

s22

**From:** Paul Rubenstein <PRubenstein@abl.com.au>  
**Sent:** Thursday, 25 June 2020 1:03 PM  
**To:** s22  
**Cc:** s22; s22; s47E(d); s47F; s47F  
**Subject:** FW: Variation No.1 [SEC=No Protective Marking]  
**Attachments:** 25062020121020-0001.pdf

Dear s22

Further to your e-mail yesterday afternoon, I attach an executed copy of the Variation No.1. I look forward to receiving a countersigned copy once signed by the Department's delegate.

Many thanks for your assistance with this matter.

Kind regards,

Paul

Paul Rubenstein | Partner

Arnold Bloch Leibler  
Level 24, 2 Chifley Square, Sydney NSW 2000  
E: [prubenstein@abl.com.au](mailto:prubenstein@abl.com.au) | T: 61 2 9226 7222 | s47F | Vcard

Arnold Bloch Leibler supports Aboriginal and Torres Strait Islander recognition and the removal of racially discriminatory provisions in the Constitution.

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s22

**From:** s22  
**Sent:** Wednesday, 24 June 2020 9:57 AM  
**To:** s47F; s22; s22; s47E(d)  
**Cc:** s47F  
**Subject:** RE: ABM - Execution Contract [ME-ME.FID5569796] [SEC=OFFICIAL]

Hi s47F

s42

Kind regards  
s22

s22

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
T: s22 | E: s22@health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F  
**Sent:** Tuesday, 23 June 2020 5:42 PM  
**To:** s22; s22; s22; s47E(d)  
**Cc:** s47F  
**Subject:** FW: ABM - Execution Contract [SEC=OFFICIAL] [ME-ME.FID5569796]

Hi s22

Please see below requested variation from ABM' lawyers. s42

s42

Kind rgds

s47F

s47F  
s47F  
s47F  
s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on LinkedIn and Twitter



**From:** Paul Rubenstein <PRubenstein@abl.com.au>  
**Sent:** Tuesday 23 June 2020 05:02 PM  
**To:** s47F >  
**Cc:** s47F >; s47F >; s47F >  
**Subject:** FW: ABM - Execution Contract [SEC=OFFICIAL] [ME-ME.FID5569796]

Hi s47F

I refer to the attached contract, executed by the parties on 3 June 2020.

Our clients have requested ARTG 338029 (attached) be added to Schedule 1 of this agreement, such that clause 1(a)(ii) of Schedule 1 will read:

*"...listed on the Australian Register of Therapeutic Goods (ARTG Number 335386, 336993, 338029 or 337229 'Gown, isolation, single use') maintained by the Therapeutic Goods Administration;"*

In accordance with clause 22.3(c) of the this Agreement, could you please seek instructions from your clients that this is agreed and that no further variations to the agreement are required for this variation to take effect.

We look forward to receiving your client's confirmation shortly.

Kind regards,  
  
Paul

**Paul Rubenstein** | Partner  
  
Arnold Bloch Leibler  
Level 24, 2 Chifley Square, Sydney NSW 2000

E: [prubenstein@abl.com.au](mailto:prubenstein@abl.com.au) | T: 61 2 9226 7222 | M: s47F | Vcard

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MinterEllison has a [24-hour chatbot helpline](#) offering guidance on a range of COVID-19 related topics and a COVID-19 Hub [on our website](#).

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s22

**From:** s22  
**Sent:** Wednesday, 24 June 2020 6:01 PM  
**To:** 'PRubenstein@abl.com.au'  
**Cc:** s22; s22; s47E(d); s47F; s47F  
**Subject:** RE: ABM - Execution Contract [ME-ME.FID5569796] [SEC=OFFICIAL]  
**Attachments:** Variation No 1 ABM 24.6.20.pdf

Dear Paul,

I am a lawyer in the Department of Health and work closely with s47F at Minter Ellison, who has passed onto me your details and request for a minor variation.

I attach a Variation No 1 document that reflects the change you have asked for. Unless you require further changes, we would be grateful if you could arrange execution by your client and have a signed copy returned to me for execution by the Department's delegate.

I look forward to hearing from you. If you need to speak to me, my details are below.

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
 Corporate, Commercial and Litigation Branch  
 Australian Government Department of Health  
 T: s22 | E: s22 @health.gov.au  
 Location: Sirius Building s22  
 GPO Box 9848, Canberra ACT 2601, Australia

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Hi s22

Please see below requested variation from ABM' lawyers. s42

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Kind rgds

s47F

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s47F  
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MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
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**From:** Paul Rubenstein <PRubenstein@abl.com.au>  
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**To:** s47F  
**Cc:** s47F; s47F; s47F  
**Subject:** FW: ABM - Execution Contract [SEC=OFFICIAL] [ME-ME.FID5569796]

Hi s47F

I refer to the attached contract, executed by the parties on 3 June 2020.

Our clients have requested ARTG 338029 (attached) be added to Schedule 1 of this agreement, such that clause 1(a)(ii) of Schedule 1 will read:

*"...listed on the Australian Register of Therapeutic Goods (ARTG Number 335386, 336993, 338029 or 337229 'Gown, isolation, single use') maintained by the Therapeutic Goods Administration;"*

In accordance with clause 22.3(c) of the this Agreement, could you please seek instructions from your clients that this is agreed and that no further variations to the agreement are required for this variation to take effect.

We look forward to receiving your client's confirmation shortly.





# Goods Contract

For the provision of isolation gowns

Commonwealth of Australia as represented by the  
Department of Health ABN 83 605 426 759  
(Customer)

Australian Business Mobiles NSW Pty Ltd (ACN 138  
288 918) as the trustee for Australian Business  
Mobiles (NSW) Unit Trust ABN 42 175 149 181  
(Supplier)

## IMPORTANT NOTICES

### PLEASE READ CAREFULLY

#### PRE-BOOKING IS ESSENTIAL

The Supplier must pre-book a time slot with s47F s47F or s47F prior to delivery of any Goods. Failure to pre-book a time slot may result in refusal to accept delivery at the unscheduled time. Any demurrage charges will be the responsibility of the Supplier.

#### CLEAR LABELLING IS NECESSARY

Goods are to be packaged so that they are clearly labelled prior to palletising. Only the same Goods must be on the same pallet. Each carton must be clearly labelled and each label must be visibly displayed on the outside of the carton with the following details:

- Product name and description
- Product code
- Expiry date

# Goods Contract

For the provision of isolation gowns

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Goods Contract

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

# Details

Date

3 June 2020

## Parties

Name	<b>Commonwealth of Australia as represented by the Department of Health</b>
ABN	83 605 426 759
Short form name	<b>Customer</b>
Notice details	<b>Attention:</b> Director, Health Emergency Countermeasures Section, Health Emergency Management Branch  <b>Postal address:</b> MDP 140, PO Box 9848, Canberra ACT 2601 <b>Physical address:</b> Sirius Building, Furzer St, Woden Town Centre ACT 2606 <b>Email:</b> s22 [redacted]@health.gov.au and copied to both s47E(d) [redacted]@health.gov.au and s47E(d) [redacted]@health.gov.au
Customer's Contract Manager	Director, Health Emergency Countermeasures Section, Health Emergency Management Branch
Name	<b>Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust</b>
ABN	42 175 149 181
Short form name	<b>Supplier</b>
Notice details	<b>Postal address:</b> Unit 5a, 149-163 Mitchell Road, Erskineville, NSW 2043 <b>Physical address:</b> Unit 5a, 149-163 Mitchell Road, Erskineville, NSW 2043 <b>Email:</b> s47F [redacted]
Supplier's Contract Manager	s47F [redacted]

## Background

- A The Customer requires the provision of certain Isolation Gowns for the Commonwealth's National Medical Stockpile.
- B The Customer has agreed to engage the Supplier, and the Supplier has agreed, to provide the Goods on the terms and conditions contained in the Contract.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Contract** means this document and its attachments and schedules as amended from time to time in accordance with the Contract, and any other documents expressly identified in this document as forming part of the Contract.

**Contract Manager** means the contract manager for the Customer and/or Supplier (as relevant) specified in the Details section to the Contract.

**Contract Price** means the total contract price specified in the Contract, including any GST component payable.

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

- (a) is correctly addressed to:  
Department of Health  
**Email Address:**  
s47E(d)@health.gov.au, or  
**Postal Address:** GPO Box  
9848, Canberra ACT 2601,  
with the Customer's preferred  
method of invoicing being by  
email;
- (b) is calculated in accordance with the Contract;
- (c) except where expressly provided otherwise in Schedule 1, relates only to Goods that have been Delivered and Accepted by the Customer in accordance with the Contract;
- (d) includes any purchase order number, and the name and phone number of the Customer's Contract Manager;
- (e) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- (f) is a valid tax invoice in accordance with the GST Act.

**Customer** means the party specified in the Details section of the Contract as the Customer.

**Defect Rectification Period** means seventeen (17) months or the Supplier's or manufacturer's standard warranty period (whichever is the longer).

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

**Goods** means:

- (a) the goods (including Isolation Gowns) and any Material specified in the Contract; and
- (b) all such incidental goods that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

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

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

**Isolation Gowns** has the meaning given to in Schedule 1.

**Losses** means any liability, loss (including economic loss), damage, compensation, costs and expenses.

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

**National Medical Stockpile** means the strategic reserve of products held by the Customer for the purposes of health emergencies.

**Notice** means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, physical address or email address set out in the Details section of the Contract or as notified from time to time.



**Specifications** means the specifications for the Goods set out at Schedule 1 and all applicable manufacturers' specifications and applicable standards.

**Supplier** means the party specified in the Details section of the Contract as the Supplier.

**Wilful Default** means a default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.

## 1.2 Interpretation

In the Contract, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to the Contract includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to ~~A\$, \$A~~ dollar or \$ is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law

includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it; and
- (l) headings are for ease of reference only and do not affect interpretation.

## 2. Precedence of Documents

### 2.1 Composition

The following documents form part of the Contract.

- (a) clauses 1 to 23;
- (b) Schedule 1;
- (c) any other schedules to this document; and
- (d) any document annexed to, or incorporated by reference into, the Contract.

### 2.2 Inconsistency

If there is any inconsistency between the provisions of the documents that together form the Contract, the provisions of the earlier mentioned document in clause 2.1 will prevail to the extent of that inconsistency.

## 3. Commencement

The Contract is effective on and from 2 June 2020.

## 4. Delivery and Acceptance

### 4.1 Delivered Goods

- (a) The Supplier must provide the Goods as specified in Schedule 1 and meet any requirements and standards specified in that Schedule.

- (b) Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused.

rejected Goods within thirty (30) days (unless another timeframe is specified by the Customer). No payment will be due for rejected Goods until their acceptance.

#### 4.2 Acceptance

- (a) The Customer may reject the Goods within fourteen (14) days after delivery, if the Goods do not comply with the requirements of the Contract (the **Acceptance Period**).
- (b) If, after the Customer's evaluation of the compliance of the Goods, the Customer accepts the Goods during the Acceptance Period, the Customer must give the Supplier a Notice of acceptance of those Goods.
- (c) If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay). The Customer agrees that it will not be able to extend the term of any Acceptance Period under clause 4.2(a) by more than ten (10) days in aggregate.
- (d) If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods, though the Customer may accept the Goods sooner.
- (e) If the Customer rejects the Goods, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. Without limitation, if and as required by the Customer, the Supplier must replace the

#### 4.3 Risk and title

- (a) Risk in the Goods passes to the Customer on delivery of the Goods to the Customer.
- (b) Title to the Goods transfers to the Customer only on acceptance.

### 5. Licences, Approvals and Warranties

- (a) The Supplier must obtain all necessary valid export and import licences or other approvals to meet the requirements of the Contract. The Supplier must provide, on request by the Customer, a copy of any necessary export or import licence or other approval, or proof that such licence or approval has been obtained.
- (b) The Supplier must obtain and maintain all intellectual property rights, licences or other approvals required for the lawful provision of the Goods and arrange and pay any necessary customs entry for any Goods.
- (c) The Supplier:
- (i) warrants that the Goods are fit for the purposes for which the Supplier knows or ought reasonably to know the Goods are to be used, free from faults or deficiencies in design, manufacture and workmanship, and comply with the Specifications;
  - (ii) warrants that it has the requisite power and authority to enter into the Contract and to carry out the obligations

- contemplated by the Contract;
- (iii) warrants that it is duly registered, properly constituted and remains in existence;
  - (iv) must provide the Customer with all relevant third party warranties in respect of Goods; and
  - (v) where the Supplier is a manufacturer, must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

the Contract and for a period of seven (7) years after the termination or expiry of the Contract, with a limit of liability of not less than \$20 million per occurrence and not less than \$20 million in the aggregate; and

- (ii) transit insurance, covering the Goods for their full replacement at all times while the Goods are in transit.
- (b) The Supplier must provide the Customer with proof of all insurances required to be held by it:
  - (i) before the later of 2 June 2020 and the first delivery of Goods to the Customer; and
  - (ii) at any other time requested by the Customer.

## 6. Defects

- (a) Notwithstanding Delivery and Acceptance of the Goods by the Customer in accordance with clause 4, the Supplier must remedy by replacement, at its cost, any defects in the Goods notified by the Customer to the Supplier at any time within the Defect Rectification Period following Delivery and Acceptance of the Goods by the Customer.
- (b) If the Supplier does not promptly replace the defective Goods, the Customer may recover the price of the Goods as a debt due from the Supplier to the Customer.
- (c) The Customer's rights under this clause 6 are in addition to, and do not detract from, its rights under the Contract or otherwise at law.

## 8. Subcontracting

- (a) Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.
- (b) The Supplier must make available to the Customer the details of all subcontractors engaged to provide the Goods under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

## 7. Insurances

- (a) The Supplier must effect and maintain adequate insurances for the Contract, including:
  - (i) product liability insurance, to be maintained at all times throughout the term of

## 9. Relationship of the Parties

- (a) Neither party is the employee, agent, officer or partner of the other party nor, by virtue of the Contract, authorised to bind or represent the other party.
- (b) The Supplier must ensure that its officers, employees, agents or subcontractors do not represent themselves as being an officer,

employee, partner or agent of the Customer.

## 10. Conflict of Interest

- (a) The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.
- (b) If any conflict or potential conflict arises during the Contract term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

## 11. Supplier Payments

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

## 12. Expenses

Unless specified otherwise in Schedule 1, the Supplier must not charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, and telecommunications charges) in addition to the Contract Price.

## 13. GST and ABN

- (a) If and to the extent that GST is payable on a supply made by the Supplier to the Customer under the Contract:
  - (i) the Customer will pay the GST component to the Supplier at the same time as the GST exclusive amount;
  - (ii) the GST component will be calculated as an amount equal to the GST exclusive amount multiplied by the prevailing rate of GST.
- (b) If and to the extent that GST is not payable on a supply made by the Supplier under the Contract:
  - (i) the Customer need not pay any GST component to the Supplier; and
  - (ii) if the Customer has already paid the GST component to the Supplier, the Supplier must immediately refund that GST component to the Customer.
- (c) If any payment by the Customer to the Supplier is a reimbursement, calculated by reference to a cost or expense incurred by the Supplier, that payment must be reduced by the amount of any input tax credit that the Supplier (or the representative member of any GST group of which the Supplier is a member) is entitled to claim in respect of that cost or expense.
- (d) If the Supplier does not provide the Customer with a document containing the Supplier's valid ABN (or sufficient evidence of an exemption to hold an ABN) prior to any payment being due under the Contract, the Customer may make such withholding from any such payment as required by applicable tax legislation at the time of payment (including any GST or similar tax).

## 14. Termination or Reduction for Convenience

- (a) In addition to any other rights the Customer has under the Contract, the Customer may at any time upon no less than twenty (20) days prior written notice terminate the Contract or reduce the scope of the Goods by providing a Notice to the Supplier.
  - (b) If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.
  - (c) The Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions).
  - (d) If the Customer issues a Notice under this clause, the Customer will pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer. Reasonable costs includes the costs of any Goods that may have been ordered by the Supplier and that may be in transit, but that have not yet been delivered to the Customer as at the date of the Notice being issued under clause 14(a).
  - (e) Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.
- (i) the Supplier does not deliver the Goods as specified in the Contract (including by any delivery date), or notifies the Customer or the Customer forms the view that the Supplier will be unable to deliver the Goods as specified in the Contract (including by any delivery date) and the Supplier does not remedy these matters within fifteen (15) days written notice from the Customer;
  - (ii) the Customer rejects the Goods in accordance with clause 4 and the Goods are not remedied as required by the Notice of rejection;
  - (iii) the Supplier breaches a term of the Contract and the breach is not capable of remedy;
  - (iv) the Supplier does not remediate a breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier (which must not be less than fifteen (15) days); or
  - (v) subject to any applicable statutory stay on the exercise of rights including sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as the case may be), the Supplier:
    - (A) is unable to pay all its debts when they become due;
    - (B) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent

## 15. Termination for Cause

- (a) The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:



appointment is made under legislation other than the *Corporations Act 2001* (Cth).

fact or law in relation to the Contract.

- (c) Each paragraph of clause 16(b) is independent of, and its application is not affected by, any of the other paragraphs.

## 16. Liability Cap

- (a) Subject to clause 16(b), the maximum amount that the Supplier is liable to pay as compensation or damages under the Contract (including at general law, in negligence or in equity) in respect of Loss suffered by the Customer of any kind, is limited in aggregate to **s47G** (plus GST).
- (b) The liability cap in this clause 16 does not apply to a liability of the Supplier whether or not expressly referred to in this clause in relation to:
- (i) a claim by a third party in respect of:
    - (A) the death, personal injury, disease or illness of any person; or
    - (B) loss of or damage to property of a third party;
  - (ii) a breach of an obligation of confidence;
  - (iii) an act or omission of the Supplier or Supplier personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
  - (iv) a Wilful Default of the Supplier or Supplier personnel;
  - (v) a repudiation of the Contract by the Supplier where the Supplier has intentionally abandoned the Contract; or
  - (vi) restitution of amounts paid under a mistake of

## 17. Dispute Resolution

- (a) For any dispute arising under the Contract both the Supplier and the Customer agree to comply with paragraphs (i) to (iv) of this clause sequentially:
- (i) both Contract Managers will try to settle the dispute by direct negotiation;
  - (ii) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
  - (iii) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
  - (iv) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.



- (b) Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.
- (c) The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.
- (d) If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.
- (e) Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.
- (f) This procedure for dispute resolution does not apply to action relating to clause 15 or to legal proceedings for urgent interlocutory relief.

## 18. Notices

- (a) A Notice is deemed to be effected:
  - (i) if delivered by hand upon delivery to the relevant address;
  - (ii) if sent by registered post upon delivery to the relevant address; or
  - (iii) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).
- (b) A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

## 19. Assignment

The Supplier may not assign any rights under the Contract without the Customer's prior written consent.

## 20. Product Recalls

If the Goods are subject to a product recall or no longer conform to an applicable law or standard, the Supplier must without delay notify the Customer providing full details, and, at the election of the Customer, replace those Goods within thirty (30) days or repay to the Customer any payment made for those Goods.

## 21. Compliance with Laws and Policies

### 21.1 Compliance and Obligation to Notify

- (a) The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all laws and policies relevant to the Goods.
- (b) If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses 21.2 to 21.8, it must:
  - (i) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
  - (ii) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

### 21.2 Access to Supplier's Premises and Records

- (a) The Supplier must maintain proper business and accounting records relating to the supply of the Goods and performance of the Contract.
- (b) The Supplier agrees to provide to the Customer, or its nominee, access, during business hours

and after reasonable prior written notice is given, to the Supplier's, or its subcontractor's premises, personnel, documents and other records, and all assistance requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office.

- (c) Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's actual and substantiated reasonable cost for complying with the Customer's request.
- (d) The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer.
- (e) All Commonwealth records, including any held by subcontractors, must be returned to the Customer at the conclusion of the Contract.

### 21.3 Privacy Act

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

### 21.4 Confidential Information

- (a) Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods, without

prior written approval from the Customer.

- (b) This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- (c) The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.
- (d) The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, or to a Minister or a House or Committee of Parliament.

### 21.5 Security and Safety

- (a) When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.
- (b) The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.
- (c) The Supplier acknowledges that unauthorised disclosure of

security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

## 21.6 Criminal Code

The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

## 21.7 Fraud

- (a) For the purposes of this clause, **Fraud** means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.
- (b) The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of the Contract.
- (c) The Supplier acknowledges the occurrence of Fraud will constitute a breach of the Contract. If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

## 21.8 Taxation

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

## 22. General

### 22.1 Governing Law

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

### 22.2 Counterpart

- (a) The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.
- (b) A party may exchange an executed counterpart of the Contract with another party by sending it by email to the other party or that other party's legal representative. In such an instance:
  - (i) the exchange by email (as applicable) will be deemed to be an effective exchange of an originally executed counterpart; and
  - (ii) whilst the party that provided the document by email is still required to provide an originally executed counterpart to each other party either by hand or post as soon as possible, the failure or delay in doing so will not affect the validity or effectiveness of the Contract or the exchange.

### 22.3 Entire Agreement

- (a) The Contract represents the parties' entire agreement in relation to the subject matter, at the time the Contract was entered.
- (b) Anything that occurred before the commencement of the Contract will be disregarded (unless incorporated into the Contract in writing).
- (c) The parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either party unless in writing and agreed by both parties.
- (d) If either party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

### 22.4 Trustee

The Supplier represents and warrants that if the Supplier is a trustee, it enters

into the Contract personally and in its capacity as trustee.

## 23. Survival

Any clause that by its nature survives termination or expiry of the Contract will survive including, clauses 7

(Insurances), 14 (Termination or reduction for convenience), 15 (Termination for Cause), 20 (Product Recalls), 21 (Compliance with Laws and Policies) and the termination or expiry of the Contract does not prejudice any accrued rights or liabilities of a party under the Contract.

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# Schedule 1 – Goods and Contract Price

## 1. Specifications and Other Requirements for the Goods and Material

The Supplier must supply to the Customer:

(a) Isolation Level 2 Gowns (**Isolation Gowns**) that:

- (i) comply with International Standards Organisation (ISO) ISO 13485;
- (ii) are approved and listed on the Australian Register of Therapeutic Goods (ARTG Number 335386, 336993 or 337229 'Gown, isolation, single use') maintained by the Therapeutic Goods Administration;
- (iii) have a remaining shelf life of seventeen (17) months;
- (iv) in the quantities and by the delivery dates set out in the table below;
- (v) delivered (in pallets no higher than 1.4 meters) to the following location or such other location in Australia as advised by the Customer:

Toll  
2 Alspec Place  
Eastern Creek, NSW, 2767, Australia

Contacts:

s47F

The Supplier must contact s47F or s47 prior to any delivery; and

- (vi) are packaged so that all cartons are labelled prior to palletising and with each label providing the following information:

Product description

Product code

Expiry date, and

- (b) information supplied or produced by the manufacturer of the Goods, in English, which outlines the manufacturer's specifications to ensure the safe and efficacious use of the Goods, including information regarding the handling, storage and management of the Goods. Each box containing the Goods must contain donning/fitting instructions.

s47G

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## 2. Contract Price

- (a) The Contract Price is s47G
- (b) The Contract Price will be payable by the Customer for Goods that are Delivered and Accepted by the Customer:
  - (i) within five (5) days after receiving a Correctly Rendered Invoice for those Goods; and
  - (ii) the Customer will pay in accordance with clause 11 of the Contract the amount of s47G for each isolation gown Delivered and Accepted.
- (c) For the avoidance of any doubt it is agreed that when the Supplier delivers the Goods in accordance with clause 4.1, the Supplier will also at the same time issue a Correctly Rendered Invoice to the Customer in respect of those delivered Goods. Subject to Acceptance by the Customer of the delivered Goods in accordance with clause 4, the Correctly Rendered Invoice will be payable within five (5) days from receipt by the Customer of the Correctly Rendered Invoice from the Supplier.

## 3. Reimbursements

Nil.

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# Signing page

EXECUTED as an agreement.

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

s47F

[Redacted signature area]

Name of witness (print)

s47F

[Redacted signature area]

Signature of delegate

Caroline Edwards

Name of delegate (print)

Acting Secretary

Position of delegate (print)

Executed by Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) in accordance with Section 127 of the Corporations Act 2001

s47F

[Redacted signature area]

Signature of sole director and sole company secretary

s47F

[Redacted signature area]

Name of sole director and sole company secretary (print)

who states that he or she is the sole director and the sole company secretary of the company

s22

**From:** s47F >  
**Sent:** Tuesday, 2 June 2020 12:59 PM  
**To:** s22; s22; s22@health.gov.au  
**Cc:** s47F; PRubenstein@abl.com.au; s47F; s47F  
**Subject:** ABM executed contract - Isolation Gowns [SEC=No Protective Marking]  
**Attachments:** 02062020124636-0001.pdf

Dear all,

Please find attached the executed version of the contract. We appreciate the opportunity to continue working with the Government to supply goods in these trying times.

Appreciated if you can return the document to us once executed by the delegate.

We look forward to an ongoing relationship with the department as it relates to the management and replenishment of the stockpile.

Regards

s47F

s47F

Group CFO

s47F

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s22

**From:** s47F >  
**Sent:** Tuesday, 2 June 2020 11:59 AM  
**To:** PRubenstein@abl.com.au  
**Cc:** s22; s22  
**Subject:** ABM - Execution Contract [SEC=OFFICIAL] [ME-ME.FID5569796]  
**Attachments:** Australian Business Mobiles - Execution Version - 02.06.2020.PDF; Compare - Australian Business Mobiles - ABL draft 28.05.2020 vs Execution Version 02.06.2020.DOCX

Dear Paul,

Please see **attached** execution version of the contract.

Please note that the contract remains subject to Commonwealth delegate consideration and approval, and it is not binding unless and until executed by the delegate and exchanged with ABM.

Please forward an executed version back to us.

Also **attached** is a word document showing the changes from your draft, dated 28 May 2020, in mark up.

Kind regards,

s47F

s47F

s47F

s47F

s47F

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s22

**From:** Paul Rubenstein <PRubenstein@abl.com.au>  
**Sent:** Thursday, 28 May 2020 11:54 AM  
**To:** s47F  
**Cc:** s22; s22; s22; s47E(d); s47F  
**Subject:** RE: ABM - Revised Draft Contract [SEC=No Protective Marking]  
**Attachments:** ABL-7981599-2-Dept. of Health - Goods Contract for the Provision of Isolation Gowns [ABL Mark-up - 28 May 2020].docx

Hi s47F

Many thanks for your e-mail.

As discussed just before I attach a mark up with a few minor comments. I have also included the language we discussed in Schedule 1.

As discussed, assuming the changes are acceptable I would be grateful if you could please circulate an execution version as soon as possible so we can arrange for it to be executed this afternoon.

Kind regards,

Paul

**Paul Rubenstein** | Partner

Arnold Bloch Leibler  
 Level 24, 2 Chifley Square, Sydney NSW 2000  
 E: prubenstein@abl.com.au | T: 61 2 9226 7222 | M: s47F | Vcard

# Arnold Bloch Leibler

**From:** s47F >  
**Sent:** Thursday, 28 May 2020 10:20 AM  
**To:** Paul Rubenstein <PRubenstein@abl.com.au>  
**Cc:** s22 @health.gov.au; s22 @health.gov.au; s22 @health.gov.au; s47E(d) @health.gov.au  
**Subject:** ABM - Revised Draft Contract

Dear Paul,

Following consideration of your client's requests for amendments to the draft contract, please see attached marked up revised version.

There are a couple of notes in Schedule 1 requesting further information.

In the meantime please call if any aspects would benefit from discussion.

Kind rgds,

s47F

s47F  
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 s47F

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s22

**From:** s47F >  
**Sent:** Wednesday, 27 May 2020 11:32 AM  
**To:** s22  
**Cc:** s47E(d) ; s47F  
**Subject:** Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5569796] [SEC=OFFICIAL]  
**Attachments:** Australian Business Mobiles - Draft contract - Sent to ABM by Health 22.05.2020 - ME Amendments 27.05.2020.DOCX

Dear all,

Updated marked up draft is attached.

Subject to your comments, we can prepare a version to send back to ABM.

Kind rgds,

s47F

s47F  
s47F  
T +s47F M +s47F  
s47F

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**From:** s22  
**Sent:** Tuesday 26 May 2020 05:29 PM  
**To:** s47F ; s22  
**Cc:** s47E(d) ; s47F ; s47F  
**Subject:** RE: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5569796] [SEC=OFFICIAL]

Hi s47F

Please find attached a copy of the correspondence to ABM offering the original contract (last Friday).

Regards

s22

s22

National Incident Response Division | Chief Medical Officer Group  
Australian Government Department of Health  
s22 [@health.gov.au](https://www.health.gov.au)  
Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >  
**Sent:** Tuesday, 26 May 2020 5:17 PM  
**To:** s22 [@health.gov.au](https://www.health.gov.au); s22 [@health.gov.au](https://www.health.gov.au)  
**Cc:** s47E(d) [@health.gov.au](https://www.health.gov.au); s47F >; s47F >; s22  
**Subject:** RE: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5569796] [SEC=OFFICIAL]

Hi s22

Do you have a copy of the version of the contract Health sent to ABM.

Just want to make sure we mark up the right document.

s47F

s47F  
s47F  
s47F  
s47F

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From: s22 <[REDACTED]@health.gov.au>

Sent: Tuesday 26 May 2020 10:44 AM

To: s47F <[REDACTED]>; s22 <[REDACTED]@health.gov.au>

Cc: s47E(d) <[REDACTED]@health.gov.au>; s47F <[REDACTED]>; s47F <[REDACTED]>; s22 <[REDACTED]>

Subject: RE: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5569796] [SEC=OFFICIAL]

Hi s47F

Thank you for this. s22 and I have gone through your points below. s42

- s42
- s42
- s42

s22 please let me know if you have anything further to add.

I'm happy to chat at 11.30.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22 <[REDACTED]@health.gov.au>  
GPO Box 9848, Canberra ACT 2601, Australia

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From: s47F <[REDACTED]>

Sent: Tuesday, 26 May 2020 10:04 AM

To: s22 <[REDACTED]@health.gov.au>; s22 <[REDACTED]@health.gov.au>

Cc: s47E(d) <[REDACTED]@health.gov.au>; s47F <[REDACTED]>; s47F <[REDACTED]>; s22 <[REDACTED]>

Subject: Request for contract drafting - Australian Business Mobiles, s22 [SEC=OFFICIAL] [ME-ME.FID5569796]

Dear all,

I received a call from ABM's lawyers (ABL) yesterday evening.

They had a number of comments on the draft contract, most of which are commercial.

The requests were:

- (a) push back the delivery dates one month each (so are 30 June and 30 July rather than 30 May and 30 June);
- (b) payment be within 5 Business Days rather than 14;
- (c) the Goods have a shelf live of 18 months, not 24. He asked that the shelf life be 17 months;
- (d) could advance payment be considered? I said it was not the Dept's desire to do advance payments. I do not think they will press this further;
- (e) in Schedule 1, sub paragraph 1(a)(i) could the reference be to 'ISO 13485 or an equivalent ISO approved management system'. You need to carefully check this;
- (f) in Schedule 1, sub paragraph 1(a)(ii) he said they may have a different ARTG number than 335386, so requested a reference to an equivalent ARTG number. You need to carefully check this;
- (g) that the 10 day remedy period for delays be 15 days.

Is there a time that suits you to go through this?

Kind rgds

s47F

s47F  
s47F  
s47F  
s47F

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s22

**From:** s22  
**Sent:** Friday, 22 May 2020 4:44 PM  
**To:** s47F  
**Cc:** s47E(d); s47F; s22  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]  
**Attachments:** Australian Business Mobiles - Draft Contract - 22 May 2020.pdf

Hi s47F

Please find attached a draft contract based on our discussions to date. Can you please review and, if you have no amendments, return a signed copy and I will arrange our delegate to counter-sign.

If you have any questions please don't hesitate to ask.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 Regulatory Policy Branch  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >  
**Sent:** Friday, 22 May 2020 3:32 PM  
**To:** s22 @health.gov.au>  
**Cc:** s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Cheers mate, sorry missed your text been a busy day!

Have a great weekend !

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

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**From:** s22 @health.gov.au>  
**Sent:** Friday, 22 May 2020 3:31 PM  
**To:** s47F >

Cc: s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
 Subject: RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s47F

Thanks for your email. As per my text message earlier this afternoon, no update at this stage, however I will be in contact when I have further information.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 Regulatory Policy Branch  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

---

From: s47F >  
 Sent: Friday, 22 May 2020 3:28 PM  
 To: s22 @health.gov.au>  
 Cc: s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
 Subject: RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s22

Just kindly following up for a Friday afternoon mate, to see if the contract has progressed as another week has passed?

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

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---

From: s47F  
 Sent: Friday, 15 May 2020 3:19 PM  
 To: s22 @health.gov.au>  
 Cc: s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
 Subject: Re: Request for updated information - gown capacity [SEC=OFFICIAL]

Good Afternoon s22

We had expected an order / contract by today, can you please advise us here ?

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 13 May 2020, at 11:23 am, s22 <[redacted]>@health.gov.au> wrote:

Many thanks s47F I will be in contact if I require anything further, or as soon as I have any further information.

Kind regards

s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22 <[redacted]>@health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

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---

**From:** s47F  
**Sent:** Tuesday, 12 May 2020 5:30 PM  
**To:** s22 <[redacted]>@health.gov.au>  
**Cc:** s47E(d) <[redacted]>@health.gov.au>; s47F <[redacted]>@health.gov.au>  
**Subject:** Re: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s22

Can now follow up and lock in below freight and overall price for you now.

Again respectfully based on a confirmed order this week;

- we would appreciate where possible an indication of freight price where possible.

s47

Please advise when you can confirm a contract to execute order pls.

Thanks mate

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 12 May 2020, at 4:50 pm, s22 <[redacted]>@health.gov.au> wrote:

Thank you s47F for your quick response.

Kind regards

s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22 <[redacted]>@health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

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From: s47F >  
 Sent: Tuesday, 12 May 2020 3:58 PM  
 To: s22 @health.gov.au>; s47E(d) @health.gov.au>  
 Cc: s47F >; s22 @health.gov.au>  
 Subject: RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s22

Appreciate the call.

Please see my information to answer each point for you below.

- if we were to place an order for s47G isolation level 2 gowns this week, can you please advise when they would arrive.  
*As of today we could deliver most if not all by the end of June. Subject to slight change in confirmation of contract timeframe.*
- can you also please email through the relevant certifications. Attached TGA certificate and EN-13795 test report,  
 team is working on getting a current air freight rate confirmed for chartering in s47G for you asap. I will confirm shortly so we can confirm a rate and lock in an all in buy price for you on gowns plus freight to execute the contract sign off.

Also, as discussed to hit your delivery we need an order urgently please. I cant stress that enough.

Let me know if you need anything more.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

***Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.***

***Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.***

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From: s22 @health.gov.au>  
 Sent: Tuesday, 12 May 2020 3:30 PM  
 To: s47F >; s47E(d) @health.gov.au>  
 Cc: s47F >; s22 @health.gov.au>  
 Subject: RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s47F

Thanks for your time on the phone just now. As discussed:

- if we were to place an order for s47G isolation level 2 gowns this week, can you please advise when they would arrive.
- can you also please email through the relevant certifications.
- we would appreciate where possible an indication of freight price where possible.

If you have any questions please let me know.

Kind regards

s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22@health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

---

From: s47F >  
Sent: Thursday, 7 May 2020 10:42 AM  
To: s47E(d)@health.gov.au >  
Cc: s47F >  
Subject: RE: Request for updated information - gown capacity [SEC=OFFICIAL]  
Importance: High

Good Morning s22

Trust you are well.

Our team have been working through the evening to confirm the best price and supply capacity the level 2 TGA approved gowns you need.

I do need to highlight here, due to conditions and regulations in China and global orders rolling in every hour, we need to move quickly here, as discussed factories capacity are filling quickly.

Good news is we have secured you a better price than discussed, but cant hold that price long without a commitment, if we get a commitment in this week we can lock in and confirm the below delivery and supply for your s47G. Ready to work with you on this to make it happen.

s47

Below is our current supply capacity table confirmed, but rest assured, once we lock this order in that its highly likely we will deliver sooner as we will be taking over factories completely.

Unit cost: (\$ aud)	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Qty that can be supplied (m)	s47G								
Cost (\$m aud, GST excl)	s47G								

Also as discussed last night, once we confirm your order, as air freight rates change by the minute, we can then confirm the additional air freight at point of locking in together. We are meeting on this at lunchtime today for you.

Lastly and respectfully to ensure we are delivering exactly what the department needs, as we did with the masks below, and met all the standards required, please provide the standards you need us to match on the gowns please, so we are all clear on what to deliver meets all standards.

We believe we have all boxes ticked but I leave no stone unturned here.

<image002.png>

I'll give you a call soon to discuss next steps here.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

Please note - Prices are subject to change without notice....

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---

**From:** s47E(d) @health.gov.au>  
**Sent:** Thursday, 7 May 2020 8:50 AM  
**To:** s47F >; s47E(d) @health.gov.au>  
**Cc:** s47F >  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Thanks s47F appreciate the call last night.

Kind regards  
s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group

s22

Australian Government Department of Health

s22 @health.gov.au

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

---

**From:** s47F >  
**Sent:** Wednesday, 6 May 2020 7:01 PM  
**To:** s47E(d) @health.gov.au>  
**Cc:** s47F >  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]  
**Importance:** High

Hi s22

Thank you for your time on the call just now.

Understanding your requirement in more detail is for s47G level 2 isolation gowns ideally and quickly.

I'll work with our team to negotiate and arrange the best offer and delivery timeframe and come back to you in the morning so we can look to lock this in for you as factories are filling fast.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“Persistence beats resistance “

---

**From:** s47E(d) @health.gov.au>  
**Sent:** Wednesday, 6 May 2020 6:16 PM  
**To:** s47F >  
**Cc:** s47E(d) @health.gov.au>; s47F >  
**Subject:** Request for updated information - gown capacity [SEC=OFFICIAL]  
**Importance:** High

Hi s47F

Following on from your email to s22 I am now after some urgent updated information on your potential to supply Isolation gowns (without coating). Can you please provide unit cost, and total qty and cost for what you can supply, in the table below. I realise you have provided unit cost in your below email, however I need to confirm. Please note this does not constitute an offer, but will be used in our current planning activity.

Can you also please confirm what level your isolation gowns are (eg. Isolation Gown Level 2).

Your earliest response would be appreciated.

If you have any questions please let me know.

Unit cost: (\$ aud)		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Qty that can be supplied (m)										
Cost (\$m aud, GST excl)										

Kind regards  
s22

s22  
<image001.png>  
Office of Health Protection | Chief Medical Officer Group  
s22  
Australian Government Department of Health  
s22 @health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

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From: s47F >  
Sent: Wednesday, 29 April 2020 1:13 PM  
To: s22 @health.gov.au>  
Cc: s47F >  
Subject: GOWNS SUPPLY [SEC=No Protective Marking]  
Importance: High

Hi s22

As discussed, please see the gowns we have been supplying and can work with a bulk program and on going supply.

Please review and advise next steps on quantities etc.

<image003.png>

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.

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Please note - Prices are subject to change without notice....

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From: s47F  
Sent: Wednesday, 29 April 2020 10:01 AM  
To: s22 @health.gov.au>  
Cc: s22 @health.gov.au>; s47F >; s47E(d) @health.gov.au>; s22 @health.gov.au>; s47F >; Paul Rubenstein <PRubenstein@abl.com.au>  
Subject: Further planning

Morning s22

Trust you are well.

When can we connect on planning supply for you on more masks and PPE stock as we have strong supply chain on all Masks, gloves, gowns, protective suits, face shields, goggles, thermometers, etc.

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 17 Apr 2020, at 6:10 pm, s22 @health.gov.au> wrote:

Hi All,

Please find a copy of the executed contract as counter-signed by the acting Secretary of the Department of Health.

Regards

s22

Director

<image001.png>  
National Incident Response Division | Chief Medical Officer Group  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s22 @health.gov.au>  
**Sent:** Friday, 17 April 2020 5:44 PM  
**To:** s47F >; s47F >; s47E(d) @health.gov.au>;  
s22 @health.gov.au>; s22 @health.gov.au>  
**Cc:** s47F >; s47F >; Paul Rubenstein  
<PRubenstein@abl.com.au>  
**Subject:** RE: Executed Contract Australian Business Mobile (NSW) Pty Ltd [SEC=OFFICIAL]

Hi s47F

Sorry to have missed your calls this afternoon – I can see that you have tried to call while I’ve been on another line.

As discussed earlier today, the contract has been progressed to the delegate. I haven’t heard yet in relation to execution but I will let you know as soon as I do.

Kind regards,

s22

**Director – Preventive Policy Section**  
<image001.png>  
Preventive Health Policy Branch | Population Health and Sport Division  
Australian Government Department of Health  
s22 @health.gov.au | s22 )

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.*

**From:** s47F >  
**Sent:** Friday, 17 April 2020 4:29 PM  
**To:** s47F >; s47E(d) @health.gov.au>; s22  
@health.gov.au>; s22 @health.gov.au>; s22  
@health.gov.au>  
**Cc:** s47F >; s47F >; Paul Rubenstein  
<PRubenstein@abl.com.au>  
**Subject:** RE: Executed Contract Australian Business Mobile (NSW) Pty Ltd [SEC=No Protective Marking]

Hi s22

How are we going with the final sign off from the delegate please/ will it happen today or tomorrow pls advise? Time is everything now.



Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

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---

**From:** s47F >  
**Sent:** Thursday, 16 April 2020 11:32 PM  
**To:** s47E(d) @health.gov.au; s22 @health.gov.au; s22 @health.gov.au;  
s22 @health.gov.au  
**Cc:** s47F >; s47F >; s47F >; Paul Rubenstein <PRubenstein@abl.com.au>  
**Subject:** RE: Executed Contract Australian Business Mobile (NSW) Pty Ltd

Team,

We have executed your revised version of the contract, please confirm the Delegate and or Department can now return an executed copy on Friday 17/4/2020.

Kind Regards

s47F

s47F

Group CFO

s47F

---

**From:** s47F  
**Sent:** Tuesday, 14 April 2020 5:06 PM  
**To:** s47E(d) @health.gov.au; s22 @health.gov.au; s22 @health.gov.au;  
s22 @health.gov.au  
**Cc:** s47F >; s47F >; s47F >; Paul Rubenstein <PRubenstein@abl.com.au>  
**Subject:** Executed Contract Australian Business Mobile (NSW) Pty Ltd

s22

Please find attached the executed contract. Appreciated if you can have the department countersign and return.

We note the executable contract had the delivery schedule in portrait not landscape – Appreciated if you provide the final printable one then amend and include as part of the execution on your side, if signing in counterpart or append if the department is signing the same version.

Kind Regards

s47F

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<20200417 - ABM Executed Contract.pdf>



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BY THE DEPARTMENT OF HEALTH AND AGED CARE

s22

**From:** s22  
**Sent:** Monday, 18 May 2020 4:54 PM  
**To:** s22  
**Subject:** FW: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5509111] [SEC=OFFICIAL]  
**Attachments:** Australian Business Mobiles - Department of Health - Isolation Gowns - 14 May 2020 - Draft 1.DOCX

Hey s22 just fyi, re ABM draft contract.

s22

Office of Health Protection | Chief Medical Officer Group  
s22  
Australian Government Department of Health  
s22 @health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22 @health.gov.au>  
**Sent:** Monday, 18 May 2020 4:49 PM  
**To:** s22 @health.gov.au>  
**Subject:** FW: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s22

The latest draft (with your changes included) sent to Minters for review and the re-issuing of a further updated version.

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
s22  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Sirius Building s22  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22  
**Sent:** Monday, 18 May 2020 4:46 PM  
**To:** s47F >  
**Cc:** s47F >  
**Subject:** FW: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s47F

We have reviewed the draft you have provided on Friday and **attach** a further revised version for you to complete another draft, and to provide a clean version of that draft so we can send it to ABM.

Grateful if you could provide an updated tracked up and clean version tomorrow.

s42

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
s22  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Sirius Building s22  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22 <[REDACTED]@health.gov.au>  
**Sent:** Friday, 15 May 2020 8:44 AM  
**To:** s22 <[REDACTED]@health.gov.au>  
**Subject:** FW: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s22 – I have a few questions on this draft if I could please discuss with you when you have a moment.

Many thanks

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 s22  
 Australian Government Department of Health  
 s22 <[REDACTED]@health.gov.au>  
 GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F <[REDACTED]>  
**Sent:** Thursday, 14 May 2020 9:45 PM  
**To:** s22 <[REDACTED]@health.gov.au>  
**Cc:** s47F <[REDACTED]>; s47E(d) <[REDACTED]@health.gov.au>; s47F <[REDACTED]>; s47F <[REDACTED]>; s22 <[REDACTED]@health.gov.au>; s22 <[REDACTED]@health.gov.au>  
**Subject:** RE: Request for contract drafting - Australian Business Mobiles, s22 [SEC=OFFICIAL] [ME-ME.FID5509111]

Hi s22

Please see attached a draft contract with Australian Business Mobiles Pty Ltd for the purchase of isolation gowns.

s42

- s42 [REDACTED]
- s42 [REDACTED]

As always, please feel free to give s47F or me a call if you would like to discuss.

Kind regards

s47F

s47F

s47F

s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
 minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)

**From:** s22 <[REDACTED]@health.gov.au>  
**Sent:** Thursday 14 May 2020 02:01 PM  
**To:** s47F <[REDACTED]>; s47F <[REDACTED]>  
**Cc:** s22 <[REDACTED]@health.gov.au>; s22 <[REDACTED]@health.gov.au>; s47E(d) <[REDACTED]@health.gov.au>; s47F <[REDACTED]>  
**Subject:** RE: Request for contract drafting - Australian Business Mobiles, s22 [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s47F

Thanks for your response. I think if there were negotiated terms previously, please use those in the development of this contract, and please note in the draft. Thanks for bringing that to my attention.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 s22  
 Australian Government Department of Health  
 s22 <[REDACTED]@health.gov.au>  
 GPO Box 9848, Canberra ACT 2601, Australia

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From: s47F >

Sent: Thursday, 14 May 2020 1:30 PM

To: s22 @health.gov.au>; s47F >

Cc: s22 @health.gov.au>; s22 @health.gov.au>; s47E(d) @health.gov.au>; s47F >

Subject: RE: Request for contract drafting - Australian Business Mobiles, s22 [SEC=OFFICIAL] [ME-ME.FID5509111]

Thanks, s22 – just responding on behalf of s47F given the timing urgency.

We will prepare these contracts and send them to you as requested by the timeframe.

s42

Kind regards

s47F

s47F

s47F

s47F

s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)

From: s22 @health.gov.au>

Sent: Thursday 14 May 2020 12:59 PM

To: s47F >

Cc: s22 @health.gov.au>; s47F >; s22 @health.gov.au>; s47E(d) @health.gov.au>

Subject: Request for contract drafting - Australian Business Mobiles, s22 [SEC=OFFICIAL]

Good afternoon s47F

I would like to request contracts to be drafted by MinterEllison s42

If possible, it would be good to have s42

s42

s22

If you have any questions please don't hesitate to ask.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group

s22

Australian Government Department of Health

s22 @health.gov.au

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

"Important: This transmission is intended only for the use of the addressee and may contain confidential or legally privileged information. If you are not the intended recipient, you are notified that any use or dissemination of this communication is strictly prohibited. If you receive this transmission in error please notify the author immediately and delete all copies of this transmission."

MinterEllison has a [24-hour chatbot helpline](#) offering guidance on a range of COVID-19 related topics and a COVID-19 Hub [on our website](#).

#### IMPORTANT INFORMATION, PLEASE READ

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S42

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THE FREEDOM OF INFORMATION ACT 1982  
BY THE DEPARTMENT OF HEALTH AND AGED CARE

## Procurement and Contract Management Checklist

Legal Company Name: Australian Business Mobiles NSW Pty Ltd

Company Location: Unit 5a, 149-163 Mitchell Road, Erskineville NSW 2043

Contract Manager: Director, Health Emergency Countermeasures Section, Health Emergency Man

Delegate for Contract: Caroline Edwards, Acting Secretary, Department of Health

Date CA Signed: 22 May 2020

Date Contract Executed: 3 June 2020

What is covered in the contract: (goods, services and freight)

s47G

Value for Money: Yes

s47E(d)

Due Diligence: DoH DISER MinterEllison

Compliant with TGA Requirements: Yes

Origin of Goods: China

Use of Freight Mechanism: Y/N

Delivery to Toll included in contract.

Exemptions and Waivers:

Nil.

Guidance on CPR Exemptions:

The following was provided on the Commitment Approval Minute:

"The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020. Under your determination, the CPRs do not apply to this procurement."

Product Demand Planning to Support Sourcing Decisions:

Need and supply analysis conducted by the Stockpile Operations area and PPE procurement team. Offer was compared to offers from other suppliers in terms of delivery schedule and quoted price.

Confirmation of Product Requirements on Receipt of Goods:

Ongoing.





Australian Government  
Department of Health

## Value for Money Assessment

### Background

The Department requested an updated proposal from Australian Business Mobiles on 6 May 2020 for the supply of isolation level 2 gowns. This followed a needs assessment conducted by the NMS Stockpile Operations team of the need for additional isolation gowns. The Department received a proposal back from the supplier.

### Findings of the Assessment

- As outlined in the Minute to the Secretary (approved 19 March 2020), Paragraph 2.6 of the CPRs provides a lawful mechanism under which a procurement may be exempted from all or part of the CPRs. Paragraph 2. 6 relevantly provides: 'These CPRs do not apply to the extent that an official applies measures determined by their Accountable Authority to be necessary ... to protect human health'.
- Given the circumstances, the supply of the isolation level 2 gowns from the supplier, to ensure the ongoing protection of human health, and within the context of sudden demand increase globally, was deemed value for money.
- Additionally, a needs assessment was conducted by the NMS Stockpile Operations team in consultation with the procurement team, who supplied a summary of current offers for gowns across a number of suppliers.
- The offer from Australian Business Mobiles provided for relatively short-term supply of the gowns, which in tandem with other offers, was deemed suitable to partially meet the need requirements of the NMS for isolation gowns.
- Australian Business Mobiles has an established contract with the Department for supply of masks to the NMS. Stockpile Operations confirmed delivery as per contract.

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

s22

**From:** s22  
**Sent:** Friday, 15 May 2020 4:05 PM  
**To:** s22; s47E(d)  
**Subject:** FW: Request for updated information - gown capacity [SEC=OFFICIAL]

Fyi for records, I have spoken to s47F on the phone and advised I will be in contact when I am able to provide further information s47F noted that he understands there are likely priorities at the moment for the gov't, and that from his side he has lined up what he can at this stage and will await further information. We both noted that next time we discuss, we will need to discuss any implications on delivery schedules.

Cheers

s22

s22

Office of Health Protection | Chief Medical Officer Group

s22  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >  
**Sent:** Friday, 15 May 2020 3:19 PM  
**To:** s22 @health.gov.au>  
**Cc:** s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
**Subject:** Re: Request for updated information - gown capacity [SEC=OFFICIAL]

Good Afternoon s22

We had expected an order / contract by today, can you please advise us here ?

Thanks in advance ,

s47F  
 Global Sales Director  
 s47F

"Persistence beats Resistance "

On 13 May 2020, at 11:23 am, s22 @health.gov.au> wrote:

Many thanks s47F I will be in contact if I require anything further, or as soon as I have any further information.

Kind regards  
 s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group  
 s22  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >  
**Sent:** Tuesday, 12 May 2020 5:30 PM  
**To:** s22 @health.gov.au>  
**Cc:** s47E(d) @health.gov.au>; s47F >; s22 @health.gov.au>  
**Subject:** Re: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s22

Can now follow up and lock in below freight and overall price for you now.

Again respectfully based on a confirmed order this week;

- we would appreciate where possible an indication of freight price where possible.

















s22

**From:** s47F >  
**Sent:** Friday, 8 May 2020 1:24 PM  
**To:** s22  
**Cc:** s47F; s47E(d)  
**Subject:** RE: Request for updated information - gown capacity H138 [SEC=OFFICIAL]

Hi s22

Thanks for your time.

Following up the discussion on the proposed management of supplying the gowns with air freight to begin then moving to a sea freight model.

Please consider our proposal below for your sign off;

s47G

Let me know if we can help any further.

Have a good weekend.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

Please note - Prices are subject to change without notice....

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**From:** s47F  
**Sent:** Friday, 8 May 2020 10:53 AM  
**To:** s22 @health.gov.au>  
**Cc:** s47F >; s47E(d) @health.gov.au>  
**Subject:** RE: Request for updated information - gown capacity H138 [SEC=OFFICIAL]

Understood s22

On the gowns we have no confirmed the air freight rate of s47

Please advise next steps.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

Please note - Prices are subject to change without notice....

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**From:** s22 <[redacted]@health.gov.au>  
**Sent:** Friday, 8 May 2020 10:48 AM  
**To:** s47F <[redacted]>  
**Cc:** s47F <[redacted]>; s47E(d) <[redacted]@health.gov.au>  
**Subject:** FW: Request for updated information - gown capacity H138 [SEC=OFFICIAL]

Hi s47F

Thanks for that, we are focussing on the gowns at the moment.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22 <[redacted]@health.gov.au>  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F <[redacted]>  
**Sent:** Thursday, 7 May 2020 9:40 PM  
**To:** s47E(d) <[redacted]@health.gov.au>  
**Cc:** s47F <[redacted]>  
**Subject:** Re: Request for updated information - gown capacity [SEC=OFFICIAL]

Evening s22

Whilst we are working on the gowns for you , we have been doing large volumes of quality face shields if you have a requirements for those please let us know also.

Have a good night.

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 7 May 2020, at 4:10 pm, s47F <[redacted]> wrote:

Good Afternoon s22

Thanks for your time just now,

Following up from our chat, we will extend the special buy s47 as you request to Monday, when you were expecting a confirmation at your meeting.

I will also send through the air freight price for you by tomorrow to confirm the logistics part of the supply.

Talk soon for anything more you need.

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

Please note - Prices are subject to change without notice....

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**From:** s47E(d) @health.gov.au>  
**Sent:** Thursday, 7 May 2020 8:50 AM  
**To:** s47F >; s47E(d) @health.gov.au>  
**Cc:** s47F >  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Thanks s47F appreciate the call last night.

Kind regards

s22

s22

<image001.png>

Office of Health Protection | Chief Medical Officer Group

s22

Australian Government Department of Health

s22 @health.gov.au

GPO Box 9848, Canberra ACT 2601, Australia

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---

**From:** s47F >  
**Sent:** Wednesday, 6 May 2020 7:01 PM  
**To:** s47E(d) @health.gov.au>  
**Cc:** s47F >  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]  
**Importance:** High

Hi s22

Thank you for your time on the call just now.

Understanding your requirement in more detail is for s47G level 2 isolation gowns ideally and quickly.

Ill work with our team to negotiate and arrange the best offer and delivery timeframe and come back to you in the morning so we can look to lock this in for you as factories are filling fast.











s22

**From:** s47E(d)  
**Sent:** Thursday, 7 May 2020 11:09 AM  
**To:** s22  
**Cc:** s47E(d)  
**Subject:** FW: Request for updated information - gown capacity [SEC=OFFICIAL]

Hi s22

You can see s47F response below. He confirmed over the phone that the unit price would remain the same for roughly half that (so around s47G

s47G

Freight costs not included. He is having a mtg around midday today to discuss what could be potential freight options.  
 Price good to the end of this week.

I said I would touch base with him again later this arvo just to touch base.

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 Regulatory Policy Branch  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47E(d) @health.gov.au>  
**Sent:** Thursday, 7 May 2020 10:57 AM  
**To:** s47F >; s47E(d) @health.gov.au>  
**Cc:** s47F >; s22 @health.gov.au>  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]

Thank you s47F much appreciated. Yes please call when you have a moment – s22

Can I please check – if the qtys were to be roughly half that – would the unit price remain the same?

Kind regards

s22

s22

Office of Health Protection | Chief Medical Officer Group  
 Regulatory Policy Branch  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >  
**Sent:** Thursday, 7 May 2020 10:42 AM  
**To:** s47E(d) @health.gov.au>  
**Cc:** s47F >  
**Subject:** RE: Request for updated information - gown capacity [SEC=OFFICIAL]  
**Importance:** High

Good Morning s22

Trust you are well.

Our team have been working through the evening to confirm the best price and supply capacity the level 2 TGA approved gowns you need.

I do need to highlight here, due to conditions and regulations in China and global orders rolling in every hour, we need to move quickly here, as discussed factories capacity are filling quickly.

Good news is we have secured you a better price than discussed, but cant hold that price long without a commitment, if we get a commitment in this week we can lock in and confirm the below delivery and supply for your s47G units. Ready to work with you on this to make it happen.















To: Travis Haslam  
Assistant Secretary, National  
Incident Response Division

## EXECUTION OF VARIATION TO CONTRACT WITH AUSTRALIAN BUSINESS MOBILES

### Purpose

To seek your signature on the Variation No 1 to Goods Contract with Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABM).

### Timing

The Variation is effective on and from 26 June 2020, and therefore your signature is required on that date.

### Issues/Sensitivities

The Department of Health entered into a contract with ABM on 3 June 2020 for the supply of level 2 isolation gowns for the National Medical Stockpile. On 23 June 2020, the supplier requested a variation to the contract to add an additional Australian Register of Therapeutic Goods (ARTG) Number. The variation does not change the risk profile of the contract. The variation is provided at Attachment A for your counter-signature.

### Consultation

Legals and Assurance Division has prepared the variation and requested your counter-signature.

### Recommendation

That you **SIGN** the variation at Attachment A.

Signed / Please Discuss

s47F

Travis Haslam  
Assistant Secretary, National Incident Response Division  
26/06/2020

### Attachments:

Attachment A: Variation No 1 to Goods Contract

Contact officer:

s22

Phone:

TRIM ref:

Cleared by:

# Variation No 1 to Goods Contract

## Parties

Name	<b>Commonwealth of Australia as represented by the Department of Health</b>
ABN	83 605 426 759
Short form name	<b>Customer</b>

Name	<b>Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust</b>
ABN	42 175 149 181
Short form name	<b>Supplier</b>

## Background

- A. On 3 June 2020 the Supplier and the Customer entered into a contract for the provision of certain isolation gowns for the Commonwealth's National Medical Stockpile (**Contract**).
- B. The Supplier and the Customer wish to vary the Contract in accordance with clause 22.3(c) as set out below.

## Agreed terms

1. The parties vary the Contract as follows:
  - (a) delete clause 1(a)(ii) of Schedule 1 in its entirety and replace it with a new clause 1(a)(ii) as follows:
    - "(ii) are approved and listed on the Australian Register of Therapeutic Goods (ARTG Number 335386, 336993, 338029 or 337229 'Gown, isolation, single use') maintained by the Therapeutic Goods Administration;"
2. The terms and conditions of the Contract continue unamended, unless specifically stated in this variation.
3. This variation is effective on and from 26 June 2020.
4. The Supplier represents and warrants that it enters into this Variation No 1 agreement personally and in its capacity as a trustee.

# Signing page

Date 26 June 2020

**EXECUTED** as an agreement.

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

s47F

s47F

Name of witness (print)

s47F

Signature of delegate

TRAVIS HASLAM

Name of delegate (print)

ASSISTANT SECRETARY

Position of delegate (print)

Executed by **Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918)** as the trustee for **Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181)** in accordance with section 127 of the *Corporations Act*

s47F

secretary

who states that she or he is the sole director and sole company secretary of the company

s47F

Name of sole director and sole company secretary (print)



## Commitment Approval Minute

Caroline Edwards  
Acting Secretary  
Department of Health



### COMMITMENT APPROVAL FOR PROCUREMENT OF PERSONAL PROTECTIVE EQUIPMENT FROM AUSTRALIAN BUSINESS MOBILES FOR THE NATIONAL MEDICAL STOCKPILE

#### 1. PURPOSE

This Minute recommends that you:

- **APPROVE** the contract with Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) (Australian Business Mobiles), using the contract developed for the Department of Health by MinterEllison, for Isolation Level 2 Gowns for the National Medical Stockpile (NMS) (**Attachment A**);
- **APPROVE** expenditure for a total of up to **s47G** (GST inclusive) under Section 23(3) of the *Public Governance, Performance and Accountability Act*;

Description	Quantity	Unit Price – Excl GST	Net Amount	GST	Total – Incl GST	Cost Centre
Isolation Level 2 Gowns	<b>s47G</b>	<b>s47G</b>				
<b>s47G</b>					<b>s47G</b> (GST inclusive)	

- **NOTE** that Australian Business Mobiles will be provided with the draft contract once you approve this Minute.
- **NOTE** that a currently executed contract with Australian Business Mobiles includes a clause providing a cap on supplier liability, and that this draft contract includes a similar clause given the supplier is likely to request one. The maximum amount that Australian Business Mobiles would be liable to pay as compensation or damages under the contract, if executed without amendment, would be limited in aggregate to **s47G** (plus GST), subject to certain carve outs (outlined below).
- **NOTE** that should you approve this Minute, a **s47E(d)** will be provided to you once the liability cap amount and clause is agreed with the supplier.

#### 2. BACKGROUND/CONTEXT

On 30 January 2020 an outbreak was declared a Public Health Emergency of International Concern. This global alert was issued by the World Health Organization (WHO) in relation to Coronavirus.

The Department continues to monitor the projected need vs projected supply of personal protective equipment available in the National Medical Stockpile (NMS).

Australian Business Mobiles has been identified as a potential supplier for Isolation Level 2 Gowns. They have undertaken to deliver **s47G** by the end of June 2020, which would partially meet the immediate needs of the NMS.



Australian Business Mobiles has previously been contracted by the Department to supply surgical masks to the National Medical Stockpile. As per their contractual arrangement, Australian Business Mobiles has successfully delivered s47G surgical masks so far to the NMS.

### 3. TIMEFRAME

Commitment Approval is required as soon as possible to allow the Department to secure the goods from Australian Business Mobiles, and secure delivery of the first allotment by the end of May 2020.

### 4. CONTRACTUAL ARRANGEMENT

MinterEllison has on behalf of the Department drafted the contract at **Attachment A**. This contract is based on a standard goods contract and has been amended in consultation with Legal and Assurance Division to reflect terms that were negotiated with the supplier on a currently executed contract.

Should you approve this commitment, Australian Business Mobiles will be provided the contract for review and signing.

### 5. COMPLIANCE WITH COMMONWEALTH PROCUREMENT RULES

The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020. Under your determination, the CPRs do not apply to this procurement.

Even though the CPRs do not apply, you are still required to consider and confirm that this proposal is a proper use of public resources in accordance with section 15(1)(a) of the PGPA Act 2013 and that value for money is achieved. For reasons outlined in this minute, this proposal reflects a proper use of monies and, in the circumstances, would attain value for money for the Commonwealth.

### EXPENDITURE APPROVAL AND FUNDS AVAILABILITY

The cost to the Department for this procurement is up to s47G (GST inclusive).

The Finance Business Partner has confirmed that funds will be made available from the nominated account Administered PRI048.

### 6. GENERAL

#### Risk Management

##### *Prior supplier performance*

Australian Business Mobiles has previously been contracted by the Department to supply surgical masks to the National Medical Stockpile. As per their contractual arrangement, Australian Business Mobiles has successfully delivered s47G surgical masks so far to the NMS.

##### *Liability cap*

Risk to the Commonwealth is introduced in this draft contract by the inclusion of a liability cap. This has been included given a currently executed contract with Australian Business Mobiles includes a clause providing a cap on supplier liability, and the supplier is likely to request a similar clause.

Subject to any amendments to the draft contract, the maximum amount that Australian Business Mobiles would be liable to pay as compensation or damages under the contract (including at general law, in negligence or in equity) in respect of Loss suffered by the Commonwealth of any kind, would be limited in aggregate to s47G (plus GST).

The inclusion of carve outs partly mitigates risks associated with the liability cap, as the cap will not apply to a liability of Australian Business Mobiles in relation to:

- a. a claim by a third party in respect of:
  - i. the death, personal injury, disease or illness of any person; or
  - ii. loss of or damage to property of a third party;
- b. a breach of an obligation of confidence;
- c. an act or omission of the Supplier or Supplier personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
- d. a Wilful Default of the Supplier or Supplier personnel;
- e. a repudiation of the Contract by the Supplier where the Supplier has intentionally abandoned the Contract; or
- f. restitution of amounts paid under a mistake of fact or law in relation to the Contract.

Should you approve this Minute, a s47E(d) will be prepared and provided to you, following confirmation of the liability cap clause and amount.

#### *Overall risk assessment*

There are no conflict of interest issues that have been raised throughout the process. Taking into consideration the inclusion of a liability cap clause in the draft contract, and subject to a s47E(d) following confirmation of the liability cap clause and amount, the risk level of this proposal is assessed as Medium.

Any significant risks and mitigations identified will be advised to the Delegate.

#### **Internal Reporting Requirements**

Under the Department's Procurement Processing and Management policy, contracts must be registered within 2 business days of execution.

#### **External Reporting Requirements**

The contract will be reported on the Department's website in accordance with the Senate Order requirements of July 2001 (Murray Motion). As the contract is valued over \$10,000 it will be reported on AusTender within 42 days of entering into the contract, in line with the Commonwealth Procurement Rules (Division 1, Item 7, Reporting arrangements).

**8. DELEGATE APPROVALS**

It is recommended that you:

<b>APPROVE</b> the contract with Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) (Australian Business Mobiles), using the contract developed for the Department of Health by MinterEllison, for Isolation Level 2 Gowns for the National Medical Stockpile (NMS) (Attachment A);	APPROVED / NOT APPROVED
<b>APPROVE</b> expenditure for a total of up to s47G (GST inclusive) under Section 23(3) of the <i>Public Governance, Performance and Accountability Act</i> ;	APPROVED / NOT APPROVED
<b>NOTE</b> that Australian Business Mobiles will be provided with the draft contract once you approve this Minute.	NOTED / PLEASE DISCUSS
<b>NOTE</b> that a currently executed contract with Australian Business Mobiles includes a clause providing a cap on supplier liability, and that this draft contract includes a similar clause given the supplier is likely to request one. The maximum amount that Australian Business Mobiles would be liable to pay as compensation or damages under the contract, if executed without amendment, would be limited in aggregate to s47G (plus GST), subject to certain carve outs (outlined below).	NOTED / PLEASE DISCUSS
<b>NOTE</b> that should you approve this Minute, a s47E(d) will be provided to you once the liability cap amount and clause is agreed with the supplier.	NOTED / PLEASE DISCUSS

Prepared by:

s47F

s22

Through Travis Haslam

s47F

Assistant Secretary  
Office of Health Protection  
u May 2020

s47F

Caroline Edwards  
Acting Secretary  
Department of Health  
May 2020

**Attachments:**

A. Draft contract

s22

**From:** s22  
**Sent:** Thursday, 16 April 2020 2:34 PM  
**To:** s47F  
**Cc:** s47E(d) ; s22  
**Subject:** RE: Revised Execution Version [SEC=OFFICIAL] H030  
**Attachments:** Australian Business Mobiles - Department of Health - COVID-19 Procurement - 16 April - mark up.docx

Hi s47F

Please find attached a new draft contract with the changes to delivery dates, quantities and execution date in mark up. If you could please confirm the amendments to the delivery dates and quantities we will arrange for an execution version.

As discussed, the execution version will also include the delivery and freight instructions on the cover page of the contract.

Kind regards,

s22

Population Health and Sport Division  
Australian Government Department of Health  
s22 @health.gov.au

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.*

**From:** s47F  
**Sent:** Thursday, 16 April 2020 10:43 AM  
**To:** s22  
**Cc:** s47E(d)  
**Subject:** Re: Revised Execution Version [SEC=OFFICIAL]

Thanks s22

We have everything aligned now for all sign offs to be locked in by tomorrow.

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 16 Apr 2020, at 8:35 am, s22 @health.gov.au wrote:

Good morning s47F

We have received the proposed dates and are working through them now. We will get back to you to confirm the executable version later today.

Kind regards

s22

s22

Population Health and Sport Division  
Australian Government Department of Health  
s22 @health.gov.au

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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From: s47F >  
 Sent: Thursday, 16 April 2020 8:21 AM  
 To: s22 @health.gov.au>  
 Cc: s47E(d) @health.gov.au>  
 Subject: RE: Revised Execution Version [SEC=OFFICIAL]

Good Morning s22

When can you send back the updated execution version for s47F to sign this afternoon please?

Thank you, very grateful,

s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name=s47F

“ Persistence beats resistance “

**Please note – All Wholesale deliveries will incur a freight charge unless terms are agreed.**

**Please note - Some postcodes in online dropship deliveries may be excluded on BULKY ITEM deliveries, feel free to enquire.**

Please note - Prices are subject to change without notice....

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From: s47F  
 Sent: Wednesday, 15 April 2020 5:42 PM  
 To: s22 @health.gov.au>  
 Cc: s47E(d) @health.gov.au>  
 Subject: RE: Revised Execution Version [SEC=OFFICIAL]

Hi s22

Yes we are keen to have all documents signed by Friday 17<sup>th</sup>.

Based on that, and dates needing to move , we have worked with our factory and confirmed, then revised and managed delivery times based on capacity we will achieve, please review and send executable document for s47F to sign please with updated delivery below;

First Delivery date – move [from 23 April to 24 April](#)  
 Revise delivery quantity to s47G

Second Delivery Date – move [from 4 May to 6 May](#)  
 Delivery quantity s47G

Third Delivery Date – move [from 11 May to 14 May](#)  
 Delivery quantity s47G

Fourth Delivery Date – move [from 20 May to 22 May](#)  
 Update delivery quantity to s47G

Fifth Delivery Date – move [from 30 May to 1 June](#)  
 Delivery quantity s47G

Call me for anything more you require.

Thank you, very grateful,



s47F

Global Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

“ Persistence beats resistance “

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**From:** s22 @health.gov.au>  
**Sent:** Tuesday, 14 April 2020 9:10 PM  
**To:** s47F >  
**Cc:** s47E(d) @health.gov.au>  
**Subject:** FW: Revised Execution Version [SEC=OFFICIAL]

Hi s47F

Below and attached is the revised version of the contract which s47F from Minter Ellison provided for re-execution earlier this evening.

As discussed this afternoon, could you please consider any impact on delivery timeframes assuming the earliest the contract could be countersigned would be Friday 17 April? If you can arrange for dates to be advised to us tomorrow, assuming the dates are acceptable to the Department we will amend the attached and provide a new execution contract for Thursday.

Kind regards,

s22

Population Health and Sport Division  
 Australian Government Department of Health  
 s22 @health.gov.au

Location: Sirius Building s22  
 PO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F >  
**Sent:** Tuesday, 14 April 2020 5:49 PM  
**To:** Paul Rubenstein <PRubenstein@abl.com.au>  
**Cc:** s22 @health.gov.au; s22 @health.gov.au; s47E(d) @health.gov.au; s22 ; s47F ; s47F >  
**Subject:** Revised Execution Version [SEC=No Protective Marking]

Dear Paul,

We noticed that the signed version from your client reflected a sole director and secretary company. We have therefore updated the execution version to reflect that and to compress in the delivery schedule.

Could you please arrange for the above to be re-executed and emailed back to the Department.

Kind rgds,

s47F

s47F

s47F

s47F

s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603



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s42

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BY THE DEPARTMENT OF HEALTH AND AGED CARE



s22

**From:** s22  
**Sent:** Friday, 17 April 2020 9:51 AM  
**To:** Haslam, Travis  
**Cc:** s47E(d); s22; s22  
**Subject:** For approval and execution - revised contract Australian Business Mobiles H030 [SEC=OFFICIAL]  
**Attachments:** Minute to Secretary - execution of revised ABM contract FINAL.docx; Australian Business Mobiles - Final Contract - ABM executed - 170420.pdf; 12.04.20 - Commonwealth DoH - ABM - s47E(d) - Final.pdf; RE: COMMITMENT APPROVAL FOR THE SUPPLY OF SURGICAL MASKS FOR THE NATIONAL MEDICAL STOCKPILE [SEC=OFFICIAL]

Hi Travis

Please find attached for your consideration and, pending your approval, forwarding to the a/g Secretary, a revised package seeking her approval of an amended contract with Australian Business Mobiles, including the addition of a liability cap.

The attached package includes:

- Minute seeking approval of revised contract
- Attachment A – Final contract signed by Australian Business Mobiles
- Attachment B - s47E(d) prepared by Minter Ellison
- Attachment C - Commitment approval of 6 April 2020 (note that this is an email from you confirming the a/g Secretary's initial approval).

The hard copy pack will follow.

Many thanks,

s22

Dear Secretary

This email seeks your approval and countersigning of a revised contract with Australian Business Mobiles NSW Pty Ltd (ABM) for the supply of surgical masks.

#### Issues/Sensitivities

On 6 April 2020 you approved an initial draft contract and provided commitment approval up to s47G (GST inclusive if applicable) for the provision of s47G surgical masks by ABM. At the time the risk profile was identified as low to medium as no conflict of interest issues have been raised throughout the process and all payments under the contract will be made on delivery and acceptance of the goods.

Risk to the Commonwealth is introduced in the revised draft contract (**Attachment A**) by the inclusion of the liability cap, pursuant to a request from ABM. Under the revised contract, subject to certain carve outs, the maximum amount that ABM is liable to pay as compensation or damages (including at general law, in negligence or in equity) in respect of loss suffered by Health of any kind, is limited in aggregate to s47G (plus GST).

A s47E(d) prepared by Minter Ellison and detailing identified risks, treatments and controls is at **Attachment B**.

We consider the procurement using the negotiated contract to be medium risk for the following reasons:

- The negotiated contract requires Australian Business Mobiles to ensure the surgical masks are compliant with International standards for PPE.
- Risks associated with the liability cap are significantly mitigated through the inclusion of carve outs. In particular, the cap will not apply to a liability of ABM in relation to a claim by a third party in respect of the death, personal injury, disease or illness of any person.
- All payments under the contract will be made following delivery and acceptance of the goods, meaning the Supplier bears the risk on the Goods until delivery.
- A number of alternative suppliers of surgical masks have been secured, should the supplies under this contract be delayed or the contract not be fulfilled.

Kind regards

s22

**From:** s47F >  
**Sent:** Monday, 13 April 2020 1:51 PM  
**To:** s47F ; s22 ; s22  
**Cc:** s47F ; s47F ; s47E(d) ; s22  
**Subject:** H030 RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

I just had a call from Paul Rubenstein, ABM's lawyer.

He said they had the execution version, but were requesting that payment due dates for the first two payments be changed from within 14 days of delivery of the Goods, to within 5 days of delivery of the Goods. He said they needed this shorter period for cashflow and financing reasons.

I said I would get instructions. Can you please let us have Health's instruction on this?

Kind rgds,

s47F

s47F  
s47F  
s47F  
s47F

**MinterEllison** MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)  
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**From:** s47F  
**Sent:** Sunday 12 April 2020 01:43 PM  
**To:** s22 ; s22  
**Cc:** s47F ; s47F ; s47E(d) ; s22 ; s47F  
**Subject:** RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

Thank you for your instructions. Please see attached:

- execution version of the contract with ABM; and
- s42

As always, please feel free to give s47F or me a call if you have any questions.

Kind regards

s47F

s47F  
s47F  
s47F  
s47F

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minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)  
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**From:** s22 @health.gov.au>  
**Sent:** Sunday 12 April 2020 12:26 PM  
**To:** s47F ; s22 @health.gov.au>  
**Cc:** s47F ; s47F ; s47E(d) @health.gov.au> ; s22 ; s47F >  
**Subject:** RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all

ABM have this morning confirmed that they accept the changes proposed yesterday. Grateful if you could please provide an execution version.

Grateful also if you could finalise the s42 - a marked up version incorporating our changes is attached. Happy to discuss should you have any concerns with the proposed changes s42

Many thanks, as always.

s22

s22

Australian Government Department of Health  
s22 @health.gov.au | s22

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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From: s47F >  
Sent: Saturday, 11 April 2020 5:12 PM  
To: s22 @health.gov.au>; s22 @health.gov.au>  
Cc: s47F >; s47F >; s47E(d) @health.gov.au>; s22 ;  
s47F >  
Subject: RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all

Please see attached a first draft of the s42 assist the Department in undertaking s42 to support the proposed liability cap in the contract with Australian Business Mobile.

- s42
- s42
  - s42

We would be happy to facilitate further discussion on the s42 if it would be of assistance.

As always, please feel free to give s47F or me a call if you have any questions.

Kind regards

s47F

s47F  
s47F  
s47F  
s47F

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minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)  
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From: s47F >  
Sent: Saturday 11 April 2020 03:43 PM  
To: s47F >; s22 @health.gov.au>; s22 @health.gov.au>  
Cc: s47F >; s47F >; s47E(d) @health.gov.au>; s22  
Subject: RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

Please see attached a revised version of the contract with ABM, which can be circulated to ABM.

If ABM confirm the proposed changes, we can prepare an execution version.

Kind regards

s47F

s47F  
s47F  
s47F  
s47F

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From: s47F >  
Sent: Saturday 11 April 2020 02:24 PM  
To: s22 @health.gov.au>; s22 @health.gov.au>  
Cc: s47F >; s47F >; s47F >; s47E(d) >  
@health.gov.au>; s22  
Subject: RE: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Now with the document attached as a copy.

s47F

s47F  
s47F  
s47F  
s47F s47F

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From: s47F  
Sent: Saturday 11 April 2020 02:22 PM  
To: s22 @health.gov.au>; s22 @health.gov.au>  
Cc: s47F >; s47F >; s47F >; s47E(d) @health.gov.au>; s22  
Subject: FW: Australian Business Mobile | Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22 and s22

Please see attached revised draft contract for Australian Business Mobile (ABM), with all changes following negotiations this morning showing in track (from the version incorporating ABM's versions).

s42  
[Redacted]

Please carefully check all changes and ensure it reflects the Department's intent.

As we understand from your email below, s22 that the Department will s42

Please feel free to give s47F or me a call if you would like to discuss.

Kind regards

s47F

s47F  
s47F  
s47F  
s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)

From: s22 @health.gov.au>  
Sent: Saturday 11 April 2020 12:54 PM  
To: s47F >; s22 @health.gov.au>; s22 ; s47E(d)  
Cc: s47F >; s47F >  
Subject: RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all

As discussed with s22 I've had a discussion with s22 to confirm he is comfortable for the Department to proceed with drafting s42, as we discussed earlier today.

We would be grateful if you could also prepare s42

Please feel free to call me on s22 should you need to discuss.

Kind regards

s22

s22  
Preventive Health Policy Branch | Population Health and Sport Division  
Australian Government Department of Health  
s22 @health.gov.au | s22

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F >  
**Sent:** Wednesday, 8 April 2020 11:20 PM  
**To:** s22 @health.gov.au>; s22 ; s22 @health.gov.au>  
**Cc:** s47F >; s47F >  
**Subject:** RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all

As discussed with s22 please see attached draft contract, incorporating the changes proposed by Australian Business Mobile in the side letter (in mark-up) and our comments in yellow highlighting for the Department's consideration.

As always, please feel free to call s47F or me if you have any questions.

Kind regards

s47F

—

s47F  
s47F  
s47F  
s47F

**MinterEllison** MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on **LinkedIn** and **Twitter**

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**From:** s22 @health.gov.au>  
**Sent:** Wednesday 8 April 2020 02:09 PM  
**To:** s47F >; s47F >; s47F >  
**Subject:** FW: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all,

Can you review the s42

As discussed, can you review s42

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
s22  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Sirius Building s22  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22  
**Sent:** Wednesday, 8 April 2020 1:24 PM  
**To:** s22 @health.gov.au>  
**Cc:** s22 @health.gov.au>  
**Subject:** FW: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

s22

Proposed amendments from ABM. s42

s42

ABM are seeking to finalise this today.

Regards

s22

s22

National Incident Response Division | Chief Medical Officer Group

Australian Government Department of Health  
s22 @health.gov.au  
Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia

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---

**From:** s47F >  
**Sent:** Wednesday, 8 April 2020 1:17 PM  
**To:** s22  
**Subject:** Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=No Protective Marking]

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s42

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s22

**Subject:** FW: H030 - Re: Contract for supply of goods [SEC=OFFICIAL]

**From:** s47F >

**Sent:** Sunday, 12 April 2020 10:41 AM

**To:** s22 @health.gov.au>

**Cc:** s47E(d) @health.gov.au>; s22 @health.gov.au>; s22 @health.gov.au>

**Subject:** Re: H030 - Re: Contract for supply of goods [SEC=OFFICIAL]

Good morning s22

We accept the proposed changes. Please send executable final document when you can please.

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 11 Apr 2020, at 4:13 pm, s22 wrote:

Hi s47F

Please find attached revised draft goods contract for your consideration. The revised contract reflects our discussions this morning including a proposed cap on liability of s47G (GST exclusive). Other changes proposed by Australian Business Mobiles on Wednesday 8 April have been accepted, with further changes identified in mark up.

We would be grateful for your consideration and advice as to whether Australian Business Mobiles is able to accept the Commonwealth's proposed changes.

As I mentioned earlier this week, the inclusion of a liability cap gives rise to additional obligations on the Commonwealth. These will need to be considered by a financial delegate within the Department before we are able to progress the contract for execution. We will endeavour to have everything in place to progress this in a timely way.

Kind regards

s22

s22

Population Health and Sport Division

Australian Government Department of Health

s22 @health.gov.au



Location: Sirius Building s22

PO Box 9848, Canberra ACT 2601, Australia

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**From:** s22 **On Behalf Of** s47E(d)

**Sent:** Thursday, 9 April 2020 3:29 PM

**To:** s47F ; s22

**Cc:** s47E(d) ; s22

**Subject:** RE: H030 - Re: Contract for supply of goods [SEC=OFFICIAL]

Hi s47F

Thanks very much for returning my call. As discussed, I am working with s22 in relation to your contract.

I understand s22 has been in touch to let you know that we are working with our lawyers to prepare a revised goods contract. We anticipate the revised contract will accept the majority of the amendments suggested by Australian Business Mobiles.

The key issue we are working through is that the inclusion of a liability cap gives rise to a requirement for the Department to undertake a s47E(d) in order to progress this issue the Department proposes that liability be set to the value of the contract, rather than the value of paid goods. I would be grateful for your advice in relation to this proposal.

In the meantime we will continue to progress the other changes to the contract and I will share a revised draft as soon as we are able.

Please feel free to call me on the number below should you need to discuss.

Kind regards,

s22

s22

Population Health and Sport Division

Australian Government Department of Health

s22 [@health.gov.au](mailto:s22@health.gov.au)

Location: Sirius Building s22

PO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.*

**From:** s47F >

**Sent:** Thursday, 9 April 2020 6:51 AM

**To:** s22

**Cc:** s47E(d) [@health.gov.au](mailto:s22@health.gov.au)>

**Subject:** H030 - Re: Contract for supply of goods [SEC=OFFICIAL]

Morning s22



Following up on the amendments as discussed yesterday pls ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 6 Apr 2020, at 6:26 pm, s22 wrote:

Hi s47F

Please find attached a copy of the contract for goods between Australian Business Mobiles and the Department of Health, for provision of products for the NMS. The contract is drafted on the basis of previous communications with the Department of Health.

Please review the Contract and sign and return an electronic copy to me by 9 April 2020

I will arrange for our delegate to countersign the Contract and return an electronic copy to you for your records.

Please feel free to call if you wish to discuss any aspects.

Many thanks for your patience on the development of this contract.

Regards

s22

Director

National Incident Response Division | Chief Medical Officer Group

Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

From: s47F >

Sent: Sunday, 5 April 2020 1:12 PM

To: s47E(d) @health.gov.au>

Cc: s22 ; s47F > ; s47F >

Subject: Re: Mask Offer [SEC=OFFICIAL]

Hi s22

Thanks for the email and follow up. All good.

It's a busy time for you and us .

I understand this concern as we have gone through strong QA and diligence per order ourselves. Our factories are busy and we need to move quickly now to lock in your order requirements so a contract if possible today is essential if possible.

Please see below comments to confirm ;

The current draft includes weekly delivery of s47G masks and payment on delivery and acceptance of goods in Australia. I wanted to confirm the delivery schedule as well as whether split the payments to be tied to each delivery.

= yes confined once order and contract is confirmed yet we will manufacturer s47G masks each 7-10 days and then lock in and arrange transport to your toll depot at eastern creek as per below whereby payment upon acceptance will be made to us .

I also wish to note that delivery would be to the Toll Depot in Eastern Creek (Sydney) rather than a location in Canberra. = agreed and confirmed

I will call you now to confirm all above .

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 5 Apr 2020, at 11:38 am, s47E(d) <[s47E\(d\)@health.gov.au](mailto:s47E(d)@health.gov.au)> wrote:

Hi s47F

My apologies on the radio silence. You will have a missed call today from unknown number which is me.

As you could appreciate the issue of potential non-compliant product arriving from overseas had made us need to take a pause on mask offerings.

I have seen a draft contract but before finalising this for the delegate's consideration, I wish to confirm a couple of key matters including your expectations around the payment schedule.

The current draft includes weekly delivery of s47G masks and payment on delivery and acceptance of goods in Australia. I wanted to confirm the delivery schedule as well as whether split the payments to be tied to each delivery.

I also wish to note that delivery would be to the Toll Depot in Eastern Creek (Sydney) rather than a location in Canberra.

Regards

s22

Director

National Incident Response Division | Chief Medical Officer Group

Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F >

**Sent:** Saturday, 4 April 2020 5:50 PM

**To:** s22

**Subject:** Re: Mask Offer [SEC=OFFICIAL]

Hi s22

How are we going pls ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 2 Apr 2020, at 12:12 am, s22 wrote:

Hi s47F

Again sorry for the late response.

I am awaiting the drafting of the contract consistent with the information you have previously provided for the consideration of the delegate.

Regards

s22

Director

Office of Health Protection Division | Chief Medical Officer Group

Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22

GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F >  
**Sent:** Wednesday, 1 April 2020 6:57 PM  
**To:** s22  
**Cc:** s47E(d) @health.gov.au>  
**Subject:** Re: Mask Offer [SEC=OFFICIAL]

Evening s22

As discussed today, please advise on status of contact pls?

As we are receiving many requests for bigger volumes on tender today. We can help you as we have confirmed just need it finalised.

Take care

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 30 Mar 2020, at 10:56 pm, s22 wrote:

Hi s47F

Sorry for the lack of response.

I will chase this in the morning and give you a call.

Regards

s22

Director

Office of Health Protection Division | Chief Medical Officer Group

Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

From: s47F >  
 Sent: Monday, 30 March 2020 8:02 PM  
 To: s22  
 Cc: s22 @health.gov.au>  
 Subject: Re: Mask Offer [SEC=OFFICIAL]  
 Hi s22

Can we have an update from our last email?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 26 Mar 2020, at 9:17 am, s22 wrote:

Hi s47F

Thanks for the chat just then. Thank you also for the earlier information. As s22 previously mentioned, this is being reviewed as part of our further due diligence with the Department's legal advisors.

The Department would only be able to consider your proposal further, if any deposit or prepayment was secured by an appropriate bank guarantee from an acceptable bank. Alternatively the Department may consider payment on delivery and acceptance of goods in Australia, as a possible approach.

Can you also please provide details of your experience in supplying products of a similar nature and scale, as that did not seem to be included.

Please note that at present, and unless and until a written contract is signed by the Department's authorised delegate, no legal obligations or rights exist between us. The Department makes no assurances that it will proceed with your proposal.

Once we have concluded our due diligence we will be in a position to provide advice to the delegate.

Regards

s22

Director

Office of Health Protection Division | Chief Medical Officer Group

Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22

GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s22 @health.gov.au>  
**Sent:** Wednesday, 25 March 2020 7:51 PM  
**To:** s47F >  
**Subject:** RE: Mask Offer [SEC=OFFICIAL]

s47F

Our due diligence is still being undertaken hope to get back to you tomorrow.

s22

s22

Director

Health Emergency Countermeasures Section

Health Emergency Management Branch

Office of Health Protection

s22 @health.gov.au

Office of Health Protection

Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present*

**From:** s47F >  
**Sent:** Tuesday, 24 March 2020 8:28 PM  
**To:** s22 @health.gov.au>  
**Subject:** Re: Mask Offer [SEC=OFFICIAL]  
 Thanks s22

What happens next pls ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 24 Mar 2020, at 8:15 pm, s22 @health.gov.au> wrote:

s47F

Many thanks I can confirm receipt

s22

s22

Director

Health Emergency Countermeasures Section

Health Emergency Management Branch

Office of Health Protection

s22 @health.gov.au

Office of Health Protection

Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present*

From: s47F &gt;

Sent: Tuesday, 24 March 2020 7:51 PM

To: s22 @health.gov.au &gt;

Subject: RE: Mask Offer [SEC=OFFICIAL]

Hi s22

Please find the requested information to draft the final contract of supply.

Please advise if you need anything further to progress;

(a)30/6/18 – Non audited General Purpose Financial Statements attached.

(b)As an organisation we are proven in high volume, critical supply of key categories into the Australian and European markets. We are an agile business that deploys resources around opportunities as they arise. Our experience in import and distribution over those years together with the established supply chain, allowed us to meet the immediate and urgent need of the Australian community in COVID-19 readiness and management. We have been dealing with our existing network of trusted and proven suppliers and factories to source high grade medical and healthcare products. As a result we have brought to the market significant volume of Hand Sanitiser, Surgical Face Masks and COVID-19 Test kits.

s47G

d) Manufacturer s47G . Cargo will then be transported through our chosen freight and logistics direct to your Canberra DC and we will provide communication and visibility on delivery from point to point.

Thank you, very grateful,

s47F

Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

Dream, Believe, Create, Succeed.

“ Persistence beats Resistance “

Please note - Prices are subject to change without notice....

Please note- Min order value of \$500ex on all wholesale orders

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**From:** s22 [redacted] <[redacted]@health.gov.au>

**Sent:** Tuesday, 24 March 2020 4:06 PM

**To:** s47F [redacted] >

**Subject:** FW: Mask Offer [SEC=OFFICIAL]

s47F [redacted]

We are in the process of doing all the checking before drafting the final contract (you will appreciate we need to formalise any arrangement) and before we can finalise and ensure our legal advisers have all that is necessary can you provide the following:

- (a) a copy of your most recent audited financial statements;
- (b) details of previous experience in supplying products of this sort;
- (c) referee details of clients who you have previously provided products of this support; (if any)
- (d) details of your supply chain and manufacturers.

Cheers

s22 [redacted]

s22 [redacted]

Director

Health Emergency Countermeasures Section

Health Emergency Management Branch

Office of Health Protection

s22 [redacted] <[redacted]@health.gov.au>

Office of Health Protection

Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

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From: s47F >  
 Sent: Monday, 23 March 2020 11:39 AM  
 To: s22 @health.gov.au>; s47F >  
 Cc: s22 @health.gov.au>; s22 ; s22  
 @health.gov.au>  
 Subject: Re: Mask Offer [SEC=OFFICIAL]

Hi Guys

I really need an update on the contract and deposit please we need to action this today or we may lose the stock

Who can we escalate this to pls ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 23 Mar 2020, at 10:04 am, s47F > wrote:

Morning s22

Good to chat earlier.

China factory chasing my deposit as laws may change in China

When can we get contract and deposit paid pls.

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 7:40 pm, s22 @health.gov.au> wrote:

All good, thanks s47F

Regards.

s22

*Health Emergency Countermeasures Section*

*Health Emergency Management Branch*

Office of Health Protection

s22

s22

s22 [@health.gov.au](mailto:s22@health.gov.au)

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**From:** s47F >

**Sent:** Sunday, 22 March 2020 7:26 PM

**To:** s22 [@health.gov.au](mailto:s22@health.gov.au)>

**Cc:** s22 [@health.gov.au](mailto:s22@health.gov.au)>; s22 ; s22  
s22 [@health.gov.au](mailto:s22@health.gov.au)>

**Subject:** Re: Mask Offer [SEC=OFFICIAL]

Evening s22

Apologies , it's been a crazy day,

Please find signed document attached.

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 6:29 pm, s22 [@health.gov.au](mailto:s22@health.gov.au)> wrote:

Thanks s47F

Please note that you have returned the form in its original format without a signature. These forms are normally hand signed and returned in PDF format.

I have sent the form off to our financial area including the email trail to see if they will accept it without the signature.

I won't have their answer back until tomorrow at the earliest. To alleviate any delays, would you be able to send in a signed PDF version, please.

Thanks and regards.

s22

Health Emergency Countermeasures Section

Health Emergency Management Branch

## Office of Health Protection

s22

s22

s22 @health.gov.au

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**From:** s47F >  
**Sent:** Sunday, 22 March 2020 5:16 PM  
**To:** s22 @health.gov.au; s22 @health.gov.au  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>; s22 ; s22 @health.gov.au  
**Subject:** RE: Mask Offer [SEC=OFFICIAL]

see attached

Thank you, very grateful,

s47F

Sales Director – “Striving to be better everyday”

s47F

Skype name=s47F

Dream, Believe, Create, Succeed.

“ Persistence beats Resistance ”

Please note - Prices are subject to change without notice....

Please note- Min order value of \$500ex on all wholesale orders

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**From:** s22 @health.gov.au  
**Sent:** Sunday, 22 March 2020 4:29 PM  
**To:** s47F ; s22 @health.gov.au  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>; s22 ; s22 @health.gov.au  
**Subject:** RE: Mask Offer [SEC=OFFICIAL]

Hello s47F

To assist us in getting the ball rolling, would you be kind enough to fill in the attached vendor form and return, please.

This form is not a commitment or contract in any way shape or form, but it will allow our accounts area to raise all of your business details into our financial system for payments to occur.

Thanks in advance, regards.

s22

*Health Emergency Countermeasures Section*

*Health Emergency Management Branch*

*Office of Health Protection*

s22

s22

s22 [@health.gov.au](mailto:s22@health.gov.au)

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**From:** s47F >

**Sent:** Sunday, 22 March 2020 3:16 PM

**To:** s22 [@health.gov.au](mailto:s22@health.gov.au)

**Cc:** Haslam, Travis <[Travis.Haslam@health.gov.au](mailto:Travis.Haslam@health.gov.au)>; s22 [@health.gov.au](mailto:s22@health.gov.au); s22

**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Hi s22

Thank you for your order, received.

To raise the invoice Please confirm for me who we should invoice ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 3:01 pm, s22 [@health.gov.au](mailto:s22@health.gov.au) wrote:

s47F

As discussed I can confirm that the Department is prepared to purchase s47G Surgical masks at an estimated cost of s47G (GST EXCL) s47G

If you can send an invoice a contract will be forthcoming as a priority.

Cheers

s22

s22

Director

Health Emergency Countermeasures Section

Health Emergency Management Branch

Office of Health Protection

s22 @health.gov.au

Office of Health Protection

Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

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**From:** s47F @darton.com.au>  
**Sent:** Saturday, 21 March 2020 1:07 PM  
**To:** s22 @health.gov.au>  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>  
**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Good Afternoon s22

Thanks for the email,

I'll have my team review the requirements below and we will come back to you with what we have.

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 21 Mar 2020, at 11:58 am, s22 @health.gov.au> wrote:

Good Morning s47

I thought I would email and introduce myself. As Sarah indicated I manage the National Medical Stockpile. To assist you confirming the standards required for masks that can be accepted for the Stockpile I have included the relevant information below.

Should you have any further queries please do not hesitate to contact me

Cheers

s22

- The products must be currently included on the Australian Register of Therapeutic Goods (ARTG) maintained by the Therapeutic Goods Administration and / or meet the current Australian standards as required by the Standards Australia. For example, Australian Standard requirements, AS / NZS 1716:2012. If the products meet the standards, then the products are acceptable for supply and for use in public hospital systems across all states and territories in Australia (**Standards Australia/Standards New Zealand (AS/NZS) 2012, Respiratory protective devices; AS/NZS 1716:2012**).
- All products certified and approved by the National Institute for Occupational Safety and Health (**NIOSH**), are acceptable for supply into the National Medical Stockpile, including the supply of **N95 Respirators** which is equivalent to **P2 Respirators** (equivalent in requirements and specifications due to Certification and Approval by the EU and European Standards) and **Surgical masks** that meet the approval and certification by NIOSH.

s22

Director

Health Emergency Countermeasures Section  
Health Emergency Management Branch

Office of Health Protection

s22

[@health.gov.au](mailto:s22@health.gov.au)

Office of Health Protection Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

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BY THE DEPARTMENT OF HEALTH AND AGED CARE



s22

**From:** s22  
**Sent:** Friday, 10 April 2020 5:52 PM  
**To:** s22; s47E(d)  
**Cc:** s22  
**Subject:** H030 RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

s47F has suggested either 11am or 1.30pm Saturday.

Relevant emails are:

- s47F
- Paul Rubenstein [PRubenstein@abl.com.au](mailto:PRubenstein@abl.com.au)
- s47F

Thanks

s22

s22

Preventive Health Policy Branch | Population Health and Sport Division  
 Australian Government Department of Health  
 s22 [@health.gov.au](mailto:s22@health.gov.au) | s22

Location: Sirius Building s22  
 PO Box 9848, Canberra ACT 2601, Australia

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**From:** s22  
**Sent:** Friday, 10 April 2020 4:19 PM  
**To:** s47E(d)  
**Cc:** s22; s22  
**Subject:** RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

Yes, we can. What time suits s47F best tomorrow or Sunday?

We will need to engage Minters with this as well. As soon as you have a time I will ask Minters to send a telecon invite to all. We will need email details of ABM's people s47F + lawyer).

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
 s22  
 Australian Government Department of Health  
 s22 [@health.gov.au](mailto:s22@health.gov.au)  
 Location: Sirius Building s22  
 GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22 [@health.gov.au](mailto:s22@health.gov.au) > On Behalf Of s47E(d)  
**Sent:** Friday, 10 April 2020 3:41 PM  
**To:** s22 [@health.gov.au](mailto:s22@health.gov.au) >  
**Cc:** s22; s22 [@health.gov.au](mailto:s22@health.gov.au) >  
**Subject:** RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

s47F has called today to request a quick conversation between our lawyers in relation to s42. If possible he would like to arrange a discussion tomorrow (Saturday) or Sunday at the latest. I am happy to take your advice on whether that's doable.

s42

I can be contacted on s22 if you need to discuss.

Kind regards

s22

s22

Preventive Health Policy Branch | Population Health and Sport Division  
Australian Government Department of Health  
s22 @health.gov.au s22

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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From: s22 @health.gov.au>  
Sent: Thursday, 9 April 2020 9:59 AM  
To: s22 @health.gov.au>  
Cc: s22 ; s47E(d) @health.gov.au>  
Subject: RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi s22

The only issue is the capped s42

Grateful if you could ring me to discuss.

Regards,

s22  
s22

Legal and Assurance Division | Corporate Operations Group  
Corporate, Commercial and Litigation Branch  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Sirius Building s22  
GPO Box 9848, Canberra ACT 2601, Australia

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From: s47F >  
Sent: Wednesday, 8 April 2020 11:20 PM  
To: s22 @health.gov.au>; s22 ; s22 @health.gov.au>  
Cc: s47F >; s47F >  
Subject: RE: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all

As discussed with s22 please see attached draft contract, incorporating the changes proposed by Australian Business Mobile in the side letter (in mark-up) and our comments in yellow highlighting for the Department's consideration.

As always, please feel free to call s47F or me if you have any questions.

Kind regards

s47F

s47F  
s47F  
s47F  
s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on LinkedIn and Twitter

From: s22 @health.gov.au>  
Sent: Wednesday 8 April 2020 02:09 PM  
To: s47F >; s47F >; s47F >  
Subject: FW: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

Hi all,

Can you review s42

s42

Regards,

s22

s22



Legal and Assurance Division | Corporate Operations Group  
Corporate, Commercial and Litigation Branch  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Sirius Building s22  
GPO Box 9848, Canberra ACT 2601, Australia

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From: s22  
Sent: Wednesday, 8 April 2020 1:24 PM  
To: s22 @health.gov.au>  
Cc: s22 @health.gov.au>  
Subject: FW: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=OFFICIAL]

s22

Proposed amendments from ABM. s42

s42

ABM are seeking to finalise this today.

Regards

s22

s22



National Incident Response Division | Chief Medical Officer Group  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

From: s47F >  
Sent: Wednesday, 8 April 2020 1:17 PM  
To: s22  
Subject: Letter\_-\_Director\_\_Health\_Emergency\_Countermeasures\_Section [SEC=No Protective Marking]

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MinterEllison has a 24-hour chatbot helpline offering guidance on a range of COVID-19 related topics and a COVID-19 Hub on our website.

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s42

s22

**From:** s22  
**Sent:** Tuesday, 24 March 2020 3:34 PM  
**To:** s22  
**Subject:** FW: Mask Offer [SEC=OFFICIAL]  
**Attachments:** ABMobile. [SEC=OFFICIAL]; ABMobile #2 [SEC=OFFICIAL]

Fyi they're coming through this way too...

s22

National Dust Disease Taskforce Team  
Office of Health Protection | Chief Medical Officer Group  
Regulatory Policy Branch  
Australian Government Department of Health  
s22 @health.gov.au  
GPO Box 9848, Canberra ACT 2601, Australia

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**From:** s22 @health.gov.au>  
**Sent:** Tuesday, 24 March 2020 3:32 PM  
**To:** s22 @health.gov.au>  
**Subject:** FW: Mask Offer [SEC=OFFICIAL]

Australian Business Mobile NSW

**From:** s22 @health.gov.au>  
**Sent:** Monday, 23 March 2020 11:09 AM  
**To:** s22 @health.gov.au>  
**Subject:** FW: Mask Offer [SEC=OFFICIAL]

s22

Email trail below.

I would add a freight line s47

It's easier now than later down the track.

Cheers.

s22

Health Emergency Countermeasures Section  
Health Emergency Management Branch  
Office of Health Protection

s22  
@health.gov.au

Please note that this email and attachments may contain confidential or legally privileged information. Please consult with the Office of Health Protection before disclosing any part of this email, or attachment, outside the Department. If you receive this email in error, please delete it and contact the sender immediately.

**From:** s47F >  
**Sent:** Sunday, 22 March 2020 2:14 PM  
**To:** s22 @health.gov.au>  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>; s22 @health.gov.au>; s22 @health.gov.au>  
**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Hi s22

s47G available every 7 days at this stage.

AUD landed s47G gst AUD per mask

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 2:01 pm, s22 @health.gov.au> wrote:

Yes

s22

s22  
Director  
Health Emergency Countermeasures Section  
Health Emergency Management Branch  
Office of Health Protection

s22 @health.gov.au  
<image001.png>

Office of Health Protection  
Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present*

---

**From:** s47F >  
**Sent:** Sunday, 22 March 2020 2:00 PM  
**To:** s22 @health.gov.au  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>; s22 @health.gov.au; s22 @health.gov.au  
**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

In AUD Landed to Canberra yes ?

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 1:52 pm, s22 @health.gov.au wrote:

s47

How many and what is the cost including freight

s22

s22  
Director  
Health Emergency Countermeasures Section  
Health Emergency Management Branch  
Office of Health Protection

s22 @health.gov.au  
<image001.png>

Office of Health Protection  
Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

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---

**From:** s47F >  
**Sent:** Sunday, 22 March 2020 1:39 PM  
**To:** s22 @health.gov.au  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>; s22 @health.gov.au; s22 @health.gov.au  
**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Hi s22

Our Shanghai office just confirmed China is about to regulate all exports of masks as of tomorrow. They will reduce the amount going out.

India has already banned the export of these.

If we secure an order today we can get them out for you and with your

<image002.jpg>

s47G

Lead time 5 days

Need order commitment today or can't guarantee supply

Talk soon

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 12:39 pm, s22 <[s22@health.gov.au](mailto:s22@health.gov.au)> wrote:

s47F

Yes we do. Any information around specifications/cost/timelines/numbers potentially to be purchased would be most helpful

s22

s22

Director  
Health Emergency Countermeasures Section  
Health Emergency Management Branch  
Office of Health Protection

s22 <[s22@health.gov.au](mailto:s22@health.gov.au)>  
<image001.png>

Office of Health Protection  
Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present*

**From:** s47F <[s47F@health.gov.au](mailto:s47F@health.gov.au)>

**Sent:** Sunday, 22 March 2020 12:23 PM

**To:** s22 <[s22@health.gov.au](mailto:s22@health.gov.au)>

**Cc:** Haslam, Travis <[Travis.Haslam@health.gov.au](mailto:Travis.Haslam@health.gov.au)>; s22 <[s22@health.gov.au](mailto:s22@health.gov.au)>; s22 <[s22@health.gov.au](mailto:s22@health.gov.au)>

**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Do you still require supply of 3ply masks ?

Thanks in advance ,

s47F

Global Sales Director

s47F

"Persistence beats Resistance "

On 22 Mar 2020, at 10:09 am, s22 <[s22@health.gov.au](mailto:s22@health.gov.au)> wrote:

s47F

Apologies. We are working to consolidate purchases to date and at this stage we are unable to undertake a commitment

However please keep me advised of updated offers you can make as we will look to continue purchasing shortly.

Cheers

s22

s22

Director  
Health Emergency Countermeasures Section  
Health Emergency Management Branch



s22 @health.gov.au  
<image001.png>

Office of Health Protection  
Australian Government Department of Health | GPO Box 9848, Canberra ACT 2601

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present*

---

**From:** s47F >  
**Sent:** Saturday, 21 March 2020 7:10 PM  
**To:** s22 @health.gov.au >  
**Cc:** Haslam, Travis <Travis.Haslam@health.gov.au>  
**Subject:** Re: Mask Offer [SEC=UNOFFICIAL]

Hi s22  
I've just confirmed I have s47G of the KN95 I can secure now from my manufacturer.  
We need to move tonight if possible.

Thanks in advance ,

s47F  
Global Sales Director  
s47F

"Persistence beats Resistance "

On 21 Mar 2020, at 5:53 pm, s47F > wrote:



---

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s22

**From:** s47F >  
**Sent:** Tuesday, 24 March 2020 10:36 AM  
**To:** s47E(d)s22; s22  
**Subject:** Re: Masks and test kits for the National Medical Stockpile [SEC=OFFICIAL]

Hi s22

Are you still keen in progressing with our test kits pls advise ?

Thanks in advance ,

s47F  
 Global Sales Director  
 s47F

"Persistence beats Resistance "

On 23 Mar 2020, at 6:07 pm, s47E(d) @tga.gov.au> wrote:

Good afternoon s47F

Thank you for your inquiry to the TGA.

***The following information is current advice relating to the supply of in vitro diagnostic medical devices for the detection of COVID-19/SARS-CoV-2 infections. However, as the COVID-19 situation is changing rapidly, this advice may change.***

A new emergency exemption has been made to allow rapid supply of COVID-19 diagnostic tests to all [Australian accredited pathology laboratories](#). In practice, this emergency exemption allows COVID-19 diagnostic tests to be immediately supplied to accredited pathology laboratories approved under the *Health Insurance Act 1973* while the TGA continues to expedite the regulatory assessment process for these devices. Accredited pathology laboratories (under the *Health Insurance Act 1973*) are those accredited as medical testing laboratories eligible for claiming to Medicare for approved pathology services.

The full exemption can viewed here: [Therapeutic Goods \(Medical Devices—Accredited Pathology Laboratories\) \(COVID-19 Emergency\) Exemption 2020](#).

A number of COVID-19 IVD tests have undergone an expedited assessment by the TGA and are now approved for inclusion in the Australian Register of Therapeutic Goods (ARTG) for general supply in Australia.

*The Therapeutic Goods Act 1989 (the Act) provides that the Minister for Health (or his delegate) may exempt certain kinds of medical devices that are not included in the Australian Register of Therapeutic Goods from various provisions of the Act so that those devices can be made available urgently to deal with public health emergencies. On 22 March 2020, the Secretary, as delegate of the Minister, made the Therapeutic Goods (Medical Devices—Accredited Pathology Laboratories) (COVID-19 Emergency) Exemption 2020 in order to facilitate necessary access to in vitro diagnostics medical devices intended for use in the diagnosis of COVID-19 infections.*

*NOTE: An emergency exemption was originally made on 31 January 2020, which limited supply of COVID-19 tests that were not already included in the ARTG, to laboratories in the Public Health Laboratory Network (PHLN). Since January 2020, there has been a significant increase in the need to test suspected COVID-19 infections. The new emergency exemption supports increased testing needs by expanding the former emergency exemption to both public and private laboratories in Australia that are appropriately accredited pathology laboratories.*

The TGA has released a [web statement](#) that provides information and guidance around the supply of COVID-19 tests in Australia, through both the Therapeutic Goods (Medical Devices—Accredited Pathology Laboratories) (COVID-19 Emergency) Exemption 2020 and the [ARTG inclusion pathway](#) for devices of this kind.

If you require any clarification regarding the information provided in this email please do not hesitate to contact us through this address.

Thanks and regards,

s22

**Medical Devices Information Unit**  
 Medical Devices Branch  
 Therapeutic Goods Administration

s22  
 s47E(d) @tga.gov.au

**Therapeutic Goods Administration**  
 Department of Health  
 PO Box 100  
 Woden ACT 2606 Australia  
[www.tga.gov.au](http://www.tga.gov.au)

For ongoing information and updates please subscribe to the TGA's [Medical Devices Information](#) and [IVDs Information](#) email subscription services

**From:** s47F >  
**Sent:** Saturday, 21 March 2020 2:55 PM



To: Norris, Sarah <[Sarah.Norris@health.gov.au](mailto:Sarah.Norris@health.gov.au)>

Cc: Haslam, Travis <[Travis.Haslam@health.gov.au](mailto:Travis.Haslam@health.gov.au)>; s22 <[REDACTED]@health.gov.au>; s47E(d) <[REDACTED]@health.gov.au>

Subject: RE: Masks and test kits for the National Medical Stockpile [SEC=OFFICIAL]

Hi Sarah,

My team and I, have received the email from s22 and will have further information on the masks once we confirm everything you need. Being the weekend its not as easy, but we are on it as a No.1 priority.

Our other No.1 priority for Australians is the test kit we now distribute. Please review below urgently and lets work together here as these kits save lives and resources.

<image006.png>

<image007.png>

<image008.png>

- Used for qualitative detection of the antibody IgM/IgG to novel Coronavirus ( COVID-19) in human serum/ plasma/ whole blood.

<image009.jpg>

<image010.jpg>

ISO 13485 approved.

Lets please discuss one you have reviewed soon.

Thank you, very grateful,

s47F

Sales Director – “Striving to be better everyday”

s47F

Skype name= s47F

Dream, Believe, Create, Succeed.

“ Persistence beats Resistance “

Please note - Prices are subject to change without notice....

Please note- Min order value of \$500ex on all wholesale orders

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---

From: Norris, Sarah <[Sarah.Norris@health.gov.au](mailto:Sarah.Norris@health.gov.au)>

Sent: Saturday, 21 March 2020 11:40 AM

To: s47F <[REDACTED]>

Cc: Haslam, Travis <[Travis.Haslam@health.gov.au](mailto:Travis.Haslam@health.gov.au)>; s22 <[REDACTED]@health.gov.au>; s47E(d) <[REDACTED]@health.gov.au>; Norris, Sarah <[Sarah.Norris@health.gov.au](mailto:Sarah.Norris@health.gov.au)>

Subject: Masks and test kits for the National Medical Stockpile [SEC=OFFICIAL]

Hi s47F thank you for the recent telephone conversation. As discussed, Minister Hunt provided me s22 details about possible masks and test kits you may have for the National Medical Stockpile. I understand you have some masks available in India but having trouble getting them released for export. As discussed, all PPE must meet Australian Standards and the team would be able to provide this information to you. With respect to the test kits, I would appreciate the information you have about them so we can forward to our TGA colleagues who can confirm they meet the appropriate standards.

Appreciate if you could please provide us with any information you may have to help us make our assessment

s22 is the team lead and is copied into this email who can assist further.

Look forward to hearing from you.

Kind regards  
Sarah

**Sarah Norris**

Acting First Assistant Secretary

<image002.png>

Office of Health Protection | Chief Medical Officer Group  
Australian Government Department of Health  
T: 02 6289 s22 | E: [sarah.norris@health.gov.au](mailto:sarah.norris@health.gov.au)  
Location: Scarborough Building  
GPO Box 9848, Canberra ACT 2601, Australia

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

s22

**From:** s22 on behalf of s47E(d)  
**Sent:** Thursday, 9 April 2020 11:33 AM  
**To:** s47E(d)  
**Cc:** s22 ; s22  
**Subject:** Advice sought - proposed contract changes Australian Business Mobiles H030 [SEC=OFFICIAL]

Good morning

I am assisting s22 with the negotiations in relation to procurement of face masks from supplier Australian Business Mobiles H030.

The supplier has proposed changes to the contract offered and I am seeking advice in relation to whether the following are acceptable:

- ***Health may reject the goods within 14 days after delivery, if the Goods do not comply with the requirements of the Contract. The Supplier is proposing that where the Goods are Accepted, Health will issue a notification to that effect. The original position only required the issue of a notice if the Goods were rejected. Is it possible to issue a notification that the goods delivered are acceptable to Health?***
- ***During the acceptance period, where circumstances outside of Health's control arise that cause a delay to the Acceptance of the goods, Health may notify the Supplier of a revised Acceptance Period. The Supplier is proposing to limit this additional period to 10 days (in aggregate). Is this acceptable to Health?***

A response at your earliest convenience would be greatly appreciated.

Kind regards

s22  
 Departmental Officer – Preventive Policy Section

Preventive Health Policy Branch | Population Health and Sport  
 Australian Government Department of Health  
 s22 @health.gov.au  
 GPO Box 9848, Canberra ACT 2601, Australia

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 THE FREEDOM OF INFORMATION ACT 1982  
 BY THE DEPARTMENT OF HEALTH AND AGED CARE

s22

**From:** s22 on behalf of s47E(d)  
**Sent:** Monday, 6 April 2020 5:58 PM  
**To:** Haslam, Travis  
**Cc:** s22; s22  
**Subject:** COMMITMENT APPROVAL FOR THE SUPPLY OF SURGICAL MASKS FOR THE NATIONAL MEDICAL STOCKPILE [SEC=OFFICIAL]  
**Attachments:** Australian Business Mobiles - Department of Health - COVID-19 Procurement - Execution Version - 5 April 2020.PDF

Hi Travis - please see revised CA for Australian Business Mobiles below for your clearance and forwarding to Caroline.

Happy to discuss or amend as needed.

Kind regards, s22

-----

Caroline Edwards  
 Acting Secretary

This email recommends that you:

- **APPROVE** the contract with Australian Business Mobiles NSW Pty Ltd, using the contract developed for the Department of Health by Minter Ellison (**Attached**).
- **APPROVE** expenditure for a total of up to s47G (GST exclusive) under Section 23(3) of the *Public Governance, Performance and Accountability Act*; for Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) for the supply of s47G surgical masks for the National Medical Stockpile (NMS).
- **NOTE** the contract will be sent to Australian Business Mobiles NSW Pty Ltd for signature upon your approval of this Minute.

#### 1. BACKGROUND/CONTEXT

On 30 January 2020 an outbreak was declared a Public Health Emergency of International Concern. This global alert was issued by the World Health Organization (WHO) in relation to Coronavirus.

The Department approached various suppliers to inquire regarding quantities of personal protective equipment (PPE) the Department could secure for the NMS. On 22 March 2020, the supplier provided a quote for supply of s47G surgical masks with weekly delivery of s47G masks. The supplier has been advised that the masks must be on the Australian Register of Therapeutic Goods and meet the current Australian Standard AS / NZS 1716:2012.

#### 2. TIMEFRAME

The supplier will be notified as soon as you approve this Minute. Australian Business Mobiles NSW Pty Ltd has advised that they will manufacture s47G masks each 7-10 days in China and then arrange for delivery to Sydney by the due dates in the table below.

Date	Number
20 April 2020	s47G
30 April 2020	s47G
10 May 2020	s47G
20 May 2020	s47G
30 May 2020	s47G

#### 3. CONTRACTUAL ARRANGEMENT

The contract has been prepared (Attachment A) by legal firm Minter Ellison based on a Commonwealth goods contract, and in consultation with Legal and Assurance Division.

##### Contract Manager

The nominated Contract Manager for this arrangement will be the Director Health Emergency Countermeasures Section, Health Emergency Management Branch.

#### 4. COMPLIANCE WITH COMMONWEALTH PROCUREMENT RULES

The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020. Under your determination, the CPRs do not apply to this procurement.

#### 5. EXPENDITURE APPROVAL AND FUNDS AVAILABILITY

The cost to the Department for the goods is up to s47G GST exclusive s47G GST inclusive).

The Finance Business Partner has confirmed that funds will be made available from the nominated account s47E(d).

#### 6. GENERAL

##### Risk Management

No conflict of interest issues that have been raised throughout the process. The risk profile is considered low to medium. Australian Business Mobiles does not ordinarily supply PPE, however, one of their Directors and Group Chief Financial Officer s47F has more than 15 years in Medical Device Sales and distribution experience in senior executive positions for companies in Australia and is also experienced in navigating government procurement arrangements.

There is a risk that Australian Business Mobiles NSW Pty Ltd will not be able to secure supply of the products due to worldwide shortages and international restrictions that disrupt supply chains. If supplies suffer excessive delay, the contract includes a mechanism that allows the Commonwealth to negotiate a new schedule with or, if required, to terminate the contract. Payments will only be made on delivery and acceptance of the goods.

Any significant risks and mitigations identified will be advised to the delegate.

#### Internal Reporting Requirements

Under the Department's Procurement Processing and Management policy, contracts must be registered within 2 business days of execution.

#### External Reporting Requirements

The contract will be reported on the Department's website in accordance with the Senate Order requirements of July 2001 (Murray Motion). As the contract is a valued over \$10,000 it will be reported on AusTender within 42 days of entering into the contract, in line with the Commonwealth Procurement Rules (Division 1, Item 7, Reporting arrangements).

### 7. DELEGATE APPROVALS

It is recommended that you:

APPROVE the contract with Australian Business Mobiles NSW Pty Ltd, using the contract developed for the Department of Health by Minter Ellison (Attachment A).	APPROVED / NOT APPROVED
APPROVE expenditure for a total of up to \$47G (GST exclusive) under Section 23(3) of the <i>Public Governance, Performance and Accountability Act</i> ; for Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) for products for the National Medical Stockpile (NMS).	APPROVED / NOT APPROVED
NOTE the contract will be sent to Australian Business Mobiles NSW Pty Ltd for signature upon your approval of this Minute.	NOTED / PLEASE DISCUSS

Prepared by:

Approved by:

.....  
Travis Haslam  
Assistant Secretary  
Office of Health Protection

.....  
Caroline Edwards  
Acting Secretary  
Department of Health

Attachments:

- A. Contract with Australian Business Mobiles NSW Pty Ltd for supply of surgical masks

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BY THE DEPARTMENT OF HEALTH AND AGED CARE



s22

**From:** s47F >  
**Sent:** Sunday, 5 April 2020 3:45 PM  
**To:** s22 ; s47E(d) ; s22  
**Cc:** s47F ; s47F ; s47F ; s22 ; s22  
**Subject:** RE: Request for Preparation of a Contract - Mask Offer [SEC=OFFICIAL] [ME-ME.FID5509111] H030  
**Attachments:** Australian Business Mobiles - Department of Health - COVID-19 Procurement - Execution Version - 5 April 2020.PDF

Hi s22

Please see attached the execution version of the Contract with Australian Business Mobiles for surgical masks.

The Contract Price is s47G payable on Delivery and Acceptance of the Goods.

Please let me know if you have any questions.

Kind regards  
s47F

s47F  
s47F  
s47F  
s47F  
MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)  
■

**From:** s22  
**Sent:** Sunday 5 April 2020 03:29 PM  
**To:** s47F ; s47E(d) ; s22  
**Cc:** s47F ; s47F ; s47F ; s22 ; s22  
**Subject:** RE: Request for Preparation of a Contract - Mask Offer [ME-ME.FID5509111] [SEC=OFFICIAL]

Thanks s47F that would be great.

Kind regards

s22

s22

s22

Preventive Health Policy Branch | Population Health and Sport Division  
Australian Government Department of Health  
s22 [@health.gov.au](#)

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F >  
**Sent:** Sunday, 5 April 2020 3:21 PM  
**To:** s22 [@health.gov.au](#)>; s47E(d) [@health.gov.au](#)>; s22  
**Cc:** s47F >; s47F >; s47F >; s22 [@health.gov.au](#)>; s22 [@health.gov.au](#)>  
**Subject:** RE: Request for Preparation of a Contract - Mask Offer [SEC=OFFICIAL] [ME-ME.FID5509111]

Thanks, s22 Would you like us to now put the Contract into final execution form?

Kind regards  
s47F

s47F  
s47F  
s47F  
s47F  
MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)  
■

**From:** s22 <[redacted]@health.gov.au>  
**Sent:** Sunday 5 April 2020 03:10 PM  
**To:** s47F <[redacted]>; s47E(d) <[redacted]@health.gov.au>; s22 <[redacted]>  
**Cc:** s47F <[redacted]>; s47F <[redacted]>; s47F <[redacted]>; s22 <[redacted]@health.gov.au>; s22 <[redacted]@health.gov.au>  
**Subject:** RE: Request for Preparation of a Contract - Mask Offer [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s47F

Thanks for the draft contract for Australian Business Mobiles.

We have reviewed your comments and s42

Following further correspondence with the supplier we expect an initial delivery 14 days with subsequent deliveries every 10 days through until the end of May (marked up in attached).

Many thanks

s22

s22

s22

Preventive Health Policy Branch | Population Health and Sport Division  
Australian Government Department of Health  
s22 <[redacted]@health.gov.au>

Location: Sirius Building s22  
PO Box 9848, Canberra ACT 2601, Australia

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**From:** s47F <[redacted]>  
**Sent:** Sunday, 5 April 2020 11:05 AM  
**To:** s47E(d) <[redacted]@health.gov.au>; s22 <[redacted]>  
**Cc:** s47F <[redacted]>; s47F <[redacted]>; s47F <[redacted]>; s22 <[redacted]@health.gov.au>; s22 <[redacted]@health.gov.au>  
**Subject:** RE: Request for Preparation of a Contract - Mask Offer [SEC=OFFICIAL] [ME-ME.FID5509111]

Hi s22

Thanks for your instructions to prepare a contract for Australian Business Mobiles.

Please see attached a draft. It contains some yellow notes on which we will need your instructions.

Kind regards  
s47F

s47F  
s47F  
s47F  
s47F

**MinterEllison** MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)

■  
Begin forwarded message:

**From:** s47E(d) <[redacted]@health.gov.au>  
**Date:** 4 April 2020 at 7:59:32 pm AEDT  
**To:** s47F <[redacted]>  
**Cc:** "s22" <[redacted]@health.gov.au>; s47F <[redacted]>; s47F <[redacted]>; "s22" <[redacted]@health.gov.au>; "s22" <[redacted]>  
**Subject:** Request for Preparation of a Contract - Mask Offer [ME-ME.FID5509111] [SEC=OFFICIAL]

Hi s47F

Can we please prepare a contract for Australian Business Mobiles based on the following information:

s42

Regards

s22

s22

Office of Health Protection Division | Chief Medical Officer Group  
Australian Government Department of Health

s22 @health.gov.au

Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

From: s47F >  
Sent: Friday, 27 March 2020 12:02 PM  
To: s22 ; s22 @health.gov.au; s22 @health.gov.au  
Cc: s22 @health.gov.au; s47F > s47F  
>  
Subject: Mask Offer [SEC=OFFICIAL] [ME-ME.FID5509111]

Hi s22

Australian Business Mobiles has provided s42

s42

Rgds,

s47F

s47F

s47F

s47F

s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
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■

From: "s22"  
Date: 26 March 2020 at 10:56:55 pm AEDT  
To: s47F >  
Cc: "s22 @health.gov.au"; s22 @health.gov.au  
Subject: FW: Mask Offer [SEC=OFFICIAL]

Good evening,

Please find below and attached the further advice from ABM

Regards

s22

s22

*Your health and safety and the health and safety of our people, clients and other visitors to our offices is important to us. As part of our response to COVID-19, we ask that you please read and act on the information at this [link](#) before attending any events or meetings at our offices or that we host elsewhere.*

#### IMPORTANT INFORMATION, PLEASE READ

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s42



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*The health and wellbeing of our people, clients and community is our priority. All staff are working remotely except for a small number of business critical people who have access to our office. More information on MinterEllison's position on COVID-19 can be accessed [on our website](#).*

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s22

**From:** s47F >  
**Sent:** Saturday, 4 April 2020 8:03 PM  
**To:** s47E(d)  
**Cc:** s22 ; s47F ; s47F ; s22 ; s22  
**Subject:** H030 - Re: Request for Preparation of a Contract - Mask Offer [ME-ME.FID5509111] [SEC=OFFICIAL]

Will do s22

s42

s47F

s47F  
s47F  
s47F  
s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



On 4 Apr 2020, at 7:59 pm, s47E(d) wrote:

Hi s47F  
Can we please prepare a contract for Australian Business Mobiles based on the following information:

s42

Regards

s22  
s22

Office of Health Protection Division | Chief Medical Officer Group  
Australian Government Department of Health  
s22 @health.gov.au  
Location: Scarborough House s22  
GPO Box 9848, Canberra ACT 2601, Australia  
*The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.*

**From:** s47F  
**Sent:** Friday, 27 March 2020 12:02 PM  
**To:** s22 ; s22 ; s22  
**Cc:** s22 ; s47F ; s47F  
**Subject:** Mask Offer [SEC=OFFICIAL] [ME-ME.FID5509111]  
Hi s22

Australian Business Mobiles has provided s42

s42

Rgds,  
s47F

s47F  
s47F  
s47F  
s47F

MinterEllison MinterEllison Building 25 National Circuit Forrest ACT 2603  
[minterellison.com](#) Follow us on [LinkedIn](#) and [Twitter](#)



**From:** s22 "  
**Date:** 26 March 2020 at 10:56:55 pm AEDT  
**To:** s47F  
**Cc:** "s22 @health.gov.au", "s22 @health.gov.au">  
**Subject:** FW: Mask Offer [SEC=OFFICIAL]

Good evening,

Please find below and attached the further advice from ABM

Regards

s22

s22

*Your health and safety and the health and safety of our people, clients and other visitors to our offices is important to us. As part of our response to COVID-19, we ask that you please read and act on the information at this [link](#) before attending any events or meetings at our offices or that we host elsewhere.*

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s42

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*The health and wellbeing of our people, clients and community is our priority. All staff are working remotely except for a small number of business critical people who have access to our office. More information on MinterEllison's position on COVID-19 can be accessed [on our website](#).*

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s22

**From:** s22  
**Sent:** Friday, 3 April 2020 11:42 AM  
**To:** s22  
**Cc:** s22; s22  
**Subject:** Australian Business Mobiles [SEC=OFFICIAL]

Hi s22

Email for s22 re Australian Business Mobiles – please review and then I will send to s22

Hi s47F

Thank you for your interest in supplying face masks for the National Medical Stockpile.

Your offer is currently under consideration.

Are you aware of the new export arrangements from China? There has also been recent concerns with products imported from China that are not consistent with the product description. Are you able to confirm you are able to meet these new requirements.

I also note on the 26 March, Mr s22 raised the Department would only be able to consider your proposal further, if any deposit or prepayment was secured by an appropriate bank guarantee from an acceptable bank. Alternatively the Department may consider payment on delivery and acceptance of goods in Australia, as a possible approach.

Can you also please provide details of your experience in supplying products of a similar nature and scale, as that did not seem to be included.

Please note that at present, and unless and until a written contract is signed by the Department's authorised delegate, no legal obligations or rights exist between us. The Department makes no assurances that it will proceed with your proposal.

Once we have concluded our due diligence we will be in a position to provide advice to the delegate.

Kind regards

s22  
 Gene Technology Policy Section  
 Regulatory Policy Branch  
 Office of Health Protection Division  
 Department of Health  
 s22

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

**MINUTE TO THE ACTING SECRETARY**

**To:** Caroline Edwards, A/g Secretary

**SUBJECT****EXECUTION OF REVISED CONTRACT FOR THE SUPPLY OF SURGICAL MASKS FOR THE NATIONAL MEDICAL STOCKPILE BY AUSTRALIAN BUSINESS MOBILES (NSW) PTY LTD****Purpose**

This Minute recommends that you:

- **SIGN** the revised contract with Australian Business Mobiles (NSW) Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) (ABM) developed for the Department of Health by legal firm Minter Ellison and amended following discussion with the supplier, for the provision of Surgical Masks for the National Medical Stockpile (NMS) (**Attachment A**);
- **NOTE** that ABM has requested a cap on supplier liability under the contract. Subject to certain carve outs (outlined below) the maximum amount that ABM is liable to pay as compensation or damages under the contract (including at general law, in negligence or in equity) in respect of loss suffered by Health of any kind, is limited in aggregate to s47G (plus GST).
- **NOTE** the legal advice and risk assessment on the contract terms provided by Minter Ellison (**Attachment B**).
- **NOTE** that you approved the initial draft contract and expenditure of up to s47G (GST inclusive if applicable) under Section 23(3) of the *Public Governance, Performance and Accountability Act* (PGPA Act) for the provision of Surgical Masks by ABM on 6 April 2020 (**Attachment C**);

**1. BACKGROUND/CONTEXT**

On 30 January 2020 the World Health Organization declared the COVID-19 outbreak a Public Health Emergency of International Concern.

The Australian Government is continuing to work to secure additional masks to ensure the National Medical Stockpile remains well stocked, and Australia has enough personal protective equipment to support our medical professionals as the COVID-19 outbreak unfolds. The required surgical masks are considered to be critical to protect human health in Australia in the context of the outbreak of COVID-19.

Following your approval of the initial draft contract, ABM requested a number of changes, most significantly to include a cap on liability that ABM could be liable to pay as compensation or damages under the contract. Other changes to the contract reflect acceptable international standards for surgical masks, operational arrangements for delivery and acceptance of goods, and time limits for termination or reduction of the contract for convenience.

ABM has considered and signed the revised draft contract, based on the negotiated terms, and has returned it to the Department for consideration and counter-signing (**Attachment A**).

**TIMEFRAME**

Upon your signature, ABM will be provided with an executed copy of the contract. ABM initially advised that they would manufacture s47G masks each 7-10 days in China and then arrange for delivery to Sydney in five instalments in April and May 2020.

Negotiations with ABM have resulted in revised delivery volumes (although the total volume remains the same) and delays of between one to six days for each delivery as per the table below. Pending execution of the final contract, no further delays are anticipated.

Date	Number
24 April 2020	s47G
6 May 2020	s47G
14 May 2020	s47G
22 May 2020	s47G
1 June 2020	s47G

**2. CONTRACTUAL ARRANGEMENT**

The contract has been prepared (**Attachment A**) by legal firm Minter Ellison based on a Commonwealth goods contract, and has been amended in consultation with Legal and Assurance Division to reflect the outcome of negotiations with ABM.

**Contract Manager**

The nominated Contract Manager for this arrangement will be the Director Health Emergency Countermeasures Section, Health Emergency Management Branch.

**3. RISK ASSESSMENT**

In considering this procurement and particularly ABM's proposed cap on liability, a number of risks have been identified and taken into account.

The most significant risk is the risk to human life from an inability to secure important supplies for the National Medical Stockpile such as the surgical masks that are to be produced under this procurement. This risk is an overriding consideration which has been addressed by rapidly negotiating the commercial arrangements for the procurement of COVID-19 related supplies.

The risk that the products do not meet specifications and the required regulatory standards have been addressed in the contract which includes the ability for the Commonwealth to reject any supplies that do not meet the required standard, and for all payments to be made on delivery and acceptance of the goods.

Risk to the Commonwealth is introduced in this contract by the inclusion of the liability cap, pursuant to a request from ABM. Subject to certain carve outs, the maximum amount that ABM is liable to pay as compensation or damages under the contract (including at general law, in negligence or in equity) in respect of loss suffered by Health of any kind, is limited in aggregate to s47G (plus GST).



The inclusion of carve outs partly mitigates risks associated with the liability cap, as the cap will not apply to a liability of ABM in relation to:

- a. a claim by a third party in respect of:
  - (i) the death, personal injury, disease or illness of any person; or
  - (ii) loss of or damage to property of a third party;
- b. a breach of an obligation of confidence;
- c. an act or omission of the ABM or its personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
- d. a Wilful Default of ABM or its personnel;
- e. a repudiation of the contract by ABM where ABM has intentionally abandoned the contract; or
- f. restitution of amounts paid under a mistake of fact or law in relation to the contract.

A Liability Risk Assessment prepared on the basis of advice from Minter Ellison and detailing identified risks, treatments and controls is at **Attachment B**. Following inclusion of the liability cap, the residual risk level of this proposal is assessed as Medium.

#### 4. COMPLIANCE WITH COMMONWEALTH PROCUREMENT RULES

The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020.

Paragraph 2.6 of the CPRs provides a lawful mechanism under which a procurement may be exempted from all or part of the CPRs. Paragraph 2.6 relevantly provides:

*'These CPRs do not apply to the extent that an official applies measures determined by their Accountable Authority to be necessary ... to protect human health'.*

Under your determination, the CPRs do not apply to this procurement.

#### 5. EXPENDITURE APPROVAL AND FUNDS AVAILABILITY

The cost to the Department for the goods is up to s47G GST exclusive (s47G GST inclusive if applicable).

The Finance Business Partner has confirmed that funds will be made available from the nominated account Administered s47E(d)

#### 6. GENERAL

##### Internal Reporting Requirements

Under the Department's Procurement Processing and Management policy, contracts must be registered within 2 business days of execution.

##### External Reporting Requirements

The contract will be reported on the Department's website in accordance with the Senate Order requirements of July 2001 (Murray Motion). As the contract is valued over \$10,000 it will be reported on AusTender within 42 days of entering into the contract, in line with the Commonwealth Procurement Rules (Division 1, Item 7, Reporting arrangements).

**7. DELEGATE APPROVALS**

It is recommended that you:

<b>SIGN</b> the revised contract with Australian Business Mobiles (NSW) Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) developed for the Department of Health by legal firm Minter Ellison and amended following negotiations with the supplier, for the provision of Surgical Masks for the National Medical Stockpile ( <b>Attachment A</b> );	<b>SIGNED / PLEASE DISCUSS</b>
<b>NOTE</b> that ABM has requested the inclusion of a liability cap limiting the maximum amount that ABM is liable to pay as compensation or damages under the contract in respect of loss suffered by Health of any kind, is limited in aggregate to <b>s47G</b> (plus GST).	<b>NOTED / PLEASE DISCUSS</b>
<b>NOTE</b> the liability risk assessment prepared by Minter Ellison ( <b>Attachment B</b> ).	<b>NOTED / PLEASE DISCUSS</b>
<b>NOTE</b> that you approved the initial draft contract and expenditure of up to <b>s47G</b> GST Inclusive if applicable) under Section 23(3) of the <i>Public Governance, Performance and Accountability Act</i> (PGPA Act) for the provision of Surgical Masks by ABM on 6 April 2020 ( <b>Attachment C</b> );	<b>NOTED / PLEASE DISCUSS</b>

Prepared by: **s47F**

**s47F**

Travis Haslam  
Assistant Secretary  
National Incident Response Division

Approved by:

**s47F**

Caroline Edwards  
A/g Secretary  
Department of Health

**Attachments:**

- Contract with The Trustee for Australian Business Mobiles (NSW) Unit Trust for signature
- Liability Risk Assessment – ABM Goods Contract with the Department of Health for the Provision of Surgical Masks
- Commitment Approval of 6 April 2020

Contact officer: **s22**

Phone:

**s22**



## Procurement and Contract Management Checklist

Legal Company Name: Australian Business Mobiles NSW Pty Ltd

Company Location: Unit 5a, 149-163 Mitchell Road, Erskineville NSW 2043

Contract Manager: Director, Health Emergency Countermeasures Section, Health Emergency Man

Delegate for Contract: Caroline Edwards, Acting Secretary, Department of Health

Date CA Signed: 22 May 2020

Date Contract Executed: 3 June 2020

What is covered in the contract: (goods, services and freight)

s47G

Value for Money: Yes

s47E(d)

Due Diligence: DoH DISER MinterEllison

Compliant with TGA Requirements: Yes

Origin of Goods: China

Use of Freight Mechanism: Y/N

Delivery to Toll included in contract.

Exemptions and Waivers:

Nil.

Guidance on CPR Exemptions:

The following was provided on the Commitment Approval Minute:

"The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020. Under your determination, the CPRs do not apply to this procurement."

Product Demand Planning to Support Sourcing Decisions:

Need and supply analysis conducted by the Stockpile Operations area and PPE procurement team. Offer was compared to offers from other suppliers in terms of delivery schedule and quoted price.

Confirmation of Product Requirements on Receipt of Goods:

Ongoing.

8 April 2020

**By E-mail**  
**Private & Confidential**

Director  
 Health Emergency Countermeasures Section  
 Health Emergency Management Branch  
 Sirius Building, Furzer Street  
 Woden Town Centre ACT 2606

s22 @health.gov.au

Dear Director

### **Goods Contract for the provision of surgical masks**

Please find enclosed our executed counterpart of the "Goods Contract for the Provision of Surgical Masks" (**Contract**), between the Commonwealth of Australia as represented by the Department of Health ABN 83 605 426 759 (**Customer**) and Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust ABN 42 175 149 181 (**Supplier**) provided to us on 5 April 2020.

The Supplier is providing the enclosed Contract, on and subject to your confirmation of/ agreement to (as relevant) the matters listed below (adopting the definitions in the Contract). Please confirm your acceptance and approval by signing and returning a copy of this letter, together with the Supplier's executed counterpart of the Contract, to us at your earliest convenience.

- 1 Paragraph 1(a)(i) of Schedule 1 is amended so that it reads as follows:  
 " that comply with Level 2 of standard AS/NZS 4381:2015 'Single use face masks for use in health care' (it being acknowledged that compliance with US Standard (ASTM F2101-14) and/or US Standard (ASTM F1862/F1862M-13) and/or ISO 22609 and/or the European Standard (EN 14683) will also satisfy this requirement )"
- 2 For the avoidance of any doubt it is agreed that when the Supplier Delivers the Goods in accordance with clause 4.1, the Supplier will also at the same time issue a Correctly Rendered Invoice to the Customer in respect of those Delivered Goods. Subject to Acceptance by the Customer of the Delivered Goods in accordance with clause 4.2. the Correctly Rendered Invoice will be payable within 14 days from receipt by the Customer of the Correctly Rendered Invoice from the Customer.
- 3 The following new clause 4.2(aa) is inserted into the Contract:  
 (a) If, after the Customer's evaluation of the compliance of the Goods, the Customer accepts the Goods during the Acceptance Period, the Customer must give the Supplier a Notice of acceptance of those Goods.
- 4 The Customer agrees that it will not be able to extend the term of any Acceptance Period under clause 4.2(b) by more than 10 days in aggregate.
- 5 The following highlighted words are inserted into clause 14(a) of the Contract:

- (a) In addition to any other rights the Customer has under the Contract, the Customer may at any time **upon no less than 20 days prior written notice** terminate the Contract or reduce the scope of the Goods by providing a Notice to the Supplier.
- 6 The reference to 'reasonable costs' in clause 14(d) includes the costs of any Goods that may have been ordered by the Supplier and that may be in transit, but that have not yet been Delivered to the Customer as at the date of the Notice being issued under clause 14(d).
- 7 The following is inserted into clause 15(a)(i) of the Contract:
- (i) the Supplier does not deliver the Goods as specified in the Contract (including by any delivery date), or notifies the Customer or the Customer forms the view that the Supplier will be unable to deliver the Goods as specified in the Contract (including by any delivery date) **and the Supplier does not remedy these matters within 10 days written notice from the Customer.**
- 8 The rights of inspection by the Customer under clause 20.2 will only be exercised within ordinary business hours and after reasonable prior written notice.
- 9 The following is inserted under clause 21 of the Contract:
- A party may exchange an executed counterpart of this Contract with another party by sending it by facsimile or email to the other party or that other party's legal representative. In such an instance:
- (a) the exchange by facsimile or email (as applicable) will be deemed to be an effective exchange of an originally executed counterpart and, if this Contract is a deed, it is intended that such exchange is to take effect as delivery of the deed; and
- (b) whilst the party that provided the document either by facsimile or email (as applicable) is still required to provide an originally executed counterpart to each other party either by hand or post as soon as possible, the failure or delay in doing so will not affect the validity or effectiveness of this Contract or the exchange.
- 10 Clause 22 of the Contract is amended by the insertion of the following highlighted words:
- 11 Any clause that by its nature survives termination or expiry of the Contract will survive including, clauses 7 (Insurances), 14 (Termination or reduction for convenience), 15 (Termination for Cause), 19 (Product Recalls), 20 (Compliance with Laws and Policies) **and the termination or expiry of this Contract does not prejudice any accrued rights or liabilities of a Party under this Contract.**
- 12 The following is inserted as a new clause 15A into the Contract:
- To the maximum extent permitted by law, the Supplier's maximum liability to the Customer for any breach of this Contract is limited to the paid value of the Goods Delivered and Approved by the Customer from time to time and excludes any consequential or indirect loss or damage.

Yours sincerely

---

**Australian Business Mobiles NSW Pty Ltd as trustee of the Australian Business Mobiles (NSW) Unit Trust**

Enc

Accepted and Agreed

---

**Commonwealth of Australia as represented by the Department of Health**

# Goods Contract

For the provision of surgical masks

Commonwealth of Australia as represented by the  
Department of Health ABN 83 605 426 759  
(Customer)

Australian Business Mobiles NSW Pty Ltd (ACN 138  
288 918) as the trustee for Australian Business  
Mobiles (NSW) Unit Trust ABN 42 175 149 181  
(Supplier)

## IMPORTANT NOTICES

### PLEASE READ CAREFULLY

#### PRE-BOOKING IS ESSENTIAL

The Supplier must pre-book a time slot with s47F (TOLL DISTRIBUTION CENTRE s47F) prior to delivery of any Goods. Failure to pre-book a time slot may result in refusal to accept delivery at the unscheduled time. Any demurrage charges will be the responsibility of the Supplier.

#### CLEAR LABELLING IS NECESSARY

Goods are to be packaged so that they are clearly labelled prior to palletising. Only the same Goods must be on the same pallet. Each carton must be clearly labelled and each label must be visibly displayed on the outside of the carton with the following details:

- Product name and description
- Product code
- Expiry date

# Goods Contract

## For the provision of surgical masks

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**Signing page**

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

# Details

Date April 2020

## Parties

Name **Commonwealth of Australia as represented by the Department of Health**  
 ABN 83 605 426 759  
 Short form name **Customer**  
 Notice details **Attention:** Director, Health Emergency Countermeasures Section, Health Emergency Management Branch  
**Postal address:** MDP 140, PO Box 9848, Canberra ACT 2601  
**Physical address:** Sirius Building, Furzer St, Woden Town Centre ACT 2606  
**Email:** s22 @health.gov.au

Customer's Contract Manager Director, Health Emergency Countermeasures Section, Health Emergency Management Branch

Name **Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust**  
 ABN 42 175 149 181  
 Short form name **Supplier**  
 Notice details **Postal address:** Unit 5a, 149-163 Mitchell Road, Erskineville, NSW 2043  
**Physical address:** Unit 5a, 149-163 Mitchell Road, Erskineville, NSW 2043  
**Email:** s47F

Supplier's Contract Manager s47F

## Background

- A The Customer requires the provision of certain surgical masks for the Commonwealth's National Medical Stockpile.
- B The Customer has agreed to engage the Supplier, and the Supplier has agreed, to provide the Goods on the terms and conditions contained in the Contract.



# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Contract** means this document and its attachments and schedules as amended from time to time in accordance with the Contract, and any other documents expressly identified in this document as forming part of the Contract.

**Contract Manager** means the contract manager for the Customer and/or Supplier (as relevant) specified in the Details section to the Contract.

**Contract Price** means the total contract price specified in the Contract, including any GST component payable.

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

- (a) is correctly addressed to:  
Department of Health  
**Email Address:**  
s47E(d)@health.gov.au; or  
**Postal Address:** GPO Box  
9848, Canberra ACT 2601,  
with the Customer's preferred  
method of invoicing being by  
email;
- (b) is calculated in accordance with the Contract;
- (c) except where expressly provided otherwise in Schedule 1, relates only to Goods that have been Delivered and Accepted by the Customer in accordance with the Contract;
- (d) includes any purchase order number, and the name and phone number of the Customer's Contract Manager;
- (e) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- (f) is a valid tax invoice in accordance with the GST Act.

**Customer** means the party specified in the Details section of the Contract as the Customer.

**Defect Rectification Period** means one hundred and two (102) weeks or the Supplier's or manufacturer's standard warranty period (whichever is the longer).

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

**Goods** means:

- (a) the goods and any Material specified in the Contract; and
- (b) all such incidental goods that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

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

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

**Losses** means any liability, loss (including economic loss), damage, compensation, costs and expenses.

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

**National Medical Stockpile** means the strategic reserve of products held by the Customer for the purposes of health emergencies.

**Notice** means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, physical address or email address set out in the Details section of the Contract or as notified from time to time.

**Specifications** means the specifications for the Goods set out at Schedule 1 and all applicable manufacturers' specifications and applicable standards.



**Supplier** means the party specified in the Details section of the Contract as the Supplier.

**Wilful Default** means a default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.

## 1.2 Interpretation

In the Contract, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to the Contract includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it; and
- (l) headings are for ease of reference only and do not affect interpretation.

## 2. Precedence of Documents

### 2.1 Composition

The following documents form part of the Contract:

- (a) clauses 1 to 23;
- (b) Schedule 1;
- (c) any other schedules to this document; and
- (d) any document annexed to, or incorporated by reference into, the Contract.

### 2.2 Inconsistency

If there is any inconsistency between the provisions of the documents that together form the Contract, the provisions of the earlier mentioned document in clause 2.1 will prevail to the extent of that inconsistency.

## 3. Commencement

The Contract is effective on and from 17 April 2020.

## 4. Delivery and Acceptance

### 4.1 Delivered Goods

- (a) The Supplier must provide the Goods as specified in Schedule 1 and meet any requirements and standards specified in that Schedule.
- (b) Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused.

## 4.2 Acceptance

- (a) The Customer may reject the Goods within:
  - (i) for Goods due to be delivered on 24 April, five (5) days after delivery, if the Goods do not comply with the requirements of the Contract;
  - (ii) for Goods due to be delivered on 6 May 2020, five (5) days after delivery, if the Goods do not comply with the requirements of the Contract; or
  - (iii) for all other Goods, fourteen (14) days after delivery, if the Goods do not comply with the requirements of the Contract,

(in each case (as relevant), the **Acceptance Period**).

- (b) If, after the Customer's evaluation of the compliance of the Goods, the Customer accepts the Goods during the Acceptance Period, the Customer must give the Supplier a Notice of acceptance of those Goods.
- (c) If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay). The Customer agrees that it will not be able to extend the term of any Acceptance Period under clause 4.2(a) by more than 10 days in aggregate.
- (d) If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have

accepted the Goods, though the Customer may accept the Goods sooner.

- (e) If the Customer rejects the Goods, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. Without limitation, if and as required by the Customer, the Supplier must replace the rejected Goods within thirty (30) days (unless another timeframe is specified by the Customer). No payment will be due for rejected Goods until their acceptance.

## 4.3 Risk and title

- (a) Risk in the Goods passes to the Customer on delivery of the Goods to the Customer.
- (b) Title to Goods transfers to the Customer only on acceptance.

## 5. Licences, Approvals and Warranties

- (a) The Supplier must obtain all necessary valid export and import licences or other approvals to meet the requirements of the Contract. The Supplier must provide, on request by the Customer, a copy of any necessary export or import licence or other approval, or proof that such licence or approval has been obtained.
- (b) The Supplier must obtain and maintain all intellectual property rights, licences or other approvals required for the lawful provision of the Goods and arrange and pay any necessary customs entry for any Goods.
- (c) The Supplier:
  - (i) warrants that the Goods are fit for the purposes for which the Supplier knows or ought reasonably to know the Goods are to be used, free from faults or deficiencies in design, manufacture and

workmanship, and comply with the Specifications;

- (ii) warrants that it has the requisite power and authority to enter into the Contract and to carry out the obligations contemplated by the Contract;
- (iii) warrants that it is duly registered, properly constituted and remains in existence;
- (iv) must provide the Customer with all relevant third party warranties in respect of Goods; and
- (v) where the Supplier is a manufacturer, must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

## 6. Defects

- (a) Notwithstanding Delivery and Acceptance of the Goods by the Customer in accordance with clause 4, the Supplier must remedy by replacement, at its cost, any defects in the Goods notified by the Customer to the Supplier at any time within the Defect Rectification Period following Delivery and Acceptance of the Goods by the Customer.
- (b) If the Supplier does not promptly replace the defective Goods, the Customer may recover the price of the Goods as a debt due from the Supplier to the Customer.
- (c) The Customer's rights under this clause 6 are in addition to, and do not detract from, its rights under the Contract or otherwise at law.

## 7. Insurances

- (a) The Supplier must effect and maintain adequate insurances for the Contract, including:
  - (i) product liability insurance, to be maintained at all times throughout the term of the Contract and for a period of seven (7) years after the termination or expiry of the Contract, with a limit of liability of not less than \$20 million per occurrence and not less than \$20 million in the aggregate; and
  - (ii) transit insurance, covering the Goods for their full replacement at all times while the Goods are in transit.
- (b) The Supplier must provide the Customer with proof of all insurances required to be held by it:
  - (i) before the later of 17 April 2020 and the first delivery of Goods to the Customer; and
  - (ii) at any other time requested by the Customer.

## 8. Subcontracting

- (a) Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.
- (b) The Supplier must make available to the Customer the details of all subcontractors engaged to provide the Goods under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

## 9. Relationship of the Parties

- (a) Neither party is the employee, agent, officer or partner of the other party nor, by virtue of the

Contract, authorised to bind or represent the other party.

- (b) The Supplier must ensure that its officers, employees, agents or subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

## 10. Conflict of Interest

- (a) The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.
- (b) If any conflict or potential conflict arises during the Contract term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

## 11. Supplier Payments

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

## 12. Expenses

Unless specified otherwise in Schedule 1, the Supplier must not charge the Customer for any fees, charges or expenses (including travel

and accommodation, document reproduction, and telecommunications charges) in addition to the Contract Price.

## 13. GST and ABN

- (a) If and to the extent that GST is payable on a supply made by the Supplier to the Customer under the Contract:
  - (i) the Customer will pay the GST component to the Supplier at the same time as the GST exclusive amount;
  - (ii) the GST component will be calculated as an amount equal to the GST exclusive amount multiplied by the prevailing rate of GST.
- (b) If and to the extent that GST is not payable on a supply made by the Supplier under the Contract:
  - (i) the Customer need not pay any GST component to the Supplier; and
  - (ii) if the Customer has already paid the GST component to the Supplier, the Supplier must immediately refund that GST component to the Customer.
- (c) If any payment by the Customer to the Supplier is a reimbursement, calculated by reference to a cost or expense incurred by the Supplier, that payment must be reduced by the amount of any input tax credit that the Supplier (or the representative member of any GST group of which the Supplier is a member) is entitled to claim in respect of that cost or expense.
- (d) If the Supplier does not provide the Customer with a document containing the Supplier's valid ABN (or sufficient evidence of an exemption to hold an ABN) prior to any payment being due under the Contract, the Customer may make such withholding from any such payment as required by



applicable tax legislation at the time of payment (including any GST or similar tax).

#### 14. Termination or Reduction for Convenience

- (a) In addition to any other rights the Customer has under the Contract, the Customer may at any time upon no less than 20 days prior written notice terminate the Contract or reduce the scope of the Goods by providing a Notice to the Supplier.
- (b) If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.
- (c) The Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions).
- (d) If the Customer issues a Notice under this clause, the Customer will pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer. Reasonable costs includes the costs of any Goods that may have been ordered by the Supplier and that may be in transit, but that have not yet been Delivered to the Customer as at the date of the Notice being issued under clause 14(a).
- (e) Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

#### 15. Termination for Cause

- (a) The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:
  - (i) the Supplier does not deliver the Goods as specified in the Contract (including by any delivery date), or notifies the Customer or the Customer forms the view that the Supplier will be unable to deliver the Goods as specified in the Contract (including by any delivery date) and the Supplier does not remedy these matters within 10 days written notice from the Customer;
  - (ii) the Customer rejects the Goods in accordance with clause 4 and the Goods are not remedied as required by the Notice of rejection;
  - (iii) the Supplier breaches a term of the Contract and the breach is not capable of remedy;
  - (iv) the Supplier does not remediate a breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier (which must not be less than ten (10) days); or
  - (v) subject to any applicable statutory stay on the exercise of rights including sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as the case may be), the Supplier:
    - (A) is unable to pay all its debts when they become due;
    - (B) if incorporated – has a liquidator, receiver,

administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth).

(vi) restitution of amounts paid under a mistake of fact or law in relation to the Contract.

(c) Each paragraph of clause 16(b) is independent of, and its application is not affected by, any of the other paragraphs.

## 16. Liability Cap

- (a) Subject to clause 16(b), the maximum amount that the Supplier is liable to pay as compensation or damages under the Contract (including at general law, in negligence or in equity) in respect of Loss suffered by the Customer of any kind, is limited in aggregate to **s47G** (plus GST).
- (b) The liability cap in this clause 16 does not apply to a liability of the Supplier whether or not expressly referred to in this clause in relation to:
- (i) a claim by a third party in respect of:
    - (A) the death, personal injury, disease or illness of any person; or
    - (B) loss of or damage to property of a third party;
  - (ii) a breach of an obligation of confidence;
  - (iii) an act or omission of the Supplier or Supplier personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
  - (iv) a Wilful Default of the Supplier or Supplier personnel;
  - (v) a repudiation of the Contract by the Supplier where the Supplier has intentionally abandoned the Contract; or

## 17. Dispute Resolution

- (a) For any dispute arising under the Contract both the Supplier and the Customer agree to comply with paragraphs (i) to (iv) of this clause sequentially:
- (i) both Contract Managers will try to settle the dispute by direct negotiation;
  - (ii) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
  - (iii) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
  - (iv) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

- (b) Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.
- (c) The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.
- (d) If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.
- (e) Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.
- (f) This procedure for dispute resolution does not apply to action relating to clause 15 or to legal proceedings for urgent interlocutory relief.

## 18. Notices

- (a) A Notice is deemed to be effected:
  - (i) if delivered by hand - upon delivery to the relevant address;
  - (ii) if sent by registered post - upon delivery to the relevant address; or
  - (iii) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).
- (b) A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

## 19. Assignment

The Supplier may not assign any rights under the Contract without the Customer's prior written consent.

## 20. Product Recalls

If the Goods are subject to a product recall or no longer conform to an applicable law or standard, the Supplier must without delay notify the Customer providing full details, and, at the election of the Customer, replace those Goods within thirty (30) days or repay to the Customer any payment made for those Goods.

## 21. Compliance with Laws and Policies

### 21.1 Compliance and Obligation to Notify

- (a) The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all laws and policies relevant to the Goods.
- (b) If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses 21.2 to 21.8, it must:
  - (i) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
  - (ii) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

### 21.2 Access to Supplier's Premises and Records

- (a) The Supplier must maintain proper business and accounting records relating to the supply of the Goods and performance of the Contract.
- (b) The Supplier agrees to provide to the Customer, or its nominee, access, during business hours and after reasonable prior written

notice is given, to the Supplier's, or its subcontractor's premises, personnel, documents and other records, and all assistance requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office.

- (c) Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's actual and substantiated reasonable cost for complying with the Customer's request.
- (d) The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer.
- (e) All Commonwealth records, including any held by subcontractors, must be returned to the Customer at the conclusion of the Contract.

### 21.3 Privacy Act

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

### 21.4 Confidential Information

- (a) Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods, without prior written approval from the Customer.

- (b) This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- (c) The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.
- (d) The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, or to a Minister or a House or Committee of Parliament.

### 21.5 Security and Safety

- (a) When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.
- (b) The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.
- (c) The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the



*Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

## 21.6 Criminal Code

The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth). The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

## 21.7 Fraud

- (a) For the purposes of this clause, **Fraud** means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.
- (b) The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of the Contract.
- (c) The Supplier acknowledges the occurrence of Fraud will constitute a breach of the Contract. If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

## 21.8 Taxation

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

## 22. General

### 22.1 Governing Law

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

### 22.2 Counterpart

- (a) The Contract may be signed and dated by the parties on separate, but identical,

copies. All signed copies constitute one (1) Contract.

- (b) A party may exchange an executed counterpart of the Contract with another party by sending it by email to the other party or that other party's legal representative. In such an instance:

- (i) the exchange by email (as applicable) will be deemed to be an effective exchange of an originally executed counterpart; and
- (ii) whilst the party that provided the document by email is still required to provide an originally executed counterpart to each other party either by hand or post as soon as possible, the failure or delay in doing so will not affect the validity or effectiveness of the Contract or the exchange.

## 22.3 Entire Agreement

- (a) The Contract represents the parties' entire agreement in relation to the subject matter, at the time the Contract was entered.
- (b) Anything that occurred before the making of the Contract will be disregarded (unless incorporated into the Contract in writing).
- (c) The parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either party unless in writing and agreed by both parties.
- (d) If either party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

## 22.4 Trustee

The Supplier represents and warrants that if the Supplier is a trustee, it enters into the Contract personally and in its capacity as trustee.

**23. Survival**

Any clause that by its nature survives termination or expiry of the Contract will survive including, clauses 7 (Insurances), 14 (Termination or reduction for convenience), 15

(Termination for Cause), 20 (Product Recalls), 21 (Compliance with Laws and Policies) and the termination or expiry of the Contract does not prejudice any accrued rights or liabilities of a party under the Contract.

THIS DOCUMENT HAS BEEN RELEASED UNDER  
THE FREEDOM OF INFORMATION ACT 1982  
BY THE DEPARTMENT OF HEALTH AND AGED CARE

# Schedule 1 – Goods and Contract Price

## 1. Specifications and Other Requirements for the Goods and Material

The Supplier must supply to the Customer:

(a) surgical masks:

- (i) that comply with relevant standards, including AS/NZS 4381:2015 'Single use face masks for use in health care' (it being acknowledged that compliance with US Standard (ASTM F2101-14) and/or US Standard (ASTM F1862/F1862M-13) and/or ISO 22609 and/or the European Standard (EN 14683) will also satisfy this requirement);
- (ii) that are approved and listed on the Australian Register of Therapeutic Goods maintained by the Therapeutic Goods Administration;
- (iii) that have a remaining shelf life of one hundred and two weeks;
- (iv) in the quantities and by the delivery dates set out in the table below; and
- (v) delivered (in pallets no higher than 1.4 meters) to the following location or such other location in Australia as advised by the Customer:

Toll

19A Interchange Drive, Eastern Creek, NSW, 2767, Australia

Contact: s47F

Please contact s47F prior to any delivery; and

- (b) information supplied or produced by the manufacturer of the Goods, in English, which outlines the manufacturer's specifications to ensure the safe and efficacious use of the Goods, including information regarding the handling, storage and management of the Goods. Each box containing the Goods must contain donning instructions and instructions on how to test for correct facial fit.

s47G

THIS DOCUMENT HAS BEEN RELEASED UNDER  
THE FREEDOM OF INFORMATION ACT 1982  
BY THE DEPARTMENT OF HEALTH AND AGED CARE

## 2. Contract Price

- (a) The Contract Price is **s47G** (excluding GST).
- (b) The Contract Price will be payable by the Customer for Goods that are Delivered and Accepted by the Customer:
  - (i) within:
    - (A) for Goods due to be delivered on 24 April 2020, five (5) days of receiving a Correctly Rendered Invoice for those Goods to be issued at the time of delivery of the Goods to the Customer;
    - (B) for Goods due to be delivered on 6 May 2020, five (5) days of receiving a Correctly Rendered Invoice for those Goods to be issued at the time of delivery of the Goods to the Customer; and
    - (C) for all other Goods, fourteen (14) days of receiving a Correctly Rendered Invoice for those Goods to be issued at the time of delivery of the Goods to the Customer; and
  - (ii) calculated as follows: **s47G** excluding GST) for each surgical mask Delivered and Accepted.
- (c) For the avoidance of any doubt it is agreed that when the Supplier delivers the Goods in accordance with clause 4.1, the Supplier will also at the same time issue a Correctly Rendered Invoice to the Customer in respect of those delivered Goods. Subject to Acceptance by the Customer of the delivered Goods in accordance with clause 4:
  - (i) for Goods due to be delivered on 24 April 2020, the Correctly Rendered Invoice will be payable within five (5) days from receipt by the Customer of the Correctly Rendered Invoice from the Supplier;
  - (ii) for Goods due to be delivered on 6 May 2020, the Correctly Rendered Invoice will be payable within five (5) days from receipt by the Customer of the Correctly Rendered Invoice from the Supplier; and
  - (iii) for all other Goods, the Correctly Rendered Invoice will be payable within fourteen (14) days from receipt by the Customer of the Correctly Rendered Invoice from the Supplier.

## 3. Reimbursements

Nil.

# Signing page

**EXECUTED** as an agreement.

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

s47F

s47F

Name of witness (print)

s47F

Signature of delegate

Caroline Edwards

Name of delegate (print)

Acting Secretary

Position of delegate (print)

**Executed by Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) in accordance with Section 127 of the Corporations Act 2001**

s47F

Signature of sole director and sole company secretary

s47F

Name of sole director and sole company secretary (print)

who states that he or she is the sole director and the sole company secretary of the company

**EDWARDS, Caroline**

**From:** Haslam, Travis  
**Sent:** Monday, 6 April 2020 6:13 PM  
**To:** EDWARDS, Caroline; s22  
**Subject:** FW: COMMITMENT APPROVAL FOR THE SUPPLY OF SURGICAL MASKS FOR THE NATIONAL MEDICAL STOCKPILE [SEC=OFFICIAL]  
**Attachments:** Australian Business Mobiles - Department of Health - COVID-19 Procurement - Execution Version - 5 April 2020.PDF  
**Categories:** Attention required

Caroline,

Please see below for your approval to enter into a contract with Australian Business Mobiles.

This email recommends that you:

- **APPROVE** the contract with Australian Business Mobiles NSW Pty Ltd, using the contract developed for the Department of Health by Minter Ellison (**Attached**).
- **APPROVE** expenditure for a total of up to s47G GST exclusive) under Section 23(3) of the *Public Governance, Performance and Accountability Act*; for Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) for the supply of 50 million surgical masks for the National Medical Stockpile (NMS).
- **NOTE** the contract will be sent to Australian Business Mobiles NSW Pty Ltd for signature upon your approval of this Minute.

### 1. BACKGROUND/CONTEXT

On 30 January 2020 an outbreak was declared a Public Health Emergency of International Concern. This global alert was issued by the World Health Organization (WHO) in relation to Coronavirus.

The Department approached various suppliers to inquire regarding quantities of personal protective equipment (PPE) the Department could secure for the NMS. On 22 March 2020, the supplier provided a quote for supply of s47G surgical masks with weekly delivery of s47G masks. The supplier has been advised that the masks must be on the Australian Register of Therapeutic Goods and meet the current Australian Standard AS / NZS 1716:2012.

### 2. TIMEFRAME

The supplier will be notified as soon as you approve this Minute. Australian Business Mobiles NSW Pty Ltd has advised that they will manufacture s47G masks each 7-10 days in China and then arrange for delivery to Sydney by the due dates in the table below.

Date	Number
20 April 2020	s47G
30 April 2020	s47G
10 May 2020	s47G
20 May 2020	s47G
30 May 2020	s47G

### 3. CONTRACTUAL ARRANGEMENT



The contract has been prepared (Attachment A) by legal firm Minter Ellison based on a Commonwealth goods contract, and in consultation with Legal and Assurance Division.

### Contract Manager

The nominated Contract Manager for this arrangement will be the Director Health Emergency Countermeasures Section, Health Emergency Management Branch.

## 4. COMPLIANCE WITH COMMONWEALTH PROCUREMENT RULES

The procurement process was conducted under a determination for the protection of human health made by you under paragraph 2.6 of the Commonwealth Procurement Rules (CPRs) on 18 March 2020. Under your determination, the CPRs do not apply to this procurement.

## 5. EXPENDITURE APPROVAL AND FUNDS AVAILABILITY

The cost to the Department for the goods is up to \$47G GST exclusive (\$47G GST inclusive).

The Finance Business Partner has confirmed that funds will be made available from the nominated account Administered \$47E(d)

## 6. GENERAL

### Risk Management

No conflict of interest issues that have been raised throughout the process. The risk profile is considered low to medium. Australian Business Mobiles does not ordinarily supply PPE, however, one of their Directors and Group Chief Financial Officer \$47F has more than 15 years in Medical Device Sales and distribution experience in senior executive positions for companies in Australia and is also experienced in navigating government procurement arrangements.

There is a risk that Australian Business Mobiles NSW Pty Ltd will not be able to secure supply of the products due to worldwide shortages and international restrictions that disrupt supply chains. If supplies suffer excessive delay, the contract includes a mechanism that allows the Commonwealth to negotiate a new schedule with or, if required, to terminate the contract. Payments will only be made on delivery and acceptance of the goods.

Any other significant risks and mitigations identified will be advised to the delegate.

### Internal Reporting Requirements

Under the Department's Procurement Processing and Management policy, contracts must be registered within 2 business days of execution.

### External Reporting Requirements

The contract will be reported on the Department's website in accordance with the Senate Order requirements of July 2001 (Murray Motion). As the contract is valued over \$10,000 it will be reported on AusTender within 42 days of entering into the contract, in line with the Commonwealth Procurement Rules (Division 1, Item 7, Reporting arrangements).

## 7. DELEGATE APPROVALS

It is recommended that you:

APPROVE the contract with Australian Business Mobiles NSW Pty Ltd, using the contract developed for the Department of Health by Minter Ellison (Attachment A).	APPROVED / NOT APPROVED
APPROVE expenditure for a total of up to \$47G GST exclusive) under Section 23(3) of the <i>Public Governance, Performance and Accountability Act</i> ; for Australian Business Mobiles NSW Pty Ltd (ACN 138 288 918) as the trustee for Australian Business Mobiles (NSW) Unit Trust (ABN 42 175 149 181) for products for the National Medical Stockpile (NMS).	APPROVED / NOT APPROVED

**NOTE** the contract will be sent to Australian Business Mobiles NSW Pty Ltd for signature upon your approval of this Minute.

NOTED / PLEASE DISCUSS

FOI 4872 Document 36

Through :

s47F

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Travis Haslam  
Assistant Secretary  
Office of Health Protection

Caroline Edwards  
Acting Secretary  
Department of Health

**Attachments:**

- A. Contract with Australian Business Mobiles NSW Pty Ltd for supply of surgical masks

THIS DOCUMENT HAS BEEN RELEASED UNDER  
THE FREEDOM OF INFORMATION ACT 1982  
BY THE DEPARTMENT OF HEALTH AND AGED CARE