



Australian Government

Department of Infrastructure and Regional Development

SERVICES AGREEMENT

FOR **[INSERT DETAILS]**

The Commonwealth of Australia as represented by the Department of Infrastructure and Regional Development
ABN 86 267 354 017

[Insert name of supplier]
[insert ABN] [insert ACN]

Agreement number: **[insert DOIRD identifying number]**

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SERVICES AGREEMENT (LONG FORM)
FOR [INSERT DETAILS]

Parties

This Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure and Regional Development
ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory
(**Commonwealth**)
2. **[Insert full legal name of supplier]** [insert ACN] [insert ABN]
[insert address]
(**Supplier**)

Context

- A. The Commonwealth requires the provision of certain services for the purposes of [insert details of Services here].
- B. The Supplier has submitted a proposal entitled [insert details of proposal here] and dated [insert date] for the provision of the Services. [optional]
- C. The Supplier has fully informed itself of all aspects of the work required to be performed and agrees to provide the Services on the terms and conditions contained in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Supplier Obligations

1.1. Nature of Services

- 1.1.1. The Supplier must perform and complete the Services:
 - a. within the Period for Services in a timely manner and in accordance with the milestones, performance standards and timetable (if any) specified in Item A of Schedule 1;
 - b. with the care, skill and any relevant practice of a person who regularly acts in the capacity for which the Supplier is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity; and
 - c. to meet any particular standards set out in Item A of Schedule 1 for performance of the Services.

1.2. **Performance of Services**

1.2.1. The Supplier warrants that:

- a. the Supplier and the Supplier's Specified Personnel are suitably qualified, have sufficient expertise to perform the Services, are of good fame and character and will act in all circumstances in a fit and proper manner while carrying out work under this Agreement;
- b. the Supplier has all licences necessary to perform the Services; and
- c. in performing the Services, the Supplier will not:
 - i. breach an obligation owed to another person; or
 - ii. infringe any Intellectual Property rights or Moral Rights of another person.

1.2.2. The Supplier will not be relieved of any of its obligations under this Agreement because of any:

- a. involvement by the Commonwealth (or the Commonwealth's Staff) in the performance of the Services;
- b. payment made to the Supplier on account of the Services;
- c. subcontracting of the Services; or
- d. acceptance by the Commonwealth of replacement Personnel (including Specified Personnel).

1.3. **Acceptance of Deliverables**

1.3.1. The Supplier must submit each Deliverable in the manner and within the timeframes specified in Item A.4 of Schedule 1, for acceptance by the Commonwealth in writing.

1.3.2. If the Commonwealth considers, acting reasonably, that the Deliverable is not acceptable to the Commonwealth as a whole, the Commonwealth may notify the Supplier of the reasons why the Deliverable is unacceptable and require the Supplier to re-submit a revised Deliverable within 10 Business Days of the notification (or such longer period as specified in the notice). The Supplier must comply with any such notice, at no additional cost to the Commonwealth.

1.3.3. If the Supplier re-submits a revised Deliverable that is still unacceptable to the Commonwealth as a whole, the Commonwealth may:

- a. notify the Supplier of the reasons why the Deliverable is still unacceptable and require the Supplier to re-submit a further revised Deliverable within 10 Business Days of the notification (or such longer period as specified in the notice) at no additional cost to the Commonwealth;
- b. accept the Deliverable "as is" subject to:
 - i. a reasonable deduction in the Fees associated with the Deliverable; or

- ii. the Supplier promptly completing, at no additional cost to the Commonwealth, any rectification work reasonably required by the Commonwealth; or
 - c. terminate this Agreement immediately by notice in writing to the Supplier.
- 1.3.4. For the avoidance of doubt, the Commonwealth may withhold payment of any Fees, Allowances or Expenses in accordance with clause 2.1.5 until a Deliverable has been accepted in accordance with this clause 1.3.
- 1.4. **Performance Standards**
- 1.4.1. The Supplier must at all times meet or exceed the KPIs (if any) set out in Item A.5 of Schedule 1.
- 1.4.2. The Supplier must measure and report the Supplier's performance against the KPIs in accordance with the requirements specified in Item A.5 of Schedule 1 using appropriate measurement and monitoring tools and procedures.
- 1.4.3. The Supplier must provide the Commonwealth with information and access to those tools and procedures to verify that they accurately measure the Supplier's performance.
- 1.4.4. If the Supplier fails to meet any KPI, the Supplier must promptly investigate and report on the underlying causes of the failure to meet the KPI, correct the problem and take whatever action is necessary to minimise the impact of the problem and prevent it from recurring.
- 1.5. **Subcontracts**
- 1.5.1. The Supplier must not subcontract the whole or any part of the performance of the Services unless the Supplier has the Commonwealth's prior written consent to do so.
- 1.5.2. The Commonwealth will not unreasonably refuse to allow the Supplier to subcontract performance of the Services, but may impose conditions on approval.
- 1.5.3. The conditions referred to in clause 1.5.2 may include:
- a. evidence of the existence of insurance required under the subcontract;
 - b. provisions dealing with Intellectual Property and/or Moral Rights;
 - c. provisions dealing with disclosure of any Confidential Information or Personal Information;
 - d. provisions dealing with compliance with the Protective Security Policy Framework.
- 1.5.4. Despite any approval the Commonwealth gives the Supplier under this clause, the Supplier will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.

1.5.5. Where subcontractors are required to have access to Security Classified Information, the subcontractors must possess a security clearance of the appropriate type and level of classification. The Supplier must make compliance by the subcontractor with the provisions of this clause a condition of any subcontract.

1.5.6. The Supplier must ensure that any subcontractor is aware of all terms and conditions relevant to the subcontractor's part in the provision of the Services.

1.6. **Specified Personnel**

1.6.1. If it is stated in Item E of Schedule 1 that the Supplier is to perform all or some of the Services using Specified Personnel, the Supplier must engage those Specified Personnel to perform those Services.

1.6.2. The Supplier must ensure that the Specified Personnel sign any documents that the Commonwealth considers necessary to conduct appropriate security checks on the Specified Personnel.

1.6.3. Where Specified Personnel are unable to undertake work in respect of the Services (for any reason), the Supplier must notify the Commonwealth immediately. The Supplier must, if requested by the Commonwealth, provide replacement Specified Personnel acceptable to the Commonwealth at no additional charge to the Commonwealth and at the earliest opportunity.

1.6.4. The Supplier must ensure that the Supplier's Personnel uphold the values and behave in a manner that is consistent with the Australian Public Service Values and the APS Code of Conduct, as applicable to their work in connection with this Contract. The APS Values and Code of Conduct are contained in Part 3 of the *Public Service Act 1999* (Cth).

1.6.5. The Commonwealth may request that the Supplier:

- a. remove any Personnel (including Specified Personnel) from further performance of the Services; and
- b. provide a replacement that is acceptable to the Commonwealth.

1.6.6. If so, the Supplier agrees, at the Supplier's own cost, to the removal and replacement of the Personnel at the earliest opportunity.

1.6.7. If the Supplier is unable or unwilling to remove any Personnel, or to provide an acceptable replacement, the Commonwealth may terminate this Agreement immediately by notice in writing to the Supplier.

1.7. **Timetable – Delay and Extension of Time**

1.7.1. Subject to clause 1.7.2, the Supplier must perform the Services in a timely manner and in accordance with:

- a. the timeframes set out in this Agreement, including by ensuring that all timetables, milestones, timeframes for delivery and other due dates (as applicable) are met or exceeded; and

- b. where no such timeframe is specified in this Agreement, any reasonable timeframe as directed by the Project Officer in writing.

1.7.2. If there is likely to be a Delay in the discharge of an obligation by the Supplier under this Agreement, then the Commonwealth will grant the Supplier an extension of time as necessary to accommodate the Delay, subject to:

- a. the Supplier notifying the Project Officer in writing (as soon as possible, but no later than 3 Business Days, after it becomes aware of the likely Delay) of the following:
 - i. the circumstances which the Supplier considers contributed to, or caused, that Delay;
 - ii. the Supplier's obligations that are or may be affected by that Delay; and
 - iii. the anticipated duration of that Delay; and
- b. the Supplier using its best endeavours to minimise the consequences of the Delay.

1.7.3. In this clause 1.7, '**Delay**' means a delay that is either:

- a. caused by an event or circumstance that is beyond the reasonable control of the Supplier (and/or that of the Supplier's Personnel); or
- b. directly caused by the Commonwealth's failure to act in accordance with this Agreement;

and, in either case, cannot be avoided by the Supplier implementing reasonable precautions or alternative methods or approaches.

1.7.4. For the avoidance of doubt, a delay is not beyond the reasonable control of the Supplier (and/or that of the Supplier's Personnel) if it is caused through an industrial dispute affecting the Supplier's Personnel, except for an industrial dispute that is protected under the *Fair Work Act 2009* (Cth).

1.8. **The Supplier's Invoice and bank account**

1.8.1. The Supplier must submit a correctly rendered invoice for payment of the Fees, Expenses and Allowances payable under this Agreement, in the manner and at the times stated in Item F of Schedule 1 and in accordance with this clause.

1.8.2. An invoice will be taken to be correctly rendered if:

- a. the invoice is addressed in accordance with the requirements at Item A.1 of Schedule 2;
- b. the invoice contains:
 - i. the full title of the Services;
 - ii. the name of the Project Officer;
 - iii. the Commonwealth's Agreement number;

- iv. the Commonwealth's purchase order number;
- v. the Supplier's ABN (if applicable);
- vi. the Supplier's bank account details for payment;
- c. the invoice is in the form of a valid tax invoice, where the Supplier is registered for GST;
- d. the Services related to the amount being claimed have been fully performed to the Commonwealth's satisfaction and have been accepted by the Commonwealth pursuant to this Agreement;
- e. the invoice is accompanied, where required, by reasonable documentation that provides evidence that the Services have been performed and/or that any Allowance or Expense claimed is payable; and
- f. the amount claimed in the invoice is due for payment under this Agreement.

1.9. **Taxes (Including GST), Duties And Government Charges**

- 1.9.1. Subject to this clause 1.9, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by the Supplier.
- 1.9.2. Unless otherwise indicated, all consideration for supply made under this Agreement is exclusive of any GST imposed on the supply.
- 1.9.3. If one Party (**Party A**) makes a taxable supply to the other Party (**Party B**) under this Agreement, Party B on receipt of a tax invoice from Party A must pay without set-off an additional amount to Party A equal to the GST imposed on the supply in question.
- 1.9.4. No Party may claim or retain from the other Party an amount in relation to a supply made under this Agreement for which the first Party can obtain an input tax credit or decreasing adjustment.

1.10. **Insurance**

- 1.10.1. The Supplier agrees to effect and maintain insurance as specified in Item G of Schedule 1.
- 1.10.2. If requested by the Project Officer, the Supplier must promptly provide proof of the currency of any policy of insurance.
- 1.10.3. This clause 1.10 will survive the expiration or termination of this Agreement and does not affect any requirement to insure against death or injury to employees under Legislative Requirements.

1.11. **Indemnity**

- 1.11.1. The Supplier indemnifies the Commonwealth and the Commonwealth's Staff (**those indemnified**) from and against any loss (including legal costs and expenses on a solicitor/own client basis) suffered by those indemnified, or

liability to pay damages, from any claim, suit, demand, action or proceeding brought by any person against those indemnified, where such loss or liability was caused by:

- a. a breach by the Supplier of the Supplier's obligations or warranties under this Agreement;
- b. any unlawful, wilfully wrongful or negligent act or omission by the Supplier or the Supplier's Personnel in connection with this Agreement;
- c. use or disclosure by the Supplier or the Supplier's Personnel of any the Commonwealth's Confidential Information or any Personal Information held or controlled in connection with this Agreement;
- d. use of the Contract Product or pre-existing matter by those indemnified as intended or permitted under this Agreement; or
- e. any infringement of Intellectual Property rights by the Supplier or the Supplier's Personnel in the course of, or incidental to, performing the Services.

1.11.2. The Supplier's liability to indemnify the Commonwealth and the Commonwealth's Staff under the preceding subclause is reduced proportionately to the extent that any negligent act or omission by those indemnified caused or contributed to any loss or liability incurred.

1.11.3. The Supplier agrees that:

- a. the Commonwealth may enforce the indemnity under this clause 1.11 in favour of the Commonwealth's Staff for the benefit of such persons in the name of the Commonwealth or of such persons; and
- b. the Commonwealth's right to be indemnified under this clause 1.11 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

1.11.4. This clause 1.11 will survive the expiration or termination of this Agreement.

1.12. **Ownership of Contract Product**

1.12.1. Ownership of all Contract Product vests immediately upon its creation in the Commonwealth.

1.12.2. The Supplier undertakes to ensure that all Contract Product is neatly and legibly compiled and adequately documented and contains sufficient evidence to support all conclusions, findings, and opinions.

1.12.3. The Supplier agrees to provide the Contract Product in the form specified in Item C of Schedule 1.

1.12.4. The Supplier agrees to establish and maintain procedures to secure Contract Product against loss and unauthorised access, use, modification or disclosure.

- 1.12.5. On the expiration or earlier termination of this Agreement, the Supplier must deliver to the Commonwealth all Contract Product remaining in the Supplier's possession within 5 Business Days.
- 1.13. **Intellectual Property in Contract Product**
- 1.13.1. Subject to this clause 1.13, Intellectual Property in all Contract Product vests immediately upon its creation in the Commonwealth.
- 1.13.2. The Commonwealth grants the Supplier a non-exclusive, revocable licence to use, reproduce, communicate, publish, adapt, and modify the Contract Product for the sole purpose of performing the Services.
- 1.13.3. The Supplier must ensure that, where any of the Specified Personnel are not the Supplier's employees, all necessary documentation will be entered into by the Specified Personnel to allow the Intellectual Property in the Contract Product to vest in the Commonwealth in accordance with this clause 1.13.
- 1.13.4. Ownership of any Intellectual Property in any pre-existing matter remains unchanged as a result of this Agreement. If:
- a. the Supplier provides pre-existing matter to perform the Services; and
 - b. the Commonwealth cannot use the Contract Product without using the Supplier's pre-existing matter,
- then the Supplier grants to, or must procure for, the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, communicate, publish, reproduce, adapt and exploit that pre-existing matter as part of the Contract Product anywhere in the world for any purpose.
- 1.13.5. If requested by the Project Officer, the Supplier must, at the Supplier's own cost, bring into existence, sign, execute or otherwise deal with any document that is required to give effect to this clause.
- 1.13.6. The Supplier warrants that it is entitled, or at the relevant time will be entitled, or will procure rights so that the Supplier is entitled at the relevant time, to deal with the Intellectual Property in any Contract Product in the manner provided for in this clause.
- 1.13.7. The provisions of this clause 1.13 survive termination or expiration of this Agreement.
- 1.14. **Moral Rights Consent**
- 1.14.1. For the purposes of this clause 1.14 '**Specified Acts**' in relation to any Contract Product, means the following classes or types of acts or omissions:
- a. those which would, but for this clause 1.14, infringe the author's right of attribution of authorship;
 - b. those which would, but for this clause 1.14, infringe the author's right of integrity of authorship;

but does not include:

- c. those which would infringe the author's right not to have authorship falsely attributed.
- 1.14.2. Where the Supplier is a natural person and the author of any Contract Product, the Supplier consents to the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Product (whether occurring before or after the consent is given).
 - 1.14.3. In any other case, the Supplier warrants or undertakes that the author of the Contract Product has given or will give a written consent to the Specified Acts, and that such consent extends directly or indirectly to the performance of the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Product (whether occurring before or after the consent is given).
- 1.15. **Security**
 - 1.15.1. The Supplier must, and must ensure that the Supplier's Personnel, comply with:
 - a. all relevant security requirements specified in the Protective Security Policy Framework;
 - b. the security requirements specified in Schedule 3; and
 - c. any variations or additions to these security requirements that the Commonwealth (in the Commonwealth's absolute discretion) notifies the Supplier of in writing, from the date specified in the notice (or 5 Business Days after it receives the notice if no date is specified).
 - 1.15.2. If the Supplier can substantiate that changes to the security requirements pursuant to subclause 1.15.1.c have cost implications for the Supplier, the Supplier may apply to the Commonwealth for a variation to the Fees.
 - 1.15.3. The Supplier acknowledges that in performing this Agreement, the Supplier may become subject to certain statutory provisions relating to security and security issues, and agrees to ensure that the Supplier's Personnel are aware of, and comply with, those statutory provisions.
 - 1.15.4. The Supplier must obtain the Commonwealth's prior written authorisation for any of the Supplier's Personnel who may be required to:
 - a. enter secure areas in the Commonwealth's building or places;
 - b. work with the Commonwealth's Staff for extended periods;
 - c. have access to Security Classified Information, or valuable assets; or
 - d. hold a particular kind of security clearance that the Commonwealth notifies the Supplier of.
 - 1.15.5. The Supplier must provide any information that the Commonwealth reasonably requests to enable the Commonwealth to investigate whether any of the Supplier's Personnel should be authorised.

- 1.15.6. The Commonwealth may require that any of the Supplier's Personnel hold a particular level of Commonwealth security clearance.
- 1.15.7. The Commonwealth will not unreasonably withhold authorisation under clause 1.15.4.
- 1.15.8. The Commonwealth agrees to notify the Supplier of:
- a. the Supplier's Personnel who have been granted authorisation (**Authorised Persons**);
 - b. the type and level of Commonwealth security clearance (if any) given to each Authorised Person;
 - c. the period during which the authorisation is effective; and
 - d. the Supplier's Personnel who have not been granted authorisation.
- 1.15.9. The Supplier must acknowledge receipt of any notice provided under clause 1.15.8 by signing and returning a copy of the notice to the Commonwealth.
- 1.15.10. The Supplier must promptly notify the Commonwealth of any change in an Authorised Person's circumstances that, in the Supplier's reasonable opinion, is likely to affect the Commonwealth's authorisation of that person.
- 1.15.11. The Commonwealth may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend the Commonwealth's authorisation of a particular person, and in such event:
- a. the Commonwealth must notify the Supplier accordingly; and
 - b. the Supplier agrees, upon request, to propose and make available another person for authorisation by the Commonwealth under this clause 1.15 within a reasonable time and without inconvenience or cost to the Commonwealth.
- 1.15.12. The Supplier must not permit any of the Supplier's Personnel to have any access to Security Classified Information unless:
- a. the relevant person has been cleared to the appropriate security level;
 - b. the Commonwealth has given written authority under this clause 1.15; and
 - c. the relevant person has undergone the training specified in Schedule 3 relating to access and use of Security Classified Information.
- 1.15.13. The Supplier must inform the Commonwealth immediately if the Supplier becomes aware that any unauthorised person has had access to Security Classified Information.
- 1.15.14. The Supplier agrees not to perform this Agreement outside Australia, or transfer Security Classified Information outside Australia, without the Commonwealth's prior written approval.
- 1.15.15. The Supplier may only access the Commonwealth's premises if the Supplier:

- a. has the Commonwealth's written authorisation; and
 - b. complies with the Commonwealth's requirements set out in this Agreement or otherwise notified by the Commonwealth.
- 1.15.16. The Supplier must ensure that the Supplier's Personnel safeguard any keys or passes or other Material detailing access arrangements that are provided to the Supplier for the purposes of this Agreement.
- 1.15.17. The Supplier agrees to protect any Official Resources in the Supplier's possession or control to the same extent as if it were the Commonwealth, including ensuring that unauthorised persons cannot access any Official Information.
- 1.15.18. The Supplier agrees to provide a written security report to the Commonwealth immediately if the Supplier becomes aware that a Security Incident has occurred.
- 1.15.19. The Supplier must ensure that the Supplier's Personnel undertake the training specified by the Commonwealth in Schedule 3.
- 1.16. **Conflict Of Interest**
- 1.16.1. The Supplier warrants at the Date of this Agreement that, to the best of the Supplier's knowledge after making diligent inquiry, no Conflict exists (inside or outside of Australia) or is likely to arise in the performance of its obligations under this Agreement, including by any of the Supplier's Personnel, that has not been disclosed by the Supplier in writing to the Commonwealth for the purposes of entering into this Agreement.
- 1.16.2. If during the term of this Agreement, a Conflict arises, or appears likely to arise, the Supplier must notify the Commonwealth immediately in writing and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict. If the Supplier fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Agreement.
- 1.16.3. The Supplier agrees that the Supplier will not, and will use the Supplier's best endeavours to ensure that any of the Supplier's Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to create a Conflict.
- 1.17. **Disclosure by the Supplier**
- 1.17.1. The Supplier warrants that, as at the Date of this Agreement, having made reasonable inquiries of the Supplier's officers, employees, agents and subcontractors, the Supplier is not aware of any:
- a. matter relating to the Supplier's commercial, financial or legal capacity or status and may affect the Supplier's ability to perform the Services;
 - b. litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, actual or threatened, and whether admitted or contested, by

another person or body (including the regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Supplier or any settlement in respect of any such matter;

- c. proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Supplier; or
- d. any criminal or other act or any other behaviour, conduct or activity of the Supplier which may:
 - i. materially and adversely affect the Supplier's credit worthiness, integrity, character or reputation; or
 - ii. attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia,

and which was not disclosed in writing to the Commonwealth prior to execution of this Agreement.

1.18. **Disengagement**

- 1.18.1. In the event of termination or expiration of this Agreement, the Supplier must:
 - a. comply with any disengagement requirements set out in Item D of Schedule 1; and
 - b. at no additional costs to the Commonwealth, provide reasonable assistance to the Commonwealth if requested, to facilitate the transition of the Services to an alternative supplier or to the Commonwealth with minimal disruption to the Commonwealth.
- 1.18.2. Notwithstanding clause 1.12.5, the Supplier may retain one full copy of Contract Product after expiration or termination of this Agreement, solely for necessary back-up, insurance or record-keeping purposes. Any copy retained by the Supplier under this clause remains subject at all times to any restrictions on the use of that Material under this Agreement, including those relating to Intellectual Property, confidentiality, privacy and security.
- 1.18.3. The provisions of this clause 1.18 survive termination or expiration of this Agreement.

2. The Commonwealth's Obligations

2.1. **Payment of Fees, Allowances and Expenses**

- 2.1.1. Subject to this Agreement, the Commonwealth will pay to the Supplier the amount of any Fees, Allowances and Expenses due under this Agreement, within 30 days after the receipt by the Commonwealth of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is required on the next Business Day.

- 2.1.2. The Commonwealth is not required to make any payment to the Supplier in the absence of a correctly rendered invoice. Accordingly, an invoice which includes amounts that are not properly payable under this Agreement or are incorrectly calculated is not a correctly rendered invoice and the Commonwealth is not required to make any payment in respect of that invoice.
- 2.1.3. The Commonwealth will pay the Fees, Allowance and Expenses, to the bank account nominated by the Supplier by electronic funds transfer.
- 2.1.4. Payment of the Fees, Allowance and Expenses, by electronic funds transfer to the nominated account under the preceding subclause, relieves the Commonwealth from any other form of payment.
- 2.1.5. In addition to any other rights it may have, the Commonwealth may defer payment of the Fees, and any applicable Allowances or Expenses, until the Supplier has completed, to the Commonwealth's satisfaction (acting reasonably), that part of the Services to which the payment relates.
- 2.1.6. Subject to clause 2.1.7, if the Supplier is a Small Business and the Commonwealth fails to pay an amount to the Supplier under this Agreement by the day it is due for payment and payable, the Commonwealth agrees to pay 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 up to and including the day that payment is made in accordance with the formula set out in clause 2.1.8.
- 2.1.7. Interest is only payable by the Commonwealth when the amount of interest exceeds \$10.00 and the Supplier has issued a correctly rendered invoice in relation to the interest.
- 2.1.8. The formula for the calculation of interest under clause 2.1.6 is:

$$\mathbf{SI = UA \times GIC \times D}$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = the General Interest Charge 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.

2.2. **Commonwealth Material**

- 2.2.1. To assist in the Supplier's performance of the Services, the Commonwealth agrees to provide the Supplier with Commonwealth Material specified in Item F of Schedule 2, at the times and in the manner set out in that item.
- 2.2.2. Ownership of all Commonwealth Material, and any Intellectual Property in Commonwealth Material, remains vested at all times in the Commonwealth.

- 2.2.3. The Commonwealth grants to the Supplier a royalty-free, non-exclusive licence to use, reproduce, supply and adapt the Commonwealth Material solely for the purposes of this Agreement and subject to any conditions or restrictions set out in Item F of Schedule 2, or notified from time to time in writing by the Commonwealth.
- 2.2.4. On the expiration or earlier termination of this Agreement, the Supplier agrees to return to the Commonwealth within 5 Business Days, all Commonwealth Material remaining in the Supplier's possession.
- 2.2.5. The risk of any loss or damage of the Commonwealth Material passes to the Supplier on delivery and remains with the Supplier until the Supplier delivers the Commonwealth Material back to the Commonwealth.
- 2.3. **Assistance and Facilities**
- 2.3.1. The Commonwealth will provide the Supplier with assistance, and make facilities available, as set out in Item G of Schedule 2.

3. Laws and Government Policies applying to this Agreement

3.1. Compliance with Commonwealth Policies

- 3.1.1. At all times when using the Commonwealth's premises or facilities, the Supplier must ensure that the Supplier's Personnel, comply with all reasonable directions and procedures relating to workplace harassment, occupational health (including the smoke free work place policy), APS and the Commonwealth's Codes of Conduct, safety and security, including the Commonwealth's Internet access and usage guidelines, in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

3.2. Compliance with Laws

- 3.2.1. In performing the Services the Supplier must:
- a. comply with Legislative Requirements, particularly the *Crimes Act 1914* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth) and *Disability Discrimination Act 1992* (Cth) and the *Workplace Gender Equality Act 2012* (Cth) (**the Gender Equality Act**); and
 - b. not enter into a subcontract with a person named by the Director of Workplace Gender Equality as an employer that is currently not complying with the Gender Equality Act.
- 3.2.2. The Supplier acknowledges that:
- a. any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of Confidential Information stored in any computer in the course of performing a contract for the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for

which there are a range of penalties, including a maximum of ten years imprisonment; and

- b. the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Supplier are authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914* (Cth), the maximum penalty for which is two years imprisonment.

3.3. **Fair Work Principles**

3.3.1. The Supplier must comply, and as far as practicable must ensure that the Supplier's subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:

- a. complying with all applicable workplace relations, work health and safety (including WHS law), and workers' compensation laws;
- b. informing the Commonwealth of any adverse court or tribunal decision for a breach of workplace relations law, work health and safety laws, or workers' compensation laws made against the Supplier during the term of this Agreement and any remedial action the Supplier has taken, or proposes to take, as a result of the decision;
- c. providing any information to the Commonwealth that the Commonwealth reasonably requires to confirm that the Supplier (and any of the Supplier's subcontractors) is complying with the Fair Work Principles; and
- d. participating in all compliance activities associated with the Supplier's legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

3.3.2. Compliance with the Fair Work Principles shall not relieve the Supplier from the Supplier's responsibility to comply with the Supplier's other obligations under this Agreement.

3.3.3. If the Supplier does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Supplier's failure to comply (including the Supplier's name) and to otherwise provide those details to other Commonwealth agencies.

3.3.4. As far as practicable, the Supplier must:

- a. not use a subcontractor in relation to this Agreement where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and

- b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under these clauses 3.3.1 to 3.3.4.

3.4. **Work health and safety**

- 3.4.1. The Supplier must ensure that the Services and the work conducted by the Supplier and any of the Supplier's Personnel comply with all applicable Legislative Requirements, standards and policies, and requirements of this Agreement, that relate to the health and safety of the Supplier, the Supplier's Personnel, the Commonwealth's Staff and third parties.
- 3.4.2. The Supplier must comply with the Supplier's obligations under any applicable WHS law, and must ensure, so far as is reasonably practicable, that the Supplier's officers (as defined by applicable WHS law) and workers comply with their obligations under applicable WHS law. The other provisions of clause 3.4 do not limit this subclause.
- 3.4.3. The Supplier must ensure, so far as is reasonably practicable, the health and safety of:
 - a. workers engaged, or caused to be engaged by the Supplier; and
 - b. workers whose activities in carrying out work are influenced or directed by the Supplier,while the workers are at work in relation to this Agreement.
- 3.4.4. The Supplier must ensure, so far as is reasonably practicable, that the health and safety of other persons (including the Commonwealth's Staff and the Commonwealth's contractors) is not put at risk from work carried out under this Agreement.
- 3.4.5. The Supplier must consult, cooperate and coordinate with the Commonwealth in relation to the Supplier's work health and safety duties.
- 3.4.6. Without limiting clause 3.3.1.d of this Agreement, the Supplier must, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and the Commonwealth's officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.
- 3.4.7. The Commonwealth may direct the Supplier to take specified measures in connection with the Supplier's work under this Agreement or otherwise in connection with the Services that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Supplier must comply with the direction. The Supplier is not entitled to an adjustment to the Fees, or to charge additional Allowances or Expenses, merely because of compliance with the direction.

- 3.4.8. If an event occurs in relation to the Supplier's work under this Agreement that leads, or could lead, to the death or, or an injury or illness to, a person (**Notifiable Incident**), the Supplier must:
- a. immediately report the matter to the Commonwealth, including all relevant details that are known to the Supplier;
 - b. as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - i. its cause; and
 - ii. what adverse effects (if any) it will have on the Supplier's work under this Agreement, including adverse effects on risks to health and safety;
 - c. as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
 - d. as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - e. within 3 Business Days after the Notifiable Incident, give the Commonwealth a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 3.4.8.b and a statement of the steps the Supplier has taken or that the Supplier proposes to take as required by clauses 3.4.8.c and d; and
 - f. within 3 months after the Notifiable Incident, give the Commonwealth a written report giving full details of its actions in relation to the Notifiable Incident.
- 3.4.9. The Supplier's obligations under clause 3.4.8 are in addition to any reporting obligation that the Supplier has under a written law.
- 3.4.10. The Supplier must fully co-operate, at the Supplier's own cost, with any investigation by any government agency (including the Commonwealth) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 3.4.11. The Supplier must not enter into any subcontract for the purpose of directly or indirectly fulfilling the Supplier's obligations under this Contract unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this clause 3.4.
- 3.4.12. A word or expression in this clause 3.4 that is:
- a. used or defined in an applicable WHS law; and
 - b. is not otherwise defined in this clause 3.4 or elsewhere in this Agreement,
- has, for the purposes of this clause 3.4, the meaning given to it under the applicable WHS law.

3.5. **Workplace Gender Equality**

- 3.5.1. This clause applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the Gender Equality Act.
- 3.5.2. If the Supplier becomes non-compliant with the Gender Equality Act during the term of this Agreement, the Supplier must notify the Project Officer.
- 3.5.3. If the term of this Contract exceeds 18 months, the Supplier must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Project Officer.
- 3.5.4. Compliance with Gender Equality Act does not relieve the Supplier from its responsibility to comply with its other obligations under this Contract.

3.6. **Treatment of Confidential Information**

- 3.6.1. Subject to subclause 3.6.7, neither the Supplier nor the Commonwealth, without the prior written consent of the other Party, will disclose any Confidential Information of the other Party to a third party.
- 3.6.2. The Supplier may only use and copy Confidential Information held or acquired or which the Supplier may have had access to in connection with this Agreement to the extent reasonably necessary to enable the Supplier to comply with its obligations under this Agreement.
- 3.6.3. The Supplier must not transfer any of the Commonwealth's Confidential Information outside Australia, or allow persons outside Australia to have access to such Material, without the Commonwealth's prior written consent. In giving its consent, the Commonwealth may impose such conditions as the Commonwealth considers appropriate.
- 3.6.4. The Commonwealth may at any time request the Supplier to give and to arrange for the Supplier's Personnel engaged in the performance of the Services to give, or arrange for any person with a Third Party Interest to give, written undertakings in a form the Commonwealth requires relating to the use and non-disclosure of the Commonwealth's Confidential Information.
- 3.6.5. If the Supplier receives a request under subclause 3.6.4, the Supplier must promptly arrange for all such undertakings to be given to the Commonwealth.
- 3.6.6. The Supplier will make available to the Project Officer or other nominated Commonwealth representatives the original non-disclosure undertakings made by the Supplier's Personnel, within 5 Business Days of a verbal or written request being made by the Project Officer or other nominated Commonwealth representative.
- 3.6.7. The obligations on the Parties under this clause are not taken to have been breached to the extent that Confidential Information:
 - a. is disclosed by a Party to its advisers or employees solely to comply with obligations, or to exercise rights, under this Agreement;

- b. is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities relating to this Agreement;
- c. is disclosed by the Commonwealth in response to a request by any Commonwealth 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 Commonwealth of Australia (including with other Commonwealth agencies), where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed by the Commonwealth;
- g. is authorised or required by law to be disclosed by the Supplier, provided the Supplier notifies the Commonwealth immediately and such notification is prior to disclosure;
- h. is disclosed by the Commonwealth and is information in a Material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property in relation to that Material form, has vested in, or is assigned to, the Commonwealth under this Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or
- i. is in the public domain otherwise than due to a breach of this clause.

3.6.8. Where either the Supplier or the Commonwealth disclose Confidential Information to another person:

- a. pursuant to subclauses 3.6.7.a, b or e, the disclosing Party:
 - i. must notify the receiving person that the information is Confidential Information; and
 - ii. not provide the information unless the receiving person agrees to keep the information confidential; or
- b. pursuant to subclauses 3.6.7.c or d, the disclosing Party must notify the receiving Party that the information is Confidential Information.

3.6.9. Where the Parties agree in writing after the Date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, that documentation is incorporated into, and becomes part of this Agreement, on the date on which both Parties have signed that documentation.

3.6.10. The obligations under this clause 3.6 continue, notwithstanding the expiry or termination of this Agreement:

- a. in relation to an item of information described in Schedule 4, for the period set out in the Schedule in respect of that item; and

- b. in relation to any information which the Parties agree in writing after the Date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed in writing in respect of that information.
- 3.6.11. On expiration or earlier termination of this Agreement the Supplier will, on request, deliver up to the Commonwealth (and not retain any copies) all Material forms of the Commonwealth's Confidential Information.
- 3.6.12. Nothing in this clause derogates from any obligation that either the Supplier or the Commonwealth may have either under the *Privacy Act 1988* (Cth), or under this Agreement, in relation to the protection of Personal Information.
- 3.7. **Protection of Personal Information**
- 3.7.1. This clause applies only where the Supplier deals with Personal Information when, and for the purpose of, providing the Services under this Agreement.
- 3.7.2. The Supplier acknowledges that the Supplier is a '**contracted service provider**' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**the Privacy Act**), and agrees in respect of the provision of the Services under this Agreement:
- a. to use or disclose Personal Information obtained during the course of providing the Services under this Agreement only for the purposes of this Agreement;
 - b. not to do any act or engage in any practice that would breach an Australian Privacy Principle (**APP**) contained in section 14 of the Privacy Act, which if done or engaged in by an Agency, would be a breach of that APP;
 - c. to carry out and discharge the obligations contained in the APPs as if the Supplier were an Agency under that Act;
 - d. to comply insofar as practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time and relating to privacy and Personal Information;
 - e. to notify individuals whose Personal Information the Supplier holds, that complaints about the Supplier's acts or practices may be investigated by the Information Commissioner who has power to award compensation against the Supplier in appropriate circumstances;
 - f. not to use or disclose Personal Information or engage in an act or practice that would breach an **APP** or an Approved Privacy Code (**APC**), where that section, APP or APC is applicable to the Supplier, unless where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under clause 3.6 [Treatment of Confidential Information] of this Agreement, and the activity or practice which is authorised by clause 3.6 [Treatment of Confidential Information] of this Agreement is inconsistent with the APP or APC;

- g. to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or an APC binding a party to this Agreement;
 - h. to immediately notify the Commonwealth if the Supplier becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 3.7, whether by the Supplier or the Supplier's Personnel; and
 - i. to ensure that any of the Supplier's Personnel who are required to deal with Personal Information for the purposes of this Agreement are made aware of the Supplier's obligations set out in this clause 3.7.
- 3.7.3. The Supplier must ensure that any subcontract entered into for the purpose of fulfilling the Supplier's obligations under this Agreement contains provisions to ensure that the subcontractor has the same obligations as the Supplier under this clause 3.7, including the requirement in relation to subcontracts.
- 3.7.4. The Supplier indemnifies the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the Supplier's obligations under this clause 3.7, or a subcontractor under the subcontract provisions referred to in subclause 3.7.3.
- 3.7.5. In this clause 3.7, the terms '**Agency**', '**APC**' and '**APPs**' have the same meaning as they have in section 6 of the Privacy Act.
- 3.7.6. The provisions of this clause 3.7 survive termination or expiration of this Agreement.
- 3.8. **Handling of Complaints**
- 3.8.1. A complaint alleging an interference with the privacy of an individual in respect of any Services performed under this Agreement will be handled by the Parties in accordance with the following procedures:
 - a. where the Commonwealth receives a complaint alleging an interference with the privacy of an individual by the Supplier or the Supplier's Personnel, the Commonwealth must immediately notify the Supplier of only those details of the complaint necessary to minimise any breach or prevent further breaches of the privacy clauses;
 - b. where the Supplier receives a complaint alleging an interference with the privacy of an individual by the Supplier or the Supplier's Personnel, the Supplier must immediately notify the Commonwealth of the nature of the complaint but must only release to the Commonwealth Confidential Information concerning the complainant with that individual's consent;
 - c. after the Commonwealth has given or been given notice in accordance with clause 3.8.1.a or b above, the Commonwealth must keep the Supplier informed of all progress with the complaint as relates to the Supplier's actions in connection with the complaint; and

- d. the Commonwealth will give the Supplier 10 Business Days written notice of an intention to assume a liability, loss or expense including in that notice an explanation of how that liability, loss or expense was assessed and the Supplier's proposed share of that liability.

3.9. **Books and records**

3.9.1. The Supplier must:

- a. keep and must require the Supplier's subcontractors to keep adequate books and records, in accordance with Australian accounting standard, in sufficient detail to enable the amounts payable by the Commonwealth under this Agreement to be determined; and
- b. retain and require the Supplier's subcontractors to retain for a period of seven years after termination or expiration of this Agreement all books and records relating to the Services.

3.9.2. The Supplier must bear the Supplier's own costs of complying with this clause.

3.9.3. This clause 3.9 applies for the term of this Agreement and for a period of 7 years from the termination or expiry of this Agreement.

3.10. **Audit and access**

3.10.1. The Commonwealth (which, in clauses 3.10.1 to 3.10.4, includes the Commonwealth's authorised representatives) may conduct audits relevant to the performance of the Supplier's obligations under this Agreement. Audits may be conducted of:

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

3.10.2. The Commonwealth may, at reasonable times and on giving reasonable notice to the Supplier:

- a. access the Supplier's premises to the extent relevant to the performance of this Agreement;
- b. require the provision by the Supplier, the Supplier's employees, agents or subcontractors, of records and information in a data format and storage

medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;

- c. inspect and copy documentation, books and records, however stored, in the custody or under control of the Supplier, the Supplier's Personnel; and
- d. require assistance in respect of any inquiry into or concerning the Services or this Agreement. 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 or any Parliamentary committee.

3.10.3. The Supplier must provide the Commonwealth with access to the Supplier's computer hardware and software to the extent necessary for the Commonwealth to exercise the Commonwealth's rights under this clause, and provide the Commonwealth with any reasonable assistance the Commonwealth requests to use that hardware and software.

3.10.4. The Commonwealth will use reasonable endeavours to ensure that:

- a. audits performed pursuant to clause 3.10.1; and
- b. the exercise of the general rights granted to the Commonwealth by clause 3.10.2,

do not unreasonably delay or disrupt in any material respect the Supplier's performance of the Supplier's obligations under this Agreement.

3.10.5. Except as set out in clause 3.10.6, each Party must bear its own costs of any reviews and/or audits.

3.10.6. If the Supplier is able to substantiate that the Supplier has incurred direct expenses in the Commonwealth's exercise of the rights granted under clause 3.10.1 or clause 3.10.2 which, having regard to the value of this Agreement, are substantial, the Parties will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

3.10.7. The Commonwealth's rights under clause 3.10.2.a to 3.10.2.c apply equally to the Auditor-General, the Privacy Commissioner or the Information Commissioner, or any of their delegates (**Commissioners**), for the purpose of performing their respective statutory functions or powers.

3.10.8. The Supplier must do all things necessary to comply with a requirement of a Commissioner, provided such requirements are legally enforceable and within the power of the relevant Commissioner.

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

- 3.10.10. The Supplier must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 3.10.
- 3.10.11. Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of any Commissioner. The Commissioner's rights under this Agreement are in addition to any other power, right or entitlement of any of the Commissioners.
- 3.10.12. This clause 3.10 applies for the term of this Agreement and for a period of 7 years from the termination or expiry of this Agreement.
- 3.11. **Access to documents**
- 3.11.1. In this clause, '**document**' has the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 3.11.2. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Supplier or any subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), the Commonwealth may at any time by written notice require the Supplier to provide the document to the Commonwealth and the Supplier must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 3.11.3. The Supplier must include in any subcontract relating to the performance of this Agreement provisions that will enable the Supplier to comply with the Supplier's obligations under this clause 3.11.
- 3.11.4. This clause 3.11 only applies if this Agreement is a '**Commonwealth contract**', as defined in the *Freedom of Information Act 1982 (Cth)*.

4. Matters arising under this Agreement

4.1. Liaison and Party Representatives

- 4.1.1. The Supplier must:
- a. liaise with, and report to, the Project Officer at the times and in the manner as reasonably directed by the Project Officer in relation to the conduct and performance of the Services; and
 - b. comply with any reasonable direction of the Project Officer in the performance of the Services, to the extent those directions are not inconsistent with the Supplier's obligations under this Agreement.
- 4.1.2. A direction under clause 4.1.1 may be given orally by the Project Officer but, if requested by the Supplier, the direction must be given as a notice.
- 4.1.3. The Project Officer and the Supplier's Representative must liaise as necessary for any purpose in connection with the Supplier's performance of the Services.
- 4.1.4. The Project Officer is the Commonwealth's representative, and the Supplier's Representative is the Supplier's representative, for the purposes of this

Agreement. The Project Officer and the Supplier's Representative each have authority to receive and sign notices for their respective Parties under this Agreement. The Supplier's Representative has authority to accept any request or direction in relation to the Services.

4.2. **Applicable law and jurisdiction**

4.2.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

4.2.2. The Parties submit to the jurisdiction of the courts of that Territory.

4.3. **Entire Agreement and Variation**

4.3.1. This Agreement records the entire agreement between the Parties in relation to its subject matter.

4.3.2. The provisions of this Agreement will not be varied either at law or in equity except by an agreement in writing between the Parties.

4.4. **Waiver**

4.4.1. If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

4.4.2. A waiver of any provision or rights under this Agreement:

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

4.4.3. A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

4.4.4. A waiver by either Party of any of its rights will not be deemed to be a waiver in respect of any other right.

4.4.5. In this clause 4.4, '**rights**' means rights or remedies provided by this Agreement or at law.

4.5. **Negation of Employment, Partnership and Agency**

4.5.1. This Agreement does not make the Supplier the Commonwealth's employee, officer, partner or agent, nor does the Supplier have authority to bind or represent the Commonwealth with third parties.

4.5.2. The Supplier agrees not to represent itself, and to ensure that the Supplier's Personnel do not represent themselves, as having the relationship or authority referred to in the preceding subclause.

4.6. **Public Announcements/Media Contact**

4.6.1. The Supplier must not make any public announcement or make any representation to any media representative about or concerning:

- a. this Agreement; or
 - b. any matter related to this Agreement,
- without the prior written consent of the Project Officer.

4.7. **Collection of Information**

- 4.7.1. The Supplier will only collect information on the Commonwealth's behalf as directed by the Commonwealth, and will collect it in accordance with the procedures the Commonwealth specifies from time to time.

4.8. **Assignment**

- 4.8.1. The Supplier must not assign, in whole or in part, either the Supplier's rights or obligations under this Agreement without the prior written approval of the Project Officer.
- 4.8.2. The Supplier must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Agreement without first consulting the Commonwealth.

4.9. **Termination without default**

- 4.9.1. The Commonwealth may at any time by notice, terminate this Agreement or reduce the scope of the Services immediately.
- 4.9.2. On receipt of a notice of termination or reduction the Supplier must:
- a. stop work as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Product; and
 - c. continue work on any part of the Services not affected by the notice.
- 4.9.3. Where there has been a termination under subclause 4.9.1 the Commonwealth will, subject to clause 4.9.5, be liable only for:
- a. payments and assistance under clause 2.1 [Payment of Fees, Allowances & Expenses] for Services rendered before the effective date of termination; and
 - b. reasonable costs incurred by the Supplier and directly attributable to the termination.
- 4.9.4. Where there has been a reduction in the scope of the Services, the Commonwealth's liability to pay Fees, Allowances or Expenses under clause 2.1 [Payment of Fees, Allowances & Expenses] or provide facilities and assistance under clause 2.3 [Assistance and Facilities] will, unless there is agreement in writing to the contrary, abate proportionately to the reduction in the Services.
- 4.9.5. The Commonwealth will not be liable under subclause 4.9.3 in any way for any amount that:

- a. is for loss of prospective profits of the Supplier or any other person; or
- b. would, in addition to any amounts paid or due, or becoming due, to the Supplier under this Agreement, together exceed the Fees.

4.10. **Termination for default**

4.10.1. Where a Party fails to satisfy any of its obligations under this Agreement, the other Party may by notice:

- a. if the failure is not capable of remedy (in the reasonable opinion of that other Party), terminate this Agreement immediately; or
- b. if the failure is capable of remedy (in the reasonable opinion of that other Party), require that the failure be remedied within the timeframe specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.

4.10.2. The timeframe specified in any notice to remedy issued under subclause 4.10.1.b must be reasonable in consideration of the circumstances of that failure.

4.10.3. The Commonwealth may also, by notice, terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if any event specified in subclauses 4.10.4.a to f happens to the Supplier.

4.10.4. The Supplier must notify the Commonwealth immediately if:

- a. the Supplier being a company, there is any change in the direct or indirect beneficial ownership or control of the Supplier (not including that resulting from ordinary trading of shares in circumstances where the Supplier is a listed company);
- b. the Supplier ceases to carry on business;
- c. the Supplier ceases to be able to pay the Supplier's debts as they become due;
- d. the Supplier being a company, enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- e. the Supplier being a natural person, is declared bankrupt or assigns the Supplier's estate for the benefit of creditors; or
- f. the Supplier being a partnership, any step is taken to dissolve that partnership.

4.10.5. In this clause, '**controller**', '**managing controller**' and '**administrator**' have the same meanings as in the *Corporations Act 2001* (Cth).

4.11. **Dispute Resolution**

4.11.1. The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- a. firstly, the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- b. secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- c. thirdly, the Parties have 10 Business Days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- d. lastly, either Party may commence legal proceedings if:
 - i. there is no resolution or agreement in accordance with subclause 4.11.1.c; or
 - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days.

4.12. **Notices**

- 4.12.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:
 - a. *if given by the Supplier to the Commonwealth* - addressed to the Project Officer at the address stated in Schedule 2, or other address as notified by the Commonwealth; or
 - b. *if given by the Commonwealth to the Supplier* - Supplier's Representative at the address stated in Schedule 1, or other address as notified by the Supplier.
- 4.12.2. Any such notice must be delivered to the other Party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending Party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 4.12.
- 4.12.3. Subject to clause 4.12.4, a notice is deemed to be received:
 - a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by prepaid post* - upon delivery to the relevant address; or
 - c. *if transmitted electronically* - upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other Party that it has received the notice (whichever is earlier).
- 4.12.4. If a notice is received:
 - a. after 5.00 pm on any Business Day; or

b. on a day that is not a Business Day.

it is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 4.12.

5. Dictionary and Interpretation

5.1. Dictionary

5.1.1. In this Agreement, unless the context indicates otherwise:

Agreement	means this contract, including the Schedules and any attachments.
Allowances	means the allowances (if any) specified in Item D of Schedule 2.
applicable WHS law	means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act).
Auditor-General	has the same meaning as the expression in the <i>Auditor-General Act 1997</i> (Cth) and includes any person authorised to carry out the functions of the Auditor-General under that Act.
Business Day	means a day that is not a Saturday, Sunday, bank holiday or public holiday in the Australian Capital Territory, Australia.
Commonwealth Material	means any Material the Commonwealth provides to the Supplier for the purposes of this Agreement or which is copied or derived from Material so provided.
Commonwealth's Staff	means the Commonwealth's officers, employees, agents and contractors (not including the Supplier).
Confidential Information	means information that: (a) is Personal Information; (b) is by its nature confidential; (c) is designated by a Party as confidential and is described in Schedule 4; or (d) is information that is agreed between the Parties in writing after the Date of this Agreement as constituting Confidential Information for the purposes of this Agreement, but does not include information which:

- (e) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or
- (f) is in a Party's possession without restriction in relation to disclosure before the date of receipt from the other Party in connection with this Agreement, or has otherwise been independently developed or acquired by a Party not in connection with this Agreement, and which in either case can be established by written evidence.

Conflict means any matter, circumstance, interest or activity affecting the Supplier (including the Supplier's Personnel) which may or may appear to impair the Supplier's ability to provide the Services to the Commonwealth diligently and independently.

Contract Product means all Material:

- (a) brought into existence for the purpose of performing the Services;
- (b) incorporated in, supplied or required to be supplied along with the material referred to in paragraph (a); or
- (c) copied or derived from material referred to in paragraphs (a) or (b),

but does not include the Supplier's trademarks or trade names.

Date of this Agreement means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so.

Deliverable means a specific deliverable (which may include software, hardware, plans and/or documentation) to be supplied by the Supplier under this Agreement and specified in Schedule 1.

Expenses means the expenses (if any) specified in Item E of Schedule 2.

Fees means the fees payable to the Supplier under this Agreement as specified in Item C of Schedule 2, and does not include Expenses or Allowances.

Full Time Equivalent	has the same meaning as the term 'full time equivalent' as defined by the Australian Bureau of Statistics.
General Interest Charge	means the interest charge determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) on the day that payment is due.
GST	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Information Commissioner	has the same meaning as the expression 'Commissioner' in the <i>Privacy Act 1988</i> (Cth) and includes any person authorised to carry out the functions of the Commissioner.
Intellectual Property	means any copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how) and circuit layout, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Intellectual Property does not include Moral Rights.
Legislative Requirements	means any: <ul style="list-style-type: none">(a) Act, Ordinance, Regulations, By-law, Order, Award and Proclamations of the Commonwealth or any State or Territory applicable to the Services; or(b) certificate, licence, consent, permit, approval or requirement of an organisation having jurisdiction over matters undertaken in performance of the Services.
Material	means any documents, goods, equipment, software, information and data stored by any means.
Moral Rights	means the rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature, conferred by statute.
Official Information	means any information developed, received or collected by or on behalf of the Commonwealth of Australia through its agencies and contracted providers.

Official Resources	includes: <ul style="list-style-type: none">(a) Official Information;(b) people who work for or with the Commonwealth; and(c) assets belonging to (even if in the possession of contracted providers) or in the Commonwealth's possession.
Period for Services	means the period set out in Item B of Schedule 1.
Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	has the same meaning as the expression in the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any person authorised to carry out the functions of the Commissioner under that Act.
Protective Security Policy Framework	means the Australian Government Protective Security Policy Framework issued by the Commonwealth Attorney-General's Department as in force from time to time.
Project Officer	means the person for the time being holding, occupying or performing the duties specified in Schedule 2.
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Agency.
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.
Services	means the services to be performed by the Supplier as described in Schedule 1 or elsewhere in this Agreement.
Small Business	means an enterprise that employs less than the Full Time Equivalent of 20 persons on the Date of this Agreement. If the enterprise forms part of a group, this test is applied to the group as a whole.
Specified Personnel	means the Supplier's Personnel specified in Schedule 1 required to undertake the Services or part of the work constituting the Services.

Supplier	will, where the context so admits, include the Supplier's officers, employees, volunteers, bailees, agents and subcontractors.
Supplier's Personnel	means the Supplier's officers, employees (including Specified Personnel), agents, volunteers, subcontractors or partners that carry out or are to carry out work or perform duties in connection with this Agreement.
Supplier's Representative	means the Supplier's representative named in Schedule 1, and any substitute notified to the Commonwealth from time to time.
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Supplier or the Commonwealth in connection with this Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.
WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth).

5.2. Interpretation

5.2.1. In this Agreement, unless the contrary intention appears:

- a. the singular includes the plural and vice versa, and a gender includes other genders;
- b. a reference to a clause, subclause, paragraph is to a clause or paragraph of this Agreement.
- c. a reference to this Agreement includes any Schedule or attachment and includes such Schedule or attachment as amended or replaced from time to time by agreement in writing between the Parties;
- d. a reference to a Schedule or attachment is a reference to a Schedule or attachment to this Agreement and includes such Schedule or attachment as amended or replaced from time to time by agreement in writing between the Parties;
- e. a reference to "dollar" or "\$" is a reference to the monetary unit or currency of Australia; and
- f. a reference to time is to Canberra, Australia time.

5.2.2. Clause headings are inserted for convenience only and have no effect in limiting or extending the language of the provisions of this Agreement.

- 5.2.3. The use of the word “includes” or “including” in relation to a right or obligation of a Party, does not limit or restrict the scope of that right or obligation.
- 5.2.4. If there is any inconsistency between the terms of this Agreement and the Schedules, the terms of this Agreement take precedence.
- 5.2.5. If there is any inconsistency between any part of a Schedule and any attachment then the terms of the Schedule takes precedence.
- 5.2.6. A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- 5.2.7. A reference to a “Party” or to “Parties” is a reference to parties to this Agreement.
- 5.2.8. A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.
- 5.2.9. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.
- 5.2.10. Another grammatical form of a defined word or expression has a corresponding meaning.
- 5.2.11. A rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it.
- 5.2.12. 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.
- 5.2.13. 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.
- 5.2.14. 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.
- 5.2.15. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 5.2.16. The expiration or earlier termination of this Agreement shall not affect the continued operation of any provision relating to:
- a. Confidential Information;
 - b. protection of Personal Information;
 - c. insurance;
 - d. disengagement;
 - e. ownership and licensing of Intellectual Property;

f. Moral Rights;

g. any indemnity,

or any other provision which expressly or by implication from its nature is intended to survive the expiration or earlier termination of this Agreement.

Executed as an Agreement

This Agreement is made on [insert day(numeric) month(name) year(numeric) in full].

SIGNED for and on behalf of the)
COMMONWEALTH OF)
AUSTRALIA, as represented by the)
Department of Infrastructure and)
Regional Development:

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

EXECUTED on behalf of [INSERT)
NAME OF SUPPLIER] in accordance)
with section 127 of the *Corporations*)
Act 2001 (Cth):)

Name of Director

Signature of Director

Name of Director/Secretary

Signature of Director/Secretary

SCHEDULE 1 SUPPLIER OBLIGATIONS AND WORK TO BE PERFORMED

A. Services

(Clause 1.1)

A.1. Description of the Services

A.1.1. [insert]

A.2. Particular standards for performance of the Services (clause 1.1.1.c)

A.2.1. [insert – for example, include any particular professional standards that are to apply in addition to the general standards set out in this Agreement. If none, write “Not Applicable” here]

A.3. Timetable for the supply of the Services (clause 1.1.1.a and 1.7.1)

A.3.1. [insert timetable here – for example, this may include a table setting out the milestones and/or due dates that apply for key components of the Services to be performed]

A.4. Deliverables and any requirements for those Deliverables (clause 1.3)

A.4.1. [insert – for example, this may include a table setting out all ‘Deliverables’ to be provided by the Supplier, ‘acceptance criteria’ (if any) as well as the due dates for supply]

A.5. Key Performance Indicators (KPIs) (clause 1.4)

A.5.1. [insert – for example, you may include a table of ‘Key Performance Indicators’ and related criteria to enhance the level of Services being performed through monitoring and management throughout the period of the Agreement. If none, write “Not Applicable” here]

B. Period for Services

(Clauses 1.1.1.a and 5.1)

B.1.1. The Period for Services commences on the Date of this Agreement and ends on [INSERT DATE].

C. Form of Contract Product

(Clause 1.12.3)

C.1.1. The Supplier must provide the Contract Product listed below in the form as described below:

a. [insert]

D. Disengagement

(Clause 1.18)

D.1.1. [insert]

E. Specified Personnel

(Clause 1.6)

E.1.1. The Supplier must ensure that the following components of the Services will be performed by the following Supplier's Personnel:

a. [insert details for each Specified Personnel]

F. Invoicing

(Clause 1.8)

F.1.1. The Supplier must invoice the Commonwealth:

a. [insert required timing of notices: For example: at the end of each month for all Services provided in that month]; and

b. [Insert any other special requirements (if any)]

G. Insurance

(Clause 1.10)

G.1.1. The Supplier must maintain:

a. public liability insurance for an amount of not less than \$10 million dollars per occurrence (with no aggregate limit) – for the Period for Services;

b. professional indemnity (or 'errors and omissions') insurance for an amount of not less than \$10 million dollars each claim and in the aggregate for all claims in any 12 month policy period – for the Period for Services plus 7 years; and

c. workers compensation insurance as required by law – for the Period for Services.

H. The Supplier's Representative and Address

(Clauses 4.1 and 4.12)

H.1. The Supplier's Representative

The Supplier's Representative is [insert details here]

H.2. The Supplier's Address

The Supplier's Postal Address is:

[insert postal address details]

Attention: [insert]

The Supplier's physical address is:

[insert physical address details]

Attention: [insert]

The Supplier's contact details are:

Telephone: [insert details]

Facsimile: [insert details]

Electronic mail address: [insert details]

SCHEDULE 2 THE COMMONWEALTH'S OBLIGATIONS AND DETAILS

A. The Commonwealth's Address (Clauses 1.8.2.a and 4.12)

A.1. Invoice address

The Commonwealth's address for invoices is:

Attention: Accounts Payable

The Department of Infrastructure and Regional Development

By Email: Invoices@infrastructure.gov.au

By Mail: PO Box 2469, Canberra City ACT 2601

By Fax: 02 6274 7057

A.2. Postal address for notices

The Commonwealth's postal address for notices is:

The Department of Infrastructure and Regional Development

[insert postal address details]

Attention: [insert]

A.3. Physical address

The Commonwealth's physical address is:

The Department of Infrastructure and Regional Development

[insert physical address details]

Attention: [insert]

A.4. Contact details

The Commonwealth's contact details are:

Telephone: [insert details]

Facsimile No: [insert details]

Electronic mail address: [insert details]

B. Project Officer (Clause 4.1)

B.1.1. The Project Officer will be the person holding, occupying or performing the duties of [insert details of the position here] and any other person designated in writing by that person.

B.1.2. At the time of entering into this Agreement the Project Officer is [insert details of current occupant of position here].

C. Fees

(Clause 2.1)

C.1.1. The maximum Fees payable by the Commonwealth for the Services under this Agreement is set out below:

Maximum Fees payable (exclusive of GST)	[\$insert]
Maximum GST payable (if applicable)	[\$insert]

C.1.2. Subject to this Agreement, the Fees are payable in the following instalments, subject to completion of the related milestone:

Instalment payable (excluding GST)	Milestone
[\$insert]	[insert]

C.1.3. Subject to this Agreement, the Fees payable will be calculated according to the rate(s) set out in the table below for work actually performed by the Supplier in accordance with this Agreement:

Level / Personnel	[Hourly / Daily] Rates (excluding GST)
[insert]	[\$insert]

C.1.4. For the avoidance of doubt:

- a. the Supplier is not entitled to claim for any amount of Fees in excess of the maximum Fee payable (as specified above); and
- b. if the maximum amount of Fees (as specified above) is reached or exceeded based on calculation of the rates in this item, the Supplier must *[immediately notify the Project Officer and suspend the performance of the Services OR complete the Services according to this Agreement]*.

D. Allowances

(Clause 2.1)

D.1.1. [insert]

E. Expenses

(Clause 2.1)

E.1.1. The Commonwealth will only be liable to reimburse the Supplier for travel, accommodation and associated expenses reasonably incurred by the Supplier in the performance of the Services, and only if:

- a. the Commonwealth has approved in writing such travel and accommodation in advance; and
- b. any Expenses claimed do not exceed the rate/s for such expenses as determined by the Commonwealth.

F. Commonwealth Material
(Clause 2.2)

F.1. Commonwealth Material to be provided to the Supplier

F.1.1. [Specify here the Commonwealth Material to be provide by the Department as well as the times and the manner for provision. If there will be none, insert the words 'No Commonwealth Material to be provided' instead]

F.2. Restrictions on use of Commonwealth Material

F.2.1. [insert details of restrictions on use (eg: the Supplier must use Commonwealth Material only for the purposes of delivering the Services'). If you don't need this item insert 'Not Applicable' here instead.]

G. Assistance and Facilities
(Clause 2.3)

[Specify any Assistance and/or Facilities that will be provided to the Supplier here – if there will be none, insert the words 'Not applicable' instead]

SCHEDULE 3 PROTECTIVE SECURITY REQUIREMENTS

- A. General Security**
 - B. Physical Security**
 - C. Information Security**
 - D. Information and Communication Technology**
 - E. Security Reports**
 - F. Security Training and Awareness**
 - G. Security Clearances**
-

SCHEDULE 4 CONFIDENTIAL INFORMATION OF THE PARTIES

A. The Commonwealth's Confidential Information

A.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

A.2. Agreement related material

Item	Period of Confidentiality
[insert relevant items]	

B. The Supplier's Confidential Information

B.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
[insert relevant items]	

B.2. Agreement related material

Item	Period of Confidentiality
[insert relevant items]	