

Australian Government

Department of Home Affairs

CONTRACT

For the Provision of *TRS Financial Service Provider*

between

COMMONWEALTH OF AUSTRALIA

as represented by the **Department of Home Affairs**

ABN 33 380 054 835

and

Global Blue Australia Pty Limited

ABN 13 080 084 902

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PARTIES

The **Commonwealth of Australia** as represented by the **Department of Home Affairs (Department)**
ABN 33 380 054 835 of 6 Chan Street BELCONNEN ACT 2617

and

Global Blue Australia Pty Limited ABN 13 080 084 902 of Exchange House Level 11, Suite 1, 10
Bridge Street, Sydney, New South Wales, 2000, AUSTRALIA (**Contractor**)

RECITALS

- A The Department requires the provision of the Requirement as specified in **Schedule 1**.
- B The Contractor has fully informed itself on all aspects of the work required to be performed and has offered to provide the goods, products and services of, and otherwise meet, the Requirement in the manner set out in this Contract.
- C The Department has agreed to accept the Contractor's offer to provide the Requirement in accordance with this Contract.

OPERATIVE PROVISIONS

THE PARTIES AGREE as follows:

1. STRUCTURE OF THIS DOCUMENT

1.1 This Contract consists of:

1.1.1 PART 1;

1.1.2 the Contract Terms and Conditions in PART 2; and

1.1.3 the following Schedules:

1.1.3.1 SCHEDULE 1 (STATEMENT OF REQUIREMENT);

1.1.3.2 SCHEDULE 2 (CONTRACT CHARGES AND EXPENSES);

1.1.3.3 SCHEDULE 3 (PERFORMANCE MEASURES);

1.1.3.4 SCHEDULE 4 (CONFIDENTIAL INFORMATION);

1.1.3.5 SCHEDULE 5 (CHANGE PROCESS);

1.1.3.6 SCHEDULE 6 (MATERIAL);

1.1.3.7 ~~§ 47(1)(b)~~ [REDACTED]

1.1.3.8 SCHEDULE 8 (COMMONWEALTH LAW AND POLICY REQUIREMENTS);

1.1.3.9 SCHEDULE 9 (INSTRUMENT OF ACCEPTANCE);

1.1.3.10 SCHEDULE 10 (FINANCIAL SECURITY);

1.1.3.11 SCHEDULE 11 (LIQUIDATED DAMAGES); and

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§ 47(1)(b)



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PART 1 - CONTRACT DETAILS

Item/Description	Reference	Details
1. Contractor details	2.1	Global Blue Australia Pty Limited Exchange House Level 11, Suite 1 10 Bridge Street Sydney, New South Wales, 2000 AUSTRALIA ABN: 13 080 084 902
2. Contractor Representative	2.1	s. 47F(1) [REDACTED] Global Blue - Head of Commercial Australia
3. Department Project Officer	2.1	Name s. 22(1)(a)(ii) [REDACTED] Title Manager Tourist Refund Office Physical address Level 2, 3 Molonglo Drive Canberra ACT 2609 Postal address Level 2, 3 Molonglo Drive Canberra ACT 2609 Phone s. 22(1)(a)(ii) [REDACTED] [REDACTED]@abf.gov.au
4. Commencement Date	2.1, 5.1	1 July 2020
5. Initial Term	2.1, 5.1	Three years
6. Option Period	2.1, 5.2	One period being two years in duration The Department must give 60 days' Notice to exercise an option
7. Specified Personnel	2.1, 11	s. 47F(1) [REDACTED] Global Blue - Head of Commercial Australia s. 47F(1) [REDACTED] Global Blue - General Counsel APAC & VP Strategic Planning
8. Subcontractors	2.1, 12	1. Global Blue Service AB [Registration Number: 556202-1922] 2. Currency Select Pty Ltd [ACN 127 747 586]

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Item/Description	Reference	Details
9. Intellectual Property Rights – Ownership of Contract Material	24, 25, 26	☐ clause 25 (Commonwealth Ownership of Intellectual Property Rights in Contract Material) is to apply ☒ clause 26 (Contractor Ownership of Intellectual Property Rights in Contract Material) is to apply
10. Limitation of liability – cap	37	Not Applicable
11. Limitation of liability – if not per occurrence	37.3	Not Applicable
12. Insurances and quantum of insurance	38	s. 47(1)(b)
13. Financial Security	39	
14. Address for Notices	59	Department Title Tourist Refund Office Physical address Level 2, 3 Molonglo Drive Canberra ACT 2609 Postal address Level 2, 3 Molonglo Drive Canberra ACT 2609 Phone 22(1)(a)(ii) @abf.gov.au Contractor Global Blue Australia Pty Ltd Attn: s. 47F(1) Exchange House Level 11, Suite 1

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Item/Description	Reference	Details
		10 Bridge Street Sydney, New South Wales, 2000 AUSTRALIA ABN: 13 080 084 902 Email: s. 47F(1)@globalblue.com
15. Governing Law	64	Australian Capital Territory
16. Department's nominated bank account for rejected refunds	Item 8, Schedule 1	Bank Name: Branch Address: Account Name: BSB: Account Number:
17. Official Payments Account	22	Bank Name: Account Name: BSB: Account Number:

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

s. 47(1)(b)

PART 2 - CONTRACT TERMS AND CONDITION

SECTION A - DEFINITIONS, INTERPRETATION AND TERM

2. DEFINITIONS AND INTERPRETATION

Definitions

- 2.1 In this Contract, except where the contrary intention is expressed, the following definitions apply:

Authorisation means any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption issued by any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority, or any other party under Law which has a right to impose a requirement or whose consent is required with respect to the Contractor's performance of its obligations under this Contract.

Auxiliary Material means Material (other than Contract Material and Commonwealth Material) which is made available by the Contractor for the purposes of the Contract on or following the Commencement Date, including any Existing Contractor Material, Third Party Material, and other Material specified as Auxiliary Material in Schedule 6 (Material).

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

s. 47(1)(b) means the Plan of this name set out in Schedule 7.

Business Disruption Event means:

- (a) any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under this Contract and that is beyond the reasonable control of that party; or
- (b) an act of war (whether declared or not), terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, lightning, fire, earthquake, storm, flood, drought, disease, explosion, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a Commonwealth Agency (except the Department) or a failure of a contractor other than the Contractor, public utility or telecommunications service provider.

Business Day means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory or the jurisdiction in which the Requirement is being provided.

Change of Control means, in relation to the Contractor, where a person who did not (directly or indirectly) effectively Control the Contractor as at the Commencement Date, either alone or together with others, acquires Control of the Contractor.

Claim means any claim, action, demand or proceeding including any claim, action, demand or proceeding:

- (a) under, arising out of, or in any way in connection with, this Contract; or

- (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

Commencement Date means the date specified in Item 4 of the Contract Details.

Commonwealth means the Commonwealth of Australia.

Commonwealth Agency means:

- (a) a non-corporate Commonwealth entity as defined in the *Public Governance, Performance and Accountability Act 2013 (Cth)*; or
- (b) a corporate Commonwealth entity as defined in the *Public Governance, Performance and Accountability Act 2013 (Cth)*.

Commonwealth Contract has the same meaning as in the *Freedom of Information Act 1982 (Cth)*.

Commonwealth Material means any Material provided by the Department to the Contractor for the purposes of this Contract (including any Material specified as Commonwealth Material in Schedule 6 (Material)) or which is copied or derived from that Material.

Confidential Information in relation to a Party, means information that is:

- (a) by its nature capable of being protected in law or equity as confidential;
- (b) designated as confidential in respect of that Party in Schedule 4 (Confidential Information); or
- (c) in the case of the Department's Confidential Information, the Contractor knows or ought to know is confidential;

but does not include information:

- (d) which is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (e) that has been independently developed or acquired without reference to the other Party's Confidential Information.

Contract means this document, including the Schedules, any annexures or attachments, and any document stated in this Contract to be expressly incorporated into this Contract.

Contract Charges means the amounts payable by the Department to the Contractor as set out in, or calculated in accordance with, Schedule 2 (Contract Charges and Expenses).

Contract Details means the details applying to this Contract as set out in Part 1 of this Contract.

Contract Material means all Material:

- (a) created by or on behalf of the Contractor or a Subcontractor for the purposes of this Contract, including any Material specified as Contract Material in Schedule 1 (Statement of Requirement);
- (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),

and includes any modifications to that Material made in accordance with clause 27.2.2.

Contract Terms and Conditions mean the terms and conditions in this Part 2 of the Contract.

Contracted Person includes the Contractor's agents, subcontractors, consultants, professional advisers and contracted staff, but does not include the Contractor's employees.

Contractor means the party specified in Item 1 of the Contract Details.

Contractor Representative means the person identified in Item 2 of Contract Details or as otherwise Notified by the Contractor to the Department.

Control means:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove or where a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of a corporation; and
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Controller has the same meaning as in the *Corporations Act 2001* (Cth).

Critical Milestone means a milestone specified in Schedule 11.

Correctly Rendered Invoice has the meaning given in clause 20.1.

s. 47(1)(b) the Plan of this name set out in Schedule 9.

Deliverables means the Goods, the Contract Material, the Documentation and any other item to be supplied by the Contractor to the Department under this Contract.

Department means the Department of Home Affairs (or its successor) or the department or agency of the Commonwealth which is from time to time responsible for the administration of this Contract.

Department Project Officer means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item 3 of the Contract Details or any substitute Notified to the Contractor by the Department.

Documentation means any documentation to be provided by the Contractor under the Contract, including any Material specified as Documentation in Schedule 1 (Statement of Requirement).

End Users means persons or category of persons (if any) specified in Schedule 1 (Statement of Requirement) who will use, or receive the benefit from, any of the Deliverables or the Services.

Existing Contractor Material means the Material, including any specified as Existing Contractor Material in Schedule 6 (Material), that the Contractor has developed before the Commencement Date which is:

- (a) used in the provision of the Requirement or the development of Contract Material or other Deliverables;
- (b) incorporated in the Contract Material or other Deliverables; or
- (c) is otherwise provided to the Department under or in connection with this Contract.

Expenses means any expenses payable by the Department to the Contractor as set out in, or calculated in accordance with Schedule 2 (Contract Charges and Expenses).

Goods means the goods to be supplied by the Contractor under this Contract, as described in Schedule 1 (Statement of Requirement).

Initial Term means the initial period of time for which this Contract is intended to continue, as specified in Item 5 of the Contract Details.

Insolvency Event, in respect of a Party, means:

- (a) a meeting of the Party's creditors being held or called;
- (b) the appointment of a liquidator, provisional liquidator or administrator to the Party;
- (c) the appointment of a Controller or analogous person appointed to the Party or any of its property;
- (d) an application being made to a court for an order to appoint a Controller, provisional liquidator, administrator or analogous person to the Party or any of its property;
- (e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the Party's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA in respect of any of the Party's property;
- (f) the Party failing to comply, under paragraph 459F(1) of the *Corporations Act 2001* (Cth), with a statutory demand;
- (g) the Party being unable to pay its debts as they fall due or otherwise becoming insolvent;

- (h) the Party suspending (or threatening to suspend) payment of its debts or ceasing (or threatening to cease) to carry on all or a material part of its business;
- (i) the Party ceasing to exist, for whatever reason, or otherwise becoming incapable of managing its own affairs for any reason;
- (j) the Party taking any step that could result in that Party becoming insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth));
- (k) any action being commenced to bankrupt or wind-up the Party, including the passing of a resolution for the winding up of the Party; or
- (l) that Party taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors,

or any analogous event under the Laws of any applicable jurisdiction.

Intellectual Property Rights (or IPR) means all intellectual property rights, including but not limited to the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity as applicable from time to time.

Liability means any liability (whether it is present or future, fixed or unascertained, actual or contingent), including for any Loss, irrespective of how or when the acts, events, circumstances or things giving rise to the liability occurred or existed (but excluding any loss of revenue, loss of profit, loss of opportunity and loss of goodwill.).

Loss means all losses, liabilities, damages, fines, penalties, costs, interest, fees and expenses however it arises and whether it is present or future, fixed or unascertained, actual or contingent, including:

- (a) legal costs and expenses on a solicitor/own client basis, disbursements, costs of investigation, litigation, settlement, judgment interest and penalties;
- (b) the value of internal management and staff time assessed according to overhead costs with no profit margin, even if the affected Personnel would not have been engaged in profitable work;
- (c) the cost of taking reasonable, preventative, protective remedial or mitigatory action; and

(d) the cost of obtaining any replacement products or services to rectify, remedy or mitigate the damage caused by the relevant event,

but excluding any loss of revenue, loss of profit, loss of opportunity and loss of goodwill.

Material includes documents, equipment, software, goods, computer file, design, know-how, information and data stored by any means, and the subject matter of any category of Intellectual Property Right.

Milestone means any fixed date to be met by the Contractor in performing any of its obligations under this Contract and includes the milestones specified in Schedule 11.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Notice means a notice, demand, consent, approval or communication issued under this Contract that is sent in accordance with clause 59. **Notify** and **Notification** have a corresponding meaning.

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or Liability, present or future.

Option Period is the period of extension of this Contract referred to in clause 5.2.

Party (or Parties) means either or both the Department and the Contractor as the context requires.

Performance Measures means the service levels, Performance Measures or other measures (if any) of the Contractor's performance under this Contract, as set out or described in Schedule 3 (Performance Measures).

Performance Payments means any part of the Contract Charges that will be payable based on the Contractor's performance against the Performance Measures, as set out in, or calculated in accordance with, Schedule 2 (Contract Charges and Expenses).

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

Personnel means any officers, employees, agents, Subcontractors, staff or professional advisers of the Party or its Subcontractors engaged in, or in relation to, the performance or management of this Contract.

Plan (or Plans) means all plans (including draft plans and draft updates to approved plans) required to be prepared by the Contractor under this Contract.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Related Body Corporate (or Related Bodies Corporate) means an entity which falls within the definition of a 'Related Body Corporate' for the purposes of the *Corporations Act 2001* (Cth).

RFT means the Request for Tender issued to market setting out the original version of the Statement of Requirement.

Requirement means the Services, and Deliverables that the Department requires, as described in Schedule 1 (Statement of Requirement).

s. 47(1)(b) means the Plan of this name set out in Schedule 7.

Satisfactory means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.

Schedule means each Schedule identified in clause 1.1.3.

Security Interest means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Services means the services to be provided by the Contractor, as set out or described in Schedule 1 (Statement of Requirement).

Specified Personnel means the personnel specified in Item 7 of the Contract Details.

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

Subcontract means the contractual or other arrangements with a Subcontractor.

Subcontractor means a person to whom the Contractor or another Subcontractor has subcontracted any part of the Requirement, including those person(s) specified at Item 8 of the Contract Details.

Term means the Initial Term plus any extension in accordance with clause 5.2.

Termination Event means any event described in clause 46 giving rise to a party's right to terminate this Contract.

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Contractor in connection with this Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

Third Party Material means Material in which a third party holds Intellectual Property Rights, and includes any Material specified as such in Schedule 6 (Material).

s. 47(1)(b) means the Plan of this name set out in Schedule 8.

Transition Out Period has the meaning given to that term in clause 69.1.6.

s. 47(1)(b) means the Plan of this name set out in Schedule 8.

Valid means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.

Wilful Misconduct means an act or omission that is taken:

- (a) intentionally to achieve a wrongful purpose;
- (b) without legal or factual justification; and
- (c) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

Work Health and Safety Legislation means:

- (a) *Work Health and Safety Act 2011* (Cth); and
- (b) *Work Health and Safety Regulations 2011* (Cth); and
- (c) any "corresponding WHS law" within the meaning of section 4 of the *Work Health and Safety Act 2011* (Cth) and Regulation 6A of the *Work Health and Safety Regulations 2011* (Cth).

Interpretation

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

- 2.2.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 2.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 2.2.3 a reference to a clause, item, paragraph, Attachment, Schedule or Annexure is to a clause or paragraph of, or attachment, schedule or annexure to, this Contract as the context requires, and a reference to this Contract includes any Attachment, Schedule or Annexure;
- 2.2.4 any Schedules, Attachments and Annexures to this Contract form part of this Contract as the case may be;
- 2.2.5 a reference to a clause includes a reference to a subclause of that clause;
- 2.2.6 a reference to any agreement or schedule or annexure is to that agreement or schedule or annexure as amended, novated, supplemented or replaced;
- 2.2.7 a reference to a document, publication, Commonwealth policy or instrument is a reference to the document, publication, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
- 2.2.8 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- 2.2.9 a reference to time is to the time in the place where the Obligation is to be performed or, to the extent that there is any uncertainty, to the time in the Australian Capital Territory;
- 2.2.10 a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

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- 2.2.11 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - 2.2.12 if the Contractor is a trustee, the Contractor enters this Contract personally and in its capacity as trustee and warrants that it has the power to perform its Obligations under this Contract;
 - 2.2.13 a reference to a statute, ordinance, code or other Law is a reference to that statute, ordinance, code or other Law as in force from time to time, and includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 2.2.14 the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
 - 2.2.15 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;
 - 2.2.16 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;
 - 2.2.17 a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of this Contract;
 - 2.2.18 if a day on or by which an Obligation must be performed or an event must occur is not a Business Day, the Obligation must be performed or the event must occur on or by the next Business Day; and
 - 2.2.19 headings are for ease of reference only and do not affect interpretation.
- 2.3 To the extent that the Parties have not completed an item of the Contract Details or a Schedule is blank, unless otherwise stated in this Contract, that item or Schedule will be taken to be "not applicable" for the purpose of this Contract.

3. PRIORITY OF DOCUMENTS

- 3.1 If there is any inconsistency between the provisions of this Contract, a descending order of precedence will be accorded to:
- 3.1.1 the Contract Details;
 - 3.1.2 the Contract Terms and Conditions;
 - 3.1.3 the Schedules to this Contract;
 - 3.1.4 any annexures or attachments to this Contract; and
 - 3.1.5 any document incorporated by express reference as part of this Contract,
- so that the provision in the higher ranked document will, to the extent of the inconsistency, prevail.

4. CONTRACT TERMS AND CONDITIONS

- 4.1 The provisions of these Contract Terms and Conditions apply to this Contract, as supplemented by the Contract Details or as varied in accordance with clause 44.

5. TERM

Initial Term

- 5.1 This Contract commences on the Commencement Date and continues for the Initial Term unless terminated earlier in accordance with clauses 46 or 47, or otherwise.

Option to extend Term

- 5.2 The Term of this Contract may be extended by the Department for further period(s), specified in Item 6 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving Notice to the Contractor. Such Notice must be given:

5.2.1 at least thirty (30) days; or

5.2.2 if another period is specified in Item 6 of the Contract Details, that period,
before the end of the then current Term.

- 5.3 Any extension exercised in accordance with clause 5.2 takes effect from the end of the then current Term.

SECTION B - THE REQUIREMENT

6. PROVISION OF THE REQUIREMENT

- 6.1 The Contractor must provide the Requirement to the Department:
- 6.1.1 by performing the Services; and
 - 6.1.2 by providing the Deliverables,
- specified in, and in accordance with, Schedule 1 (Statement of Requirement) and the other provisions of this Contract and any reasonable directions of the Department.
- 6.2 The Contractor must:
- 6.2.1 provide the Requirement as specified in Schedule 1 (Statement of Requirement) to the satisfaction of the Department;
 - 6.2.2 ensure that the Services and Deliverables comply with the requirements of this Contract;
 - 6.2.3 ensure that the Services and Deliverables comply with all representations made to the Department by the Contractor in relation to standards, quality and timing;
 - 6.2.4 provide all reasonable assistance consistent with the Contractor's Obligations under this Contract and required by the Department;
 - 6.2.5 coordinate and cooperate with any other contractors to the Department or Commonwealth Agencies in providing the Requirement;
 - 6.2.6 comply with the time frames specified in Schedule 1 (Statement of Requirement) or as reasonably Notified by the Department; and
 - 6.2.7 submit invoices, and any supporting documents, in the manner specified in clause 20.
- 6.3 The Contractor is fully responsible for the provision of the Requirement and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- 6.3.1 involvement by the Department or any of its Personnel in the provision of the Requirement;
 - 6.3.2 payment made to the Contractor on account of the Requirement;
 - 6.3.3 subcontracting of the Requirement; or
 - 6.3.4 acceptance or rejection by the Department of Personnel nominated by the Contractor to replace Specified Personnel.
- 6.4 The Contractor acknowledges and agrees that this Contract is not an exclusive arrangement and nothing in this Contract prevents the Department, in its discretion, from entering into an arrangement with a person other than the Contractor for the provision of the Requirement.

7. STANDARDS

7.1 Without limiting any other provision of this Contract, in providing the Requirement the Contractor must ensure:

7.1.1 in relation to any Goods provided, that the Goods:

- 7.1.1.1 meet the specifications and other requirements in Schedule 1 (Statement of Requirement) and otherwise conform to the requirements of this Contract;
- 7.1.1.2 are new (unless specified otherwise in Schedule 1 (Statement of Requirement));
- 7.1.1.3 are reasonably fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Contractor;
- 7.1.1.4 are of acceptable quality, made of good material and workmanship, free from defects;
- 7.1.1.5 comply with the highest relevant commercially acceptable standards and relevant best practice, including at a minimum any Departmental, Commonwealth or industry standards and guidelines specified in Schedule 1 (Statement of Requirement);
- 7.1.1.6 are manufactured and supplied in strict compliance with all relevant Laws and codes, licensing obligations and Work Health and Safety Legislation; and
- 7.1.1.7 are supplied with due skill and care and to the best of the Contractor's knowledge and expertise; and

7.1.2 in relation to any Services provided, that the Contractor:

- 7.1.2.1 performs the Services with due care and skill and to a high professional standard, in accordance with relevant best practice, including any Commonwealth, State and Territory and industry standards and guidelines specified in Schedule 1 (Statement of Requirement);
- 7.1.2.2 performs the Services to the satisfaction of the Department Project Officer and (if applicable) in a manner that meets or exceeds the Performance Measures; and
- 7.1.2.3 complies with all Laws and codes relevant to the performance of the Services, licensing obligations and Work Health and Safety Legislation; and

7.1.3 in relation to any Documentation provided, that it:

- 7.1.3.1 is fit for purpose;
- 7.1.3.2 is written in English (unless another language is specified in Schedule 1 (Statement of Requirement));

- 7.1.3.3 is complete and accurate; and
- 7.1.3.4 is of such a nature and quality that it might reasonably be expected to achieve or satisfy the Contractor's Obligations under this Contract; and
- 7.1.4 in relation to any Contract Material or other Deliverable provided, that it:
 - 7.1.4.1 is fit for purpose;
 - 7.1.4.2 is complete and accurate;
 - 7.1.4.3 is of such a nature and quality that it might reasonably be expected to achieve or satisfy the Contractor's Obligations under this Contract;
 - 7.1.4.4 complies with the highest relevant commercially acceptable standards and best practice including, at a minimum, to any Departmental, Commonwealth or industry standards and guidelines specified in Schedule 1 (Statement of Requirement); and
 - 7.1.4.5 is supplied with due skill and care and to the best of the Contractor's knowledge and expertise and in accordance with all relevant Laws.

8. DELIVERY

- 8.1 The Contractor must supply and deliver the Services and the Deliverables at the times and in the manner specified in Schedule 1 (Statement of Requirement).
- 8.2 The Contractor must provide evidence of delivery of any Deliverable as specified in Schedule 1 (Statement of Requirement).
- 8.3 If a Service includes the installation or integration of a Deliverable, the Contractor must install and integrate the Deliverable at the time or times:
 - 8.3.1 as specified in Schedule 1 (Statement of Requirement); or
 - 8.3.2 any later times that the Department Notifies to the Contractor.

Extension of time

- 8.4 The Contractor must, on becoming aware that it will be unable to meet an Obligation in relation to provision of the Services or Deliverables, promptly Notify the Department and provide details of the cause of the anticipated delay or failure and of the Contractor's proposal for managing the delay.
- 8.5 Without limiting the Contractor's other Obligations under the Contract, if the Contractor is delayed in the provision of a Services or Deliverable and the event giving rise to the delay:
 - 8.5.1 is beyond the Contractor's reasonable control (including being beyond the reasonable control of the Subcontractors of the Contractor); and
 - 8.5.2 could not have reasonably been contemplated or allowed for by the Contractor or its Subcontractors; and
 - 8.5.3 is not provided for elsewhere in this Contract.

and provided that the Contractor:

- 8.5.4 demonstrates to the Department's satisfaction that work under this Contract cannot be performed in such a way, as is reasonable having regard to any other relevant circumstances, so as to avoid or remove the delay;
- 8.5.5 has made (and continues to make) all reasonable endeavours to minimise the delay and mitigate both Parties' losses,

the Contractor may request an extension of time for the provision of the Service or Deliverable of no more than the period the Contractor was delayed or prevented from providing the Service or Deliverable. To support a request for an extension of time, the Contractor must provide substantiating documentation to the satisfaction of the Department, including details of any other events or circumstances which contributed to the delay.

- 8.6 If the Department grants an extension of time, the Parties will vary this Contract in accordance with the variation procedures in clause 44 to reflect the extension agreed to by the Department.

Testing and Inspection

- 8.7 The Contractor must carry out such testing of the Services or Deliverables as specified in Schedule 1 (Statement of Requirement) or as the Department may reasonably require, and must permit the Department or any other person nominated by the Department, to attend such testing. If testing discloses that the Services or Deliverables are defective, the Department may, by Notice require the defect to be remedied before the Contractor offers the Services or Deliverables for acceptance (if applicable) or otherwise provides the Services or Deliverables to the Department.
- 8.8 The Department may take steps (including inspection, examination or testing) to verify that the Services or Deliverables conform to the requirements of this Contract before accepting or taking delivery of the Services or Deliverables. The Contractor must, if requested by the Department, assist the Department to undertake such steps either at the Contractor's premises or at the premises of any Subcontractor, as applicable.

Acceptance and rejection

- 8.9 The Contractor must offer the Services and Deliverables for acceptance if required under the Schedule 1 (Statement of Requirement) in accordance with the time frames and inanner specified in Schedule 1 (Statement of Requirement).
- 8.10 The Department must, within twenty (20) Business Days (or other period specified in Schedule 1 (Statement of Requirement)) after the offer of Services or Deliverables for acceptance, by giving a Notice to the Contractor:
 - 8.10.1 accept the Services or Deliverables; or
 - 8.10.2 if the Services or Deliverables do not conform to the requirements of the Contract, reject the Services or Deliverables, in which case delivery or performance will be deemed not to have occurred for the purpose of determining whether the Contractor has complied with clause 8.1.
- 8.11 The Contractor must make good or replace the rejected Services or Deliverables and resubmit the Services or Deliverables for acceptance at no additional cost to the Department, within the time specified by the Department. The Contractor must meet all costs of, and incidental to, the

performance of remedial work, including any packing, freight, disassembly and re-assembly costs.

- 8.12 If the Contractor fails to make good or replace the rejected Services or Deliverables in accordance with clause 8.11, the Department may, without limiting the Contractor's other warranties and obligations under this Contract, perform or have performed the necessary remedial work at the expense of the Contractor and may recover such expense as a debt due to the Department.
- 8.13 The Contractor will bear all costs associated with replacing or correcting rejected Services or Deliverables.
- 8.14 Any action of the Contractor in making good or replacing Services or Deliverables will not entitle the Contractor to claim for an extension of time or relieve the Contractor from performing its obligations under the Contract.
- 8.15 If the Department rejects any Deliverables, the Contractor must promptly arrange for collection of those Deliverables, and the Department will hold those Deliverables at the Contractor's risk until the Deliverables are collected and the Department accepts no responsibility for those Deliverables. Repossession of Deliverables will not affect the obligation of the Contractor to provide conforming Deliverables.

Warranty Periods

- 8.16 The Contractor will remedy by repair, replacement or re-performance, any defects in the Services or Deliverables that are Notified by the Department to the Contractor during any applicable warranty period specified in Schedule 1 (Statement of Requirement) (**Warranty Period**) commencing from acceptance of the Services or Deliverables (or if the Services or Deliverables are not required to be accepted, from delivery of the Services or Deliverables).
- 8.17 The Department may at its discretion require the Contractor to carry out such tests as are relevant to the remedial work.
- 8.18 Any Services or Deliverables repaired, replaced or re-performed under this clause will have an identical Warranty Period commencing from the date of the repair, replacement or reperformance.
- 8.19 The Contractor, unless the Department otherwise allows, must meet all costs of, and incidental to, the performance of remedial work under clause 8.16, including any packing, freight, disassembly and re-assembly costs and, if applicable, installation, commissioning and testing costs.
- 8.20 If the Contractor fails within the period of thirty (30) days after notification by the Department, to rectify a defect pursuant to clause 8.16, the Department may, without limiting the Contractor's warranties and obligations under this clause 8, perform or have performed the necessary remedial work at the expense of the Contractor and may recover such expense as a debt due to the Department.
- 8.21 The rights and remedies provided in clause 8.16 are in addition to, and will not limit, any other rights of the Department under the Contract or otherwise.

Ownership and Risk

- 8.22 Title to the Deliverables passes to the Department on the earlier of payment of the Contract Charges for those Deliverables or delivery of the Deliverables to the Department.
- 8.23 The Contractor warrants that it has the right to transfer title to the Deliverables to the Department and that title to the Deliverables will pass to the Department free of any Security Interest.
- 8.24 Subject to clause 8.26, risk of Loss of or damage to the Deliverables passes from the Contractor to the Department upon delivery.

Return of Deliverables

- 8.25 The Department may return to the Contractor any Deliverables, at no additional cost to the Department, providing that those Deliverables are returned substantially in the condition in which they were received.
- 8.26 Where the Department Notifies the Contractor that it wishes to return Deliverables, the Contractor must promptly arrange for collection of those Deliverables and the Department will hold those Deliverables at the Contractor's risk and the Department accepts no responsibility for those Deliverables.
- 8.27 Clause 8.25 applies irrespective of whether the title in the Deliverables has passed to the Department. Where title to the Deliverables has passed and payment has been made, such payment (or part payment) is an amount not due to the Contractor for the purposes of clause 19.5.3.
- 8.28 Where title to the Deliverables has passed and payment has been made, title to Deliverables returned under this clause 8 will revert to the Contractor on the date when the repayment is received by the Department or set-off occurs.

Liquidated damages

- 8.29 If the Contractor fails to achieve a Critical Milestone by the date specified in Schedule 11 for that Critical Milestone, then the Department will be entitled to the liquidated damages set out in Schedule 11 in respect of that Critical Milestone (as liquidated damages and not as a penalty) until the Critical Milestone is achieved.
- 8.30 The Parties acknowledge that:
- 8.30.1 if the Contractor fails to achieve a Critical Milestone by the date specified in Schedule 11 for that Critical Milestone:
- 8.30.1.1 the Department will suffer damage; and
- 8.30.1.2 all such damage may not, having regard to the nature of the Services or Deliverables, be able to be precisely calculated or proved,
- and, therefore, the parties agree that the liquidated damages is a genuine pre-estimate of the damage which would be suffered by the Department in such event; and

- 8.30.2 payment of the liquidated damages to the Department does not relieve the Contractor from its obligation to provide the Services or Deliverables or from any other Obligations or liabilities under this Contract.
- 8.31 Nothing in clauses 8.29 or 8.30 will limit the Department's rights or remedies in contract, tort (including negligence), equity or otherwise in respect of:
- 8.31.1 Loss suffered by the Department for the Contractor's failure to provide the Services or Deliverables in accordance with the delivery, milestone or other performance dates set out in this Contract; or
- 8.31.2 Loss suffered by the Department at any time for any other cause; or
- 8.31.3 any right to terminate this Contract under clause 46 or otherwise.

9. MAINTENANCE AND SUPPORT

- 9.1 The Contractor must provide any maintenance and support Services in respect of the Deliverables as set out or described in Schedule 1 (Statement of Requirement).

10. DIRECTIONS, REPORTING AND LIAISON

- 10.1 In addition to any specific Obligations in Schedule 1 (Statement of Requirement), the Contractor must:
- 10.1.1 liaise with the Department Project Officer and comply effectively and efficiently with any reasonable directions given by the Department Project Officer in respect of this Contract; and
- 10.1.2 promptly provide any information the Department Project Officer may reasonably require.

11. PERSONNEL

- 11.1 The Contractor must undertake all necessary recruitment, training, security clearance preparation and other functions as necessary, to ensure its Personnel have the requisite skills, experience and qualifications for the Contractor to meet the requirements of this Contract.
- 11.2 Where the Contract Details set out Specified Personnel, the Contractor agrees that the Specified Personnel will undertake work in respect of the Requirement as set out in the Contract Details and in accordance with the terms of this Contract.
- 11.3 If any Specified Personnel are or will become unable or unavailable to undertake work in respect of the Requirement, the Contractor will Notify the Department immediately.
- 11.4 The Department may, at its absolute discretion, give Notice requiring the Contractor to remove any of its Personnel (including Specified Personnel) from work in respect of the Requirement. The Contractor must remove the Personnel from work in respect of the Requirement within the time specified in the Notice.
- 11.5 If any Specified Personnel are or will become unable or unavailable or are removed under this clause 11, the Contractor must provide replacement Specified Personnel with equivalent skills, experience and qualifications acceptable to the Department at no additional cost and at the

earliest opportunity. The Contractor must provide documentation to support the nomination of any replacement Specified Personnel.

- 11.6 Any need to replace any of the Contractor's Personnel (including Specified Personnel) during the course of this Contract will not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Contract.
- 11.7 If the Contractor is unable to provide acceptable replacement Specified Personnel, the Department may terminate this Contract in accordance with the provisions of clause 46.

12. SUBCONTRACTING

- 12.1 The Contractor must not, without the prior written approval of the Department, subcontract any part of the Requirement.
- 12.2 The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 12.1.
- 12.3 The Contractor must ensure that any Subcontract for the performance of the Requirement contains provisions that are equivalent with all Obligations imposed on this Contractor and rights of the Department under this Contract, including those in relation to work health and safety, confidentiality, privacy, security, reporting obligations, Immigration and Border Protection Workers, disclosures, audit requirements, compliance with Laws and Commonwealth policies and termination for convenience.
- 12.4 The Contractor must ensure that each Subcontractor:
 - 12.4.1 has in place adequate resources and personnel who are appropriately experienced, qualified and skilled to perform work in respect of the Requirement under this Contract; and
 - 12.4.2 is of sufficient financial standing to enable it to perform its obligations under the Subcontract.
- 12.5 The Contractor, by subcontracting any part of the Requirement or by obtaining the Department's approval to a Subcontract, will not be relieved of its liabilities or obligations under this Contract, and will be responsible for all Subcontractors.
- 12.6 The Contractor must make available, on request, details including names of all Subcontractors.
- 12.7 The Contractor must inform the Subcontractors that their participation in relation to all or part of the Requirement may be publicly disclosed.

13. CONDUCT ON PREMISES

- 13.1 When using the Department's premises or facilities, the Contractor must comply (and must ensure that its Personnel comply) with all directions and all current procedures relating to security and work health and safety and any codes of behaviour that apply to those premises or facilities.

14. DEPARTMENTAL ASSISTANCE

- 14.1 Without limiting any of the Contractor's Obligations under this Contract, the Department must provide the facilities and assistance as specified in Schedule 1 (Statement of Requirement).

15. PERFORMANCE MANAGEMENT

Performance Management - General

- 15.1 The Department will monitor the performance of the Contractor under this Contract and will evaluate the effectiveness of the Contractor's performance on an ongoing basis.
- 15.2 The Contractor must report to the Department Project Officer on its performance under this Contract monthly or as otherwise specified in Schedule 3 (Performance Measures).
- 15.3 The Department may conduct a review to assess the performance of the Contractor. Reviews will take into account the information that the Contractor provides to the Department in its reports.
- 15.4 If the Department determines that the Contractor's performance is not compliant with this Contract, whether after a review or otherwise, then, without limiting the Department's rights, the Department may:
 - 15.4.1 require the Contractor to propose and comply with service levels or other measures for performance that are acceptable to the Department;
 - 15.4.2 withhold part or all of the Contract Charges payable under this Contract until such time as the Contractor's performance has improved, or until a breach is rectified, to the Department's satisfaction;
 - 15.4.3 take any action provided for under clause 15.7;
 - 15.4.4 exercise any step-in rights of the Department in accordance with the clauses set out in Section I (Step-In) of this Contract;
 - 15.4.5 reduce the scope of this Contract in accordance with clause 47; or
 - 15.4.6 terminate this Contract in accordance with clause 46.
- 15.5 This remainder of this clause 15 applies if Schedule 3 (Performance Measures) is completed with specific Performance Measures.

Measuring and monitoring tools

- 15.6 Unless specified otherwise in Schedule 3 (Performance Measures), the Contractor must:
 - 15.6.1 implement and maintain during the Term, measuring and monitoring tools capable of measuring its performance against the Performance Measures;
 - 15.6.2 provide the Department with access to the data and information gathered by those tools;
 - 15.6.3 if requested by the Department demonstrate to the Department the operation and accuracy of those tools; and
 - 15.6.4 investigate any failure to provide the Requirement in accordance with the Performance Measures.

Consequences of failing to meet Performance Measures

- 15.7 Schedule 3 (Performance Measures) may specify consequences which will apply if the Contractor fails to meet a Performance Measure.
- 15.8 Without limiting clause 15.7, a failure by the Contractor to meet a Performance Measure may affect the Contractor's entitlement to Performance Payments in accordance with Schedule 2 (Contract Charges and Expense).
- 15.9 The Contractor acknowledges and agrees that the consequences for failing to meet the Performance Measures set out in Schedule 3 (Performance Measures):
 - 15.9.1 are reasonable and appropriate for managing the Contractor's adherence to its Obligations under the Contract; and
 - 15.9.2 do not limit the Department's rights or remedies arising from any defective performance under the Contract.

16. COMPLIANCE

- 16.1 Unless otherwise agreed by the Department in writing, the Contractor must, and must ensure that its Subcontractors, obtain and maintain all Authorisations necessary to enable the provision of the Requirement in accordance with this Contract.
- 16.2 The Contractor must provide the Department with copies of any Authorisations relevant to the performance of, or necessary to perform, this Contract, promptly upon request by the Department.
- 16.3 The Contractor must, in carrying out its Obligations under this Contract, comply with all Laws of the Commonwealth or State or Territory or local authority in force from time to time and applicable to the provision of the Requirement.
- 16.4 The Contractor must, in carrying out its Obligations under this Contract, comply with applicable Commonwealth policies if those policies are specified in this Contract or Notified to the Contractor.
- 16.5 Without limiting clauses 16.1 or 16.4, the Contractor must comply with all provisions and requirements set out in Schedule 8 (Commonwealth Law and Policy Requirements).

17. OFFER TO PROVIDE THE REQUIREMENT TO OTHER COMMONWEALTH ENTITIES

- 17.1 In addition to providing the Requirement to the Department under this Contract, the Contractor offers to provide the Requirement to any other Commonwealth Agency that wishes to obtain the Requirement from the Contractor.
- 17.2 A Commonwealth Agency may accept the offer under clause 17.1 by:
 - 17.2.1 holding discussions with the Contractor about it providing the Requirement to the Commonwealth Agency; and
 - 17.2.2 if the Contractor indicates that it can provide the Requirement to the Commonwealth Agency, giving the Contractor an Instrument of Acceptance substantially in the form of Schedule 9 (Instrument of Acceptance), in accordance

with clause 59 (as if references to the Department in that clause were references to the other Commonwealth Agency).

17.3 Each Instrument of Acceptance given to the Contractor under this Contract will create a separate agreement, on the terms and conditions of this Contract as modified by the Instrument of Acceptance, between the Contractor and:

17.3.1 where the Commonwealth Agency is a Commonwealth entity other than a body corporate, - the Commonwealth of Australia as represented by that Commonwealth Agency; or

17.3.2 where the Commonwealth Agency is a body corporate – the body corporate; and

17.3.3 where the Commonwealth Agency is a Commonwealth company - that Commonwealth company.

18 PLANS

18.1

S. 47(1)(b)

[Note: This procurement is not subject to Indigenous Participation as it is not included in the specified industries outlined in guidance issued by Dept of Prime Minister and Cabinet. See [\[https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp/policy-guide-1\]](https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp/policy-guide-1) for further clarification.]

18.2 Where this Contract requires the Contractor to submit a Plan or any other document for approval by the Department:

18.2.1 that Plan or document will have effect from the date the Department provides its written approval to the Contractor; and

18.2.2 if the Department is not satisfied with the Plan or other document submitted, the Contractor must promptly amend the Plan or document and resubmit it for approval within the time frame specified by the Department.

18.3 The Contractor must comply with, and ensure that all Contractor Personnel and Subcontractors comply with, the Plans in the provision of the Requirement.

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under the Freedom of Information Act 1982

SECTION C - PAYMENTS

19. CONTRACT CHARGES AND EXPENSES

- 19.1 In consideration for the performance by the Contractor of its Obligations under this Contract and subject to the terms of the Contract, the Department must pay to the Contractor:
- 19.1.1 the Contract Charges; and
 - 19.1.2 the Expenses (if any).
- 19.2 The Department must pay the Contractor the amount owing within 30 days of the receipt of a Correctly Rendered Invoice submitted by the Contractor. If this 30 day period ends on a day that is not a Business Day, payment will be made on the next Business Day.
- 19.3 If there is a dispute as to whether an amount is payable under an invoice, the Contractor must cancel the invoice in dispute and issue a Correctly Rendered Invoice for any undisputed portion of the disputed invoice. The Department must pay a Correctly Rendered Invoice for the undisputed portion of a disputed invoice.
- 19.4 The Contract Charges and Expenses are set out in Schedule 2 and are taken to include:
- 19.4.1 all costs, resources and expenses required or incurred by the Contractor in providing the Requirement; and
 - 19.4.2 except as provided by clause 21, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract by the Contractor.

Department's Right to Delay or Reduce Payment

- 19.5 Despite anything else in this Contract:
- 19.5.1 the Department is not obliged to pay the Contract Charges for any Services or Deliverables that are not provided in accordance with the Contract;
 - 19.5.2 the Department may (in addition and without prejudice to any other right it may have) defer payment or reduce the amount of any Contract Charges payable until the Contractor has completed, to the satisfaction of the Department, that part of the Requirement to which those Contract Charges relate;
 - 19.5.3 if the Department pays any amount to the Contractor that is not due, including by making a payment under an improperly rendered or inaccurate invoice, the Contractor must immediately repay that overpayment to the Department; and
 - 19.5.4 the Department may set-off any amount the Contractor owes it, including under clause 19.5.3, against any amount the Department owes the Contractor, whether owed actually, contingently or prospectively under this Contract.

Interest

- 19.6 The Department is not required to pay any interest or penalty in respect of late payments, unless expressly stated in Schedule 2 (Contract Charges and Expenses).

20. INVOICES

Correctly Rendered Invoice

- 20.1 A **Correctly Rendered Invoice** means an invoice that:
- 20.1.1 is submitted in arrears;
 - 20.1.2 is correctly addressed;
 - 20.1.3 is correctly calculated;
 - 20.1.4 identifies the amount claimed and the Services, Deliverables or Expenses for which the amount is claimed;
 - 20.1.5 is accompanied by documentation substantiating the amounts claimed; and
 - 20.1.6 contains the information and meets the requirements for invoices set out in Schedule 2 (Contract Charges and Expenses).

Submission of Invoices

- 20.2 The Contractor must submit a Correctly Rendered Invoice to the Department for the Contract Charges monthly in arrears or at the times (if any) set out in Schedule 2 (Contract Charges and Expenses).
- 20.3 The Contractor must not submit invoices for Services or Deliverables that have not been delivered to the Department.

21. GST

- 21.1 In this clause 21, capitalised terms have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 21.2 A Party must pay GST on a Taxable Supply made to it under this Contract, in addition to any consideration (excluding GST) that is payable for that Taxable Supply and it must do so at the same time and in the same way as it is required to pay the consideration for that Taxable Supply.
- 21.3 A Party making a Taxable Supply to another Party under this Contract must issue a Tax Invoice to the other Party, setting out the amount of the GST payable by that other Party and must do so at the time the other party is required to pay the consideration for the Taxable Supply.
- 21.4 Subject to clause 21.5, if the Contractor is required under this Contract to indemnify the Department, or either Party is required to make a contribution to the other Party, and the other Party can obtain an Input Tax Credit on an acquisition associated with that indemnity or contribution, the amount the Party is required to pay is:
- 21.4.1 reduced by the amount of that Input Tax Credit; but
 - 21.4.2 increased by any GST payable by that other Party in respect of the indemnity or contribution.
- 21.5 Despite clause 21.4, the amount of an indemnity or contribution is not reduced by the amount of an Input Tax Credit if that credit has already been taken into account in calculating the

amount of the indemnity or contribution. If an Adjustment Event results in the GST on a Taxable Supply being different from the GST recovered by the supplier, the supplier:

- 21.5.1 must refund to the other Party any excess; and
 - 21.5.2 may recover from the other Party any shortfall.
- 21.6 The recovery of any money from the other Party under clause 21.5 is conditional on an Adjustment Note first being given to the other Party.

22. HANDLING OF OTHER CRF MONEY, RECEIPT OF FUNDS AND PAYMENT OF GST REFUNDS

22.1 In this clause 22, the following definition applies:

- 22.1.1 **Official Payments Account** means the trust account described in clause 22.4, from which GST refunds are to be paid by the Contractor to the End Users in accordance with this Contract.

Contractor to handle other CRF money in compliance with PGPA Act and PGPA Rules

- 22.2 The Contractor acknowledges that the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rules) require Department officials to manage the receipt, custody, expenditure, banking, remittance and the keeping of records relating to the debiting, crediting and disbursement of other Consolidated Revenue Fund (CRF) money, which includes money transacted by the Contractor on behalf of the Department under this Contract.
- 22.3 The Contractor acknowledges that funds held by the Contractor or a Subcontractor under this Contract for the purposes of making payments (for refunding GST) to third parties on behalf of the Department are "other CRF money" within the meaning of the PGPA Act and the PGPA Rules.

AFSL and Establishment of the Official Payments Account

- 22.4 The Contractor, or its authorised Subcontractor, shall be required to hold and maintain an Australian Financial Services Licence granted by ASIC as the Services provided by the Contractor to the Department pursuant to this Contract shall be considered a non-cash payment facility to a wholesale client. The Contractor, or its authorised Subcontractor, shall establish and maintain the Official Payments Account, from which the Contractor, or its authorised Subcontractor, must pay GST refunds to the End Users in accordance with this Contract. The Official Payments Account shall be an account for the purposes of the client money provisions in sections 981A and 981B of the *Corporations Act 2001* (Cth), a non-interest bearing account and the Contractor shall remit any interest earned on the Official Payments Account to the Department at the end of each calendar month. Any other offshore bank accounts used by the Contractor, or its authorised Subcontractor, to process GST refunds are not covered by the client money provisions in section 981B in the *Corporations Act 2001* (Cth) as they are subject to separate regulation by offshore regulators.
- 22.5 The Department shall deposit monies equivalent to the value of GST refunds in the Official Payments Account, specified in Item 17 of the Contract Details, in accordance with the procedure agreed between the Department and the Contractor.

[Note: The parties acknowledge that the PGPA Rules require the other CRF money to be deposited in a bank as soon as is practicable.]

- 22.6 The Contractor, or its authorised Subcontractor, is responsible for the daily operation and management of the Official Payments Account in accordance with this Contract and the client money provisions in sections 981A and 981B of the *Corporations Act 2001* (Cth).
- 22.7 The Contractor must ensure that the Official Payments Account is not overdrawn.
- 22.8 The Contractor will reconcile the Official Payments Account at the end of each calendar month and must provide to the Department a month-end reconciliation of the Official Payments Account by the third Business Day of the following month, covering the previous calendar month.
- 22.9 The reconciliation is to record that the balance of the Official Payments Account at the end of the reconciliation period is equal to the total value of all deposits for that period.
- 22.10 The Contractor must immediately advise the Department of any discrepancies identified by the reconciliation and will be responsible for resolving any such discrepancies.
- 22.11 The Contractor must comply with all directions from the Department with respect to management of the Official Payments Account that are necessary for the Department to comply with the *Corporations Act 2001* (Cth), the PGPA Act (including any direction given because of the withdrawal of authorisation of the Official Payments Account or of a particular expenditure otherwise authorised by this Contract or by amendment to the PGPA Act).
- 22.12 The Contractor must return any other CRF money in its custody to the Department following expiry or termination of this Contract in a timely manner once all refunds have been processed.

Authorisation and payment of GST refunds

- 22.13 The Contractor must ensure that any person paying a GST refund is authorised to do so and their identity is disclosed to the Department.
- 22.14 GST refunds must only be paid upon receipt of payment information from the relevant End User. The payment must be made in accordance with any agreement under which the GST refunds are payable to the End Users and in accordance with the PGPA Act and the PGPA Rules.
- 22.15 The Contractor acts as an agent of the Department solely for the following purposes:
- 22.15.1 collecting and storing documentation relating to the Services; and
 - 22.15.2 operating the Official Payments Account and making payments on behalf of the Department, in accordance with the PGPA Act and this Contract.

Use of funds in the Official Payments Account

- 22.16 The Contractor acknowledges and agrees that funds deposited into the Official Payments Account must be applied by the Contractor only for the payment of GST refunds in accordance with this Contract.
- 22.17 The Contractor must not allow any money other than other CRF money to be deposited into the Official Payments Account.
- 22.18 The Contractor must provide the Department Project Officer 5 Business Days' notice in writing of any proposed change to the identity of persons authorised to pay a GST refund.

Daily recording of Expense

- 22.19 On each day that a payment has been made during the Term of Contract, the Contractor must record in a statement the amount of GST refunds paid by the Contractor on that day.
- 22.20 The Contractor must provide the statement referred to in clause 22.19 on request by the Department.

Loss of other CRF Money

- 22.21 Where loss of other CRF money to which the Contractor has access occurs, the Contractor is liable and will indemnify the Department and its officers and employees ("those indemnified") from and against any Loss incurred by any of those indemnified except to the extent that such Loss was caused by any act or omission of those indemnified.

Failure to disburse

- 22.22 Without affecting or limiting Department rights under the Contract, if the Contractor fails to disburse any payment in accordance with the terms required of such payment, the Contractor will indemnify the Department for the amounts charged by any person or any cost, loss or expense incurred by the Department as a result of such failure to act in accordance with the relevant payment terms.

Changes to PGPA Framework Obligations

- 22.23 If compliance with a change to the PGPA Act requires an amendment to this clause, the Department must:
- 22.23.1 promptly notify the Contractor of the required amendment; and
 - 22.23.2 together with the Contractor, make the necessary amendment.
- 22.24 The Contractor acknowledges that this Contract is an agreement made in accordance with section 105 of the PGPA Act, and if the Contractor makes a payment of other CRF money that is not authorised by this Contract, the Contractor is liable to prosecution for committing an offence under Divisions 134 and 135 in the Schedule to the *Criminal Code Act 1995* (Cth).

SECTION D - MATERIAL

23. COMMONWEALTH MATERIAL

- 23.1 The Department must provide to the Contractor the Commonwealth Material as specified or described in Schedule 6 (Material).
- 23.2 The Contractor must ensure that the Commonwealth Material is used, copied, supplied, or reproduced only for the purposes of this Contract.
- 23.3 The Contractor must ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Schedule 6 (Material), and any direction by the Department.
- 23.4 The Parties acknowledge that the Commonwealth Material is not provided to the Contractor for the purpose of either directing or guiding the Contractor's work under the Contract. The Department does not warrant the suitability of Commonwealth Material for any particular use or application, nor does the Department warrant the accuracy or precision of that material.
- 23.5 The Contractor will be responsible for the application or use of the Commonwealth Material and any conclusions, assumptions or interpretations made by the Contractor on the basis of the Commonwealth Material.
- 23.6 The Contractor must ensure that all Commonwealth Material and Contract Material in the form of information, data and records held in its business systems are captured and maintained in accordance with the principles of ISO16175 (Principles and Functional Requirements for Records in Electronic Office Environments).

24. INTELLECTUAL PROPERTY - OWNERSHIP MODEL

- 24.1 Item 9 of the Contract Details sets out the ownership model for Intellectual Property Rights in all Contract Material.
- 24.2 If no ownership model is selected in Item 9 of the Contract details:
 - 24.2.1 clause 25 will apply; and
 - 24.2.2 for the avoidance of doubt, no part of clause 26 will apply.
- 24.3 Nothing in clauses 24, 25 or 26 affects the ownership of the Intellectual Property Rights in any:
 - 24.3.1 Commonwealth Material;
 - 24.3.2 Existing Contractor Material;
 - 24.3.3 Third Party Material; or
 - 24.3.4 other Auxiliary Material.
- 24.4 The Contractor must obtain all necessary Intellectual Property Rights and permissions before using or making available any Third Party Material or other Auxiliary Material for the purposes of the Contract.

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- 24.5 The Department must obtain all necessary Intellectual Property rights and permissions before making Commonwealth Material available to the Contractor for the purposes of the Contract.
- 24.6 If specified in Schedule 1 (Statement of Requirement), the Contractor must make the Contract Material or Auxiliary Material available to third parties (including to members of the public) by means of a Creative Commons licence, in accordance with any reasonable direction by the Department.

25. COMMONWEALTH OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

[Note: This clause applies if specified in Item 9 of the Contract Details or if that item is not completed.]

- 25.1 All Intellectual Property Rights in all Contract Material vests or will vest in the Department immediately on its creation.
- 25.2 Unless otherwise specified in Schedule 6 (Material), the Contractor grants to (or must procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, adapt, modify, distribute, communicate and exploit the Auxiliary Material.
- 25.3 Unless otherwise specified in Schedule 6 (Material), to the extent that the Contractor needs to use any of the Commonwealth Material or Contract Material for the purpose of performing its obligations under the Contract, the Department grants to the Contractor a world-wide, royalty free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate that Material solely for the purpose of providing the Requirement.
- 25.4 The licence in clause 25.3 is subject to:
- 25.4.1 any permissions, limitations, conditions or restrictions in Schedule 6 (Material); and
- 25.4.2 any direction given by the Department to the Contractor.

26. CONTRACTOR OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

[Note: This clause only applies if specified in Item 9 of the Contract Details.]

- 26.1 All Intellectual Property Rights in the Contract Material vests or will vest immediately in the Contractor.
- 26.2 Unless otherwise specified in Schedule 6 (Material), the Contractor grants to (or must procure for) the Department a permanent, irrevocable, worldwide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute, communicate and exploit the Contract Material.
- 26.3 Unless otherwise specified in Schedule 6 (Material), to the extent that the Contractor needs to use any of the Commonwealth Material for the purpose of performing its obligations under the Contract, the Department grants to the Contractor a world-wide, royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify, distribute and communicate that Material solely for the purpose of providing the Requirement.

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- 26.4 The licence in clause 26.3 is subject to:
- 26.4.1 any permissions, limitation, condition or restriction in Schedule 6 (Material); and
 - 26.4.2 any direction by the Department.

27. INTELLECTUAL PROPERTY WARRANTY

Warranty

- 27.1 The Contractor represents and warrants that:

- 27.1.1 it is entitled; or
- 27.1.2 it will be entitled at the relevant time,

to grant the licences and deal with the Intellectual Property in any Material, including Contract Material, Existing Contractor Material, Third Party Material and any other Auxiliary Material provided by it to the Department, in the manner set out in this Contract.

Remedy for breach of warranty

- 27.2 If a person claims, or the Department reasonably believes that a person is likely to claim, that all or part of a Deliverable or the performance of a Service infringes the person's Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 36 and to any other rights that the Department may have against it, promptly, at the Contractor's expense:

- 27.2.1 use its best efforts to secure the rights for the Department to continue to use the Deliverables free of any claim or Liability for infringement; or
- 27.2.2 replace, modify or reperform the Service or Deliverables in such a manner that the Contractor's provision of the Service or Deliverable, or the Department's use of the relevant Deliverable does not infringe the Intellectual Property Rights of any other person,

without any degradation of the performance or quality of the Service or Deliverable.

28. MORAL RIGHTS

- 28.1 For the purposes of this clause 28, "**Permitted Acts**" means any of the following classes or types of acts or omissions:

- 28.1.1 using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- 28.1.2 supplementing the Contract Material with any other Material;
- 28.1.3 making any variations to, including additions to or deletions from, the Contract Material; or
- 28.1.4 using the Contract Material in a different context to that originally envisaged,

but does not include those which would infringe the author's right not to have authorship falsely attributed.

- 28.2 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department.
- 28.3 If clause 28.2 does not apply, the Contractor must:
- 28.3.1 obtain from each author 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
 - 28.3.2 provide the executed original of any such consent to the Department upon request by the Department.
- 28.4 This clause 28:
- 28.4.1 applies subject to any provision to the contrary in Schedule 6 (Material); and
 - 28.4.2 does not apply to any Commonwealth Material incorporated into the Contract Material.

SECTION E - INFORMATION AND SECURITY

29. CONFIDENTIAL INFORMATION

- 29.1 The Parties must not, without prior Notice of consent from the other Party:
- 29.1.1 use any Confidential Information of the other Party except for the purposes of this Contract; and
 - 29.1.2 disclose any Confidential Information of the other Party to a third party.
- 29.2 In giving written consent to use or disclose the Department's Confidential Information, the Department may impose such conditions as it thinks fit, and the Contractor must comply with these conditions.
- 29.3 If the Contractor becomes subject to a legal Obligation to provide any Confidential Information of the Department to a third party, the Contractor must immediately:
- 29.3.1 Notify the Department;
 - 29.3.2 take all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information; and
 - 29.3.3 assist and cooperate with the Department if the Department seeks to limit or resist the requirement for the Confidential Information to be disclosed.
- 29.4 If the Contractor becomes aware that any Confidential Information of the Department may have been lost, stolen, accessed or used in a manner inconsistent with this clause 29, or any suspected or possible breach of this Contract, the Contractor must:
- 29.4.1 immediately Notify the Department giving details of the suspected or possible breach;
 - 29.4.2 do everything necessary to remedy the unauthorised access to, use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of this clause 29;
 - 29.4.3 comply with all written directions from the Department in relation to the actual, suspected or possible breach of this clause 29; and
 - 29.4.4 give the Department all assistance required in connection with proceedings which the Department may institute against any person for breach of confidence or otherwise.
- 29.5 The Contractor must ensure that each member of its Personnel who may have access to any Confidential Information of the Department is (before being given access to that Confidential Information) briefed on or otherwise made aware of the fact that the wrongful disclosure of, or the misuse of, Confidential Information would be a breach of this Contract.
- 29.6 The Department may at any time require:
- 29.6.1 the Contractor's Personnel and Subcontractors; or
 - 29.6.2 any person with a Third Party Interest,

to give a written undertaking in a form reasonably required by the Department relating to the use and non-disclosure of the Department's Confidential Information.

- 29.7 If the Contractor receives a request under clause 29.6, it must promptly arrange for all such undertakings to be given.
- 29.8 The obligations on the Parties under this clause 29 will not be taken to have been breached to the extent that Confidential Information:
- 29.8.1 is disclosed by a Party in order to comply with obligations, or exercise rights, under this Contract, including the exercise of a Party's IPR in relation to Material that includes the Confidential Information;
 - 29.8.2 is disclosed by a Party's internal management Personnel, solely to enable effective management or auditing of Contract related activities;
 - 29.8.3 is disclosed to any Commonwealth Minister, or the Minister's advisers;
 - 29.8.4 without limiting the application of this clause 29.8, is disclosed:
 - 29.8.4.1 in order to comply with the requirements of any regulatory body;
 - 29.8.4.2 in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted by the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Australian Information Commissioner or the Privacy Commissioner pursuant to clause 41; or
 - 29.8.4.3 in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth;
 - 29.8.5 is authorised or required by Law to be disclosed;
 - 29.8.6 is shared by the Department within the Department's organisation, or with another agency, where this serves the legitimate interests of the Department; or
 - 29.8.7 is in the public domain otherwise than due to a breach of this clause 29.
- 29.9 Where a person discloses Confidential Information to another person pursuant to clauses 29.8.1, 29.8.2, 29.8.3, or 29.8.4, the disclosing person must notify the receiving person that the information is confidential.
- 29.10 The obligations under this clause 29 continue after the expiry or termination of this Contract unless specified otherwise in relation to particular Confidential Information in Schedule 4 (Confidential Information).

Reporting Obligations and Disclosures

- 29.11 The Contractor permits the disclosure of information related to this Contract for various reporting and Department disclosure obligations. These disclosures include:
- 29.11.1 disclosure of procurement information for the Department's annual reporting purposes;
 - 29.11.2 disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
 - 29.11.3 disclosure of information consistent with the *Freedom of Information Act 1982* (Cth);
 - 29.11.4 disclosure of information consistent with the *Ombudsman Act 1976* (Cth);
 - 29.11.5 disclosure of discoverable information that is relevant to a case before a court; and
 - 29.11.6 disclosure of information as required under other Law or Commonwealth policy.
- 29.12 The Contractor must provide all reasonable assistance to the Department with regard to the release of the Contractor's Confidential Information where disclosure may be required for the purposes of the Department's Parliamentary reporting and accountability obligations.

30. PROTECTION OF PERSONAL INFORMATION

Application of Clause

- 30.1 This clause 30 applies only to the extent that the Contractor deals with Personal Information in providing the Requirement under this Contract.

Interpretation of this Clause

- 30.2 In this clause 30, the following terms have the same meaning as they have in the *Privacy Act 1988* (Cth) (the **Privacy Act**):
- 30.2.1 an agency;
 - 30.2.2 overseas recipient;
 - 30.2.3 APP code;
 - 30.2.4 CR code;
 - 30.2.5 Contractor;
 - 30.2.6 Eligible Data Breach; and
 - 30.2.7 APPs (Australian Privacy Principles).

Obligations of Contractor in relation to Personal Information

- 30.3 The Contractor acknowledges that it is a contracted Contractor and agrees, in providing the Requirement under this Contract:
- 30.3.1 to use or disclose Personal Information obtained in the course of providing Requirement under this Contract only for the authorised purposes of this Contract;
 - 30.3.2 to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - 30.3.3 not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an APP;
 - 30.3.4 to comply with the APPs, any registered APP code or registered CR code that is applicable to the Contractor;
 - 30.3.5 to comply with APP 5 by notifying the individuals where Personal Information is being, or has been collected about the individuals. Unless otherwise provided by the Privacy Act, the Contractor must notify or make the individual/s aware that important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of Personal Information, including sensitive information, can be located in the Department's Privacy Notice Form (Form 1442i);
 - 30.3.6 not to use or disclose Personal Information in breach of APP 7 (Direct marketing) of the Privacy Act (where applied to the Contractor), unless the information was collected for the purpose of meeting, directly or indirectly, an obligation under this Contract and the use or disclosure is necessary to meet, directly or indirectly, such an obligation under this Contract;
 - 30.3.7 to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Contract that are inconsistent with a registered APP code binding a party to this Contract or with an APP);
 - 30.3.8 to comply with the APPs in relation to the collection, use, disclosure, storage and destruction or de-identification of Personal Information, when disclosure is made to an overseas recipient;
 - 30.3.9 to not transfer Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the Department. But, for the avoidance of doubt, the parties hereby agree and confirm that the Contractor shall be permitted to transfer Personal Information to an approved Subcontractor specified Item 8 of the Contract Details in accordance with Australian Privacy Principle (APP) 8 for the purpose of performing and providing the Services under this Contract;

[Note: the Contractor is aware that under section 16C of the Privacy Act, the Contractor is accountable for an act or practice of the approved overseas Subcontractors that would breach the APPs]
 - 30.3.10 if the Department approves the transfer of Personal Information outside Australia or access of it to parties outside Australia, to ensure the overseas recipient implements a data breach response plan which includes a mechanism for notifying

- the Department where there are reasonable grounds to suspect a data breach and outlines appropriate remedial action;
- 30.3.11 to notify individuals whose Personal Information is held by the Contractor or a Subcontractor, as the case may be, of the complaints mechanism outlined in the Privacy Act that may apply to the Contractor;
- 30.3.12 to notify the Department immediately if the Contractor:
- a. becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 30, whether by the Contractor or a Subcontractor;
 - b. becomes aware that a disclosure of Personal Information may be required by law; or
 - c. is approached by the Information Commissioner, or by any individual to whom any Personal Information held by the Contractor or a Subcontractor relates, in respect of Personal Information.
- 30.3.13 to cooperate with any reasonable request or direction of the Department in relation to an inquiry, audit or other exercise of powers and functions, by the Information Commissioner under the Privacy Act;
- 30.3.14 to comply with any directions, guidelines, determinations or recommendations relating to the use or disclosure of Personal Information publicly available or Notified to the Contractor by the Department Project Officer;
- 30.3.15 to destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected upon written notice from the Department; and
- 30.3.16 to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 30.
- 30.4 Without limiting clause 30.3, if the Contractor becomes aware that there are reasonable grounds to suspect that there may have been, or where the Department notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Requirement, the Contractor must:
- 30.4.1 notify the Department in writing as soon as possible, which must be no later than within three (3) days of becoming aware;
 - 30.4.2 take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - 30.4.3 unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the Privacy Act; and
 - 30.4.4 take any action as reasonably directed by the Department.
- 30.5 The Contractor must ensure that any Subcontract entered into by the Contractor for the purpose of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Contractor has under this clause 30 (including this requirement in relation to Subcontracts). The Contractor agrees to indemnify the Department against any Loss, Liability

or expense suffered or incurred by the Department which arises directly or indirectly from a breach of any of the Contractor's or Subcontractor's obligations referred to in clause 30.

- 30.6 The provisions of this clause 30 survive termination or expiration of this Contract.

31. SECURITY REQUIREMENTS

- 31.1 In this clause 31:

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:

- (a) Official Information;
- (b) people who work for or with the Commonwealth; and
- (c) assets belonging to (even if in the possession of the contractor) or in the possession of the Commonwealth;

Protective Security Policy Framework is Australia's protective security policy, amended from time to time, organised in a tiered, hierarchical structure developed to be read in its entirety following the structure outlined in a diagram at <http://protectivesecurity.gov.au/PSPF/pages/default.aspx>;

Security Classified Information means Official Information that, if compromised, could have adverse consequences for the Commonwealth; and

Security Incident means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

General Security Obligations

- 31.2 The Contractor must ensure that its Personnel comply with:

- 31.2.1 all relevant security requirements specified in the Australian Government Protective Security Framework and the Department's security policies and procedures;
- 31.2.2 the security requirements specified Schedule 1 (Statement of Requirement); and
- 31.2.3 any variations or additions to these security requirements that the Commonwealth (in its absolute discretion) Notifies the Contractor in writing, from the date specified in the Notice (or five (5) Business Days after it receives the Notice if no date is specified).

- 31.3 The Contractor acknowledges that in performing the Contract, it may become subject to certain statutory provisions relating to security and security issues, and must ensure that its Personnel are aware of, and comply, with those statutory provisions.

- 31.4 Subject to clause 44, the Contractor may apply to the Department for a variation in the Contract Charges if the Contractor can substantiate that changes to the security requirements pursuant to clause 31.2.3 have cost implications for it.

Personnel Security

- 31.5 To comply with the eligibility requirements of the Protective Security policy framework, security clearances for access to security classified resources must not be provided to anyone who is not an Australian citizen.
- 31.6 All individuals who require non-public access to the Department's resources (including ICT systems, information and facilities), or any individual lawfully directed in accordance with the *Australian Border Force Act 2015* (Cth), must undergo employment suitability screening and be granted an Employment Suitability Clearance (ESC) as well as hold a minimum baseline security clearance.
- 31.7 The Contractor must not permit any of its Personnel to have any access to any security classified resources, or any of the Department premises, information or systems (which are not publicly available), unless:
- 31.7.1 that person(s) has been assessed and cleared by the Department's Employment Suitability Clearance Team and cleared by the Australian Government Security Vetting Agency AGSVA); and
 - 31.7.2 the Department Project Officer has given written authority for the Contractor's Personnel to access such resources, premises, information and systems.
- 31.8 Contractor Personnel that are proposed to deliver services to Department sites must have been assessed and received a minimum baseline security clearance provided by AGSVA.
- 31.9 The Contractor must ensure that at all times during the term of this Contract a sufficient number of its Personnel hold the appropriate security level to enable efficient provision of the Services.
- 31.10 The Contractor must inform the Department Project Officer immediately upon becoming aware that any person has had their security clearance revoked or denied by AGSVA.
- 31.11 The Contractor must provide any information to the Department Project Officer, as reasonably requested for the Department to undertake reasonable investigations for the purposes of this clause.
- 31.12 The Department may, from time to time, Notify the Contractor that particular Personnel must hold a particular level of Department security clearance and the Contractor must comply with, and ensure its Personnel act in accordance with, that Notice.
- 31.13 Unless otherwise specified in Schedule 2 (Contract Charges and Expenses), the Contractor is responsible for all costs associated with obtaining security clearances or obtaining authorisation under this clause 31.

Information Security

- 31.14 The Contractor agrees not to permit any of its Personnel to have any access to Security Classified Information unless:
- 31.14.1 the relevant person satisfies the personnel security requirements at clauses 31.7 to 31.13;
 - 31.14.2 the Department has given prior written authorisation; and

- 31.14.3 the relevant person has undergone any training specified in Schedule 1 (Statement of Requirement) relating to access and use of Security Classified Information.
- 31.15 The Contractor must inform the Department immediately if it becomes aware that any unauthorised person has had access to Security Classified Information.
- 31.16 The Contractor must not provide any part of the Requirement outside Australia, or transfer Security Classified Information outside Australia, without the Department's prior written approval. But, for the avoidance of doubt, the parties hereby agree and confirm that the contractor shall be permitted to provide any part of this requirement via an approved Subcontractors specified in Item 8 of the Contract Details, provided that the Contractor ensures the Subcontractors comply with the Information Security requirements set out in clauses 31.14 -31.18.
- 31.17 The Contractor and its Personnel must handle any information received from the Department under this Contract in accordance with all Commonwealth legislative requirements, directions and policies, including but not limited to:
- 31.17.1 Parts 5.3 and 5.6 of the *Criminal Code Act 1995* (Cth);
- 31.17.2 Section 91.1 and Part 10.7 of the *Criminal Code Act 1995* (Cth);
- 31.17.3 *Privacy Act 1988* (Cth); and
- 31.17.4 *Freedom of Information Act 1982* (Cth).
- 31.18 The Contractor must draw all Commonwealth legislative requirements, directions and policies addressing the handling of information received from the Department to the attention of all Personnel involved in providing the Requirement.

Physical Security

- 31.19 The Contractor may only access the Department's premises if it:
- 31.19.1 has the Department's written authorisation; and
- 31.19.2 complies with the Department's requirements set out in this Contract or otherwise Notified by the Department.
- 31.20 The Contractor must ensure that its facilities for storing the Department's security information and resources:
- 31.20.1 Classified up to and including PROTECTED is built to Zone 2 level as defined in the Australian Government's Physical Security Management Guidelines – Security Zones and Risk Mitigation Control Measures, and stored in a Class 'C' security container; or
- 31.20.2 Classified SECRET is built to Zone 4 level as defined in the Australian Government's Physical Security Management Guidelines – Security Zones and Risk Mitigation Control Measures, and stored in a Class 'B' security container.
- 31.21 The Contractor's facilities must have the capability of increasing the security Zone to a higher level:

- 31.21.1 As advised by the Department;
 - 31.21.2 Subject to a Protective Security Risk Assessment conducted by the Department; and
 - 31.21.3 Certified by the Department's Agency Security Adviser.
- 31.22 The Contractor must ensure that its Personnel safeguard any keys, passwords, building passes or other Material detailing access arrangements that are provided to the Contractor for the purposes of this Contract.
- 31.23 The Contractor must protect any Official Resources it possesses or controls to the same extent as if it were the Department, including ensuring that unauthorised persons cannot access any Official Information.

Security Reports

- 31.24 The Contractor must Notify the Department immediately if it becomes aware that a Security Incident has occurred.
- 31.25 The Contractor must supply written security reports to the Department in a form and at the times specified in Schedule 1 (Statement of Requirement), including the following information:
- 31.25.1 all Security Incidents, including steps taken by the Contractor to address these;
 - 31.25.2 perceived security problems;
 - 31.25.3 where appropriate, recommendations for security improvements;
 - 31.25.4 proposed and actual changes of Personnel; and
 - 31.25.5 any other information which the Department reasonably requires.

Training

- 31.26 The Contractor must, upon request by the Department, ensure that its Personnel undertake the training specified in Schedule 1 (Statement of Requirement) or as Notified by the Department.

32. IMMIGRATION AND BORDER PROTECTION WORKERS

- 32.1 The Contractor acknowledges that it, its employees and Contracted Persons (including the Specified Personnel) may be Immigration and Border Protection Workers as determined by the Secretary or Australian Border Force Commissioner under section 5 of the *Australian Border Force Act 2015* (Cth).
- 32.2 The Contractor acknowledges that Immigration and Border Protection Workers must comply with:
- 32.2.1 requirements and directions that may be issued under Part 5 of the *Australian Border Force Act 2015* (Cth) relating to alcohol and drug tests;
 - 32.2.2 secrecy and disclosure provisions in Part 6 of the *Australian Border Force Act 2015* (Cth);

- 32.2.3 Directions given by the Secretary or the Australian Border Force Commissioner to Immigration and Border Protection Workers from time to time, which may include directions about security clearances, drugs and alcohol, mandatory reporting and professional standards or other matters;
 - 32.2.4 any other obligations under the *Australian Border Force Act 2015* (Cth);
 - 32.2.5 Departmental policies issued by the Department to Immigration and Border Protection workers, as applicable.
- 32.3 The Contractor must ensure that its employees and Contracted Persons who are Immigration and Border Protection Workers are aware of and comply with their obligations under the *Australian Border Force Act 2015* (Cth) and applicable Departmental policies.
- 32.4 At the Commencement Date, the directions and Departmental policies applicable to the Departments Workers are identified at Schedule I of this Contract. The directions and policies are available on an ongoing basis on the following Department website: <https://www.homeaffairs.gov.au/about/access-accountability/integrity>.
- 32.5 The Contractor must include written terms and conditions in any agreement that it enters into with Contracted Persons, obliging such Contracted Persons, if they are Immigration and Border Protection Workers, to:
- 32.5.1 Be aware of and comply with their obligations under the *Australian Border Force Act 2015* (Cth) and applicable Departmental directions and policies;
 - 32.5.2 Ensure that their employees and Contracted Persons are aware of and comply with their obligations under the *Australian Border Force Act 2015* (Cth) and applicable Departmental policies; and
 - 32.5.3 Ensure that they have the right to cease the involvement of their employees and Contractor Personnel in the performance of the Services or the Requirement, if so requested by the Department under this clause.
- 32.6 If the Contractor or its employees or Contracted Persons, including the Specified Personnel:
- 32.6.1 breach this clause;
 - 32.6.2 fail at any time to comply with their obligations under the *Australian Border Force Act 2015* (Cth) or applicable Departmental policies; or
 - 32.6.3 fail to exercise any right to cease the involvement of any of their employees or Contracted Persons in the performance of the Services or the Requirement, if so requested by the Department under this clause,
- then the Department may (without limiting or affecting the Department's rights at law or otherwise), by written notice, in its absolute discretion:
- 32.6.4 require that the Contractor immediately cease the involvement of specified employees or Contracted Persons, including Specified Personnel, in the performance of all or part of the Services or the Requirement;
 - 32.6.5 immediately revoke its approval of a Subcontractor under this Contract; or

- 32.6.6 immediately terminate this Contract, whether or not the breach, failure or conduct is capable of being remedied,
- without liability and at no additional cost to the Commonwealth.
- 32.7 Without limiting or affecting the Department's rights at law or otherwise, the Department may also claim damages in connection with any of the matters set out in clause 32.6.
- 32.8 The Contractor acknowledges that the Commonwealth's rights under this clause are in addition to the rights of the Secretary and the Australian Border Force Commissioner under section 57 of the *Australian Border Force Act 2015* (Cth), and in particular their rights to require that persons cease to perform services for the Department or to terminate this Contract.
- 32.9 Any termination of this Contract by the Secretary or the Australian Border Force Commissioner under section 57 of the *Australian Border Force Act 2015* (Cth) is also a valid termination under the terms and conditions of this Contract.

SECTION F - RISKS

33. CONFLICT OF INTEREST

33.1 In this clause 33:

Conflict means any matter, circumstance, interest, or activity affecting the Contractor (including its Personnel) which may or may appear to impair the ability of the Contractor to provide the Requirement to the Department diligently and independently.

33.2 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict that has not been disclosed to the Department exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its Personnel.

33.3 The Contractor must not, and must ensure that its Personnel do not, engage in any activity that is likely to give rise to a Conflict.

33.4 If a Conflict arises, or appears likely to arise, during the Term the Contractor agrees to:

33.4.1 Notify the Department immediately;

33.4.2 to make full disclosure of all relevant information relating to the Conflict; and

33.4.3 to take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

34. s. 47(1)(b)

34.1 The Contractor must maintain and implement the following approved Plans at Schedule 7:

34.1.1

s. 47(1)(b)

34.1.2

34.2 The Contractor must review and update the Plans at Schedule 7 for the Department's approval every 12 months in accordance with clause 18 and:

34.2.1

s. 47(1)(b)

34.2.2

34.3 The Contractor must, and must ensure all Contractor Personnel and Subcontractors (where relevant), comply with their obligations with respect to:

34.3.1

s. 47(1)(b)

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34.3.2 s. 47(1)(b)

34.4 Without limiting clause 34.1.1 in relation to s. 47(1)(b):

34.4.1 s. 47(1)(b)

34.4.2 s. 47(1)(b)

34.4.3 the Department is not required to disclose information which has been provided to it by other Commonwealth Agencies or the Commonwealth which is subject to express or implied restrictions on disclosure.

34.5 Without limiting clause 34.1.2, in relation to s. 47(1)(b):

34.5.1 the Contractor must conduct an exercise or test of the procedures set out in the s. 47(1)(b) on an annual basis and provide assurance in writing to the Department that its s. 47(1)(b) complies with this Contract; and

34.5.2 report to the Department:

34.5.2.1 the results of the annual exercise or testing of the s. 47(1)(b) referenced in clause 34.5.1 within one week after the conclusion of the exercise or test and results; and

34.5.2.2 the results of any detailed damage assessment conducted by the Contractor, including recommendations for improvement, following a business interruption within 48 hours after the s. 47(1)(b)

34.6 The Department may conduct, or engage a third party auditor to conduct, an audit of the Contractor's compliance with the Plans at Schedule 7.

35. WARRANTIES

Application of general warranties

35.1 The general warranties provided under this clause 35:

35.1.1 will survive the termination or expiry of this Contract; and

35.1.2 are in addition to, do not limit and are not limited by any other warranties provided by the Contractor under this Contract.

Contractor has informed itself

35.2 The Contractor warrants that:

- 35.2.1 it has done everything possible to inform itself fully and completely as to:
 - 35.2.1.1 the requirements in this Contract;
 - 35.2.1.2 the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Contract; and
 - 35.2.1.3 all things necessary for delivery and management of this Contract and the performance of the Contractor's obligations under this Contract;
- 35.2.2 it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- 35.2.3 it does not rely on any representation, warranty, condition or other conduct, information, statement or document which may have been made by the Department or any person purporting to act on behalf of the Department in entering into this Contract, other than an express warranty contained in this Contract.

Contractor skill and quality

- 35.3 The Contractor represents and warrants that it has, and its Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Requirement in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Contract and meets the Department's requirements in full.

Contractor's right to grant licences

- 35.4 The Contractor warrants that it has the right to grant all licences granted pursuant to this Contract.

Contractor's right to enter this Contract

35.5 The Contractor warrants that:

- 35.5.1 it has the right to enter into this Contract;
- 35.5.2 it has:
 - 35.5.2.1 full corporate power and authority; and
 - 35.5.2.2 all rights, title, licences, interests and property necessary,to lawfully enter into, perform and observe its obligations under this Contract;
- 35.5.3 the execution, delivery and performance of this Contract by the Contractor has been duly and validly authorised by all necessary corporate action; and

35.5.4 the Contractor's signing, delivery and performance of this Contract does not constitute:

35.5.4.1 a violation of any judgment, order or decree;

35.5.4.2 a material default under any agreement which relates in any way to the provision of the Requirement; or

35.5.4.3 an event that would, with notice or lapse of time, constitute such a default.

Contractor's disclosure of proceedings and matters

35.6 The Contractor warrants that it has disclosed in writing prior to the Commencement Date any matter that may affect the Contractor's reputation or capability or ability to perform and fulfil its obligations under this Contract, including:

35.6.1 any relevant litigation, arbitration, mediation, conciliation, proceeding or investigation that is taking place, pending or threatened (either in Australia or overseas); and

35.6.2 any relevant matters relating to the commercial, technical or financial capacity of the Contractor or of any Subcontractor proposed to be engaged in respect of this Contract.

Solvency

35.7 The Contractor warrants that:

35.7.1 it is solvent and there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and

35.7.2 no Controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

Bribery of foreign public officials

35.8 The Contractor warrants that it has not provided, offered or promised a benefit to another person that is not legitimately due to that person with the intention of influencing a foreign public official in the exercise of his or her duties in order to obtain or retain business or a business advantage not legitimately due to its recipient.

35.9 For the purposes of clause 35.8:

35.9.1 expressions defined in section 70.1 of the *Criminal Code Act 1995* (Cth) have the meanings given to those expressions in that section; and

35.9.2 the warranty in paragraph (i) does not apply to conduct that is lawful in the foreign public official's country (as set out in section 70.3 of the *Criminal Code Act 1995*) or facilitation payments (as set out in section 70.4 of the *Criminal Code Act 1995*) that are notified to the other Party.

Contractor's compliance with Australian Government Policy

35.10 The Contractor warrants that:

- 35.10.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
- 35.10.2 it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment account; and
- 35.10.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list.

Third party warranties

35.11 If the Contractor supplies any items that have been procured from a third party, or that incorporate or rely on goods or services that have been procured from a third party, the Contractor assigns to the Department, to the extent permitted by Law, the benefits of any warranties given by the third party. This assignment does not in any way relieve the Contractor of the Obligation to comply with warranties offered directly by the Contractor under this Contract.

Contractor warranty not to rely on proportionate liability

35.12 The Contractor warrants that, to the extent permitted by law, it will not invoke or rely on the *Civil Law (Wrongs) Act 2002* (ACT) Chapter 7A or other State or Territory proportionate liability legislation.

36. INDEMNITY

36.1 The Contractor must at all times indemnify the Department and its Personnel from and against any Loss or Liability incurred as a consequence of a Claim (including costs and expenses of defending or settling any Claim referred to above) in connection with;

- 36.1.1 loss of or damage to property of those indemnified or any other person;
- 36.1.2 personal injury or death of any person;
- 36.1.3 any other Liability owed by those indemnified to any other person,

arising from or as a consequence of:

- 36.1.4 any act or omission by the Contractor or its Personnel in connection with this Contract;
- 36.1.5 any breach by the Contractor of its Obligations or warranties under this Contract;
- 36.1.6 any unauthorised use or disclosure by the Contractor, its Personnel, or Subcontractors of Personal Information held or controlled in connection with this Contract; or
- 36.1.7 the use by those indemnified of the Contract Material, Existing Contractor Material.

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Third Party Material or other Auxiliary Material provided by it (including in respect of any infringement of Intellectual Property Rights in that Material).

- 36.2 The right to be indemnified under clause 36.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law.
- 36.3 This clause 36 will survive seven (7) years after the expiration or termination of this Contract.
- 36.4 The benefit of this indemnity clause is held by the Department on trust for those indemnified.

37. LIABILITY

Limitation

- 37.1 The Liability of each Party arising out of or in connection with this Contract (including any indemnity) is, subject to clause 37.2, limited to the amount (if any) specified in Item 10 of the Contract Details. If Item 10 of the Contract Details is not used or no amount is specified, the Liability of each Party arising out of or in connection with this Contract (including under an indemnity) is not limited.
- 37.2 Any limit on the Liability of each Party under clause 37.1 does not apply in relation to:
 - 37.2.1 Liability relating to personal injury (including sickness and death);
 - 37.2.2 Liability relating to loss of, or damage to, property;
 - 37.2.3 Liabilities owed to a third party;
 - 37.2.4 any infringement of Intellectual Property Rights;
 - 37.2.5 a breach of any Obligation of confidentiality, security matter or privacy; or
 - 37.2.6 any breach of any Law or any wilfully wrongful act or omission, including, in the case of the Contractor, any act or omission that constitutes repudiation of this Contract.
- 37.3 Unless specified otherwise in Item 10 of the Contract Details, any limitation of Liability in clause 37.1 applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

Review of limitation

- 37.4 The Parties acknowledge that the limitation of Liability (if any) specified in Item 10 of the Contract Details may be subject to review in the event that this Contract is varied or extended.
- 37.5 For the avoidance of doubt, a Party may require a review of the limitation of Liability specified in Item 10 of the Contract Details as a condition of its acceptance to a variation request under clause 44, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that Party's risk exposure arising out of that variation.

Contribution

- 37.6 The Liability of a Party (**Party A**) for any Losses incurred by another Party (**Party B**), including under an indemnity, will be reduced proportionately to the extent that Party A demonstrates

that:

- 37.6.1 any negligent act or omission of Party B (or of its Personnel); or
- 37.6.2 any failure by Party B to comply with its Obligations, warranties and responsibilities under this Contract,

contributed to those Losses.

38. INSURANCE

Obligation to maintain insurance

- 38.1 In connection with the provision of the Requirement, the Contractor must effect and maintain valid and enforceable insurance policies of the types for the amounts set out in Item 12 of the Contract Details and otherwise in accordance with this clause 38.
- 38.2 The insurance policies referred to in clause 38.1 must be maintained for the Term unless specified otherwise in Item 12 of the Contract Details.
- 38.3 With the exception of the workers compensation insurance, the insurances referred to in clause 38.1 must be effected with insurers with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Department, acting reasonably.
- 38.4 The Contractor must ensure that its Subcontractors are insured as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, in a manner consistent with the requirements of this clause 38 as if they were the Contractor.

Evidence of insurance

- 38.5 The Contractor must, upon request by the Department, provide evidence that it has current insurance policies which comply with the requirements of this clause 38 to the Department.

Notices

- 38.6 The Contractor must, in respect of the insurances required by this clause 38:
 - 38.6.1 promptly inform the Department if it becomes aware of any actual, threatened or likely claims which could materially reduce the available limits of indemnity or which may involve the Department, and must reinstate or replace any depleted aggregate limit resulting from claims that are unrelated to the work under this Contract, if requested to do so in writing by the Department; and
 - 38.6.2 do everything reasonably required by the Department to enable the Department to claim and to collect or recover monies due under any insurance policy.

39. FINANCIAL SECURITY

- 39.1 The Contractor must provide a financial security in accordance with this clause 39 in the amount set out, and by the date set out in Item 13 of the Contract Details.
- 39.2 The security provided under clause 39.2 must be:

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- 39.2.1 unconditional and irrevocable;
- 39.2.2 issued by a bank or financial institution acceptable to the Department;
- 39.2.3 in the form set out at Schedule 10.
- 39.3 The security will be released by the Department within 10 Business Days after the release event set out in Item 13 of the Contract Details occurs.
- 39.4 The Department's rights under the security will be exercisable by the Department for either or both of the following:
 - 39.4.1 to obtain compensation for Loss suffered in the event that the Contractor fails to perform this Contract, including upon termination of this Contract; or
 - 39.4.2 to recover any debts due to the Department in relation to the Contract.
- 39.5 If the Contractor fails to provide or maintain any security required by this clause 39, the Department may withhold all or part of any payment under this Contract until the Contractor meets those obligations.
- 39.6 If the Department exercises any or all of its rights under the security provided under this clause 39, the Department will not be liable for, and the Contractor must release the Department from liability for, any resultant loss or damage to the Contractor.
- 39.7 The rights of the Department to recover from the Contractor the balance, after draw down or exercise of the security provided for under this clause 39, of loss or damage suffered by the Department will not be limited by the Department's exercise of that security.

SECTION G - ACCESS AND AUDIT

40. BOOKS AND RECORDS

- 40.1 The Contractor must at all times maintain full, true, accurate and up-to-date accounts and records relating to this Contract. Such accounts and records must:
- 40.1.1 include appropriate audit trails for transactions performed;
 - 40.1.2 record all receipts and expenses in relation to the provision of the Requirement;
 - 40.1.3 record all other matters on which the Contractor is required to report by this Contract;
 - 40.1.4 be kept in a manner that permits them to be conveniently and properly audited, and enable the Contract Charges and any other amounts payable to be determined;
 - 40.1.5 comply with any applicable Australian Accounting Standards; and
 - 40.1.6 be made available to the Department as required for:
 - 40.1.6.1 monitoring and reviewing the performance of the Contractor's obligations under this Contract, including being available for audit and access in accordance with clauses 41 and 42; and
 - 40.1.6.2 the Department to satisfy its reporting and record keeping obligations under the *Public Governance, Performance and Accountability Act 2013*.
- 40.2 The Contractor must securely retain, and require its Subcontractors to securely retain, for a period of seven (7) years after termination or expiration of this Contract, all accounts and records referred to in clause 40.1.
- 40.3 The Contractor agrees to comply with any reasonable directions from the Department with respect to any applicable Commonwealth, State or Territory Laws relating to archival requirements.
- 40.4 The Contractor must bear its own costs of complying with this clause 40.
- 40.5 This clause 40 applies for the Term and for a period of seven (7) years from the termination or expiry of this Contract.

41. ACCESS TO PREMISES

- 41.1 The Contractor must allow:
- 41.1.1 the Department Project Officer;
 - 41.1.2 the Australian National Audit Office;
 - 41.1.3 the Privacy Commissioner or his or her delegate;
 - 41.1.4 the Australian Information Commissioner or his or her delegate;

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41.1.5 the Commonwealth Ombudsman or his or her delegate; and

41.1.6 other persons authorised by the Department Project Officer,

to access the Contractor's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Contractor's possession or control, for purposes associated with this Contract or any review of performance under the Contract.

41.2 The rights referred to in clause 41.1 are subject to:

41.2.1 the provision of reasonable prior Notice to the Contractor;

41.2.2 compliance with the Contractor's reasonable security procedures;

41.2.3 each party bearing its own cost arising out of or in connection with any access or inspection; and

41.2.4 if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor's Confidential Information.

41.3 The Contractor must ensure that any Subcontract contains an equivalent clause granting the rights specified in clauses 40 and 41.

41.4 This clause 41 applies for the Term and for a period of seven (7) years from the date of expiration or termination of the Contract.

42. ADDITIONAL ACCESS TO DOCUMENTS

42.1 This clause 42 applies only if this Contract is a Commonwealth Contract.

42.2 Where the Department has received a request for access to a document created by, or in the possession of, the Contractor or any Subcontractor that relates to the performance of this Contract (but not to the entry into this Contract), the Department may at any time by giving Notice require the Contractor to provide the document to the Department and the Contractor must, at no additional cost to the Department, promptly comply with the Notice but in any event no later than fourteen (14) days from the date of receipt of the Department's request.

42.3 The Contractor must include in any Subcontract provision that will enable the Contractor to comply with its obligations under this clause 42.

43. RECOVERY OF POSSESSION OF PROPERTY

43.1 If an Insolvency Event occurs in relation to the Contractor or this Contract is terminated or expires, the Department will be entitled to immediately take possession of any property owned by the Department in the possession of the Contractor or a Subcontractor.

43.2 The Contractor grants to the Department a right for any person authorised by the Department to enter any premises occupied by the Contractor to remove any property owned by the Department, in the circumstances contemplated in clause 43.1, including by detaching them from any item to which they may be attached, or by detaching them from any land to which they may be fixed.

- 43.3 The Contractor must ensure that each Subcontractor that has possession of any property owned by the Department grants to the Department a right for a person authorised by the Department to enter any premises occupied by the Subcontractor on the same terms as clause 43.2.
- 43.4 This clause survives the termination of this Contract.

SECTION H - CHANGES TO THE CONTRACT, DISPUTE RESOLUTION AND TERMINATION

44. VARIATION OF THIS AGREEMENT

- 44.1 No variation of this Contract will be of any force or effect unless it is in writing and signed by the Parties.
- 44.2 The Parties must follow the processes in Schedule 5 (CHANGE PROCESS) if either Party wishes to vary the Contract.
- 44.3 Any changes to the Contract Charges and Expenses associated with a variation of this Contract must:
 - 44.3.1 not exceed any reasonable additional cost; and
 - 44.3.2 take fully into account any reduction in cost.
- 44.4 Any variation to this Contract takes effect from the date on which the Parties execute the necessary document to implement that change unless another date for commencement of the variation is specified in that document.

45. DISPUTE RESOLUTION

- 45.1 The Parties agree that any dispute arising during the course of this Contract will be dealt with as follows:
 - 45.1.1 the Party claiming that there is a dispute will send to the other a Notice setting out the nature of the dispute;
 - 45.1.2 the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to senior management of the Parties with authority to intervene and direct some form of resolution;
 - 45.1.3 the Parties have ten (10) Business Days from the sending of the Notice (or such other time as is agreed by the Parties) to reach a resolution or to agree that the dispute will be referred to mediation or some other form of alternative dispute resolution procedure; and
 - 45.1.4 either Party may commence legal proceedings if:
 - 45.1.4.1 there is no resolution or agreement within the period referred to in clause 45.1.3 and the Parties have not agreed to refer the dispute to mediation or some other form of alternative dispute resolution procedure; or
 - 45.1.4.2 there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission (or such extended time as the Parties may agree in writing before the expiration of the fifteen (15) Business Days).
- 45.2 Despite the existence of a dispute, the Contractor must continue to provide the Requirement unless Notified otherwise by the Department.

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- 45.3 Clause 45.1 does not apply to:
- 45.3.1 action by either Party under or purportedly under clause 46;
 - 45.3.2 action by the Department under or purportedly under clause 19.5 or 47; or
 - 45.3.3 either Party commencing legal proceedings for urgent interlocutory relief.

46. TERMINATION FOR DEFAULT

- 46.1 If a Party fails to perform any obligation under this Contract, other Party may (without limitation to any other remedy available at Law):
- 46.1.1 if it considers that the failure is not capable of remedy – terminate this Contract immediately by Notice; or
 - 46.1.2 if it considers that the failure is capable of remedy – give Notice requiring that the failure be remedied within the time specified in the Notice and, if the failure is not remedied within that time, terminate this Contract immediately by giving a second Notice.
- 46.2 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:
- 46.2.1 an Insolvency Event occurs in respect of the Contractor;
 - 46.2.2 the Contractor fails to obtain or ceases to hold any Authorisation required to enable it to provide the Requirement or perform any of its Obligations;
 - 46.2.3 if the Contractor ceases for any reason to be able lawfully to provide the Requirement or perform any of its Obligations;
 - 46.2.4 if, in the Department's opinion, there is a Change of Control in relation to the Contractor without the prior written consent of the Department.
- 46.3 If a purported termination by the Department under this clause 46 is determined by a competent authority to be invalid for any reason, then that termination will be deemed to be a termination under clause 47, which has effect from the date of the notice of termination referred to in this clause 46.

47. TERMINATION FOR CONVENIENCE

- 47.1 The Department may, at any time by serving a minimum of three months notice and subject to the Contractor continuing to provide the Services during the transition out period stated in the Transition Out Plan terminate this Contract or reduce the scope of the Requirement.
- 47.2 Where there has been a termination under clause 47.1, the Department will be liable only:
- 47.2.1 to pay any Contract Charges or Expenses relating to those parts of the Requirement completed before the effective date of termination; and
 - 47.2.2 to reimburse any expenses reasonably and unavoidably incurred by the Contractor and directly attributable to the termination or reduction where the Contractor substantiates these amounts to the satisfaction of the Department Project Officer.

- 47.3 For the purposes of clause 47.2, the expenses reasonably and unavoidably incurred do not include any loss of profits, loss of business revenue, loss of opportunity, economic loss, indirect, special or consequential loss or any special or punitive damages.
- 47.4 The Department is not liable to pay compensation under clause 47.2 in an amount which would, in addition to any amounts paid or due or becoming due to the Contractor under this Contract, together exceed the Contract Charges.

48. GENERAL TERMINATION AND SCOPE REDUCTION PROVISIONS

- 48.1 Upon receipt of a Notice of termination or reduction, the Contractor agrees to:
- 48.1.1 stop (or reduce) work as specified in the Notice;
 - 48.1.2 comply with any directions given to the Contractor by the Department;
 - 48.1.3 take all available steps to minimise Loss resulting from that termination or reduction; and
 - 48.1.4 continue work on any part of the Requirement not affected by the Notice.
- 48.2 Where there has been a reduction in the scope of the Requirement, the Department's liability to pay the Contract Charges or Expenses under this Contract will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Requirement.
- 48.3 The Contractor must, and must ensure that all Subcontractors, deliver to the Department (or as directed by the Department) within 20 Business Days after receipt of a Notice of termination or reduction (or such other period agreed by the Department in writing) or upon the expiry of the Contract:
- 48.3.1 all documents and data in the possession of the Contractor or its Personnel which contain or relate to any Confidential Information or which are security classified;
 - 48.3.2 all Commonwealth Material in the possession of the Contractor or its Personnel;
 - 48.3.3 any other property owned by the Department in the possession of the Contractor or its Personnel.
- 48.4 The Contractor will not be entitled to compensation for loss of prospective profits