Contract Terms’.

“**Additional DoSO Terms**” means the terms and conditions set out in the section of the DoSO with the heading ‘Additional DoSO Terms’.

“**Approach to Market**” or “**ATM**” means the notice inviting Potential Suppliers to participate in the relevant procurement.

“**Black Economy Policy**” means the *Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

“**Business Days**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned, as defined by the *Corporations Act 2001* (Cth), and also excludes the period between Christmas Day and New Year’s Day.

“**Closing Time**” means the closing time and date as specified in the Approach to Market.

“**Commonwealth Contracting Suite**” or “**CCS**” means the suite of proprietary documents developed for Commonwealth procurements.

“**Commonwealth Procurement Rules**” means the legislative instrument issued by the Finance Minister under section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which establishes the framework under which entities govern and undertake their own procurement.

“**Confidential Information**” means any information that any Party does not wish to be shared outside those involved in the Contract or Standing Offer Arrangement. It can include anything that has been acquired, developed or made available to any of the Parties in the course of the relationship between the Parties. It includes, but is not limited to, information:

- a) specifically identified as confidential in the Contract or DoSO
- b) where disclosure would cause unreasonable detriment to the owner of the information or another party, or
- c) where the information was provided under an understanding that it would remain confidential.

“**Conflicts of Interest**” means any real or apparent situation where the personal interests of the Supplier, its officers, employees, agents or Subcontractors could improperly influence the Supplier’s performance of the Contract or DoSO as relevant.

“**Contract**” means the documents (specified in the Commonwealth Contract Terms or the Commonwealth Purchase Order Terms as relevant) as executed or amended from time to time by agreement in writing between the Supplier and the Customer.

“**Contract Details Schedule**” means the section in a Contract issued under the DoSO with the heading ‘Contract Details Schedule’.

“**Contract Manager**” means the ‘Contract Manager’ for the Customer or Supplier representative (as relevant) specified in the Contract.

“**Contract Price**” means the maximum contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“**Correctly Rendered Invoice**” means an invoice that:

- a) is correctly addressed and includes any purchase order number or other Customer reference advised by the Customer’s Contract Manager and the name and specified contact details of the Customer’s Contract Manager
- b) relates only to the Goods and/or Services that have been accepted by the Customer in accordance with the Contract or a payment or milestone schedule identified in the Contract
- c) is correctly calculated and charged in accordance with the Contract
- d) is for an amount which, together with previously Correctly Rendered Invoices, does not exceed the Contract Price, and
- e) is a valid tax invoice in accordance with the GST Act.

“**Customer**” means the party specified in the Contract as the Customer.

“**Deed of Standing Offer**” or “**DoSO**” means the documents (specified in the Commonwealth DoSO Terms) as executed or amended by agreement in writing between the Lead Customer and the Supplier.

“**Delivery and Acceptance**” means the process by which Goods and/or Services are delivered to the Customer and accepted by the Customer as meeting the terms specified in the Contract.

Commonwealth Contracting Suite Glossary and Interpretation

“**DoSO Manager**” means the ‘DoSO Manager’ for the Lead Customer or Supplier representative (as relevant) specified in the DoSO.

“**Electronic invoicing**” or “**eInvoicing**” means the automated exchange of invoices directly between the Customer and Supplier’s software or financial systems via the Peppol network, as long as both Parties are Peppol eInvoicing enabled.

“**Eligible Data Breach**” means an ‘Eligible Data Breach’ as defined in the *Privacy Act 1988* (Cth).

“**End Date**” means the date specified in the Contract or DoSO (as relevant) on which the agreement ceases.

“**Fraud**” means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.

“**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.

“**Goods and/or Services**” means:

- a) the Goods and/or Services and any Material, and
- b) all such incidental Goods and/or Services that are reasonably required to achieve the Requirement of the Customer,

as specified in the Contract and, where relevant, offered under a Standing Offer Arrangement.

“**GST**” means a Commonwealth goods and services tax imposed by the GST Act.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Indigenous Procurement Policy**” means the procurement connected policy as described at the National Indigenous Australians Agency website <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

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

“**Lead Customer**” means the party specified in the DoSO as the Lead Customer.

“**Material**” means any material used or brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“**Moral Rights**” means the rights in Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity.

“**Notice**” means an official notice or communication under the Contract or DoSO (as relevant) in writing, from one Contract or DoSO Manager to the other Contract or DoSO Manager (as the case may be), at the postal address, or email address, or facsimile number set out in the Contract or DoSO or as notified by the relevant Party.

“**Peppol**” means the Pan-European Public Procurement On-Line framework as described at the Australian Taxation Office website <https://softwaredevelopers.ato.gov.au/eInvoicing>.

“**Party**” or “**Parties**” means (as relevant) the Customer and Supplier specified in the Contract or the Lead Customer and Supplier specified in the DoSO.

“**Personal Information**” means information relating to a natural person as defined in the *Privacy Act 1988* (Cth).

“**Potential Customer**” means an Australian Government entity that is identified within the DoSO as being able to use the Standing Offer Arrangement.

“**Potential Supplier**” means any entity who is eligible to respond to an ATM.

“**Pricing Schedule**” means a schedule of maximum pricing rates that a Supplier can offer in an RFQ for Goods and/or Services as set out in the DoSO.

“**Public Interest Certificate**” means a certificate issued under section 22 of the *Government Procurement (Judicial Review) Act 2018* (Cth).

“**Referenced Material**” means any materials referenced in the ATM, including but not limited to, reports, plans, drawings or samples.

“**Request for Quote**” or “**RFQ**” means any notice inviting quotations to provide specific Goods and/or Services under the DoSO.

Commonwealth Contracting Suite Glossary and Interpretation

“**Required Capabilities**” means:

- a) in the DoSO ATM, the description of the Lead Customer’s required Goods and/or Services. These may be categorised into several descriptions of Required Capabilities.
- b) in the DoSO, the description of the Goods and/or Services that a Supplier is approved to offer.

“**Requirement**” means the description of the Goods and/or Services in:

- a) for the purposes of the Commonwealth ATM Terms, the section of the Approach to Market with the heading ‘The Requirement’
- b) for the purposes of the Commonwealth Contract Terms, the section of the Contract with the heading ‘The Requirement’, or
- c) for the purposes of the Commonwealth Purchase Order Terms, the Customer’s purchase order or similar ordering document setting out the Goods and/or Services.

“**Response**” means information provided by a Potential Supplier or Supplier demonstrating their capacity and capability to:

- a) provide the Requirement under the ATM or Request for Quote, or
- b) meet a Required Capability under the DoSO ATM.

“**Satisfactory**” in relation to the Black Economy Policy only, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Black Economy Policy or, if the circumstances in Part 6.c of the Black Economy Policy apply, the conditions set out in Part 8 of the Black Economy Policy.

“**Specified Personnel**” means personnel specified in the Contract, or who are accepted by the Customer in accordance with clause C.C.13 [Specified Personnel].

“**Standing Offer Arrangement**” means the DoSO arrangement, any Contract that is executed under the DoSO and any other document that applies to it.

“**Standing Offer Details**” means the section of the DoSO with the heading ‘Standing Offer Details’.

“**Statement of Requirement**” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“**Statement of Tax Record**” means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

“**Statement of Work**” means the section or schedule of the Contract (as the case may be) with the heading ‘Statement of Work’.

“**Subcontractor**” means an entity contracted by the Supplier to supply some or all of the Goods and/or Services required under the Contract.

“**Supplier**” means a party specified in the Contract or the DoSO as the Supplier.

“**Valid**” in relation to the Black Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.e of the Black Economy Policy.

Commonwealth Contracting Suite Glossary and Interpretation

Interpretation

In the Commonwealth Contracting Suite, unless stated otherwise:

- a) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- b) words in the singular include the plural and words in the plural include the singular
- c) the words 'including', 'such as', 'particularly' and similar expressions are not used as and are not intended to be interpreted as words of limitation
- d) a reference to dollars is a reference to Australian dollars
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- f) clause headings are for reference only and have no effect in limiting or extending the language of the terms to which they refer, and
- g) the following clause references used in Commonwealth Contracting Suite documents refer to that section or part of the relevant CCS document listed in the table below:

| Clause Reference | Section / Part | CCS Document |
|------------------|---|--|
| A.A.[x] | Statement of Requirement | CCS Approach to Market (ATM) |
| A.B.[x] | Commonwealth Approach to Market (ATM) Terms | |
| A.C.[x] | Additional Contract Terms | |
| C.A.[x] | Statement of Work | Commonwealth Contract |
| C.B.[x] | Additional Contract Terms | |
| C.C.[x] | Commonwealth Contract Terms | |
| | | <i>NOTE: Where relevant, this also forms part of a Contract formed under a DoSO.</i> |
| P.C.[x] | Commonwealth Purchase Order Terms | Commonwealth Purchase Order Terms |
| D.A.[x] | CCS DoSO ATM | CCS Deed of Standing Offer (DoSO) |
| D.B.[x] | Commonwealth DoSO ATM Terms | |
| D.C.[x] | DoSO ATM Response Form | |
| D.D.[x] | CCS DoSO | |
| D.D.3(x) | Additional DoSO Terms | |
| D.E.[x] | Commonwealth DoSO Terms | |
| R.A.[x] | Schedule 1 - Statement of Work | CCS DoSO RFQ and Contract |
| R.B.[x] | Schedule 2 - Additional Contract Terms | |
| R.C.[x] | Schedule 3 - Supplier's Response Form | |
| R.D.[x] | Contract Details Schedule | |

s22

Commonwealth Contract – Consultancy Services

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Consultancy Services, they enter into a Contract comprising:

- a) Additional Contract Terms (if any)
- b) Statement of Work
- c) Commonwealth Contract Terms
- d) Commonwealth Contracting Suite Glossary and Interpretation
- e) Contract Annex 1 – Supplementary Information (if any).

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by Department of Industry, Science and Resources

ABN 74 599 608 295 by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

s22

Date:

23 January 2023

s47F

N 16 632 575 029 in accordance with Section 127 of

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (*print*)

Date:

19 January 2023

Department of Industry and Science

Contract for the Provision of Services number [insert]

Commonwealth of Australia (**Commonwealth**)

[Insert name of Contractor] (**Contractor**)

Note to the Contractor:

This Contract outlines the rights and obligations of you and the Commonwealth (represented by the Department of Industry and Science) (**the Department**) in relation to the performance of the Services.

If this Contract has been issued following a tender process, the terms and conditions contained in clauses 1 to 37 should be the same as those in the draft contract provided as an attachment to the Request for Tender document, other than any amendments agreed between you and the Commonwealth during contract negotiations. Please read any amended provisions (such as the descriptions of the Services and the Milestone Dates and Performance Criteria (if any)) carefully to ensure that they are correct.

The Government's Supplier Pay On-Time or Pay Interest Policy may apply to this Contract. Full details of the policy can be found in Resource Management Guide No. 417 on the [Finance website](#).

The effect and purpose of the clauses in this Contract are explained in the User Notes available on the Department's website at [User Notes](#). Where relevant, the User Notes contain a description of the purpose and operation of specific clauses.

The Commonwealth Representative specified in this Contract is prepared to discuss any aspect of this Contract with you, but if you are still unsure about any aspect of this Contract you should seek independent legal advice before signing.

This Contract has been sent to you in duplicate. If the Contract is acceptable, please complete the signing page at the end of the Contract and return both signed copies to the Department. The Commonwealth will then sign and date the copies and return one original copy to you. This process must be completed before work may commence.

Contract Information

Date

_____ / _____ / _____
 day month year

Parties

Name The Commonwealth of Australia as represented by the Department of Industry and Science

Commonwealth

Short form name ABN [insert Department's ABN]

Name [insert name of Contractor]

Name

Short form name

Contractor

ABN [insert Contractor's ABN]

Overview

- A The Commonwealth requires the provision of the Services specified in Schedule 2 and the Contractor is required to meet the Milestone Dates and provide the Deliverables specified.
- B The Contractor has agreed to provide the Services on the terms and conditions contained in this Contract.
- C The Commonwealth has agreed to pay the Contractor the Service Charges in accordance with Schedule 3.
- D The Commonwealth has agreed to engage the Contractor to provide the Services on the terms and conditions contained in this Contract.

Contract for the Provision of Services

| | |
|--|-----------|
| Contract Information | 2 |
| Agreed Terms | 5 |
| Part 1 – Services | 5 |
| 1. Definitions and interpretation | 5 |
| 2. Priority of Contract documents | 10 |
| 3. Duration of Contract | 11 |
| 4. Transition-in arrangements | 11 |
| 5. Services to other Agencies – Not Used | 11 |
| 6. General obligations of the Contractor | 11 |
| 7. Provision of Services | 12 |
| 8. Co-operation with Personnel and contractors | 14 |
| 9. Monitoring progress | 15 |
| 10. Performance assessment | 15 |
| 11. Personnel | 16 |
| 12. Commonwealth Material | 17 |
| 13. Intellectual Property Rights | 18 |
| 14. Moral Rights | 20 |
| Part 2 – General requirements | 21 |
| 15. Payment | 21 |
| 16. GST | 22 |
| 17. Indemnity | 22 |
| 18. Insurance | 23 |
| 19. Confidentiality | 24 |
| 20. Protection of personal information | 26 |
| 21. Work health and safety | 28 |
| 22. Conflict of interest | 30 |
| 23. Goods or Services to Associates | 32 |
| 24. Security | 34 |
| 25. Cyber security | 34 |
| 26. Books and records | 36 |
| 27. Audit and access | 37 |

| | |
|---|-----------|
| 28. Access to documents | 38 |
| 29. Unforeseen events | 39 |
| 30. Dispute resolution | 39 |
| 31. False or misleading information | 40 |
| 32. Increase or reduction in scope of Services | 40 |
| 33. Termination | 41 |
| 34. Consequences of expiration or termination | 43 |
| 35. Survival | 44 |
| 36. Notices and other communications | 45 |
| 37. Miscellaneous | 45 |
| Schedule 1 – Contract Details | 48 |
| Schedule 2 – Services | 51 |
| Schedule 3 – Payment | 58 |
| Schedule 4 – Confidentiality and privacy undertaking | 61 |
| Schedule 5 – Designated Confidential Information | 64 |
| Schedule 6 – Pre-existing Material | 66 |
| Signing page | 67 |

Agreed Terms

Part 1 – Services

1. Definitions and interpretation

1.1 Definitions

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

| | |
|--|--|
| Accelerating Commercialisation Customer Information Guide | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Accelerating Commercialisation Programme | the programme element of the Entrepreneurs' Infrastructure Programme described in Schedule C of the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au |
| Accounting Standards | means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 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. |
| Activity Reports | means a report designed to record the activities undertaken by Commercialisation and Business Development – Commercialisation Advisers |
| Advisers | (a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers. |
| Advisory Committee | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Agency | (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 the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control. |
| Agency Order Form | the form specified by the Commonwealth. |
| Agreed Terms | clauses 1 to 37 of this Contract, which set out terms and conditions agreed by the parties. |
| Applicant | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |

| | |
|---|--|
| Associate | has the same meaning as in clause 23. |
| Australian Government Protective Security Policy Framework | the <i>Australian Government Protective Security Policy Framework</i> , as amended or replaced from time to time. |
| Business Day | a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received. |
| Business Hours | from 9.00am to 5.00pm on a Business Day, unless specified otherwise in item 5 of the Contract Details. |
| Commencement Date | the date on which this Contract commences, as specified in item 6 of the Contract Details. |
| Commercialising Australia Programme | the programme aims to build the capacity of and opportunities for Australia's researchers, entrepreneurs and innovative firms to convert intellectual property into commercial ventures, creating high skill jobs and increasing our global competitiveness. |
| Commonwealth | the Commonwealth as specified in item 1 of the Contract Details. |
| Commonwealth Material | any Material provided to the Contractor by the Commonwealth, including the Material (if any) specified in item 15 of the Contract Details. |
| Commonwealth Representative | the person identified in item 3 of the Contract Details. |
| Confidential Contract Provisions | the provisions identified in Schedule 5. |
| Confidential Information | information that is by its nature confidential and: <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in Schedule 5 of this Contract; or (b) a party knows or ought to know is confidential, but does not include: <ul style="list-style-type: none"> (c) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation. |
| Conflict | refers to a conflict of interests, duties, or interest and duty, or risk of a conflict of any of these kinds, or an apparent conflict of any of these kinds: <ul style="list-style-type: none"> (a) arising as a result of the Contractor or any of its employees, agents or contractors engaging in any activity, having any interest or holding any office; and/or (b) which affects or is likely to affect the Contractor's ability to provide the Services in accordance with this Contract, fairly and independently. |
| Contract | this agreement between the Commonwealth and the Contractor, as amended from time to time in accordance with clause 37.2, and |

| | |
|-----------------------------------|---|
| | includes its schedules and any attachments. |
| Contract Details | the details set out in Schedule 1. |
| Contract Material | 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 Contract and includes any modifications that may be required under clause 13.7(b). |
| Contractor | the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel. |
| Contractor Representative | the person identified in item 4 of the Contract Details. |
| Contract Period | the Initial Contract Period plus any extension in accordance with clause 3.2. |
| Customer Information Guide | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Corporations Act | the <i>Corporations Act 2001</i> (Cth). |
| Customer Service Charter | means the customer service charter as adopted, amended or modified by the Department from time to time |
| Deliverable | any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract. |
| Department | the Department of Industry and Science and any successor department that may administer this Contract. |
| Expert Network | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Former Participant | a successful applicant for the Commercialising Australia Programme. |
| Industry Growth Centre | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Initial Contract Period | the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details. |
| Know-how | means expertise, knowledge, skills, techniques, methods, procedures, ideas and concepts. |

| | |
|-------------------------------------|---|
| Intellectual Property Rights | all intellectual property rights, including: <ul style="list-style-type: none"> (a) copyright, patents, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered. |
| Law | 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. |
| LEADR | the dispute resolution association with that name and the Australian Business Number 69 008 651 232. |
| Material | 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. |
| Milestone Date | any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in Schedule 2. |
| Moral Rights | 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). |
| Nominated Agency | an Agency, listed in item 10 of the Contract Details, which may require the provision of Services under this Contract. |
| Notice | a notice, demand, consent, approval or communication issued under this Contract. |
| Panel | means an assessment panel made up of commercialisation advisers |
| Participant | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Performance Criteria | the requirements set out in item 4 of Schedule 2 for each Service and Deliverable and if none are set out (or it states not applicable or anything to the same effect) the requirements in clauses 7.1(b), 7.1(c) and 7.1(e). |
| Personnel | in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of the Contractor, of any subcontractor. |
| Portfolio | has the same meaning as in the Entrepreneurs' Infrastructure |

| | |
|-------------------------------|--|
| | Programme Guidelines available at www.business.gov.au . |
| Potential Applicant | a person or entity who has submitted an expression of interest for the Accelerating Commercialisation Programme and may or may not proceed to submit an application for funding under the Accelerating Commercialisation Programme. |
| Pre-existing Material | Material owned by a party before execution of this Contract, including the Material specified in Schedule 6. |
| Privacy Act | the <i>Privacy Act 1988</i> (Cth). |
| Private Assistance | means: <ul style="list-style-type: none"> (a) the provision of any assistance, goods or services by the Contractor to an Applicant, Potential Applicant or Participant, outside the Accelerating Commercialisation Programme; or (b) suggesting to an Applicant, Potential Applicant or Participant that it seek assistance, goods or services from a person with whom the Contractor is Associated. |
| Programme Delegate | has the same meaning as in the Entrepreneurs' Infrastructure Programme Guidelines available at www.business.gov.au . |
| Related Body Corporate | has the same meaning as in section 50 of the Corporations Act. |
| Schedules | the schedules to this Contract. |
| Service Charges | the charges payable to the Contractor in accordance with Schedule 3. |
| Services | the services to be provided by the Contractor, as specified in Schedule 2 and includes the provision of the Deliverables. |
| Specified Personnel | the Contractor's subcontractors and Personnel specified in item 14 of the Contract Details. |
| Third Party Material | Material owned by a third party that is: <ul style="list-style-type: none"> (a) included, embodied in or attached to the Contract Material; or (b) used as part of the performance of the Services. |
| WHS Act | the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act. |
| WHS Laws | the WHS Act, regulations made under the WHS Act and any Code of Practice approved for the purpose of the WHS Act. |
| WHS Worker | Personnel of the Contractor who are <i>workers</i> (as defined in the WHS Act): <ul style="list-style-type: none"> (a) engaged, or caused to be engaged by the Commonwealth; or (b) whose activities in carrying out work are influenced or directed by the Commonwealth while at work (wherever occurring) in the Commonwealth's business or undertaking. |

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, paragraph or schedule is to a clause or paragraph of, or schedule to, this Contract, and a reference to this Contract includes any schedule;
- (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 Canberra, Australia 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 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;
- (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.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, 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 Contract.

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Contract Period unless terminated in accordance with clause 29.3 or clause 32.

3.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Commonwealth for further period(s), specified in item 8 of the Contract Details (each an **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 Contract Details (**Option Notice Period**),before the end of the current Contract Period.
- (b) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. Transition-in arrangements

From the Commencement Date, the Contractor must:

- (a) accept any clients of the Department that previously received assistance under another, or similar program, such as the Commercialisation Australia Programme, referred by the Department;
- (b) commence the provision of the Services to those clients for the Accelerating Commercialisation Programme; and
- (c) comply with all reasonable directions given by the Department relating to the Contractor's provision of Services to those clients.

5. Services to other Agencies – Not Used

6. General obligations of the Contractor

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.

7. Provision of Services

7.1 Service obligations

The Contractor must supply the Services:

- (a) to the reasonable satisfaction of the Commonwealth Representative;
- (b) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (c) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- (d) in accordance with the Performance Criteria;
- (e) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;
- (f) using the Specified Personnel (if any);
- (g) in accordance with all applicable Laws;
- (h) in accordance with any directions in relation to the Services given by the Commonwealth from time to time;
- (i) 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;
- (j) in accordance with the same standards and obligations that are imposed on Commonwealth Personnel under the WHS Act and any specific legislative requirements set out at item 11 of Schedule 1;
- (k) so as to keep accurate and auditable records relating to the performance of the Services; and
- (l) otherwise in accordance with the provisions of this Contract.

7.2 Contractor warranties

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 subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Services, and are fit and proper people;
- (d) the Services will be fit for the purpose as set out in Schedule 2;
- (e) the Services will be complete and accurate;
- (f) any materials that the Contractor incorporated in the Services are free from defects in design, performance and workmanship;
- (g) all work performed under this Contract will be carried out and completed in a proper and workmanlike manner and in the most cost-effective manner and using materials suitable for the purpose;

- (h) all insurance policies required to be held by the Contractor under this Contract:
 - (i) will remain in effect as provided for in this Contract; and
 - (ii) will not be varied by the Contractor without the Commonwealth's written consent;
- (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 will comply with the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**) and:
 - (i) if it becomes non-compliant with the WGE Act during the Term of the Contract, the Contractor will notify the Commonwealth as soon as practicable.
 - (ii) if the term of this Contract exceeds 18 months, the Contractor must provide a current letter of compliance under the WGE Act within 18 months from the Contract Commencement Date and, following this, annually to the Commonwealth; and
 - (iii) compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

7.3 Access to Commonwealth's premises

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

7.4 Conduct at Commonwealth's premises

Without limiting clauses 21 and 23, the Contractor must, if using or accessing the Commonwealth'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.

7.5 Cultural Diversity

The Contractor should be aware of the Charter of Public Service in a Culturally Diverse Society. The Contractor must be sensitive to cultural diversity and, where the Services involve the provision of services to the public, must have regard to the principles set out in that charter.

7.6 Subcontracting

- (a) The Contractor must:
 - (i) not subcontract any aspect of the provision of the Services other than to those entities set out in item 13 of the Contract Details without the prior written approval of the Commonwealth, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Workplace Gender Equality in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the WGE Act and
 - (iii) ensure that any subcontractor approved under this Contract complies with:
 - I. Clause 18 (Insurance);
 - II. Clause 19 (Confidentiality);
 - III. Clause 20 (Protection of personal information);
 - IV. Clause 21 (Work health and safety);

- V. Clause 22 (Conflict of interest);
 - VI. Clause 23 (Security);
 - VII. Clause 27 (Audit and access);
 - VIII. Clause 28 (Access to documents);
 - IX. Clause 32 (Increase or reduction in scope of Services); and
 - X. Clause 33 (Termination)
- (iv) ensure that any subcontract entered into for the purpose of this Contract contains a provision requiring the subcontractor to comply with all applicable Laws in the performance of the subcontract.
- (b) The Contractor is fully responsible for the performance of the Services even if the Contractor subcontracts any aspect of the provision of the Services.
- (c) The Contractor agrees that the Commonwealth may publicly disclose the names, Australian Business Numbers and addresses of the subcontractors approved under this Contract and their role in fulfilling this Contract.
- (d) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent provision to clause 7.6(c) permitting the Commonwealth to disclose the information specified in that clause.

8. Co-operation with Personnel and contractors

The Contractor must in the performance of the Services under this Contract:

- (a) fully co-operate with the Commonwealth's Personnel and other contractors;
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in the Commonwealth's best interests, the timely and efficient completion of all work and other activities to be performed for the Commonwealth by any person; and
- (c) consult, co-operate and co-ordinate activities with Commonwealth Personnel and other contractors to address overlapping work health and safety duties and ensure, so far as is reasonable practicable, the health and safety of workers and workplaces.

9. Monitoring progress

9.1 Progress meetings

The parties will meet at the times and manner set out in Schedule 2 (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 Commonwealth must ensure the Commonwealth Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

9.2 Reporting

The Contractor must provide the Commonwealth with reports in accordance with Schedule 2.

10. Performance assessment

10.1 Assessment of Services

- (a) Every twelve months from the Commencement Date of this Contract, the Commonwealth will:
 - (i) assess the Contractor's performance of Services against the Performance Criteria so as to achieve the Service Levels ('Performance Assessment'); and
 - (ii) arrange a meeting with the Contractor to discuss the Contractor performance ('the Performance Assessment meeting').
- (b) The Commonwealth will issue the Contractor with a notice specifying the time, date and venue for the Performance Assessment meeting.
- (c) The Contractor must participate in the Performance Assessment meeting.

10.2 (d) Notice of non-compliant Services

If at any time during the Contract Period or following a Performance Assessment, the Commonwealth considers that all or part of the Services do not meet the Performance Criteria, the Commonwealth must provide the Contractor with written notice of that fact, including the reasons for the Services not meeting the Performance Criteria and what actions the Contractor is required to take to rectify the non-compliant Services.

10.3 Rectification of non-compliant Services

If the Commonwealth notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Services are promptly corrected;
- (b) give Notice to the Commonwealth when the Services have been corrected; and
- (c) allow the Commonwealth to repeat the assessment of all or part of the Services against the Performance Criteria,

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

10.4 Right to terminate

If any part of the Services does not meet the Performance Criteria on two or more occasions, the Commonwealth may terminate this Contract immediately under clause 33.2 by giving the Contractor written notice.

10.5 Other Rights

Clauses 10.2, 10.3 and 10.4 do not limit in any way any other right, remedy or recourse of the Commonwealth.

11. Personnel

11.1 Specified Personnel

- (a) The Contractor must ensure that:
 - (i) the Specified Personnel undertake the Services in accordance with the terms of this Contract; and
 - (ii) the Specified Personnel, during the term of their employment or engagement as a Specified Personnel, perform the Services on a full-time basis, or as otherwise specified in this Contract.
- (b) The Contractor may remove Personnel or engage replacement Personnel (including Specified Personnel) from work in respect of the Services upon receipt of prior written approval from the Commonwealth, which may be given in the Commonwealth's absolute discretion.

11.2 Availability of Specified Personnel

The Contractor must ensure that:

- (a) it, and each of its Specified Personnel, is able to be contacted by Participants during Business Hours; and
- (b) the Services are performed at all reasonable times during the Contract Period, or such other times notified by the Commonwealth to the Contractor from time to time.

11.3 Removal of Personnel

- (a) The Commonwealth may, in its absolute discretion, give Notice requiring the Contractor to remove Personnel (including Specified Personnel) from work in respect of the Services.
- (b) If Notice under clause 11.3(a) is given, the Contractor must promptly arrange for the removal of such Personnel from work in respect of the Services and must engage replacement Personnel in accordance with clause 11.4.

11.4 Replacement Personnel

- (a) The Contractor must at its cost, if required by the Commonwealth, provide replacement Personnel acceptable to the Commonwealth in its absolute discretion within two weeks of receiving the Commonwealth's request (or such longer period agreed by the parties in writing).
- (b) Without limiting the Commonwealth's rights in clause 11.4(a), if a Specified Personnel is absent for more than two weeks (other than for a period of leave which has been approved by the Commonwealth under this clause 11), ceases their employment or engagement with the Contractor, or breaches any obligation referred to in this Contract as an obligation of the Contractor to provide the Services, the Contractor must notify the Commonwealth immediately and, if requested by the Commonwealth, provide a replacement Personnel acceptable to the Commonwealth in its absolute discretion within two weeks of receiving the Commonwealth's request (or such longer period agreed by the parties in writing).
- (c) If the Contractor is unable to provide acceptable replacement Personnel within the time period referred to in clause 11.4(b), the Commonwealth may terminate this Contract, or reduce the scope of the Services in accordance with the provisions of clause 32.

11.5 Additional Personnel

Where the Contractor or any Specified Personnel is unable to provide the Services and clause 11.7 or 11.8 applies, the Contractor must, if required by the Commonwealth, engage additional Personnel (acceptable to the Commonwealth) to ensure that the Services are performed without interruption in accordance with this Contract.

11.6 Notification of absence

The Contractor must notify the Programme Delegate where:

- (a) any Specified Personnel proposes to take a leave of absence; or
- (b) the Contractor is unable to provide the Services,

for a period of one consecutive Business Days or longer (excluding, in the case of part-time Specified Personnel, any days which they would not ordinarily work).

11.7 Programme Delegate's consent

The Contractor must seek the Programme Delegate's prior written consent where for a period of five consecutive Business Days or longer (excluding, in the case of part-time Specified Personnel, any days which they would not ordinarily work):

- (a) any Specified Personnel proposes to take a leave of absence; or
- (b) the Contractor is unable to provide the Services.

11.8 Leave of absence greater than 20 Business Days

- (a) Subject to this clause 11.7, the Contractor must obtain the Programme Delegate's consent before permitting any Specified Personnel to take any leave of absence which would, in aggregate, exceed 20 Business Days in the 12 month period commencing on the Commencement Date, and if the agreement is extended, for each 12 month period thereafter.
- (b) The Programme Delegate's consent may be given or withheld in his/her absolute discretion, and may be subject to conditions, including:
 - (i) requiring the Contractor to engage additional Personnel in accordance with clause 11.5; or
 - (ii) a reduction in the amount of the fees payable by the Commonwealth to the Contractor proportionate to the number of days absence the relevant Specified Personnel proposes to take in excess of 20 Business Days.
- (c) The 20 Business Day period specified in clause 11.8(a) is applicable to Specified Personnel who undertake the Services on a full-time basis (nominally 38 hours per week). Where the relevant Specified Personnel works part-time, the 20 Business Day period will be reduced on a pro-rata basis to the hours worked by that Personnel to the nearest half-day.

12. Commonwealth Material

The Commonwealth will provide to the Contractor the Commonwealth Material and the Contractor must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 15 of the Contract Details and any direction by the Commonwealth.

13. Intellectual Property Rights

13.1 Pre-existing Material and Third Party Material

This clause 13 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

13.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before including any Third Party Material in the Contract Material or using Third Party Material as part of the Services.

13.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

- (a) This Contract sets out a framework for the parties to select between the following ownership models for Intellectual Property Rights in Contract Material:
 - (i) **first model:** Intellectual Property Rights in Contract Material vest in the Commonwealth, who provides a licence to the Contractor as set out in clause 13.4 ; or
 - (ii) **second model:** Intellectual Property Rights in Contract Material vest in the Contractor, who provides a licence to the Commonwealth as set out in clause 13.5.
- (b) The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 16 of the Contract Details.
- (c) If no ownership model is, or both ownership models are, selected in item 16 of the Contract Details, clause 13.4 applies and clause 13.5, in its entirety, does not apply to this Contract.
- (d) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

13.4 First model: Commonwealth ownership of Intellectual Property Rights in Contract Material

- (a) All Intellectual Property Rights in the Contract Material vest in the Commonwealth on creation.
- (b) Unless otherwise specified in item 17 of the Contract Details, to the extent that:
 - (i) the Commonwealth needs to use any of the Pre-existing Material or Third Party Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Commonwealth for the period specified in item 17 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Pre-existing Material or Third Party Material;
 - (ii) the Contractor needs to use any of the:
 - (i) Commonwealth Material; or
 - (ii) Contract Material,
 for the purpose of performing its obligations under this Contract, the Commonwealth grants to the Contractor, subject to any conditions or restrictions specified in item 15 of the Contract Details and any direction by the

Commonwealth, 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 Commonwealth under clause 13.4(b)(i) does not include a right to exploit the Pre-existing Material or Third Party Material for the Commonwealth's commercial purposes.

13.5 Second model: Contractor ownership of Intellectual Property Rights in Contract Material

- (a) If specified in item 16 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Contractor on creation.
- (b) Unless otherwise specified in item 18 of the Contract Details, to the extent that:
- (i) the Commonwealth needs to use any of the:
 - (i) Pre-existing Material or Third Party Material provided by the Contractor; or
 - (ii) Contract Material,

to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Commonwealth for the period specified in item 18 of the Contract Details a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or
 - (ii) the Contractor needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Contract, the Commonwealth grants to the Contractor, subject to any conditions or restrictions specified in item 15 of the Contract Details and any direction by the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.
- (c) The licence granted to the Commonwealth under clause 13.5(b)(i) does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for the Commonwealth's commercial purposes.

13.6 Warranty

The Contractor warrants that:

- (a) the Pre-existing Material, Third Party Material, the Deliverables and the Contract Material (**Warranted Materials**) and the Commonwealth's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person;
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 13; and
- (c) where specified at item 11 of the Contract Details, the Warranted Materials are compliant with the Web Content Accessibility Guidelines (WCAG) 2.0 to a double A rating.

13.7 Remedy for breach of warranty

If someone claims, or the Commonwealth 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 17 and to any other rights that the Commonwealth may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Commonwealth 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.

13.8 Delivery of Contract Material

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

14. Moral Rights

14.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Commonwealth, the Contractor must:

- (a) give, where the Contractor is an individual, in a form acceptable to the Commonwealth;
- (b) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Contract Material gives, in a form acceptable to the Commonwealth; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Contract Material gives,

genuine consent in writing to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights.

14.2 Specified Acts

- (a) In this clause 14, unless otherwise specified in item 19 of the Contract Details, **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; and
 - (iv) adding any additional content or information to the Contract Material.
- (b) For the purposes of clause 14.2(a), **Contract Material** includes any Pre-existing Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Contract Material.

Part 2 – General requirements

15. Payment

15.1 Obligation to pay charges

Subject to this clause 15 and the Services meeting the requirements of this Contract including the Performance Criteria, the Commonwealth must pay to the Contractor the Service Charges as set out in Schedule 3.

15.2 Performance bonus

A separate performance bonus (in addition to the Service Charges) may be paid to the Contractor as determined by the Commonwealth in its sole discretion and taking into account matters such as (but not limited to):

- a. the quality and timeliness of reporting;
- b. networking and collaboration activities;
- c. promotion of the Accelerating Commercialisation Programme;
- d. levels of recruitment to the Expert Network; and
- e. quality and effectiveness of domestic and international roadshows.

15.3 Deferral of payment

The Commonwealth shall be entitled, without derogating from any other right it may have, to defer payment of a monthly instalment for Services performed until the Contractor has completed, to the satisfaction of the Commonwealth, that part of the Services to which that instalment relates.

15.4 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Commonwealth for the Service Charges in accordance with the requirements specified in Schedule 3.

15.5 Due date for payment

Unless otherwise specified in Schedule 3, the Commonwealth must make payment of a correctly rendered invoice within 30 days after receiving the invoice. If this period ends on a day which is not a Business Day, payment is due on the next Business Day.

15.6 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 Commonwealth to the Contractor under this Contract.

15.7 Expenses

Unless specified otherwise in Schedule 3, the Contractor must not charge the Commonwealth 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. The Commonwealth is under no obligation to pay any amount in excess of the Service Charges.

15.8 Taxes

The Contractor must pay all:

- (a) 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 16, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

15.9 Interest

Interest is payable by the Commonwealth to the Contractor in the circumstances set out in Schedule 3.

16. GST

16.1 Interpretation

In this clause 16, 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.

16.2 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

16.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 16.2.

16.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

16.5 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 16.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause 16.5 is deemed to be a payment, credit or refund of the GST Amount payable under clause 16.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

16.6 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.

17. Indemnity

17.1 Indemnity

- (a) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees (referred to in this clause 17.1 as those indemnified) from and against any loss or liability, including:
- (i) loss of, or damage to, property of the Commonwealth;

- (ii) claims by any person in respect of personal injury or death;
- (iii) claims by any person in respect of loss of, or damage to, any property; and
- (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 17.1(a)(ii) or clause 17.1(a)(iii),

arising out of or as a consequence of:

- (v) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Services;
 - (vi) any actual, likely or threatened breach of the Contractor's or subcontractor's obligations relating to Confidential Information or personal information; or
 - (vii) without limiting the preceding paragraphs, any breach of this Contract by the Contractor, or negligence on the part of the Contractor, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Contractor, its Personnel or subcontractors.
- (b) The Contractor's liability to indemnify those indemnified under clause 17.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
- (c) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Contract Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Contract Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

18. Insurance

18.1 Obligation to maintain insurance

In connection with the provision of the Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
 - (i) public liability;
 - (ii) either professional indemnity or errors or omissions (as required by the Commonwealth having regard to the nature of the Services);
 - (iii) workers' compensation as required by Law; and
 - (iv) any additional types specified in item 20 of the Contract Details; and
- (b) for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for either professional indemnity or errors or omissions, unless otherwise specified in item 20 of the Contract Details,

in the amounts specified in item 20 of the Contract Details.

18.2 Certificates of currency

The Contractor must, on request by the Commonwealth, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 18.1.

19. Confidentiality

19.1 Prohibition on disclosure

- (a) Subject to clause 19.4, the Contractor must not, without the prior written consent of the Commonwealth disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 19.4, the Commonwealth must not, without the prior written consent of the Contractor disclose any Contractor Confidential Information to a third party.

19.2 Conditions of approval

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 19.2.

19.3 Advisers and third parties

The Commonwealth may at any time require the Contractor to arrange for:

- (a) its Advisers;
- (b) its Personnel and other employees and subcontractors engaged in the performance of the Services; or
- (c) any other third party, to whom Commonwealth Confidential Information may be disclosed pursuant to clause 19.4(a) or clause 19.4(b),

to give a written undertaking relating to the use and non-disclosure of the Commonwealth's Confidential Information substantially in the form set out in Schedule 4.

19.4 Exceptions to obligations

The obligations on each party under clause 19.1 or 19.10 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees 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 activities related to this Contract;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within the Department, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor General, the Australian Information Commissioner or Commonwealth Ombudsman;
- (g) is required by Law, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Contract.

19.5 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 19.4(a), (b) or (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, including in the case of Commonwealth Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect substantially in the form set out in Schedule 4; or
- (b) pursuant to clauses 19.4(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

19.6 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) Where 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.

19.7 Period of confidentiality

The obligations under this clause 19 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 5, for the period set out in that schedule 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.

19.8 No reduction in privacy obligations

Nothing in this Contract derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

19.9 Return of information

At the Commonwealth's request or on the expiry or termination this Contract, the Contractor must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Contractor must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

19.10 Confidential Contract Provisions

Notwithstanding any other provision of this Contract, the Commonwealth may disclose the provisions of this Contract except the Confidential Contract Provisions.

20. Protection of personal information

20.1 Definitions

In this clause 20, the terms ‘agency’, ‘Australian Privacy Principle’ (APPs), ‘APP privacy policy’, ‘Australian Privacy Principle Code’ (APP code) and ‘contracted service provider’ have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not’.

20.2 Application of this clause

This clause 20 applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract.

20.3 Obligations

The Contractor acknowledges that it is a ‘contracted service provider’ and agrees in respect of the provision of Services under this Contract to take all necessary measures to ensure that personal information in its possession or control in connection with this Contract is protected against loss and unauthorised access, use, disclosure or modification.

- (a) The Contractor must, on request from the Commonwealth, provide to the Commonwealth:
 - (i) a copy of the Contractor’s and any subcontractor’s APP privacy policy which is compliant with APP 1;
 - (ii) copies of the Contractor’s and any subcontractor’s security and data protection policies upon request by the Commonwealth; or
 - (iii) details of the Contractor’s and any subcontractor’s processes and procedures implemented to ensure compliance with the Privacy Act.
- (b) The Contractor agrees in respect of the provision of Services under this Contract:
 - (i) not to collect personal information unless the information is necessary, directly or indirectly, to discharge an obligation of this Contract;
 - (ii) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
 - (iii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
 - (iv) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
 - (v) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;

- (vi) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Contractor, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract;
- (vii) to follow any reasonable directions given by the Commonwealth to ensure compliance with the Privacy Act;
- (viii) must not transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 20.3(b)(vii);
- (ix) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Contract;
- (x) to immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 20, whether by the Contractor or any subcontractor (including any complaints made about acts or practices of the Contractor in connection with personal information);
- (xi) to notify the Commonwealth of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 20.3(b)(xi);
- (xii) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Contractor by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 20; and
- (xiii) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 20.

20.4 Subcontracts

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 20, including the requirement in relation to subcontracts.

20.5 Indemnity

The Contractor agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 20, or a subcontractor under the subcontract provisions referred to in clause 20.4.

21. Work health and safety

21.1 General safety obligations

- (a) The Contractor must ensure the Services are performed in a safe manner.
- (b) The Contractor must not, and must ensure its Personnel do not, by act or omission place the Commonwealth in breach of its obligations under the WHS Laws.
- (c) The Contractor must, and must ensure its Personnel, if using or accessing the Commonwealth's premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or might reasonably be inferred from the circumstances.

21.2 Definitions

In this clause 21 the words, Inspector, Notifiable Incident, Regulator and WHS Entry Permit Holder have the meanings given in the WHS Act.

21.3 Specific safety obligations

- (a) The Contractor must inform itself, and ensure its Personnel inform themselves, of the Commonwealth's work health and safety policies and procedures relevant to the Services.
- (b) The Contractor must, and must ensure its Personnel:
 - (i) comply with the WHS law in relation to the Services performed by WHS Workers;
 - (ii) in relation to Services performed by WHS Workers, comply with all relevant work health and safety policies and procedures of the Commonwealth; and
 - (iii) immediately comply with any direction in relation to Services performed by WHS Workers from any person having authority under the WHS Laws to give directions.

21.4 Notifying the Commonwealth

- (a) The Contractor must notify the Commonwealth as soon as practicable of any concern the Contractor has regarding work health and safety in relation to Services performed by WHS Workers.
- (b) The Contractor must immediately notify the Commonwealth of any:
 - (i) breach or suspected breach of WHS Laws in relation to Services performed by WHS Workers;
 - (ii) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;
 - (iii) entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed by WHS Workers; or
 - (iv) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Contractor or its Personnel under the WHS Laws.

- (c) The Contractor must provide to the Commonwealth a copy of any notice issued to the Contractor under the WHS Laws in relation to Services performed by WHS Workers as soon as possible and in any event within 24 hours of receipt.
- (d) If the Contractor is required by the WHS Laws to report a Notifiable Incident to the Regulator in relation to Services performed by WHS Workers, the Contractor must:
 - (i) as soon as practicable in the circumstances, notify the Commonwealth of the Notifiable Incident and, if requested by the Commonwealth, provide a copy of any written notice given to the Regulator; and
 - (ii) if requested by the Commonwealth, provide within the timeframe specified by the Commonwealth a report on the Notifiable Incident, the results of any investigations into its cause, and any recommendations for prevention in the future.

21.5 Investigations

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

21.6 Documentation

If the Contractor is required by the WHS Laws to:

- (a) prepare, submit, supply, obtain or review any document (including any management plan, risk assessment, safe work method statement, emergency plan, safety data sheet, notice to the Regulator or register); or
- (b) obtain or sight any licence, permit or authorisation (**Licence**),

in relation to Services performed by WHS Workers, the Contractor must, before commencing or continuing work:

- (c) prepare, submit, supply, obtain or review the document or obtain or sight the Licence as required; and
- (d) provide a copy of the document or Licence to the Commonwealth, allowing sufficient time for the Commonwealth to review the document or Licence and consult as it considers appropriate.

21.7 Sign and barriers

If the Contractor is required by the WHS Laws to display any sign or install any barrier in relation to the Services performed by WHS Workers, the Contractor must do so before commencing or continuing work.

21.8 Suspension

- (a) Without limiting any other right or remedy of the Commonwealth, if the Commonwealth is not satisfied that the Contractor is performing the Services in compliance with its work health and safety obligations under this Contract or relevant legislation, the Commonwealth may direct the Contractor to suspend work on part or all of the Services.
- (b) If the Commonwealth directs the Contractor under clause 21.8(a), the Contractor must suspend work on the Services as directed until the Contractor satisfies the Commonwealth that the Services will be performed in compliance with its work health and safety obligations.

21.9 Subcontracts

The Contractor must ensure that any subcontract entered into in relation to Services performed by WHS Workers imposes obligations on subcontractors equivalent to the obligations the Contractor has under clause 21, including this requirement in relation to subcontracts.

21.10 Relationship to other obligations

- (a) Where there is any inconsistency between this clause 21 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (b) The Contractor acknowledges that it is responsible for:
 - (i) complying with its obligations under WHS Laws; and
 - (ii) providing the Services in accordance with this Contract,
 and will not be relieved of that responsibility because of:
 - (iii) anything in this clause 21 or in any policy or procedure referred to in this clause 21;
 - (iv) any instruction or direction or failure to give an instruction or direction under this clause 21;
 - (v) any exercise of, or failure to exercise, the Commonwealth's rights under this clause 21; or
 - (vi) any notice or other document or communication from the Contractor under this clause 21.
- (c) To the extent permitted by Law, the Commonwealth is not liable to the Contractor for any Loss in connection with work health and safety in relation to WHS Workers performing Services.

22. Conflict of interest

22.1 Conflict of interest

- (a) The Contractor warrants that, at the date of this Contract, no Conflict exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Contractor must provide to the Commonwealth a statutory declaration in the form prescribed by the *Statutory Declarations Regulations 1993* (Cth), specifying any interests it has, or that it has no interests, which would be a Conflict or may give rise to a Conflict, within 30 days of the Commencement Date, and thereafter:
 - (i) on each anniversary of the Commencement Date;
 - (ii) within 10 Business Days of a request by the Commonwealth; and

- (iii) otherwise, when the Contractor's circumstances materially change (such as a change of shareholding, change of offices, change of investments or activities).
- (c) Without limiting the operation of this clause 22, the Contractor must, during the Contract Period, ensure that no Conflict arises through the Contractor's, or any Specified Personnel's, involvement with any other parties, projects or programmes.
- (d) If, during the Contract Period, the Contractor becomes aware that a Conflict has arisen, or is likely to arise, the Contractor must immediately notify the Programme Delegate of that Conflict.
- (e) If the Contractor notifies the Commonwealth of a Conflict under clause 22.1(d) or the Commonwealth independently believes a Conflict may have arisen and notifies the Contractor of such, the Contractor must provide the Programme Delegate with all relevant information relating to the Conflict, including any information requested by the Programme Delegate.
- (f) The Programme Delegate will determine, in its absolute discretion, whether the Conflict is material or not.
- (g) If the Programme Delegate determines that the Conflict is material, the Contractor must take such steps as the Programme Delegate may require to resolve or otherwise deal with the Conflict (including ceasing the relevant dealings).
- (h) If the Contractor:
 - (i) fails to notify the Programme Delegate in accordance with clause 22.1(d);
 - (ii) fails to provide the information required by the Programme Delegate in accordance with clause 22.1(e); or
 - (iii) is unable (in the Programme Delegate's opinion) or unwilling to resolve or deal with any Conflict as required under clause 22.1(g),

the Commonwealth may terminate this Contract in accordance with clause 22.2.

22.2 Bias

Without limiting the operation of clause 22.1, the Contractor must not, in undertaking the Services:

- (a) act in a manner which is biased or which displays or tends to display any perception of bias; or
- (b) take into account an irrelevant consideration or not take into account a relevant consideration,

including when making an assessment of an application under the Accelerating Commercialisation Programme.

22.3 No benefit to Contractor

Without limiting the operation of clause 22.1, during the Contract Period and for three (3) months after the expiry or termination of the Contract, the Contractor must not accept a benefit, whether financial or otherwise, from any person other than the Commonwealth which arises from or in any way relates to:

- (a) undertaking the Services; or
- (b) the allocation of funding under the Accelerating Commercialisation Programme.

22.4 No interest in provision of services

Without limiting the operation of clause 22.1, the Contractor warrants that it has no legal or beneficial interest in, and is not an Associate of, any provider of services to Participants to whom the Contractor provides the Services.

22.5 Dealings with Applicants and Potential Applicants

- (a) Subject to clauses 22.6(b) and (c), the Contractor must not provide Private Assistance to an Applicant or a Potential Applicant.
- (b) Where an Applicant was not approved for funding by the Commonwealth under the Accelerating Commercialisation Programme, the Contractor may, with the prior consent of the Programme Delegate, provide Private Assistance to the Applicant.
- (c) The Contractor may provide Private Assistance to an Applicant or Potential Applicant if that Applicant or Potential Applicant is ineligible for funding under the Accelerating Commercialisation Programme as determined by the Programme Delegate.
- (d) Subject to clause 22.7, where the Contractor proposes to provide a Potential Applicant or Applicant with Private Assistance in accordance with this clause 22.6, the Contractor must:
 - (i) inform the Applicant or Potential Applicant that the Private Assistance is not provided under the Accelerating Commercialisation Programme, or otherwise funded or endorsed by the Commonwealth; and
 - (ii) notify the Programme Delegate of its intention to provide Private Assistance to an Applicant or Potential Applicant and must warrant that the Applicant or Potential Applicant has been advised of the matters set out in clause 22.6(d)(I).

22.6 Dealings with Former Participants and Participants

- (a) The Contractor must not provide Private Assistance to a Former Participant or Participant until three months after the Former Participant or Participant exits the Commercialising Australia Programme or Accelerating Commercialisation Programme respectively.
- (b) The Contractor must not, without the prior consent of the Commonwealth, acquire any form of equity in a Former Participant or Participant (or otherwise become Associated with a Former Participant or Participant) until three months after the Former Participant or Participant exits the Commercialising Australia Programme or Accelerating Commercialisation Programme respectively.

22.7 Meaning of “exit”

In this clause 22, a Participant is taken to have exited the Accelerating Commercialisation Programme when it is no longer entitled to receive assistance from the Contractor under the Participant’s funding agreement with the Commonwealth.

23. Goods or Services to Associates

23.1 No goods or services

The Contractor must not provide any goods or services, for consideration (including cash or in-kind payments) or otherwise, to an Associate in relation to the Accelerating Commercialisation Programme, unless it has the Commonwealth’s approval to do so under clause 23.5.

23.2 Associates

Subject to clause 23.3, an Associate means:

- (a) a subcontractor, shareholder, director, secretary, other officer, employee or agent of the Contractor, or any shareholder, director, secretary, other officer, employee or agent of any subcontractor of the Contractor;
- (b) a Related Body Corporate of the Contractor;
- (c) a Relative of a person mentioned in clause 23.2(a);
- (d) a person who has an agreement, arrangement, understanding or undertaking with the Contractor, whether formal or informal, expressed or implied and whether or not legally enforceable:
 - (i) by reason of which either that person or the Contractor may have the power to exercise directly or indirectly, control the exercise of, or substantially influence the exercise of, any recommendations for, the Accelerating Commercialisation Programme;
 - (ii) with a view to controlling or influencing a decision in respect of the rating and ranking of Applicants for funding under the Accelerating Commercialisation Programme; or
 - (iii) under which either that person or the Contractor may acquire funds from the Accelerating Commercialisation Programme in accordance with the directions of the other of them;
- (e) a person with whom the Contractor is, or proposes to become, associated, whether formally or informally, with a view to controlling or influencing the Programme Delegate or the composition of the board of directors of an Applicant or a Participant under the Accelerating Commercialisation Programme in relation to obtaining funding under the Accelerating Commercialisation Programme;
- (f) if the Contractor has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act, matter or thing, with a view to becoming associated with a person otherwise specified in this clause 23.2, that other person; or
- (g) a person in accordance with whose directions or instructions the directors of a person otherwise specified in this clause 23.2 are accustomed to act.

23.3 Not Associates

A person shall not be taken to be an Associate of the Contractor under this clause 23 by reason only that:

- (a) the Contractor provides advice to that person solely in undertaking the Services; or
- (b) the Contractor recommends or proposes to recommend to the other person funding under the Accelerating Commercialisation Programme.

23.4 Relatives

For the purposes of this clause 23 a Relative means a mother, father, wife, husband, de facto spouse, guardian, child, sibling, grandparent, grandchild, cousin, uncle, aunt, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

23.5 Approval to provide services to an Associate

- (a) If the Contractor proposes to provide goods or services to an Associate in a particular circumstance, it must apply to the Commonwealth for approval to do so before providing those goods or services to an Associate.

- (b) The Contractor must apply to the Commonwealth for additional approval in subsequent circumstances where the Contractor proposes to provide goods or services to an Associate.
- (c) The Contractor's application to the Commonwealth for approval under clauses 23.5(a) and 23.5(b) must include details of the specific arrangement, including:
 - (i) the relationship between the Contractor and the Associate;
 - (ii) the goods or services to be provided;
 - (iii) the duration of the provision of goods or services;
 - (iv) whether the Contractor will be paid for the goods or services; and
 - (v) any other information the Commonwealth requests.
- (d) The Commonwealth will determine, in its absolute discretion, and on a case by case basis, whether or not to give approval for the Contractor to provide goods and services to an Associate in a particular circumstance.

24. Security

24.1 Australian Government Protective Security Policy Framework

The Contractor must comply with the security requirements detailed in the Australian Government Protective Security Policy Framework as minimum standards (to the extent applicable to the Services), any security requirements specified in item 21 of the Contract Details and any additional requirements advised by the Commonwealth from time to time.

24.2 Security clearances

- (a) If required by the Commonwealth, each of the Personnel engaged by or on behalf of the Contractor must hold an Australian Government security clearance to the level required by the Commonwealth.
- (b) The Commonwealth will facilitate the obtaining of security clearances.
- (c) The cost of security clearances will be borne by the Contractor.

24.3 Security checks

The Commonwealth may undertake any security checks it considers appropriate of the Contractor, its employees, agents and subcontractors.

24.4 Security breaches

- (a) The Contractor acknowledges that if any Personnel lose their security clearance or causes a security breach, the Commonwealth may:
 - (i) after consultation with the Contractor, require the replacement of that person; or
 - (ii) immediately terminate this Contract for breach.
- (b) The Contractor must notify the Commonwealth immediately on becoming aware of any security incident or security breach. The Contractor agrees that if a security incident or a security breach occurs, the Contractor will immediately comply with all directions of the Commonwealth in order to address the incident or breach, and ensure it does not occur again.

25. Cyber security

- 25.1 The purpose of clauses 25.1, 25.2 and 25.3 is to set out the Contractor's obligations in respect of information and materials of the Department:

- (a) in respect of which the Contractor has custody or control for purposes connected with this Contract; or
- (b) which are accessed, transmitted or stored using or on the Contractor's information systems or equipment under this Contract

(Customer Data).

25.2 The Contractor must:

- (a) do all things that a reasonable and prudent entity would do to ensure that all Customer Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (b) provide protective measures for the Customer Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Customer Data;
- (c) without limiting clauses 25.2(a) or 25.2(b), comply with all security regulations or procedures or directions as are specified in the Contract or given by the Department from time to time regarding any aspect of security of, or access to, the Department's information, material or premises; and
- (d) unless the Contract or the Department in writing expressly states that it is not required, develop for acceptance by the Department a Commonwealth Data Protection Plan (**CDPP**) that sets out how the Contractor and the Department will deal with and discharge their obligations in respect of Customer Data (including personal information) during the provision of the Services. The CDPP must:
 - (i) be consistent with the requirements of the Contract (including clauses 25.2(a) and 25.2(b));
 - (ii) be consistent with the requirements of the *Privacy Act 1988* (Cth);
 - (iii) specifically deal with cybercrime risks, including unauthorised access;
 - (iv) be consistent with the Australian Government's Protective Security Policy Framework (PSPF) and Information Security Manual (ISM); and
 - (v) set out the steps and processes that the Contractor and the Department will follow to protect the Customer Data from unauthorised access, use, misuse, destruction or loss,

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

25.3 If the Contractor becomes aware of any actual or suspected:

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

the Contractor must:

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

25.4 The Contractor must, if specified in the Contract, take out and maintain insurance to protect against the risks of a Cyber Incident.

25.5 The Contractor must ensure that:

- (a) all subcontracts and other supply chain arrangements, which may allow or cause access to Customer Data, contain no provisions that are inconsistent with clauses 25.1, 25.2, 25.3 or 25.4 or 25.5; and
- (b) all Personnel and any Subcontractors who have access to Customer Data comply with clauses 25.2 and 25.3.

26. Books and records

26.1 Contractor to keep books and records

The Contractor must:

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

26.2 Costs

The Contractor must bear its own costs of complying with this clause 26.

26.3 Survival

This clause 25 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

27. Audit and access

27.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

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

27.2 Access by the Commonwealth

- (a) The Commonwealth 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 employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Commonwealth for use of the Commonwealth'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 Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament of the Commonwealth of Australia or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 27, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

27.3 Conduct of audit and access

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 27.1; and
- (b) the exercise of the general rights granted by clause 27.2 by the Commonwealth,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Contract or its business.

27.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

27.5 Auditor-General and Australian Information Commissioner

The rights of the Commonwealth under clause 0 to 27.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or Australian Information Commissioner's statutory functions or powers.

27.6 Contractor to comply with Auditor-General's requirements

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 27.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

27.7 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.

27.8 Subcontractor requirements

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 27.

27.9 No restriction

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner. The rights of the Commonwealth under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner.

Note: the effect of clause 35(j) of this Contract is that this clause 27 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

28. Access to documents**28.1 Definitions**

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

28.2 Application of this clause

This clause 28 only applies where the Contract is a Commonwealth contract.

28.3 Obligations

The Contractor agrees that where the Commonwealth has received a request for access to a document created by, or in the possession of, the Contractor (or any subcontractor) that relates to the performance of this Contract (and not to the entry into the Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth, and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.

28.4 Subcontractor requirements

The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under clause 27.

29. Unforeseen events

29.1 Occurrence of unforeseen event

Subject to clause 29.2, a party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation.

29.2 Notice of unforeseen event

When the circumstances described in clause 29.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

29.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 29.1 continues for a period of more than 30 consecutive days or other period as specified in item 22 of the Contract Details, the other party may terminate this Contract immediately by giving the Affected Party written notice.

29.4 Consequences of termination

If this Contract is terminated under clause 29.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services rendered in accordance with this Contract prior to the date of intervention of the circumstances described in clause 29.1.

30. Dispute resolution

30.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 30 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 30.

30.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

30.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 30.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

30.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 30.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

30.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 30.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

30.6 Confidentiality

Any information or documents disclosed by a party under this clause 30:

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

30.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 30. The parties to the Dispute must equally pay the costs of any mediator.

30.8 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 30.1 to 30.5. Clauses 30.6 and 30.7 survive termination of the dispute resolution process.

30.9 Breach of this clause

If a party to a Dispute breaches clauses 30.1 to 30.8, the other party does not have to comply with those clauses in relation to the Dispute.

31. False or misleading information**31.1 Criminal Code acknowledgement**

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

31.2 Subcontracts

The Contractor must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

Note: Under section 137 of the Criminal Code giving false or misleading information to a Commonwealth entity is an offence, but only if the Commonwealth entity took reasonable steps to inform the person of the offence.

32. Increase or reduction in scope of Services**32.1 Increase or reduction in scope of Services**

The Commonwealth may at any time by written Notice to the Contractor without giving any reason increase or reduce the scope of the Services.

32.2 Obligations of the Contractor upon receipt of Notice

Upon receipt of a Notice pursuant to clause 32.1, the Contractor must immediately:

- (a) stop work to the extent, if any, that the Notice has reduced the scope of the Services;
- (b) commence additional work to the extent, if any, that the Notice has increased the scope of the Services;
- (c) continue work on any part of the Services not affected by the Notice; and
- (d) where there is a reduction in the scope of the Services, comply with the obligations of the Contractor set out in clause 32.1.

32.3 Commonwealth's liability upon reduction in scope of Services

- (a) If the Commonwealth reduces the scope of the Services under clause 32.3 the Commonwealth will only be liable for:
 - (i) payments for Services rendered before the date of reduction specified in the Notice; and
 - (ii) subject to subclauses 32.3(b), (c) and (d), and the Contractor's compliance with clause 6.6, any reasonable costs incurred by the Contractor which are unavoidable and directly attributable to the reduction in scope of the Services up to an amount equal to three months' of the fees (inclusive of GST) payable by the Commonwealth to the Contractor under this Contract. The Contractor must substantiate those costs to the satisfaction of the Commonwealth.
- (b) Following a reduction in scope of the Services the Commonwealth shall have no liability to pay fees under this Contract in respect of that part of the Services that has been reduced pursuant to clause 32.1, as specified in the Commonwealth's Notice provided to the Contractor.
- (c) The Commonwealth shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the Service Charges.
- (d) The Contractor shall not be entitled to compensation for loss of prospective profits or revenue.
- (e) Subject to clause 32.3(a), the Contractor will be responsible for any cost, liability or expense arising out of, or in connection with, a reduction in the scope of the Services (including costs associated with terminating relevant subcontracts and employee contracts).

32.4 Contractor's rights upon increase in scope of Services

If the Commonwealth increases the scope of the Services under clause 32.1:

- (a) the Commonwealth must pay to the Contractor a reasonable fee for the additional work, as agreed by the parties; and
- (b) the terms and conditions of this Contract shall apply to the provision of the additional work.

33. Termination

33.1 Termination for convenience

- (a) The Commonwealth may, at any time, by notice, terminate this Contract, including for a machinery of government change.
- (b) On receipt of a notice of termination the Contractor must:

- (i) stop work as specified in the notice; and
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material.
- (c) If this Contract is terminated under this clause 33.1, the Commonwealth is liable only for:
- (i) payments under clause 15 for Services rendered in accordance with this Contract before the effective date of termination;
 - (ii) any bonus or part bonus payment (determined by the Commonwealth in its sole discretion); and
 - (iii) reasonable costs actually incurred by the Contractor and directly attributable to the termination.
- (d) The Commonwealth is not liable to pay compensation under clause 0 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 and any bonus payment payable under this Contract.
- (e) The Contractor is not entitled to compensation for loss of prospective profits.

33.2 Termination for default

- (a) Without limiting any other rights or remedies the Commonwealth may have against the Contractor arising out of or in connection with this Contract, the Commonwealth may terminate this Contract effective immediately by giving notice to the Contractor if:
- (i) the Contractor breaches a material provision of this Contract where 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; or
 - (iii) an event specified in clause 33.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 33.2(a), each of the following constitutes a breach of a material provision:
- (i) breach of warranty under clause 7.2 (Contractor warranties);
 - (ii) a failure to comply with Performance Criteria to the extent required under clause 10.4 (Right to terminate);
 - (iii) a failure to comply with clause 11 (Personnel);
 - (iv) a failure to comply with clause 13 (Intellectual Property Rights);
 - (v) a failure to comply with clause 18 (Insurance);
 - (vi) a failure to comply with clause 19 (Confidentiality);
 - (vii) a failure to comply with clause 20 (Protection of personal information);
 - (viii) a failure to notify the Commonwealth of a conflict of interest under clause 22 (Conflict of interest);
 - (ix) A failure to comply with clause 27 (Audit and Access); and
- (c) The Contractor must notify the Commonwealth 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 company 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.

In this clause 33.2, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

33.3 Termination at any time by the Contractor

- (a) The Contractor may, at any time, on one month's written Notice to the Commonwealth, terminate this Contract.
- (b) If this Contract is terminated under clause 33.3 (a), the Commonwealth will only be liable for payments for Services performed up to the date of termination and any bonus or part bonus payable (determined by the Commonwealth in its sole discretion).
- (c) If the Contractor gives notice under clause 33.3 (a), it must provide reasonable assistance to the Commonwealth to effectively and efficiently handover Participants (and any Applicants and Potential Applicants) to whom it provides Services, to another Contractor within the 1 month notice period.

33.4 After termination

On termination of this Contract the Contractor must:

- (a) stop work on the Services;
- (b) deal with Contract Material in accordance with clause 13.8;
- (c) deal with Commonwealth Material as reasonably directed by the Commonwealth; and
- (d) return all the Commonwealth's Confidential Information to the Commonwealth.

33.5 Termination does not affect accrued rights

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

34. Consequences of expiration or termination

34.1 Obligations of the Contractor

Upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Contractor must immediately:

- (a) take all steps to minimise loss resulting from the expiration, termination or reduction in the scope of the Services, including the protection of Commonwealth Material, Contract Material and Confidential Information;
- (b) deliver all Contract Material (or, in the case of a reduction in the scope of the Services, that Contract Material requested by the Programme Delegate) to the Programme Delegate;

- (c) if notified by the Commonwealth to the Contractor, transfer all Intellectual Property (or the Intellectual Property specified in the Notice) in the Contract Material to the Commonwealth;
- (d) return all Commonwealth Material to the Programme Delegate;
- (e) return to the Programme Delegate all Confidential Information disclosed to the Contractor by the Commonwealth;
- (f) co-operate to the utmost with the Programme Delegate, and all other contractors and those Participants for whom the Contractor is responsible under the Accelerating Commercialisation Programme, to ensure the uninterrupted professional and effective delivery of services under the Accelerating Commercialisation Programme;
- (g) comply with all reasonable directions of the Programme Delegate;
- (h) prepare any reports as specified in Schedule 2 and provide these reports to the Commonwealth within 28 days of the expiry or termination of this Contract (as applicable);
- (i) if the scope of the Services has been reduced pursuant to clause 31, comply with its obligations under clause 31.2.
- (j) if the Contract has been terminated pursuant to clause 32, comply with its obligations under clause 32.1; and

34.2 Restrictions on activities of Contractor

The Contractor acknowledges and agrees that:

- (a) while undertaking the Services, the Contractor (including, for the avoidance of doubt, its employees, agents and contractors) may acquire Confidential Information, trade secrets, Know-how and other knowledge and information, and particular skills in the affairs, practices, customer requirements and network connections of the Accelerating Commercialisation Programme;
- (b) disclosure or use by the Contractor of any of the matters specified in clause 34.2(a) following expiration or termination of this Contract could materially harm the Commonwealth; and
- (c) following expiration or termination of this Contract, the Contractor will not disclose, use or take advantage of these matters for the advantage of the Contractor or other persons to the detriment of the Commonwealth, any Participant or the Accelerating Commercialisation Programme.

35. Survival

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

- (a) Clause 13 (Intellectual Property Rights);
- (b) Clause 14 (Moral Rights);
- (c) Clause 16 (GST);
- (d) Clause 17 (Indemnity);

- (e) Clause 18 (Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (f) Clause 19 (Confidentiality and privacy);
- (g) Clause 20 (Protection of personal information);
- (h) Clause 23 (Security);
- (i) Clause 256 (Books and records);
- (j) Clause 27 (Audit and access) for a period of seven years from the expiry or termination of this Contract; and
- (k) Clause 31 (False or misleading information).

36. Notices and other communications

36.1 Service of notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or other electronic means (facsimile and/or email as specified) to the recipient's address for Notices specified in item 23 of the Contract Details, as varied by any Notice given by the recipient to the sender.

36.2 Effective on receipt

A Notice given in accordance with clause 36.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, as provided under sections 14 and 14A of the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

37. Miscellaneous

37.1 Ownership of Contract

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

37.2 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.

37.3 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.

37.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

37.5 Costs

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

37.6 Counterparts

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

37.7 No merger

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

37.8 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

37.9 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.

37.10 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.

37.11 Waiver

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

37.12 Relationship

- (a) The parties 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 parties.

37.13 Announcements

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Commonwealth'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 Commonwealth.

37.14 Governing law and jurisdiction

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 the Australian Capital Territory.

DRAFT

Schedule 1 – Contract Details

| Item number | Description | Clause Reference | Details |
|-------------|------------------------------------|---------------------------|--|
| 1. | Commonwealth | 1.1 | Commonwealth of Australia as represented by the Department of Industry and Science [insert street address] ABN 74 599 608 295 |
| 2. | Contractor | 1.1 | [insert name of Contractor] [insert street address] [insert ABN] |
| 3. | Commonwealth Representative | 1.1 | [insert position and/or name of the Commonwealth's representative] |
| 4. | Contractor Representative | 1.1 | [insert position and/or name of Contractor's representative] |
| 5. | Business Hours | 1.1 | [if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable'] |
| 6. | Commencement Date | 1.1 and 3.1 | [insert date Contract is to commence eg, dd/mm/yy] |
| 7. | Initial Contract Period | 1.1 and 3.1 | [insert the initial period of time for which this Contract will continue eg, 2 years] |
| 8. | Option Period | 3.2 | [insert Option Period eg, 2 periods each being 1 year in duration. Otherwise insert 'not applicable'] |
| 9. | Option Notice Period | 3.2 | [if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days). Otherwise insert 'not applicable'] |
| 10. | Nominated Agency | 1.1 and 4 | [insert name(s) of any Nominated Agencies. Otherwise insert 'not applicable'] |
| 11. | Relevant Industry Standards | 7.1(e) and 13.6(c) | [insert relevant industry standards, best practice and guidelines (if any). If the contract services involve an Australian Government website then include compliance with the Web Content Accessibility Guidelines (WCAG) 2.0 to a double A rating here. More information is available at - http://www.finance.gov.au/publications/wcag-2-implementation/index.html . Otherwise insert 'no additional standards, practice or guidelines'] |

| Item number | Description | Clause Reference | Details |
|-------------|--|-------------------|---|
| | | | apply'] |
| 12. | Specific legislative requirements | 7.2(j) | [insert any significant work health and safety issues arising from use by the Department of the goods to be purchased? e.g. any specific legislative requirements.] |
| 13. | Subcontractors | 7.6 | [insert names and ABNs of any subcontractors. Otherwise insert 'not applicable'] |
| 14. | Specified Personnel | 1.1 and 11 | [insert names and positions of Specified Personnel. Otherwise insert 'not applicable'] |
| 15. | Commonwealth Material | 1.1 and 12 | [insert specific Material to be provided to the Contractor by the Commonwealth (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable'] |
| 16. | Intellectual Property Rights – ownership of Contract Material | 13.3(b) | Clause 13.4 (First model: Commonwealth ownership of Intellectual Property Rights in Contract Material) is to apply. |
| 17. | Intellectual Property Rights – licences | 13.4(b) | Where clause 13.4 (First model: Commonwealth ownership of Intellectual Property Rights in Contract Material) is to apply: 1. Period of Commonwealth's licence is: Perpetual |
| 18. | Intellectual Property Rights – licences | 13.5(b) | Not applicable |
| 19. | Moral Rights – Specified Acts | 14.2 | [if the Commonwealth wants to perform additional acts with the Contract Material other than those listed in clause 14.2, these should be set out here. Otherwise insert 'not applicable'] |
| 20. | Insurance | 18.1 | [\$ insert amount of public liability insurance. See the RFT for details] [\$ insert amount of professional indemnity or errors and omissions. See the RFT for details] [insert any additional types of insurance the Contractor is required to maintain and the amount of that insurance required] |
| 21. | Security | 23 | [insert any security requirements additional to those specified in clause 23. Otherwise insert |

| Item number | Description | Clause Reference | Details |
|-------------|---|------------------|---|
| | | | 'not applicable'] |
| 22. | Unforeseen events termination period | 29.3 | [if a termination period other than 14 days will apply in the event of an 'unforeseen event,' specify it here. Otherwise insert 'not applicable'] |
| 23. | Address for Notices | 36.1 | <p>Commonwealth: [insert name and position of person to receive Notices] [insert postal address] [insert physical address] [insert facsimile number] [insert email address]</p> <p>Contractor: [insert name and position of person to receive Notices] [insert postal address] [insert physical address] [insert facsimile number]</p> |

Schedule 2 – Services

1. Purpose (clause 7.2)

The provision of Commercialisation Advisers or Business Development – Commercialisation services.

2. Services (clauses 1.1 and 7)

Contractors must provide the following Services under the Accelerating Commercialisation Programme, including:

[Note: Select either Part A or Part B – whichever is applicable to the Contractor]

Part A:

Services to be delivered by Commercialisation Advisers

Commercialisation Advisers will:

1. Provide feedback and guidance to Potential Applicants about the merits of their commercialisation project.

Commercialisation Advisers will review Expressions of Interests and draft applications for the Accelerating Commercialisation Programme and provide feedback to Potential Applicants in person, or by telephone or email.

2. Provide the Advisory Committee or Panel with advice about the merits of new applications for assistance under the Accelerating Commercialisation Programme.

Commercialisation Advisers will assess eligible applications against the merit criteria set out in the Customer Information Guide. This includes undertaking additional checks or investigation into Applicants' claims (due diligence).

These assessments will be used by the Advisory Committee or Panel in considering applications for funding and/or joining the Portfolio, and in developing a merit ranking. Commercialisation Advisers may be required to participate in Advisory Committee or Panel meetings, in person or by telephone, to provide further information about their assessments.

3. Serve as a member of the Panel assessing applications for joining the Portfolio

Commercialisation Advisers may be asked to serve on the Panel as required, to assess applications to join the Portfolio only (grant applications must be assessed by the Advisory Committee). The Panel will provide the Programme Delegate with a funding recommendation in relation to each application.

4. Assist Participants through the commercialisation process

Commercialisation Advisers will be partnered with Participants by the Department and assist them to identify and develop the skills and knowledge necessary to commercialise their novel intellectual property. The level of assistance that Commercialisation Advisers must provide will vary according to the needs of the Participant.

Commercialisation Advisers may be required to assist Applicants in exploring alternative means of financing their project.

Commercialisation Advisers are required to assist Participants with developing their own professional networks. Based on the Participants' needs, they will link Participants to Expert Network members with appropriate experience and/or relevant domain expertise. Commercialisation Advisers will facilitate meetings with the Expert Network member, ensure the member understands his/her obligations and keep a record of the meetings.

Commercialisation Advisers are required to assist Participants with administration issues related to their funding agreement, such as the administration of their grant and reporting obligations.

5. Monitor the progress of Participants and provide feedback to the Programme Delegate

Commercialisation Advisers will monitor the progress of Participants by maintaining regular contact with Participants to ensure timely progress of their commercialisation project is being achieved, undertaking site visits at the Participant's place of business, monitoring the Participant's engagement with their Expert Network members; and reporting to the Programme Delegate on a Participant's achievement of its contracted milestones in the Activity Reports.

Commercialisation Advisers are required to provide timely, written reports about the Accelerating Commercialisation Programme and relevant industry intelligence as required by the Programme Delegate.

Commercialisation Advisers may undertake other activities as directed by Programme Delegate from time to time.

6. Network, Collaborate and Promote the Accelerating Commercialisation Programme

Commercialisation Advisers are required to undertake networking and promoting activities for the Accelerating Commercialisation Programme. Networking and promoting activities may include, but are not limited to: attending networking events, presenting to industry groups, meeting with relevant stakeholders and recruiting high quality candidates for the Expert Network.

Commercialisation Advisers will be required to facilitate introductions between Portfolio members and members of the Expert Network, as well as relevant individuals from their professional networks.

Commercialisation Advisers may be asked from time to time, to perform in the role of Commercialisation Adviser - Business Development.

7. General Requirements

To effectively perform these Services, Commercialisation Advisers are required to:

- familiarise themselves fully with the aims and objectives of the Entrepreneurs' Infrastructure Programme and the Accelerating Commercialisation Programme, with reference to the Programme Guidelines, the Customer Information Guide and any other information provided to them by the Department;
- develop and maintain links with the Industry Growth Centres;
- consult with the relevant Industry Growth Centres on relevant applications and other matters as required;
- keep up-to-date on suitable service providers and other assistance programmes to which Participants may be referred;
- keep up-to-date on industry developments so that the Commercialisation Adviser's assessments of Participants and applications are appropriate; and
- assist in the orderly transfer of management of Participants to other Commercialisation Advisers as required by Programme Management from time to time.

Part B

Services to be delivered by Business Development – Commercialisation Advisers

Business Development – Commercialisation Advisers provide a number of key services under the Accelerating Commercialisation Programme, including:

1. Serving as a member of the Panel assessing applications for joining the Portfolio

Business Development – Commercialisation Advisers may be asked to serve on the Panel as required, to assess applications to join the Portfolio only (grant applications must be assessed by the Advisory Committee). The Panel will provide the Programme Delegate with a recommendation in relation to each application.

2. Providing feedback to the Programme Delegate

Business Development – Commercialisation Advisers are required to provide timely, written reports about the Accelerating Commercialisation Programme and relevant industry intelligence as required by the Programme Delegate.

Business Development – Commercialisation Advisers may undertake other activities as directed by Programme Delegate of Accelerating Commercialisation – Entrepreneurs' Infrastructure Programme from time to time.

3. Build the Expert Network Programme Infrastructure

Business Development – Commercialisation Advisers are required to attract high quality additions to the Expert Network, including but not limited to: Early Stage Business builders, domain specialists, strategic corporates & professional investors.

Business Development – Commercialisation Advisers are required to leverage professional and Programme networks to attract interest in the Expert Network, both internationally and domestically.

4. Promote the Participant Portfolio, both domestically and internationally

Business Development – Commercialisation Advisers are required to participate in, facilitate, promote and assist in the planning of high quality international & domestic Roadshows, which may include travelling overseas to provide support to the Portfolio Participants.

Business Development – Commercialisation Advisers are required to undertake scoping of opportunities, internationally and domestically, to co-ordinate roadshows with specific Industry events. All reasonable associated costs will be reimbursed by the Commonwealth. Where appropriate Business Development – Commercialisation Advisers may be required to undertake event planning and co-ordination between the Portfolio, the Expert Network, programme management and external event co-ordinators.

Business Development – Commercialisation Advisers are required to build strategic relationships with relevant industry bodies and groups, internationally and domestically that can be leveraged to support Roadshows and similar style of events.

Business Development – Commercialisation Advisers are required to leverage professional and Programme networks to promote the Participant Portfolio, both domestically and internationally. This may include, but is not limited to, building connections at networking events, speaking at Industry events, holding small meetings with relevant stakeholders and supporting internal Expert networking events.

5. **Facilitate commercial opportunities between the Portfolio and the Expert Network, via qualified introductions through specific Commercialisation Advisers**

Business Development – Commercialisation Advisers are required to facilitate introductions between Portfolio members and investors, other entrepreneurs, domain experts, supply chains and strategic corporations; and to actively engage with the Expert Network to maintain a high quality membership and assist in identifying introduction opportunities.

as:

6. **General Requirements**

To effectively perform these services, Commercialisation Advisers are required to:

- familiarise themselves fully with the aims and objectives of the Entrepreneurs' Infrastructure Programme and with reference to the Programme Guidelines, the Customer Information Guide and any other information provided to them by the Department;
- develop and maintain links with the Industry Growth Centres; and
- consult with the relevant Industry Growth Centres on relevant applications and other matters as required;

3. **Deliverables (clause 1.1)**

| | Deliverables | Milestone Date |
|---|--|--|
| 1 | Delivery of Commercialisation Adviser or Business Development - Commercialisation Adviser Services | Duration of Contract Period |
| 2 | Activity Reports | <p>Within 5 Business Days after the last day of each month during the Contract Period.</p> <p>Upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Activity Report must be provided within 28 days of the date of expiry or termination.</p> |

4. Performance Criteria (clauses 1.1 and 10)

The Contractor must perform the Services strictly in accordance with the following principles:

- 1 **satisfaction** – the Contractor must provide the Services to the satisfaction of the Programme Delegate;
- 2 **direction** – the Contractor must comply fully with all directions of the Programme Delegate and with all requirements and procedures of the Accelerating Commercialisation Programme as amended by the Commonwealth from time to time;
- 3 **timeliness** – the Contractor must adhere to timeframes for Accelerating Commercialisation Programme processes, as determined by the Commonwealth from time to time;
- 4 **participation as a member of the Accelerating Commercialisation network** – the Contractor must work cooperatively with other members of the Accelerating Commercialisation Programme, in particular the Programme Delegate, to ensure the professional and effective delivery of the Accelerating Commercialisation Programme;
- 5 **guidance** – the Contractor must assist Participants with identifying how they will achieve their commercialisation goals and help them access specialist advice and appropriate Expert Network Members. The Contractor must also ensure that they provide appropriate levels of guidance, support and advice to assist Participants in achieving their commercialisation objectives;
- 6 **liaison and cooperation with Programme Delegate** – the Contractor must work in close and regular liaison and cooperation with the Programme Delegate at all times, and give due recognition to the overseeing role of the Programme Delegate;
- 7 **marketing/promotion** – the Contractor must participate in promotional activities for the Accelerating Commercialisation Programme at the direction of the Programme Delegate including liaising with Departmental marketing staff when directed by the Chief Executive Officer;
- 8 **assessment of applications** – the Contractor must ensure that the applications they are asked to assess are assessed in a fair and equitable manner with each being judged on its respective merits;
- 9 **appropriateness of recommendations** – the Contractor must submit appropriate recommendations to the satisfaction of the Programme Delegate regarding whether or not Applicants should be supported;
- 10 **appropriateness of advice** – the Contractor must ensure that appropriate advice is provided to Participants about their commercialisation goals and the specialist advice and services they need to access; and
- 11 **highest ethical standards** – the Contractor must operate, and must be seen to operate, in a fair and equitable manner at all times. The Contractor must also at all times:
 - behave honestly and with integrity in a highly professional manner;
 - act with care and diligence;
 - treat all Potential Applicants, Applicants, Participants and other members of the delivery network, including the Programme Delegate, with respect and courtesy, and without harassment;

- use Commonwealth resources in a proper manner;
- not provide false or misleading information in response to a request for information; and
- not make improper use of inside information in order to gain or seek to gain, a benefit or advantage for themselves or any other person.

12 **customer focus and customer service** - the Department is driven by the values of customer service. The Customer Service Charter defines those values, and requires relevant Personnel in the Accelerating Commercialisation Programme to observe the customer service principles identified within the Customer Service Charter.

The Contractor must in all dealings with customers comply with the Customer Service Charter, while still ensuring effective delivery of the Services.

5. Progress meetings (clause 9.1)

| Meeting | Attendees | Frequency | Place |
|---------|-----------|-----------|-------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

6. Reporting (clause 9.2)

- (a) The Contractor must provide the following reports to the Commonwealth as directed by the Programme Delegate:
- monthly Activity Reports;
 - any other report required by the Programme Delegate from time to time,
- in a format prescribed by the Programme Delegate.
- (b) The Contractor must ensure that all reports are in a form which will enable the Programme Delegate to:
- ensure that the objectives of the Accelerating Commercialisation Programme are being met; and
 - monitor the activities of the Contractor.
- (c) Subject to paragraph (e), Activity Reports must be submitted on a monthly basis, within 5 Business Days after the last day of each month during the Contract Period. Activity Reports must be substantially in the form of the pro-forma template provided by the Department to the Contractor from time to time.
- (d) Upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Contractor must provide a timely, detailed written Activity Report, and all other reports required by the Commonwealth, to the Commonwealth within 28 days of

the date of expiry or termination, or the date on which the Commonwealth notifies the Contractor that the scope of the Services has been reduced (as applicable).

DRAFT

Schedule 3 – Payment

1. Fixed charges (clause 15)

Subject to the terms of this Contract and receipt of a correctly rendered invoice, the Commonwealth will pay the Service Charge in twelve equal monthly instalments for each year of the Contract. All payments will be made in arrears.

| | Charges (exclusive of GST) | GST Component | Total (inclusive of GST) |
|-------------------------|----------------------------|---------------|--------------------------|
| Service Charges (fixed) | | | |
| Other charges (if any) | | | |
| TOTAL | | | |

2. Bonus payment (clause 15)

Subject to the terms of this Contract, a separate performance bonus of up to (insert amount) (inclusive of GST) per year may be paid to the Contractor.

3. Daily rates (clause 15) – Not applicable

4. Milestone payments (clause 15) – Not applicable

5. Invoicing requirements (clause 15.2)

The invoice must meet the requirements of a tax invoice as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and in a form approved by the Commonwealth which sets out:

- (a) the details of the amount of time spent by each of the person including Specified Personnel on the Services for the period to which the invoice relates and a record detailing how the relevant Milestone Dates have been met;
- (b) the contract or project number;
- (c) the amount of any allowances and costs to be paid by the Commonwealth together with any substantiating material required;
- (d) the name of the Commonwealth Representative; and
- (e) such other information as the Commonwealth requires.

Invoices must be submitted to:

[insert position and name of the Commonwealth's representative]
 Department of Industry and Science
 [insert postal address and email address (if applicable)]

6. Payment period (clause 15.5)

[Note: Specify an alternative payment period if the 30 day period contemplated in clause 15.5 is not suitable. For payments valued up to and including A\$1 million (GST inclusive) (as defined in Item 8 below), this period must be 30 days or less in accordance with the Government's Procurement Supplier Pay On-Time or Pay Interest Policy. If the 30 day period is suitable, state in this section: 'Clause 15.5 applies'.]

7. Expenses (clause 15.7)

[Note: If the Contract is for a fixed fee, insert 'The Commonwealth will not pay any travel, accommodation or other fees, charges or expenses'. If the Commonwealth will pay expenses in addition to the fee, insert the following:

- (a) Subject to (b)below, the Commonwealth will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by the Commonwealth and do not exceed \$[insert] (exclusive 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 Commonwealth. The Contractor must submit an invoice for those expenses and the Commonwealth will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.]

8. Payment of Interest

[Note: Check that the reference to 30 days in this Item 8 is correct. If you have specified a shorter payment period in Item 6 of this Schedule 3, the reference to 30 days should be changed for consistency.]

[Note: this item will be applicable where the Contract is for an amount valued up to and including \$1 million (GST inclusive).]

(a) Payment Terms

The Department will pay the Contractor within 30 days after 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.

(b) Interest

This Item 8 only applies where:

- (i) the value of this Contract is not more than A\$1 million (GST inclusive); and
- (ii) the amount of the interest payable exceeds A\$10.

The Commonwealth will pay interest on late payments to the Contractor for payments made by the Commonwealth more than 30 days after the amount became due and payable, the Commonwealth will make a self-generated interest payment to the Contractor.

Interest payable under this Item 8 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 Commonwealth 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.

In this Item 8 “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.

(c) Correct rendering of invoices

For the purposes of this Item 8, an invoice is correctly rendered if it:

- (i) meets the requirements specified in Item 5 of this Schedule 3 for a correctly rendered invoice; and
- (ii) is due for payment in accordance with clause 15 (Payment) of this Contract.

DRAFT

Schedule 4 – Confidentiality and privacy undertaking

Date

_____/_____/_____
 day month year

Parties

Name The Commonwealth of Australia as represented by the Department of Industry and Science ABN 74 599 608 295
 Short form name **Commonwealth**
 Notice details [insert]

Name [insert name of Confidant and ABN]
 Short form name **Confidant, I, me and my**
 Notice details [insert]

Background

- A. The Commonwealth requires the provision of certain services.
- B. [Insert name of Contractor] (**Contractor**) has agreed to provide services to the Commonwealth under a contract dated [insert date] (**Contract**).
- C. The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.

Agreed terms

1. Definitions

Confidential Information means information that is by its nature confidential and:

- (a) is designated by the Commonwealth as confidential and is described in Schedule 5 of the Contract; or
 - (b) the Confidant knows or ought to know is confidential,
- but does not include information that:
- (c) is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation.

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

2. Access

I understand that in the course of performing duties under the Contract, I may have access to Personal Information and Confidential Information.

3. Non-disclosure

- (a) I will treat as secret and confidential all Personal Information and Confidential Information to which I have access or which is disclosed to me.
- (b) If the Commonwealth grants its consent for me to disclose Personal Information or Confidential Information, it may impose conditions on that consent. In particular, the Commonwealth may require that I obtain the execution of a deed in these terms by the person to whom I propose to disclose the Personal Information or Confidential Information.
- (c) My obligations under this deed will not be taken to have been breached where I am required by law to disclose the Personal Information or Confidential Information.

4. Restriction on use

- (a) I will use the Personal Information or Confidential Information only for the purpose of my dealings with the Commonwealth (whether directly or indirectly).
- (b) I will not copy or reproduce the Personal Information or Confidential Information without the approval of the Commonwealth, will not allow any other person outside the Commonwealth access to the Personal Information or Confidential Information and will take all necessary precautions to prevent unauthorised access to or copying of the Personal Information or Confidential Information in my control.

5. Powers of the Commonwealth

- (a) Immediately on request by the Commonwealth, I must deliver to the Commonwealth all documents in my possession or control containing Personal Information or Confidential Information.
- (b) If at the time of such a request I am aware that documents containing Personal Information or Confidential Information are beyond my possession or control, then I must provide full details of where the documents containing the Personal Information or Confidential Information are, and the identity of the person who has control of them.

6. Privacy Act obligations

I agree to abide by the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, in respect of both Personal Information and Confidential Information, whether or not I am legally bound to comply with that Act and as if the definition of personal information in that Act includes Confidential Information.

7. Survival

This deed will survive the expiry or termination of any contract between the Contractor and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

8. Applicable law

This deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and I agree to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this deed.

EXECUTED as a deed.

Signed sealed and delivered for and behalf of the **Commonwealth of Australia as represented by the Industry** by its duly authorised delegate in the presence of

Signature of witness



Signature of delegate



Name of witness (print)

Name of delegate (print)

Position of delegate (print)

Signed sealed and delivered by [name of signatory] in the presence of

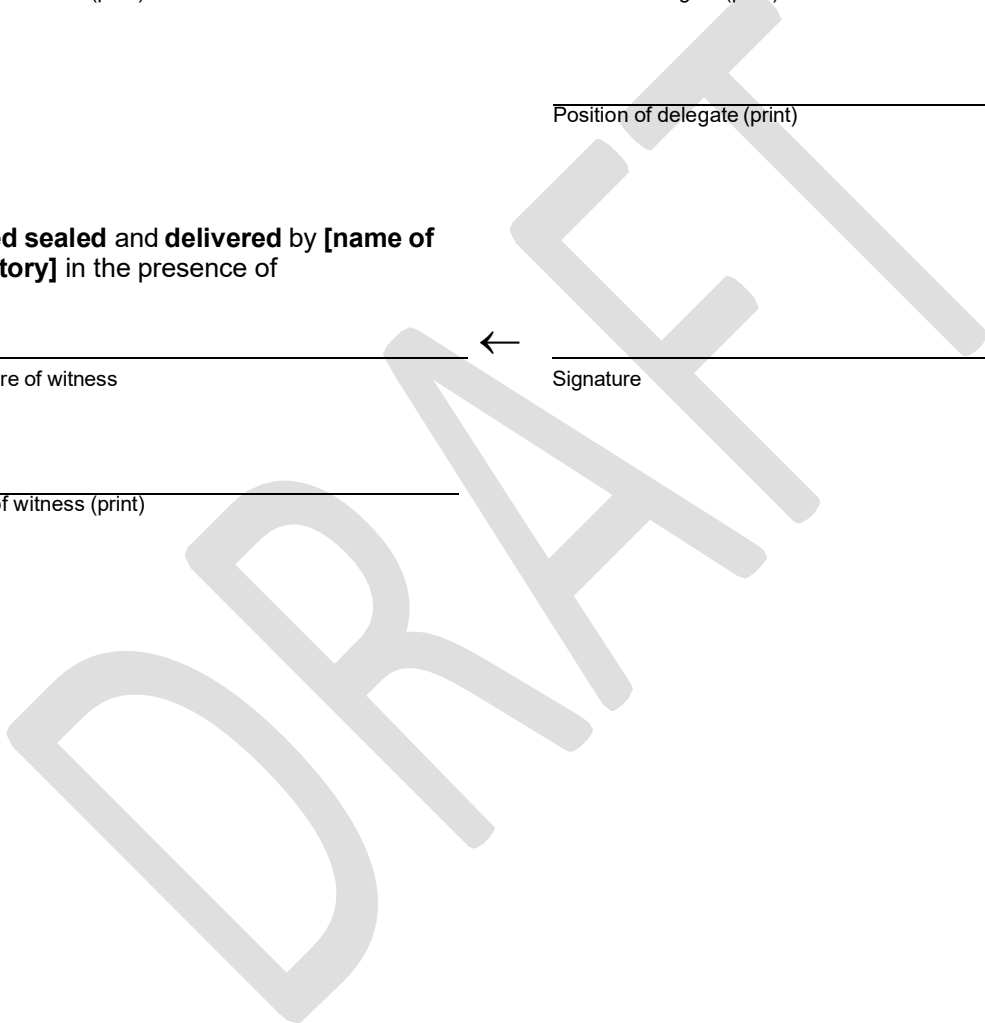
Signature of witness



Signature



Name of witness (print)



Schedule 5 – Designated Confidential Information

[Note: This Schedule should include each party's Confidential Information (decided by reference to the [Confidentiality throughout the Procurement Cycle](#) material available at:-

<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>). The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in this Schedule.

Note that, if Contract provisions or Schedules are to be kept confidential (i.e. inserted at sections 1.1 or 2.1 of this Schedule) and the value of the Contract is over \$100,000, the Commonwealth must report these in accordance with the Senate Order on Departmental and Agency Contracts, including providing a statement of reasons for the confidentiality. Users can contact ProcurementInbox for further information. If the value of the Contract is under \$100,000, any confidentiality provisions will need to be recorded in the Contracts Module, but the Senate Order won't apply.]

1. Confidential information of the Commonwealth (clause 1.1 and 19)

1.1 Contract provisions / Schedules

| Item | Period of Confidentiality |
|-------------------------|---------------------------|
| [insert relevant items] | |
| | |

1.2 Contract-related Material

| Item | Period of Confidentiality |
|-------------------------|---------------------------|
| [insert relevant items] | |
| | |

2. Confidential information of the Contractor (clause 1.1 and 19)

2.1 Contract provisions / Schedules

| Item | Period of Confidentiality |
|-------------------------|---------------------------|
| [insert relevant items] | |
| | |

2.2 Contract-related Material

| Item | Period of Confidentiality |
|-------------------------|---------------------------|
| [insert relevant items] | |

| Item | Period of Confidentiality |
|------|---------------------------|
| | |

DRAFT

Schedule 6 – Pre-existing Material

1. Commonwealth's Pre-existing Material (clause 13)

| Item number | Item | Description | Date created |
|-------------|------|-------------|--------------|
| | | | |
| | | | |
| | | | |

2. Contractor's Pre-existing Material (clause 13)

| Item number | Item | Description | Date created |
|-------------|------|-------------|--------------|
| | | | |
| | | | |
| | | | |

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the
**Commonwealth of Australia as
represented by the Department of
Industry and Science** by its duly authorised
delegate in the presence of

| | | | |
|-------------------------|---|------------------------------|---|
| | ← | | ← |
| Signature of witness | | Signature of delegate | |
| | | | |
| Name of witness (print) | | Name of delegate (print) | |
| | | | |
| | | Position of delegate (print) | |

[Select one of the following execution clauses. Where the Contractor is a company, select the first execution block below, otherwise, select the second option.]

Executed by [insert name of company] in
accordance with Section 127 of the
Corporations Act 2001 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) | |

Are you a Small Business?

(ie. if you employ less than the full time equivalent of 20 persons) Y/N

Signed by [insert contracting party name]
in the presence of

Signature of witness



Signature of Contractor



Name of witness (print)

Are you a Small Business?

(ie. if you employ less than the full time equivalent of 20 persons) Y/N

DRAFT