

CONTRACT

CONTRACT IN RELATION TO COMMUNICATION AGAINST VIOLENT
EXTREMISM (CAVE)

The Attorney-General's Department
ABN 92 661 124 436

Breakthrough Media Network Pty Ltd
ABN 59 606 999 553 ACN 606 999 553

CONTENTS

1.	Interpretation	1
1.1.	Definitions	1
1.2.	Interpretation	4
1.3.	Guidance on construction of contract	5
1.4.	Commencement and option to extend	5
2.	Provision of Services	6
2.1.	Principal obligations of Service Provider	6
2.2.	Liaison with Project Officer	6
2.3.	Subcontractors	6
2.4.	Specified Personnel	7
2.5.	Responsibility of Service Provider	7
2.6.	Compliance with Fair Work Act	7
2.7.	Compliance with <i>Workplace Gender Equality Act 2012</i> (Cth)	7
3.	Fees, allowances and assistance	8
3.1.	Principal obligations of Department	8
3.2.	Department's rights to defer payment	8
3.3.	Taxes, duties and government charges	8
3.4.	Superannuation	9
3.5.	Equipment	9
4.	Intellectual Property	9
4.1.	Use of Commonwealth Material	9
4.2.	Rights in Contract Material	9
4.3.	Moral Rights	11
5.	Confidentiality of Official Information and other security obligations	12
5.1.	Interpretation	12
5.2.	Confidentiality of Official Information	12
5.3.	Other security obligations of Service Provider	12
6.	Dealing with Copies and Access to Documents	13
6.1.	Interpretation	13
6.2.	Actions at end of contract	13
6.3.	Access to documents	13
7.	Confidential Information of Service Provider	14
7.1.	Confidential Information not to be disclosed	14
7.2.	Exceptions to obligations	14
7.3.	Period of confidentiality	14
8.	Liability	14
8.1.	Proportionate liability regimes excluded	14

8.2.	Indemnity and release	15
9.	Dispute resolution	16
9.1.	Procedure for dispute resolution	16
9.2.	Costs	16
9.3.	Continued performance	16
9.4.	Exemption	17
10.	Termination or reduction in scope of Services	17
10.1.	Termination for convenience	17
10.2.	Termination for fault	18
11.	Notices	18
11.1.	Format, addressing and delivery	18
11.2.	When effective	19
12.	General provisions	19
12.1.	Work health and safety	19
12.2.	Obligations of Service Provider in relation to privacy	19
12.3.	Audit and access	19
12.4.	Insurance	20
12.5.	Extension of provisions to subcontractors and Personnel	20
12.6.	Conflict of interest	21
12.7.	Relationship of parties	21
12.8.	Waiver	21
12.9.	Variation	22
12.10.	Assignment	22
12.11.	Survival	22
12.12.	Compliance with Legislation	22
12.13.	Applicable law	22
12.14.	Counterparts	23
	Schedule Contract Details	24

CONTRACT**CONTRACT IN RELATION TO COMMUNICATION AGAINST VIOLENT EXTREMISM
(CAVE) EXTREMISM****Date**

This Contract is made on _____ March 2016.

Parties

This Contract is made between and binds the following parties:

1. **Commonwealth of Australia** as represented by the **Attorney-General's Department** ABN 92 661 124 436 of 3-5 National Circuit Barton ACT 2600 (the Department)
2. **Breakthrough Media Network Pty Ltd** ABN 59 606 999 553 ACN 606 999 553 of 502/3 Gladstone Street, Newtown NSW 2042 (the Service Provider)

Context

This Contract is made in the following context:

- A. The Department requires the provision of certain services.
- B. The Service Provider has fully informed itself about the requirement and has submitted the proposal referred to in Item 1.
- C. The parties have agreed that the Service Provider will perform the Services for the Department on the terms and conditions set out in this contract.

Operative Provisions**1. Interpretation****1.1. Definitions**

- 1.1.1. In this contract, unless the context indicates otherwise:

Attachment	means a document attached to the contract or incorporated by reference in the Schedule, and includes the Attachment as amended or replaced from time to time by agreement in writing between the parties;
Australian Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 24;
Commencement	means the date on which this contract is made, unless

Date	otherwise specified in Item 4;
Commonwealth Material	means any Material: a. provided by the Department to the Service Provider for the purposes of this contract; or b. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Item 19;
Contract Material	means any Material: a. created for the purposes of this contract; b. provided or required to be provided to the Department as part of the Services; or c. derived at any time from the Material referred to in paragraphs a or b; including all reports prepared by the Service Provider under this contract but excluding Independently Created Material and Public Material.
Department	includes any department, Corporate or Non-corporate Commonwealth entity or authority of the Commonwealth which is from time to time responsible for administering this contract;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
Independently Created Material	means Material that: a. the Service Provider provides to the Department for the Department's own use; and b. is created by the Service Provider or a third party independently of the Service Provider's performance of the Services or this contract, and includes the Material specified as such in Item 15.
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010 (Cth)</i> when performing privacy functions as defined in that Act;
Instalment	means the fee payable under clause 3.1.1.a and Item 10 in relation to a specified part or the whole of the Services;
Intellectual Property	includes: a. all copyright (including rights in relation to

phonograms and broadcasts);

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

but does not include:

- d. Moral Rights;
- e. the non-proprietary rights of performers; or
- f. rights in relation to Confidential Information;

Material means anything in relation to which Intellectual Property or any Performance rights arise;

Moral Rights means the following non-proprietary rights of authors of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

Official Information means any information developed, received or collected by or on behalf of the Department to which the Service Provider gains access under or in connection with this contract, and includes the Commonwealth Material, Contract Material and the terms of the contract but excludes existing Material referred to in clause 4.2.2.b, Independently Created Material and Public Material;

Open Access Licence means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see <http://creativecommons.org.au/learn-more/licences>);

Performance has the meaning given in section 248A of the *Copyright Act 1968* (Cth);

Personnel means:

- a. in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors; and
- b. in relation to the Department - any natural person, other than a person referred to in paragraph a, who

is an officer, employee, agent or professional advisor of the Commonwealth.

Positive Influencer	means a third party individual or organisation with whom the Service Provider partners for the purpose of developing and disseminating Public Material and who has been approved by the Department in writing for that purpose;
Procurement	has the same meaning as in the Commonwealth Procurement Rules;
Proposal	means the Service Provider's tender response referred to in Item 1;
Project Officer	means the person specified (by name or position) in Item 7 or any substitute notified to the Service Provider;
Public Material	means Material: - that is created in the course of the Service Provider's performance of the Services for the purpose of public dissemination; and - that satisfies the requirements in clauses 4.2.3 and 4.2.5 regarding that Material;
Schedule	means the schedule to this contract entitled 'Contract Details', and includes the Schedule as amended or replaced from time to time by agreement in writing between the parties;
Services	means the services described in Item 2 and includes the provision to the Department of the Material specified in Item 3; and
Specified Personnel	means the Personnel specified in Item 8.1.2 as required to perform all or part of the work constituting the Services.

1.2. Interpretation

1.2.1. In this contract, unless the contrary intention appears:

- words importing a gender include any other gender;
- words in the singular include the plural and words in the plural include the singular;
- clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- words importing a person include a partnership and a body whether corporate or otherwise;
- a reference to dollars is a reference to Australian dollars;

- f. a reference to a “subcontractor” does not include a reference to a Positive Influencer;
- g. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- h. 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;
- i. a reference to an Item is a reference to an Item in the Schedule;
- j. the Schedule and any Attachments form part of this contract;
- k. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and Attachments if any), the terms and conditions of the clauses prevail;
- l. if any conflict arises between any part of the Schedule and any part of an Attachment, the Schedule prevails;
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form; and
- n. a reference to a time or date is a reference to that time or date in Canberra Australia.

1.3. Guidance on construction of contract

- 1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.
- 1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and option to extend

- 1.4.1. The terms of this contract apply on and from the Commencement Date.
- 1.4.2. The Department may, by written notice, extend the term of the contract for the period(s) specified in Item 4. The Department will issue the written notice under this clause at least 30 days prior to the expiry of this contract.

2. Provision of Services

2.1. Principal obligations of Service Provider

- 2.1.1. The Service Provider agrees to:
- a. perform the Services as specified in Item 2 in accordance with the Services budget referred to in Item 6;
 - b. provide to the Department the Material specified in Item 3;
 - c. adopt relevant best practice, including any Department, Commonwealth or industry standards and guidelines specified in Item 2;
 - d. comply with the time frame for the performance of the Services specified in Item 4; and
 - e. submit invoices, and any required supporting documents, in the manner specified in Item 5.
- 2.1.2. The Service Provider agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Department under this contract to be determined.
- 2.1.3. The Service Provider acknowledges that the Department has entered into this contract in reliance on representations made by the Service Provider in its Proposal.

2.2. Liaison with Project Officer

- 2.2.1. The Service Provider agrees:
- a. to liaise with the Project Officer as reasonably required; and
 - b. to comply with directions of the Project Officer that are consistent with this contract.

2.3. Subcontractors

- 2.3.1. The Service Provider agrees not to subcontract the performance of any part of the Services without the Department's prior written approval.
- 2.3.2. The Department may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.
- 2.3.3. The Department has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 8.
- 2.3.4. The Service Provider agrees to make available to the Department (if requested), details of all subcontractors engaged in the performance of the Services.

- 2.3.5. The Service Provider acknowledges, and must inform all subcontractors that, the Department may publicly disclose the names of any subcontractors engaged in the performance of the Services.
- 2.3.6. Clauses 2.3.1, 2.3.2 and 2.3.4 also apply to the Service Provider's engagement of Positive Influencers.

2.4. Specified Personnel

- 2.4.1. The Service Provider agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.
- 2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Service Provider agrees to notify the Department immediately.
- 2.4.3. The Service Provider agrees, at the request of the Department acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Service Provider will provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.

2.5. Responsibility of Service Provider

- 2.5.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:
- a. involvement by the Department in developing the strategies for, or approving Materials created in the course of, the Service Provider's performance of the Services;
 - b. subcontracting of the Services or engagement of Positive Influencers;
 - c. acceptance by the Department of Specified Personnel; or
 - d. payment made to the Service Provider on account of the Services.

2.6. Compliance with *Fair Work Act*

- 2.6.1. The Department will not enter into a contract with a Potential Supplier who fails, when required by the Department, to confirm that in dealing with its employees and independent contractors, the potential supplier has due regard to Commonwealth policies on the engagement of workers and that the potential supplier complies with Commonwealth policies on the engagement of workers including the *Fair Work Act 2009* (Cth) and obligations under relevant work health and safety laws.

2.7. Compliance with *Workplace Gender Equality Act 2012* (Cth)

- 2.7.1. This clause 2.7 applies only to the extent that the Service Provider is a relevant employer for the purposes of the WGE Act.

- 2.7.2. The Service Provider must comply with its obligations, if any, under the WGE Act.
- 2.7.3. If the Service Provider becomes non-compliant with the WGE Act during the term of this contract, the Service Provider must notify the Department.
- 2.7.4. If the term of this contract exceeds 18 months, the Service Provider must provide a current Letter of Compliance within 18 months from the Commencement Date and following this, annually, to the Department.
- 2.7.5. Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under this contract.
- 2.7.6. For the purpose of this clause 2.7:

Letter of Compliance	means a letter issued by the Workplace Gender Equality Agency to the Service Provider confirming that it has complied with their obligations under the WGE Act;
WGE Act	means the <i>Workplace Gender Equality Act 2012</i> (Cth).

3. Fees, allowances and assistance

3.1. Principal obligations of Department

- 3.1.1. The Department agrees to:
- pay the fees in the Instalments as specified in Item 10;
 - pay the allowances and meet the costs specified in Item 11;
 - make all payments as and when specified in Item 5; and
 - provide facilities and assistance as specified in Item 12.

3.2. Department's rights to defer payment

- 3.2.1. The Department will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Service Provider has not completed, to the satisfaction of the Department, that part of the Services to which the Instalment relates.

3.3. Taxes, duties and government charges

- 3.3.1. Except as provided by this clause 3.3, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.
- 3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.
- 3.3.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this contract, on receipt of a tax invoice from the supplier, the

recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

3.4. Superannuation

- 3.4.1. This contract is entered into on the understanding that the Department is not required to make any superannuation contributions in connection with the contract.

3.5. Equipment

- 3.5.1. If the Department gives the Service Provider a written notice requiring the Service Provider to provide, and transfer the ownership of, some or all of the equipment described in Item 25 to the Department on the completion of the Services, the Service Provider must provide the Department with the equipment specified in that notice within 5 Business Days of the completion of the Services or the date of the Department's notice, whichever is later.

4. Intellectual Property

4.1. Use of Commonwealth Material

- 4.1.1. The Department agrees to provide Commonwealth Material to the Service Provider as specified in Item 13.
- 4.1.2. The Department grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt the Commonwealth Material for the purposes of this contract.
- 4.1.3. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item 14 and any direction from the Department.

4.2. Rights in Contract Material, Independently Created Material and Public Material

- 4.2.1. Except to the extent the Department expressly agrees in writing otherwise, Intellectual Property in all Contract Material vests or will vest in the Department.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Material in existence at the Commencement Date, including the Material specified as existing Material in Item 15.
- 4.2.3. The Service Provider must own, or have a broad licence to use and publicly disseminate, all Material that the Service Provider publicly disseminates in the

course of its performance of the Services. The Service Provider agrees to irrevocably licence this Material to the public under the terms of an Open Access Licence;

- 4.2.4. The Service Provider grants to (or will procure for) the Department a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit any existing Material referred to in clause 4.2.2.b, in conjunction with the Contract Material, as well as any Independently Created Material, for any purpose.
- 4.2.5. In respect of all Material that is publicly disseminated in the course of the Service Provider's performance of the Services, the Service Provider agrees to ensure that:
- a. subject to clause 4.2.6, the version of the Material that is publicly disseminated has been approved by the Department, in writing, for public dissemination;
 - b. the Positive Influencer(s) who releases the Material agrees in writing to irrevocably license the Material to the public under an Open Access Licence;
 - c. each person who appears in the publicly disseminated Material has signed a perpetual, written and irrevocable consent and release to the:
 - i. Service Provider recording, reproducing, editing, supplementing, broadcasting and publicly disseminating the Material (with or without attribution of any performership); and
 - ii. licensing of the Material to the public in accordance with clause 4.2.5.b; and
 - d. within 5 Business Days' of the Department requesting a copy of these written consents and releases, the Service Provider will provide a copy of the requested consents and releases to the Department.
- 4.2.6. Clause 4.2.5.a does not apply to an item or class of Material that the Department has previously agreed in writing does not need to be approved by the Department before it is publicly disseminated.
- 4.2.7. The Service Provider agrees, on request by the Department, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2.
- 4.2.8. The Service Provider warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material, existing Material referred to in clause 4.2.2.b, Independently Created Material and Material that is incorporated into Public Material in the manner provided for in this clause 4.2.

4.3. Moral Rights

4.3.1. In this clause 4.3:

Permitted Acts means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;
- b. supplementing the Contract Material with any other Material;
- c. using the Contract Material in a different context to that originally envisaged; and
- d. the acts or omissions, specifically set out in Item 16;

but does not include false attribution of authorship.

4.3.2. Where the Service Provider is a natural person and the author of the Contract Material, he or she:

- a. consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given); and
- b. acknowledges that their attention has been drawn to the Department's general policies and practices regarding Moral Rights as described in Item 16.

4.3.3. Where clause 4.3.2 does not apply, the Service Provider agrees:

- a. to obtain from each author of Contract Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Department; and
- b. to ensure that each author's attention is drawn to the Department's general policies and practices regarding Moral Rights as described in Item 16.

4.3.4. This clause 4.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources	includes: a. Official Information; b. people who work for or with the Department; and c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Department;
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the Department; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

5.2. Confidentiality of Official Information

- 5.2.1. The Service Provider will not, without prior written authorisation of the Department, disclose any Official Information to any person (unless required to do so by law).
- 5.2.2. The Service Provider is authorised, subject to clause 5.3.1.a to 5.3.1.c, to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.
- 5.2.3. The Service Provider agrees to arrange for each of its Personnel and subcontractors to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of Official Information.
- 5.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

5.3. Other security obligations of Service Provider

- 5.3.1. The Service Provider agrees:
- to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
 - to make its Personnel available to attend any security training provided by the Department;
 - to notify the Department of any change in the personal circumstances of Personnel referred to in 5.3.1.a;

- d. to notify the Department immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Department's procedures for Security Incident reporting as advised by the Department from time to time;
 - e. not to perform the Services outside Australia without the Department's prior written approval; and
 - f. to comply with the additional security requirements specified in Item 17 if any, and any variations or additions to those requirements as notified by the Department from time to time.
- 5.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to the Department on request.

6. Dealing with Copies and Access to Documents

6.1. Interpretation

6.1.1. In clause 6.2:

Copy means any document, device, article or medium in which Commonwealth Material, Contract Material, or Official Information is embodied.

6.2. Actions at end of contract

- 6.2.1. The Service Provider agrees, on expiration or termination of this contract, to deal with all Copies as directed by the Department, subject to any requirement of law binding on the Service Provider.

6.3. Access to documents

- 6.3.1. This clause 6.3 applies if at the date of entering into this contract, this contract is a 'Commonwealth contract' as defined in clause 4 of the *Freedom of Information Act 1982 (Cth)*.
- 6.3.2. In this clause 6.3, 'document' has the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 6.3.3. Where the Department has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), the Department may at any time by written notice require the Service Provider to provide the document to the Department and the Service Provider must, at no additional cost to the Department, promptly comply with the notice.
- 6.3.4. The Service Provider must include in any subcontract relating to the performance of this contract provisions that will enable the Service Provider to comply with its obligations under this clause 6.3.

7. Confidential Information of Service Provider

7.1. Confidential Information not to be disclosed

- 7.1.1. Subject to clause 7.2, the Department will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

7.2. Exceptions to obligations

- 7.2.1. The obligations of the Department under this clause 7 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract;
- b. is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by the Department to the responsible Minister;
- d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Department within the Department's organisation, or with another Non-corporate Commonwealth entity, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 7.

- 7.2.2. Where the Department discloses Confidential Information to another person pursuant to clauses 7.2.1.a - 7.2.1.e, the Department will notify the receiving person that the information is confidential.

- 7.2.3. In the circumstances referred to in clauses 7.2.1.a, 7.2.1.b and 7.2.1.e, the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.

7.3. Period of confidentiality

- 7.3.1. The obligations under this clause 7 in relation to an item of information described in Item 19 continue for the period set out there in respect of that item.

8. Liability

8.1. Proportionate liability regimes excluded

- 8.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this contract.

8.2. Indemnity and release

8.2.1. The Service Provider indemnifies the Department from and against any:

- a. cost or liability incurred by the Department;
- b. loss of or damage to property of the Department; or
- c. loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Department,

arising from either:

- d. a breach by the Service Provider of this contract;
- e. a claim against the Commonwealth relating to the infringement of any third party:
 - i. Moral Rights in Contract Material or Performance rights in Public Material; or
 - ii. Intellectual Property rights in the existing Material referred to in clause 4.2.2.b, Contract Material, Independently Created Material or Public Material; or
- f. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this contract.

8.2.2. The Service Provider's liability to indemnify the Department under clause 8.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

8.2.3. The right of the Department to be indemnified under this clause 8.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

8.2.4. Subject to clause 8.2.5, the Service Provider releases the Department in respect of any claim that a third party makes against the Service Provider in relation to the performance of the Services.

8.2.5. The release the subject of clause 8.2.4 does not extend to any claim made by a third party against the Service Provider to the extent it directly arises as result of:

- a. the use by the Service Provider of Commonwealth Materials in the performance of the Services; or
- b. the Service Provider editing, adapting or exploiting Contract Material in accordance with a specific direction by the Department,

provided that the Service Provider has fully complied with the terms of this contract.

9. Dispute resolution

9.1. Procedure for dispute resolution

9.1.1. The parties agree that a dispute arising under this contract will be dealt with as follows:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 9.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will co-operate fully with any process instigated under clause 9.1.1.d in order to achieve a speedy resolution; and
- f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

9.2. Costs

9.2.1. Each party will bear its own costs of complying with this clause 9, and the parties will bear equally the cost of any third person engaged under clause 9.1.1.d.

9.3. Continued performance

9.3.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Department not to do so) continue to perform the Services.

9.4. Exemption

- 9.4.1. This clause 9 does not apply to:
- a. action by the Department under or purportedly under clause 10.1;
 - b. action by either party under or purportedly under clause 10.2; or
 - c. legal proceedings by either party seeking urgent interlocutory relief.

10. Termination or reduction in scope of Services

10.1. Termination for convenience

- 10.1.1. The Department may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.
- 10.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:
- a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Services not affected by the notice.
- 10.1.3. In the event of termination under clause 10.1.1, the Department will be liable only:
- a. to pay any Instalment relating to Services completed before the effective date of termination;
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 10.1.3.a;
 - c. to pay any allowance and meet any costs unavoidably incurred under Item 11 before the effective date of termination; and
 - d. to provide the facilities and assistance necessarily required under Item 12 before the effective date of termination.
- 10.1.4. The Department will not be liable to pay amounts under clause 10.1.3.a and 10.1.3.b which would, added to any fees already paid to the Service Provider under this contract, together exceed the fees set out in Item 10.
- 10.1.5. In the event of a reduction in the scope of the Services under clause 10.1.1, the Department's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.
- 10.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

10.2. Termination for fault

- 10.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - *if it considers that the failure is:*
- a. *not capable of remedy* - may, by notice, terminate the contract immediately; or
 - b. *capable of remedy* - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.
- 10.2.2. The Department may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if:
- a. a subcontractor specified in Item 8, or two or more of the Specified Personnel, cease to perform their work on the Services as specified in Item 8 or 9 before that work is completed;
 - b. *the Service Provider being a corporation* - comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
 - c. *the Service Provider being an individual* - becomes bankrupt or enters into a scheme of arrangement with creditors.

11. Notices

11.1. Format, addressing and delivery

- 11.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:
- a. *if given by the Service Provider to the Department* - addressed to the Project Officer at the address specified in Item 20 or as otherwise notified by the Department; or
 - b. *if given by the Department to the Service Provider* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in Item 21 or as otherwise notified by the Service Provider.
- 11.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

11.2. When effective

- 11.2.1. A notice is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 11.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

12. General provisions

12.1. Work health and safety

- 12.1.1. The Service Provider agrees, in carrying out this contract, to comply with:
- a. all relevant legislation, codes of practice and national standards relating to work health and safety; including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to occupational health and safety,
- Including those that apply to the Department's premises when using those premises.
- 12.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 12.1.1, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

12.2. Obligations of Service Provider in relation to privacy

- 12.2.1. The Service Provider agrees, in providing the Services:
- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 18, to the extent that they are consistent with the Australian Privacy Principles.
- 12.2.2. The Service Provider agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 12.2.

Note: For information about the *Privacy Act 1988 (Cth)* see the fact sheet referred to in Item 23.

12.3. Audit and access

- 12.3.1. The Service Provider agrees:

- a. to give the Project Officer, or any persons authorised in writing by the Project Officer, access to premises where the Services are being performed or where Official Resources are located; and
 - b. to permit those persons to inspect and take copies of any Material relevant to the Services.
- 12.3.2. The rights referred to in clause 12.3.1 are subject to:
 - a. the Department providing reasonable prior notice;
 - b. the reasonable security procedures in place at the premises; and
 - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 12.3.3. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 12.3.
- 12.3.4. This clause 12.3 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).

Note: For information about the *Auditor-General Act 1997* (Cth) see the fact sheet referred to in Item 23.

12.4. Insurance

- 12.4.1. The Service Provider agrees:
 - a. to effect and maintain the insurance specified in Item 22; and
 - b. on request, to provide proof of insurance acceptable to the Department.
- 12.4.2. This clause 12.4 continues in operation for so long as any obligations remain in connection with the contract.

12.5. Extension of provisions to subcontractors and Personnel

- 12.5.1. In this clause 12.5:

Requirement means an obligation, condition, restriction or prohibition binding on the Service Provider under this contract.
- 12.5.2. The Service Provider agrees to ensure that:
 - a. all of its subcontractors and Personnel comply with all relevant Requirements; and
 - b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.
- 12.5.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Department.

- 12.5.4. The Service Provider agrees to ensure that its arrangements with Positive Influencers give effect to, and are not inconsistent with, the Service Provider's obligations under this contract.

12.6. Conflict of interest

- 12.6.1. In this clause 12.6:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the Department diligently and independently.

- 12.6.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services. The Service Provider repeats this warranty each time the Department agrees to the Service Provider engaging Personnel or a subcontractor.

- 12.6.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Service Provider agrees:

- a. to notify the Department immediately through the Project Officer specified in Item 7;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict.

12.7. Relationship of parties

- 12.7.1. The Service Provider is not by virtue of this contract an officer, employee, partner or agent of the Department, nor does the Service Provider have any power or authority to bind or represent the Department.

- 12.7.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the Department; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

12.8. Waiver

- 12.8.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.

- 12.8.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

12.9. Variation

- 12.9.1. Subject to clause 12.9.2, a variation of this contract is binding only if agreed in writing and signed by the parties.
- 12.9.2. The parties may agree in writing to vary an Attachment.

12.10. Assignment

- 12.10.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this contract without the Department's prior written approval.

12.11. Survival

- 12.11.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. security;
- d. privacy;
- e. dealing with copies;
- f. books and records;
- g. audit and access;
- h. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

12.12. Compliance with Legislation

- 12.12.1. In this clause 12.12:

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

- 12.12.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this contract.
- 12.12.3. The Service Provider acknowledges that its attention has been drawn to the fact sheet referred to in Item 23 which provides details of some Legislation that may be applicable to the performance of the contract.

12.13. Applicable law

- 12.13.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 24.
- 12.13.2. The parties submit to the jurisdiction of the courts of that State or Territory.

12.14. Counterparts

- 12.14.1. This contract may be executed by each party in counterpart. Each counterpart is deemed to be an original of this contract and the two counterparts together constitute one agreement.

s. 47G(1)(a)

3. Required Contract Material (see clause 2.1.1.b)

3.1. Strategy documents and plans

- 3.1.1. The Service Provider is required to develop and provide an initial audience segmentation and network analysis document as described in Item 2 by the date specified in Item 4.
- 3.1.2. The Service Provider is required to develop and provide the Department with an overarching program strategy document as described in Item 2 by the date specified in Item 4.
- 3.1.3. The Service Provider is also required to develop and provide the Department with a project level communications strategy for each strategic communication project as described in Item 2 before each project launch.

3.2. Other reports

- 3.2.1. The Service Provider must provide the following written reports to the Department:

- a. Creative concepts and online placement strategies – weekly written report.
 - b. Product based performance reports – fortnightly written report.
 - c. Performance reports – quarterly written report
 - d. Contract management and relationship management report – monthly written report.
- 3.2.2. The information that each report must contain is set out on pages 29 to 30 of the Proposal.
- 3.2.3. The Service Provider is required to use, and include the findings of, the evaluation model set out in section 3.5 of the Proposal to inform the reports it provides to the Department.

s. 47G(1)(a)

5. Invoicing and Payment

(see clauses 2.1.1.e & 3.1.1.c)

Invoices:

- 5.1.1. Invoices will be issued by the Service Provider on completion of milestones as specified in Item 10. Invoices are to be submitted in AUD only. Invoices in another currency will not be accepted.
- 5.1.2. To be correctly rendered, invoices must include the following information:
- a. the words "tax invoice" stated prominently;
 - b. the Service Provider's name;
 - c. the Service Provider's ABN;
 - d. the Department's name and address;
 - e. the date of issue of the tax invoice;
 - f. the title of this contract and the contract number or purchase order number (if any);
 - g. details of fees, allowances and costs including the items to which they relate;
 - h. the total amount payable in AUD (including GST);
 - i. the GST amount shown separately; and
 - j. written certification in a form acceptable to the Department that the Service Provider has paid all remuneration, fees or other amounts payable to its Personnel and/or subcontractors involved in performance of the contract, and be sent to the Department, either:
 - k. electronically, to s. 22(1)(a)(iii)@ag.gov.au in PDF format 8 (or above) or
 - l. in hard copy, to GPO Box 1245, TUGGERANONG BC ACT 2901.
 The Department's preference is to receive the invoices electronically at the address specified in paragraph k of this Item 5.
- 5.1.3. All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Service Provider's entitlement to those allowances or costs.
- 5.1.4. An invoice is not correctly rendered where:
- a. it includes amounts that are not properly payable under this contract or are incorrectly calculated; or

- b. it relates to a payment in relation to which the Department has exercised its rights under clause 3.2.

5.1.5. All invoices must be addressed to the Project Officer.

Payment Terms:

- 5.1.6. The due date for payment by the Department is within 30 calendar days after receipt of a correctly rendered invoice, satisfactory completion of the milestones relating to the payment and compliance with this contract. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.
- 5.1.7. Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Service Provider:

Account Name: Breakthrough Media Network PTY LTD

ABN: 59606999553

Bank: s. 47G(1)(a)

BSB/Account No: s. 47G(1)(a)

6. Services Budget and expenditure requirements

- 6.1.1. The Service Provider agrees to deliver the Services within, and in accordance with the budget specified in Attachment B.
- 6.1.2. The Service Provider must expend a minimum of s. 47(1)(b), s. 47G(1)(a) on the purchasing of advertising for the Public Material created in the course of the Services.
- 6.1.3. The budget for the Services must not in any circumstances exceed the maximum amount of the Fees specified in this contract.
- 6.1.4. Subject to Item 6.1.6, the Service Provider may only revise the budget for the Services with the prior written agreement of the Department.
- 6.1.5. The most recently Department-approved revised budget for the Services will become the budget for the Services.
- 6.1.6. The Service Provider may increase or decrease the value of a line item in the most recently Department-approved budget without the Department's prior written approval provided that the total of all adjustments made to that line item over the contract term does not exceed 10% of the value of that line item in the latest Department-approved budget. Any adjustment to the Services budget made by the Service Provider under this Item 6.1.6 must comply with the requirements in Items 6.1.2 and 6.1.3. The Service Provider will give the Department monthly updates on any changes made to the Budget under this Item 6.1.6.

7. Project Officer

(See clause 2.2)

- 7.1.1. The Project Officer is the person for the time-being holding, occupying or performing the duties of Director, Communications Against Violent Extremism Unit, currently s. 22(1)(a)(ii), available on telephone number s. 22(1)(a)(ii) or via the address and facsimile number set out in Item 20.

8. Subcontractors

(See clause 2.3)

- 8.1.1. The Service Provider may subcontract the performance of parts of the Services as follows:

Part of the Services being subcontracted	Subcontractor	Additional conditions	Location and amount of time spent on Services
Provision of s. 47F(1) services	Breakthrough Media Network Ltd a company incorporated in England		s. 47F(1) across the Services timeframe specified in Item 4.

- 8.1.2. If it requires, the Service Provider may also subcontract an individual who is specifically named in Item 9 to undertake the role specified in Item 9 for that individual relating to the Service Provider's performance of the Services.

s. 47G(1)(a)

s. 47G(1)(a)

11. Allowances and Costs

(See clauses 3.1.1.b & 10.1.3.c)

No allowances or costs to be paid in addition to the Fees.

s. 47G(1)(a)

13. Required Commonwealth Material (See clause 4.1)

13.1.1. The following Commonwealth Material will be provided to the Service Provider:

- Australian Government logos and crests
- CVE Communications Implementation Plan
- CAVE Core Script
- Social Media Monitoring Analysis Reports (SMART)
- Briefing material on past social media and counter narrative projects
- Talking About Terrorism in Australia – Guide
- Talking About Terrorism in Australia – Report
- Impact of Australian Counter Terrorism Measures
- Community and Radicalisation: An examination of perceptions, ideas, beliefs and solutions throughout Australia
- Living Safe Together Communications Strategy
- Living Safe Together Community Engagement Guide

14. Use of Commonwealth Material (See clause 4.1.3)

14.1.1. Any Australian Government logos or crests must be used in accordance with the Australian Government Branding Design Guidelines, available at https://www.dpmc.gov.au/sites/default/files/publications/Australian_Government_Branding_Design_Guidelines.pdf

15. Existing Material and Independently Created Material

(See clause 4.2.2)

15.1. Existing Material

15.1.1. None specified.

15.2. Independently Created Material

15.2.1. None specified.

16. Moral Rights

(See clause 4.3)

Permitted Acts

16.1.1. In addition to those set out in clause 4.3.1, the following are 'Permitted Acts' for the purposes of clause 4.3.1d:

- a. use of the Contract Material for advertising, merchandising or promotional purposes of any kind;
- b. incorporating the Contract Material into a website or as part of a multi-media training program; and
- c. synchronising a sound recording as part of the soundtrack of a film.

Department policy on Moral Rights

16.1.2. Any policy that the Department may notify to the Service Provider from time to time.

17. Security Requirements

(See clause 5)

17.1.1. The Service Provider must comply with the Protective Security Policy Framework (PSPF).

17.1.2. The Service Provider must comply with the following security requirements:

- o Australian Standard 4811-2006 – Employment Screening
- o Australian Government Information Security Manual - Guidance for agencies and Service Providers for managing the risks arising from greater sharing and exchange of information - see <http://www.dsd.gov.au> for further information.
- o Australian Government Personnel Security Protocol - procedures for Service Providers with ongoing access to Australian Government assets
- o Australian Government Information Security Protocol - agencies to comply to protect Official information when processing, stored or communicated by Australian Government systems

- o Australian Government Guidelines on Security Incidents and Investigations and/or The Australian Government Investigation Standards - for reporting and investigating security incidents and taking corrective action

17.1.3. As part of the Services, the Service Provider must adhere to the additional physical, IT and information security measures specified in section 7 of the Proposal.

18. Privacy Directions, Guidelines, Determinations or Recommendations
(See clause 12.2.1.b)

18.1.1. None Specified

19. Service Provider's Confidential Information
(See clause 7 of this contract)

19.1.1. Information contained in contract:

Item	Period of Confidentiality
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None specified	N/A
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19.1.2. Information obtained or generated in performing contract:

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

None specified	N/A
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20. Department's Address for Notices
(See clause 11.1.1.a)

Physical address	3-5 National Circuit Barton ACT 2600
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Postal address	3-5 National Circuit Barton ACT 2600
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Email	s. 22(1)(a)(ii) @ag.gov.au
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Facsimile	n/a
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21. Service Provider's Address for Notices
(See clause 11.1.1.b)

Physical address	s. 47G(1)(a)
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Postal address	As above
Email	Service Provider to provide this information within 5 Business Days of the Commencement Date
Facsimile	n/a

22. Insurance

(See clause 12.4)

22.1.1. Required insurance:

- a. workers' compensation as required by law;
- b. public liability insurance to a value of \$10 million; and
- c. professional negligence insurance to a value of \$5 million.

23. Applicable Legislation

(See clause 12.12.3)

See AGS Fact Sheet No 1: Commonwealth legislation that may apply to Australian Government contractors, available at:

<http://www.ag.gov.au/publications/agspubs/factsheets/index.htm>

24. Applicable Law

(See clause 12.13)

Australian Capital Territory

25. Equipment

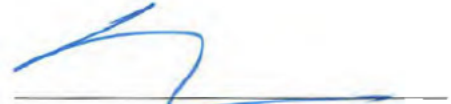
- 25.1.1. The equipment and software specified in the Services budget most recently approved by the Department. The Services budget is described in Item 6.

Signatures

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by the Attorney-
General's Department by:)
)
)

KATHERINE JONES

Name of signatory



Signature

DEPUTY SECRETARY

Position of signatory

7 March 2016

Date signed

In the presence of:

s. 22(1)(a)(ii)

Name of witness

s. 47F(1)

Signature of witness

SIGNED for and on behalf of)
Breakthrough Media Network Pty Ltd)
ACN 606 999 553 in accordance with)
the requirements of section 127 of the)
Corporations Act 2001

Signature

Name of Director

Signature of witness

Name of witness

Date

Signature

Name of Director

Signature of witness

Name of witness

Date