



Australian Government

**Department of Health
and Aged Care**

DEED OF VARIATION

This document has been released under
the Freedom of Information Act 1982
by the Department of Health, Disability and Ageing

Parties

This Deed is between the Commonwealth and the Existing Party

Recitals

- A. The Commonwealth and the Existing Party are parties to the Existing Agreement.
- B. The Parties now wish to vary the Existing Agreement in accordance with the terms and conditions of this Deed.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- Commonwealth** means the entity specified in Item 1;
- Deed** means this document and includes the Schedule and any other attachments;
- Effective Date** means the date specified in Item 4;
- Existing Agreement** means the existing agreement and the variations described in Item 3;
- Existing Party** means the entity specified in Item 2;
- Item** means an item forming part of the Schedule;
- Party** means a party to this Deed; and
- Schedule** means the schedule to this Deed.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) capitalised words defined in the Existing Agreement have the same meaning when used in this Deed;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) headings are inserted for convenience and do not affect the interpretation of this Deed;

- (f) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
- (g) a rule of construction will not apply to the disadvantage of a Party just because that Party was responsible for the preparation of this Deed or any part of it.

2. Variation to Existing Agreement

2.1 Variation

The Parties agree that on and from the Effective Date the Existing Agreement is varied as set out in Item 5. Attachment A. In the Attachment insertions appear in red, and deletions appear in strikethrough (~~strikethrough~~).

3. Confirmation

3.1 Continuation of Existing Agreement

The Parties confirm and agree that the Existing Agreement, as amended by clause 2 of this Deed:

- (a) continues in full force and effect; and
- (b) is the entire agreement between the Parties in relation to its subject matter.

4. General

4.1 Counterparts

This Deed may be executed in any number of counterparts and the counterparts taken together constitute one and the same instrument.

4.2 Variation

This Deed may only be varied in writing signed by both Parties.

4.3 Waiver

A provision of, or a right created under, this Deed may not be waived except in writing signed by the Party to be bound.

4.4 Further steps

Each Party must, at its own cost and expense, promptly do all things reasonably required by the other Party to give full effect to this Deed and the matters contemplated by it.

4.5 Costs and stamp duty

- (a) Each Party must pay its own cost and expense arising out of the negotiation, preparation and execution of this Deed.
- (b) The Existing Party must pay all duties (including stamp duty and associated fines, penalties and interest) payable on this Deed and on any transaction or instrument executed under it.

4.6 Law and jurisdiction

This Deed is governed by and construed in accordance with the same laws that govern the Existing Agreement.

4.7 Severability

Any provision of this Deed which is wholly or partially illegal, void or unenforceable is severed from this Deed to the extent it is illegal, void or unenforceable. The validity or enforceability of the remaining provisions are not affected and continue in force.

4.8 Acting as trustee

If a Party acts as trustee of a trust in relation to this Deed:

- (a) it is liable both personally, and in its capacity as trustee of that trust; and
- (b) it represents and warrants (upon which the other Party relies) that it has full power and authority:
 - (i) to enter into this Deed and to be legally bound by it; and
 - (ii) to be able to comply with, and perform, all its obligations under it.

4.9 Inconsistency

If there is any conflict or inconsistency within this Deed, the following order of descending priority will apply:

- (a) the terms and conditions;
- (b) the Schedule;
- (c) any attachments or annexures to the Schedule; and
- (d) any documents incorporated by reference into this Deed.

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Schedule – Deed Details

Item	Description	Details
1.	Commonwealth details	<p>Legal entity name: Commonwealth of Australia as represented by the Department of Health and Aged Care</p> <p>ABN: 83 605 426 759</p> <p>Physical address: Sirius Building, Furzer St, Woden Town Centre ACT 2606</p> <p>Postal address: PO Box 9848, Canberra ACT 2601,</p> <p>Contact person: s22 [REDACTED] Director Communication and Partnerships Section</p> <p>Email: s22 [REDACTED]@health.gov.au</p>
2.	Existing Party details	<p>Legal entity name: Cancer Council Australia</p> <p>ABN: 91 130 793 725</p> <p>Physical address: Level 2, 320 Pitt St, Sydney NSW 2000</p> <p>Contact person: s47F [REDACTED] Director Cancer Control Campaigns and Communications</p> <p>Email: s47F [REDACTED]@cancer.org.au</p>
3.	Existing Agreement	The agreement for 'A national skin cancer campaign - Year 2' entered into between the Commonwealth and the Existing Party dated 4 November 2022.
4.	Effective Date	The date this Deed is executed by the last Party to do so.
5.	Variations	(a) The Existing Agreement is varied as set out in Attachment A.

Execution

Executed as a deed

SIGNED, SEALED AND DELIVERED for and on behalf of the Commonwealth of Australia as represented by the **Department of Health and Aged Care** ABN 83 605 426 759 by a duly authorised representative:

Reed: Mitchell

Name of authorised representative (print)

s22

Name of witness (print)

s47F

Signature of authorised representative

s47F

Signature of witness

23 June 2023

Date

SIGNED for and on behalf of **Cancer Council Australia**, ABN **91 130 793 725** in accordance with the Board approved Delegation of Authority by:

s47F

Name of Authorised Signatory (print)

s47F

Name of Authorised Signatory(print)

s47F

Signature of Authorised Signatory

s47F

Signature of Authorised Signatory

23 June 2023

Date

23 June 2023

Date

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Attachment A



Australian Government

**Department of Health
and Aged Care**

CONTRACT FOR SERVICES

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Aged Care

ABN 83 605 426 759

and

Cancer Council Australia

ABN 91 130 793 725

in relation to Services for

A national skin cancer campaign - Year 2

HEALTH/E22-242244

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This Contract is made between the

COMMONWEALTH OF AUSTRALIA for the purposes of this Contract represented by and acting through the Department of Health and Aged Care ABN 83 605 426 759

and

Cancer Council Australia, Level 2, 320 Pitt St, Sydney NSW 2000 ABN 91 130 793 725 ('the Contractor').

Schedule 1 RECITALS

- A. The Department requires the provision of certain services to the Department as specified in the Schedule.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed ^{s47(1)(b)} [REDACTED] _{s47(1)(b)}
- C. The Department has agreed after further negotiations to engage the Contractor to provide the Phase One Services upon the terms and conditions contained in this Contract.

Schedule 2 OPERATIVE PART

1. INTERPRETATION AND OPERATION OF CONTRACT

1.1 In this Contract, unless the contrary intention appears:

'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

'Australian Standards' means the documents published under that name by Standards Australia;

'Bankruptcy Act' means *Bankruptcy Act 1966*;

'Business Day' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in the place where the act is to be performed;

'Change in Control' means:

- (a) a body corporate or entity that Controls the Contractor ceases to Control the Contractor; or
- (b) a body corporate or entity that does not Control the Contractor comes to Control the Contractor.

For the purposes of the definition of 'Change in Control', 'Control' means, in relation to the Contractor any of the following:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Contractor;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Contractor;
- (c) the ability to appoint or remove a majority of the directors of the Contractor;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the Contractor; or

- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Contractor;

'Commencement Date' means the date on which this Contract commences, as specified in Item P;

'Commonwealth' means the Commonwealth of Australia;

'Commonwealth Material' means any Material:

- (f) provided by the Department to the Contractor for the purposes of this Contract; or
- (g) copied or derived at any time from the Material referred to in paragraph (a);

'Confidential Information' means information that:

- (h) is by its nature confidential;
- (i) is designated by the Department as confidential; or
- (j) the Contractor knows or ought to know is confidential;

but does not include information which:

- (k) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;
- (l) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Department; or
- (m) has been independently developed or acquired by the Contractor;

'Conflict' means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Contractor (or the Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in performing the Services fairly and independently;

'Contract' means this document as amended from time to time and includes its Schedules and any attachments;

'Contract Material' means all Material:

- (a) created for the purposes of this Contract;
- (b) provided or required under this Contract to be provided to the Department as part of the Services; or
- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b); and

including the Material described in Item B;

'Contract Term' means the Initial Contract Term plus any extension in accordance with clause 2.2 of the Contract;

'Contractor Personnel' means:

- (d) officers, employees, agents or subcontractors of the Contractor;
- (e) officers, employees, agents or subcontractors of the Contractor's subcontractors; and
- (f) those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis,

engaged in the performance of the Services;

'Control':

- (g) has the meaning given in section 50AA of the Corporations Act;
- (h) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in Marketable Securities, bonds or instruments of the entity or otherwise); and
- (i) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity;

'Corporations Act' means the *Corporations Act 2001*;

'Department' means the Commonwealth as represented by the Department of Health and Aged Care or any department or agency of the Commonwealth that is from time to time responsible for the administration of this Contract;

'Eligible Data Breach' means an 'Eligible Data Breach' as defined in the *Privacy Act 1988*;

'Existing Material' means all Material in existence prior to the commencement of this Contract that is:

- (j) incorporated in;
- (k) supplied with, or as part of; or
- (l) required to be supplied with, or as part of;

the Contract Material and includes Material identified as Existing Material in Item L but excludes Commonwealth Material;

'Extension Period' has the meaning given in clause 2.2 of the Contract;

'External Administrator' means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;

'Government Agency' means:

- (m) a 'Commonwealth entity' or 'Commonwealth company' as defined in the *Public Governance, Performance and Accountability Act 2013*;
- (n) an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (o) a body established by the Commonwealth Parliament, or either House of Parliament, or by the Governor-General or by a Minister of State of the Commonwealth; or
- (p) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution,

acting directly or through an agent;

'GST' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*;

'Indigenous Procurement Policy' means the policy of that name available on the

[Indigenous Procurement Website at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp;](https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp)

'Initial Contract Term' means the initial period of time for which this Contract is intended to continue, as specified in Item Q;

'Insolvency Event' means in respect of a person, any of the following:

- (q) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
- (r) except with the Department's consent:
 - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (s) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (t) it becomes the subject of an Ipso Facto Event;
- (u) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (v) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;
- (w) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the Bankruptcy Act;
- (x) any application (not withdrawn or dismissed within five Business Days) is made to a court for an order, a meeting is convened, a resolution is passed, or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) a personal insolvency agreement;
 - (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
 - (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
 - (v) or any agreement or other arrangement of the type referred to in this paragraph (h) is ordered, declared or agreed to;
- (y) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (z) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (aa) it stops or suspends payment to all or a class of creditors generally;

'Intellectual Property' means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia);

'Ipso Facto Event' with respect to a person occurs if the person is or becomes the subject of:

- (bb) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), section 434J(1) or section 451E(1) of the Corporations Act; or
- (cc) any process which under any Law may give rise to a stay on, or prevention of, the exercise of contractual rights;

'Item' means an item in the Schedule;

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

'Liquidation' means:

- (dd) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (ee) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them;

'Marketable Security' means:

- (ff) a 'marketable security' as defined in section 9 of the Corporations Act;
- (gg) a negotiable instrument;
- (hh) a unit or other interest in a trust or partnership; and
- (ii) a right or an option in respect of any of the above, whether issued or unissued;

'Material' means documents, records, equipment, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

'Moral Rights' includes the following rights of an author of copyright Material:

- (jj) the right of attribution of authorship;
- (kk) the right of integrity of authorship; and
- (ll) the right not to have authorship falsely attributed;

'Ombudsman' means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

'Party' means a party to this Contract;

'Personal Information' has the meaning given in the *Privacy Act 1988*;

'Privacy Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* when performing the 'privacy functions' as defined in the Act;

'Protective Security Policy Framework' or 'PSPF' means the Australian Government's protective security requirements for the protection of its people, information and assets (which replaced the *Commonwealth Protective Security Manual 2005*);

'Public Interest Disclosure' has the meaning given in the *Public Interest Disclosure Act 2013*;

'Related Body' means, regardless of any body's trustee or other capacity:

- (mm) a body corporate which would be related under section 50 of the Corporations Act on the basis that the term 'subsidiary' in that section had the meaning given in this document; or
- (nn) an entity which Controls, is Controlled by, or is under common Control with, that body;

'Schedule' means the schedule to this Contract;

'Services' means the services described in the Schedule including as set out in Item A and the provision to the Department of the Material specified in Item B;

'Specified Personnel' means the Contractor Personnel specified in Item I;

'Web Content Accessibility Guidelines 2.1' means the Guidelines available at <http://www.w3.org/TR/WCAG>;

'WHS legislation' means the *Work Health and Safety Act 2011*, any regulations made under that act and any 'corresponding WHS law' within the meaning of section 4 of the *Work Health and Safety Act 2011* and Regulation 6A of the *Work Health and Safety Regulations 2011*; and

'World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014)' means the advisory notes released by the Australian Human Rights Commission available at <https://www.humanrights.gov.au/our-work/disability-rights/world-wide-web-access-disability-discrimination-act-advisory-notes-ver>.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (e) all references to dollars, A\$, \$A or \$ are to Australian dollars;
- (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;
- (h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as

amended from time to time;

- (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;
 - (j) the term 'may' when used in the context of a right or remedy exercisable by the Department means that the Department may exercise that right or remedy in its sole and absolute discretion and the Department has no obligation to the Contractor to do so unless expressly stated;
 - (k) a reference to an instrument or document includes the instrument or document as altered, supplemented or replaced from time to time; and
 - (l) references to clauses are to clauses in this Contract, references to 'Items' are to Items in the Schedule to this Contract, references to 'Schedule' are to the Schedule to this Contract and references to Annexures or Attachments are references to documents attached to this Contract.
- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Contract and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Contract and any part of the Annexures or Attachments (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the Annexures or Attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Contract. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Contract.
- 1.5 This Contract records the entire contract between the Parties in relation to its subject matter.
- 1.6 This Contract may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, will constitute one and the same agreement.
- 1.7 No variation of this Contract is binding unless agreed in writing between the Parties.
- 1.8 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.9 A waiver of any provision of, or right under, this Contract must be in writing.
- 1.10 No waiver of a term or condition of this Contract will operate as a waiver of another breach of the same or of any other term or condition contained in this Contract.
- 1.11 If a Party does not exercise, or delays in exercising, any of its rights under this Contract or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.12 A single or partial exercise by a Party of any of its rights under this Contract or at Law does not prevent the further exercise of any right.
- 1.13 The Contractor must not assign or transfer its rights or obligations under this Contract without prior approval in writing from the Department.
- 1.14 The Contractor agrees not to consult with any person for the purposes of entering into an arrangement that will require novation of this Contract without first

consulting the Department.

2. TERM

- 2.1 This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Term unless terminated earlier in accordance with this Contract or extended in accordance with clause 2.2.
- 2.2 The Initial Contract Term may be extended by the Department for further term(s), specified in Item R (each an 'Extension Period'), on the terms, including the fees, allowances and costs, then in effect, by giving written notice to the Contractor at least 20 Business Days before the end of the current Contract Term. Any extension in accordance with this clause 2.2 takes effect from the end of the then current Contract Term.

3. PROVISION OF SERVICES

- 3.1 The Contractor must:
- (a) perform the Services in accordance with this Contract, with due care and skill and in accordance with relevant best practice, including any applicable Australian Standards and any Commonwealth and industry standards and guidelines specified in either Item B or Item C;
 - (b) ensure that the Services and Contract Material are fit for the purpose for which they are provided;
 - (c) ensure that any Contract Material which is to be placed on a Departmental website or the intranet complies with the:
 - (i) Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.1;
 - (ii) the accessibility standard contained within the Digital Service Standard issued by the Digital Transformation Agency and available at <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria>; and
 - (iii) World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014);
 - (d) comply with the time-frame for the performance of the Services specified in Item D;
 - (e) liaise with the Department, provide any information the Department may reasonably require, and comply with any reasonable directions of the Department;
 - (f) ensure that it and its Contractor Personnel, when carrying out their duties and performing work under this Contract, do not:
 - (i) cause any unreasonable or unnecessary disruption to the routines, procedures and responsibilities of the Department; or
 - (ii) damage the reputation of the Department or the Commonwealth more broadly in the community;
 - (g) meet with the Department at the times set out in Item A (or as otherwise reasonably required by the Department to discuss the provision of the Services). The Contractor must ensure that the Specified Personnel are

reasonably available to attend such meetings; and

(h) deliver to the Department all deliverables, plans and reports specified in Item A.

3.2 The Contractor acknowledges that:

(a) the Department collects or may come into possession of information concerning the Contractor that is either publicly available information or information obtained through the course of the Department conducting its affairs; and

(b) subject to clause 3.3, the Department may use that information when considering the Contractor's ability to perform this Contract.

3.3 The Department may consult with the Contractor if any information referred to under clause 3.2 is a cause of concern to the Department.

3.4 Subject to clauses 15 and 16, no right or obligation in this Contract is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Commonwealth, its entities, officers, employees or agents.

4. FEES, ALLOWANCES AND ASSISTANCE

4.1 The Department agrees to:

(a) pay the fees specified in Item E;

(b) pay the allowances and meet the costs, if any, specified in Item F; and

(c) provide the facilities and assistance, if any, specified in Item G.

4.2 The Department will be entitled, in addition to any other right it may have, to withhold or reduce any payment of fees or allowances until the Contractor has completed to the satisfaction of the Department that part of the Services to which the payment relates.

4.3 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Department may issue the Contractor with a written notice requiring repayment of the full amount of the overpayment.

4.4 The Contractor must pay to the Department the full amount of the overpayment specified in the notice referred to in clause 4.3 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.

4.5 The Department may recover the overpayment specified in the notice referred to in clause 4.3, from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Contract.

4.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 4.3, the Department may require that Interest be paid on the amount after the expiry of the twenty (20) Business Days' notice referred to in clause 4.4, until the amount is paid to the Department in full.

4.7 The Contractor must provide the Department with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where the Contractor repays to the Department some or all of the fees or expenses.

4.8 The Contractor agrees to submit invoices for payment in the manner specified in Item H and clause 6.

5. PAYMENTS

5.1 Subject to clause 5.3, the Department will pay the Contractor within:

- (a) if it is specified in Item V that the Parties agree to use the Pan-European Public Procurement On-Line framework for electronic invoicing for this Contract, 5 calendar days;
- (b) otherwise, 20 calendar days; or
- (c) as agreed between the Parties on an item-by-item basis.

(‘Payment Period’)

after the Department acknowledges the satisfactory delivery of the Services and receipt of a correctly rendered invoice .

5.2 The Payment Period starts on the next calendar day after the receipt of the correctly rendered invoice. If the Payment Period ends on a day that is not a Business Day, payment is due on the next Business Day.

5.3 For clarity, clause 5.1 does not require the Department to make payment to the Supplier within the Payment Period if:

- (a) the Services have not been satisfactorily performed in accordance with this Contract;
- (b) the invoice is not correctly rendered; or
- (c) the Department disputes the amount of the invoice.

5.4 Subject to clause 5.5, for payments made by the Department after the Payment Period, the Department must pay the unpaid amount, and where the interest accrued on the unpaid amount is more than A\$100, the Department must also pay the interest accrued on the unpaid amount.

5.5 For clarity, clause 5.4 does not require the Department to pay interest on the unpaid amount where the Department did not make payment within the Payment Period if:

- (a) the Services were not satisfactorily performed in accordance with this Contract;
- (b) the invoice was not correctly rendered; or
- (c) the Department disputed the amount of the invoice.

5.6 Interest payable under clause 5.2 will be simple interest on the unpaid amount calculated in respect of each calendar day from the day after the Payment Period ends, up to and including the day that the Department effects payment as represented by the following formula:

$$SI = UA \times GIC \times D$$

Where:

- SI = simple interest amount;
- UA = the unpaid amount;
- GIC = General Interest Charge Rate daily rate; and
- D = the number of days from the end of the Payment Period up to and including the day that payment is made.

5.7 In this clause 5 ‘**General Interest Charge Rate**’ means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

5.8 For the purposes of this clause 5 an invoice is correctly rendered if it:

- (a) is correctly addressed and calculated in accordance with this Contract, including the requirements specified in Item V; and
- (b) relates only to supplies that have been delivered to the Department in accordance with this Contract; and
- (c) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.

6. TAXES, DUTIES AND GOVERNMENT CHARGES

- 6.1 Subject to this clause 6, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be paid by the Contractor or as the Contractor might arrange.
- 6.2 The remainder of this clause 6 (apart from clause 6.8) only apply where the Contractor is registered, or is required to be registered for GST.
- 6.3 The goods, services and other supplies made by the Contractor under this Contract are 'taxable supplies' within the meaning of the GST Law.
- 6.4 Unless it can demonstrate to the Department's reasonable satisfaction that it is not registered or required to be registered for GST, the Contractor will issue the Department with a 'tax invoice' in accordance with the GST Law together with, or as a part of, each invoice submitted for payment in accordance with clause 4.8. The Department will not be required to pay or provide any consideration for any taxable supply unless and until it has received a tax invoice for that supply.
- 6.5 The amounts payable by the Department to the Contractor, as determined under clause 4, are stated inclusive of GST but must not include any amount which represents GST paid by the Contractor for which the Contractor may claim an input tax credit.
- 6.6 If a payment to satisfy a claim or a right to claim under or in connection with this Contract gives rise to a liability to pay GST, subject to the payee issuing a tax invoice to the payer, the payer must also pay, and indemnify the payee against the amount of that GST. For the avoidance of doubt, this clause does not apply to the Fees or other payments for the Contractor's services as specified in the Schedule.
- 6.7 If a Party has a claim under or in connection with this Contract for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit). The Contractor will be presumed to be entitled to a full input tax credit unless it can demonstrate to the Department's reasonable satisfaction why this is not the case.
- 6.8 If and to the extent that any supply made to the Department under this Contract is not a taxable supply:
 - (a) the consideration payable by the Department for that supply will, if required by the Department, be reduced by 1/11th (GST component); and
 - (b) if the Department has already paid the price for that supply and the Department requires the Contractor to refund the GST component, the Contractor must refund the GST component.
- 6.9 For the purposes of this clause, 'GST Law', 'supply', 'input tax credit' and other terms relevant to GST, have any meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* and any applicable rulings of the Australian Taxation Office.

7. SUBCONTRACTORS

- 7.1 The Contractor agrees that:
- (a) it will not subcontract the performance of any part of the Services without the prior approval in writing of the Department; and
 - (b) the subcontractors, if any, specified in Item A will perform work in relation to the Services in accordance with this Contract and are approved by the Department to do so.
- 7.2 Clause 7.2 is not applicable to this contract.
- 7.3 Where a subcontractor specified in Item A or approved by the Department under clause 7.1(a) is unable to perform the work, the Contractor agrees to notify the Department immediately.
- 7.4 Where clause 7.3 applies, the Department may request the Contractor to secure a replacement subcontractor acceptable to the Department at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.4 the Department may terminate this Contract in accordance with the provisions of clause 35.
- 7.6 In respect of subcontractors listed in Item A or approved by the Department under this clause, the Contractor must ensure that:
- (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
 - (b) the subcontract will not conflict with or detract from the rights and entitlements of the Department under this Contract;
 - (c) the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Services;
 - (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the performance of the Services;
 - (e) the subcontract contains all the relevant terms of this Contract including those relating to compliance with the Law, conflicts of interest, subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded the Department by clauses 34 and 35, in the event of this Contract being terminated;
 - (f) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Department will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
 - (g) the other party to the subcontract is prohibited from further subcontracting the Services without the prior written approval of the Department; and
 - (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Department.

8. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 8.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item I.
- 8.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Department immediately.
- 8.3 The Department may request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services.
- 8.4 Where clauses 8.2 or 8.3 apply, the Department may request the Contractor to provide replacement personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 8.5 If the Contractor does not comply with any request made under clause 8.3 or clause 8.4, the Department may terminate this Contract in accordance with the provisions of clause 35.

9. RESPONSIBILITY OF CONTRACTOR

- 9.1 The Contractor agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- (a) involvement by the Department in the performance of the Services;
 - (b) payment made to the Contractor on account of the Services;
 - (c) subcontracting of any aspect of the Services; or
 - (d) acceptance by the Department of replacement Contractor Personnel (including Specified Personnel).

10. COMMONWEALTH MATERIAL

- 10.1 The Department agrees to provide the Commonwealth Material to the Contractor as specified in Item J.
- 10.2 The Department grants to the Contractor a royalty-free, licence fee-free, non-exclusive, non-transferrable, revocable licence (including a limited right of sub-licence to sub-license to a subcontractor specified in Item A or approved by the Department under clause 7) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material solely for the purposes of this Contract.

10.3 s47E(d)

- 10.4 The Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Item K, and any direction by the Department.
- 10.5 Property in any copy of Commonwealth Material (in the form of a document, article or removable medium) vests or remains vested in the Department. The Contractor

agrees:

- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Contract, to deliver to the Department, or, in accordance with Department directions erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.

10.6 This clause 10 survives the expiration or earlier termination of this Contract.

11. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 11.1 The ownership model for Intellectual Property in Contract Material is that set out in Item S.
- 11.2 If no ownership model is selected in Item S, clause 12 applies and clause 13 in its entirety, does not apply to this Contract.

12. EXISTING MATERIAL AND DEPARTMENT OWNERSHIP OF INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

12.1 Intellectual Property in all Contract Material created under this contract will vest in the Commonwealth.

12.2 Clause 12.1 does not affect the ownership of Intellectual Property in any Existing Material

12.3 s47E(d)

12.4 If requested by the Department, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12.

12.5 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and Existing Material in the manner provided for in this clause 12.

12.6 Property in any copy of Contract Material (in the form of a document, article or removable medium) vests or will vest in the Department. The Contractor agrees:

- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or earlier termination of this Contract, to deliver to the Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,

unless any provision to the contrary is set out in Item M.

12.7 This clause 12 survives the expiration or earlier termination of this Contract.

13. EXISTING MATERIAL AND CONTRACTOR OWNERSHIP OF INTELLECTUAL PROPERTY

IN CONTRACT MATERIAL

- 13.1 Intellectual Property in all Contract Material vests or will vest in the Contractor.
- 13.2 Clause 13 does not affect the ownership of Intellectual Property in any Existing Material or Commonwealth Material.
- 13.3 The Contractor grants, or undertakes to arrange for a third party to grant, to the Department and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in any Existing Material in conjunction with the Contract Material.
- 13.4 The Contractor grants to the Department and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Contract Material for the Department's or the Commonwealth's purpose.
- 13.5 If requested by the Department, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 13.
- 13.6 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and Existing Material in the manner provided for in this clause 13.
- 13.7 This clause 13 survives the expiration or earlier termination of this Contract.

14. MORAL RIGHTS

- 14.1 The applicable definition of 'Specified Acts' for the purposes of this clause 14 is that set out in Item T.
- 14.2 If no option is selected in Item T, clause 14.3 applies and clause 14.4 in its entirety does not apply to this Contract.
- 14.3 For the purposes of this clause 14, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Department:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material, with or without attribution of authorship;
 - (b) supplementing the Contract Material with any other Material;
 - (c) using the Contract Material in a different context to that originally envisaged; and
 - (d) falsely attributing authorship of any Contract Material, or any content in the Contract Material.

14.4 For the purposes of this clause 14, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Department:

- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; and
- (c) using the Contract Material in a different context to that originally envisaged, but does not include false attribution of authorship.

14.5 The Contractor must use its best endeavours to ensure that:

- (a) where there is no consent already in place, a written consent will be given by the author of any Contract Material, other than Existing Material, to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
- (b) where there is no consent already in place, the author of any Existing Material will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Commonwealth in relation to the Commonwealth's licensed use of such Material.

14.6 This clause 14 survives the expiration or earlier termination of this Contract.

15. **DISCLOSURE OF INFORMATION**

15.1 Subject to clause 15.5, the Contractor agrees not to disclose any Confidential Information relating to this Contract or the Services without prior approval in writing from the Department.

15.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 15.1 and the Contractor agrees to comply with these conditions.

15.3 The Department may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Department, relating to the non-disclosure of Confidential Information.

15.4 If the Contractor receives a request under clause 15.3, it agrees to promptly arrange for all such undertakings to be given.

15.5 The obligations on the Contractor under this clause 15 will not be taken to have been breached where the information referred to is required by Law to be disclosed.

15.6 Property in any copy of Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Department. The Contractor agrees:

- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or earlier termination of this Contract, to deliver to the Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,

unless any provision to the contrary is set out in Item M.

- 15.7 The Department gives no undertaking to treat Contractor information, or this Contract, as confidential information. The Contractor acknowledges that the Department may disclose information relevant to this Contract, or this Contract itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (d) to Department third party service providers for the purposes of providing goods and services to, or on behalf of, the Department; or
 - (e) for any other requirements of the Commonwealth.
- 15.8 This clause 15 survives the expiration or earlier termination of this Contract.

16. ACCESS TO DOCUMENTS

- 16.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
- 16.2 This clause 16 only applies if this is a Contract which complies with the description of 'Commonwealth contract'.
- 16.3 Where the Department has received a request for access to a document created by or in the possession of, the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Department may at any time by written notice require the Contractor to provide the document to the Department and the Contractor must, at no additional cost to the Department, promptly comply with the notice.
- 16.4 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this clause 16.

17. NOTIFIABLE DATA BREACHES

- 17.1 *If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor agrees to:*
- (a) *notify the Department in writing as soon as possible, which must be no later than within three days of becoming aware; and*
 - (b) *unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the Privacy Act 1988.*
- 17.2 *Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Department notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor must:*
- (a) *take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal*

Information relates;

- (b) *unless otherwise directed by the Department, take all other action necessary to comply with the requirements of the Privacy Act 1988; and*
- (c) *take any other action as reasonably directed by the Department.*

17.3 This clause 17 survives the expiration or earlier termination of this Contract.

18. PROTECTION OF PERSONAL INFORMATION

18.1 This clause 18 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services under this Contract.

18.2 In this clause 18, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code (RAC); and
- (d) Australian Privacy Principle (APP),

have the same meaning as they have in the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

18.3 The Contractor acknowledges that it may be treated as a 'contracted service provider' and agrees in respect of the provision of the Services under this Contract:

- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an APP;
- (c) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (d) comply with the obligations contained in the APPs that apply to the Contractor;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Contractor, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the APP or RAC, whichever is applicable to the Contractor;
- (f) to comply with any request under section 95C of the Privacy Act;
- (g) to immediately notify the Department if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 18, whether by the Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 18;
- (i) to ensure that any officers, employees or agents of the Contractor who are

required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 18; and

- (j) not use or disclose any Personal Information, obtained from the Department, for the purposes of direct marketing.
- 18.4 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Contractor has under this clause 18, including the requirement in relation to subcontracts.
- 18.5 The Department may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Department, relating to the non-disclosure of Personal Information.
- 18.6 If the Contractor receives a request under clause 18.5, it agrees to promptly arrange for all such undertakings to be given.
- 18.7 The Contractor indemnifies the Department in respect of any loss, liability or expense suffered or incurred by the Department which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in clause 18.4.
- 18.8 The Contractor's obligations under this clause 18 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Contractor but for the application of this clause.
- 18.9 This clause 18 survives the expiration or earlier termination of this Contract.

19. COMPLIANCE WITH LAWS AND POLICIES

- 19.1 The Contractor agrees, in carrying out this Contract, to comply with all Laws and any relevant policies, including:
- (a) the *Crimes Act 1914*;
 - (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Disability Discrimination Act 1992*;
 - (e) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*;
 - (f) the *Archives Act 1983*;
 - (g) the *Privacy Act 1988*;
 - (h) the *Freedom of Information Act 1982*;
 - (i) the *Criminal Code Act 1995*;
 - (j) the *Public Interest Disclosure Act 2013*;
 - (k) the *Modern Slavery Act 2018*;
 - (l) the *Payment Times Reporting Act 2020*;
 - (m) any work health and safety legislation applicable to the Contractor;
 - (n) the Australian Government's *Lobbying Code of Conduct*;

- (o) the [Protective Security Policy Framework](#);
 - (p) any fraud control policy, rules or guidelines issued by the Australian Government from time to time; and
 - (q) any other policies notified to the Contractor in writing or listed in Item C.
- 19.2 The Contractor acknowledges that under section 137.1 of the Criminal Code, giving false or misleading information to the Commonwealth is a serious offence.
- 19.3 The Contractor agrees, when using the Department's premises or facilities, to comply with all reasonable directions and procedures relating to work health, safety and security in operation at those premises or in regard to those facilities (including the Department's smoke-free work-place policy) whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.
- 19.4 Without limiting the effect of clause 37, the Contractor must comply with, and require Contractor Personnel to comply with, the behaviours specified in:
- (a) the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Contractor and those Contractor Personnel were APS employees as defined in that Act; and
 - (b) the general duties of officials at sections 25-29 of the *Public Governance, Performance and Accountability Act 2013* as if the Contractor and those Contractor Personnel were officials as defined in that Act.
- 19.5 Clauses 19.6 to 19.9 only apply to the extent that:
- (a) this Contract is entered into following a procurement which is at, or above, the relevant procurement thresholds as defined in the *Commonwealth Procurement Rules* but not where that procurement is listed in Appendix A to those Rules; and
 - (b) the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* ('the WGE Act').
- 19.6 The Contractor must comply with its obligations, if any, under the WGE Act.
- 19.7 If the Contractor becomes non-compliant with the WGE Act during the Contract Term, the Contractor must notify the Department.
- 19.8 If the Contract Term exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Department.
- 19.9 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

20. INDIGENOUS PROCUREMENT POLICY

- 20.1 In this clause 20, the term 'Indigenous Enterprise' has the meaning given in the Indigenous Procurement Policy.
- 20.2 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- 20.3 The Contractor must use its reasonable endeavours to increase its:
- (a) purchasing from Indigenous enterprises; and

- (b) employment of Indigenous Australians,
in the delivery of the Services as specified in the Schedule.
- 20.4 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor and use of Indigenous suppliers in the Contractor's supply chain.
- 20.5 The Contractor must provide such written reports and evidence of its compliance with this clause 20 every 6 months during the Contract Term.
- 20.6 The option selected for the Indigenous Procurement Policy is that set out in Item U.
- 20.7 If no option is selected in Item U, clause 21 applies and clause 22 does not apply to this Contract.

21. INDIGENOUS PROCUREMENT POLICY – NOT HIGH VALUE CONTRACT

- 21.1 In this clause 21, the terms 'High Value Contract', 'Indigenous Enterprise' and 'Remote Area' all have the meaning given in the Indigenous Procurement Policy.
- 21.2 If during the Contract Term the value of this Contract exceeds \$7.5 million, and more than half of the value of this Contract is being spent in one or more of the industry sectors specified in the Indigenous Procurement Policy then this Contract will become a High Value Contract for the purposes of the Indigenous Procurement Policy, in which case the Contractor must:
- (a) within 60 days after the \$7.5 million value is reached, develop an Indigenous Participation Plan as required for the purposes of the Indigenous Procurement Policy and using a template provided by the Department that addresses:
- (i) how the Contractor intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
 - (ii) the Contractor's current rate of Indigenous employment and supplier use;
 - (iii) the Contractor's commitment to Indigenous participation; and
 - (iv) if any part of this Contract is being or will be delivered in a Remote Area, how the Contractor will ensure that its provision of the Services will deliver significant Indigenous employment or supplier use outcomes in that Remote Area; and
- (b) submit the draft Indigenous Participation Plan to the Department for its review and, if appropriate, approval.
- 21.3 Upon approval of the draft Indigenous Participation Plan under clause 21.2(b), the Contractor must:
- (a) comply with the Indigenous Participation Plan (which will by contract variation form an Annexure to the Contract);
 - (b) report against its compliance with the Indigenous Participation Plan quarterly during the Contract Term; and
 - (c) comply with any directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.

22. INDIGENOUS PROCUREMENT POLICY – HIGH VALUE CONTRACT

- 22.1 In this clause 22:

- (a) 'Indigenous Participation Plan' means the plan referenced at Item U; and
- (b) 'Powering Indigenous Procurement reporting portal' means the online portal where Contractors report on their progress against their mandatory minimum requirements under the Indigenous Procurement Policy.
- 22.2 Without limiting clause 20.2, the Contractor must comply with the Indigenous Participation Plan.
- 22.3 The Contractor must submit a written report to the Department via the Powering Indigenous Procurement reporting portal on its compliance with the Indigenous Participation Plan, as follows:
- (a) at least once every quarter during the Contract Term; and
- (b) within 5 Business Days after the end of the Term ('End of Term Report').
- 22.4 The End of Term Report must identify whether the Contractor:
- (a) met the mandatory minimum requirements; and
- (b) complied with the Indigenous Participation Plan.
- 22.5 Throughout the Contract Term, the Contractor is responsible for managing the Contractor's access to the Powering Indigenous Procurement reporting portal including by managing the:
- (a) enabling of its authorised Personnel's access; and
- (b) disabling of its authorised Personnel's access.
- If the Contractor did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.
- 22.6 If the Department considers, in its absolute discretion at any time during the Contract Term, that it has concerns in relation to the Contractor's:
- (a) compliance with the Indigenous Participation Plan; or
- (b) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
- the Department may request the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Contractor must comply with all reasonable directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.
- 22.7 Without limiting its other rights under the Contract or at Law, any material failure by the Contractor to:
- (a) implement the Indigenous Participation Plan; or
- (b) comply with a direction issued by the Department under clause 22.6,
- will be a breach of this Contract, and the Department may terminate this Contract in accordance with clause 35.
- 22.8 Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under clause 22.3:
- (a) will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
- (b) will not be considered to be Confidential Information; and
- (c) may be used by Commonwealth entities for any purpose, including for

Department, provide the Department a copy of any such Statement of Tax Record.

- 24.6 If the Contractor is a partnership, the Contractor will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Department as soon as possible after they become a partner to the partnership. The Contractor must provide a Valid and Satisfactory Statement of Tax Record in respect of each partner that is directly involved in the delivery of the partnership.

25. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

25.1 In this clause 25:

- (a) **'Commonwealth Entity'** has the meaning given to this term in the *Public Governance, Performance and Accountability Act 2013 (Cth)*.
- (b) **'Entrusted Person'** has the meaning given to this term in the PTR Act.
- (c) **'General Interest Charge Rate'** has meaning given to this term in clause 5.7.
- (d) **'Policy Team'** means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.
- (e) **'PT PCP'** means the Commonwealth's 'Payment Times Procurement Connected Policy'.
- (f) **'PT PCP Evaluation Questionnaire'** means a questionnaire in substantially the form of Appendix C of the PT PCP.
- (g) **'PT PCP Purpose'** means:
- (i) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those of the Commonwealth's suppliers and their subcontractors that are Reporting Entities; or
 - (ii) improving payment times to PT PCP Subcontractors.
- (h) **'PT PCP Remediation Plan'** means a written remediation plan substantially in the form of Appendix D of the PT PCP.
- (i) **'PT PCP Subcontract'** means a subcontract between a Reporting Entity and another party (**Other Party**) in respect of which:
- (i) the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Contract;
 - (ii) both parties are carrying on business in Australia; and
 - (iii) the component of the subcontract for the provision of goods or services for the purposes of this Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offers (panel arrangements),
- but does not include the following subcontracts:
- (iv) subcontracts entered into prior to the date of submission of the Reporting Entity's tender response for this Contract;
 - (v) subcontracts which contain standard terms and conditions put forward

by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or

- (vi) subcontracts for the purposes of:
 - (A) procuring and consuming goods or services overseas; or
 - (B) procuring real property, including leases and licences.
 - (j) **'PTR Act'** means the *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the PTR Act.
 - (k) **'Reporting Entity'** has the meaning given to this term in the PTR Act.
 - (l) **'Reporting Entity Subcontractor'** means any person that:
 - (i) is a Reporting Entity; and
 - (ii) provides goods or services directly or indirectly to the Contractor for the purposes of this Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive).
- 'Reporting Entity Subcontract'** has a corresponding meaning.
- (m) A reference to the Department in clauses 25.8, 25.12(b), 25.13 and 25.14 includes the Policy Team.

PT PCP Subcontracts

- 25.2 The Contractor must comply with the PT PCP.
- 25.3 If the Contractor enters into a PT PCP Subcontract, the Contractor must include in that subcontract:
 - (a) a requirement for the Contractor to pay the PT PCP Subcontractor:
 - (i) subject to clause 25.5, within 20 calendar days after the acknowledgement of the satisfactory delivery of the services and receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (ii) subject to clause 25.6, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 25.7;
 - (b) a statement that the PT PCP applies to that subcontract; and
 - (c) a statement that the subcontractor may make a complaint to the Policy Team, or to the Commonwealth as represented by the Department, in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 25.3.
- 25.4 If the Contractor enters into a Reporting Entity Subcontract in anticipation of (or after) entering this Contract, the Contractor must use reasonable endeavours to include in that subcontract:
 - (a) obligations equivalent to those in clause 25.2; and
 - (b) a requirement that, if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (i) obligations equivalent to those in clause 25.2; and
 - (ii) obligations equivalent to this clause 25.4(b) (such that the obligations in this clause 25.4(b) are to continue to be flowed down the supply chain

to all Reporting Entity Subcontractors).

- 25.5 Clause 25.3(a) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 25.3(a)(i).
- 25.6 The Contractor is not required to pay interest in accordance with clause 25.3(a)(ii) if either:
- (a) the Department has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - (b) the amount of the interest payable is less than \$100 (GST inclusive).
- 25.7 Interest payable under clause 25.3(a)(ii) will be simple interest calculated in accordance with the formula in clause 5.5.

PT PCP Evaluation Questionnaire

- 25.8 If requested in writing by the Department, the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non-Compliance and Remediation

- 25.9 If the Department considers or becomes aware that the Contractor has not or may not have complied with:
- (a) the requirements of this clause 25; or
 - (b) the payment requirements of a PT PCP Subcontract,
- the Department may direct the Contractor to provide to the Department either or both of the following within the timeframes specified by the Department:
- (c) information to enable the Department to review the Contractor's compliance; or
 - (d) a properly completed PT PCP Remediation Plan.
- 25.10 The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 25.9(d).
- 25.11 If the Department considers that the Contractor has failed to comply with any of its obligations under this clause 25, without limiting the Department's rights and remedies at law or otherwise under this Contract, the Department may do either or both of the following:
- (a) take the failure or non-compliance into account as part of the Department's monitoring of the Contractor's performance under this Contract; or
 - (b) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.
- 25.12 The Contractor agrees that, if it is the subject of a complaint in relation to its compliance with this clause 25 or the associated payment provisions of a PT PCP Subcontract:
- (a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (b) it will cooperate in good faith with the Department in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

- 25.13 For any PT PCP Purpose, the Contractor consents to the Department:
- (a) using and sharing with any other Commonwealth Entity the information

provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan or otherwise received or obtained by the Department in connection with this Contract or a PT PCP Subcontract; and

- (b) receiving information obtained under, or in accordance with, the PTR Act ('Protected Information') from an Entrusted Person and using such Protected Information.

25.14 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any Personal Information, the Contractor warrants and represents that it has obtained all necessary consents in accordance with the Privacy Act to the collection, use and disclosure of such information in the manner contemplated by clause 25.13. The Contractor will provide evidence of such consents to the Department on request.

26. CHILD SAFETY

26.1 If any part of the Services involves the Contractor employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Contractor agrees:

- (a) to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
- (b) if requested, provide the Department at the Contractor's cost, an annual statement of compliance with this clause 26, in such form as may be specified by the Department.

26.2 When child safety obligations may be relevant to a subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under this Contract imposes on the subcontractor the same obligations regarding child safety that the Contractor has under this Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

27. CONFLICT OF INTEREST

27.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract, except as disclosed in writing to the Department, no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Contractor or the Contractor Personnel.

27.2 If, during the Contract Term, a Conflict arises, or appears likely to arise, in respect of the Contractor or any of the Contractor Personnel, the Contractor agrees to:

- (a) notify the Department immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
- (b) take such steps as have been proposed by the Contractor, or at the absolute discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

27.3 If the Contractor fails to notify the Department under this clause 27 or is unable or

unwilling to resolve or deal with the Conflict as required, the Department may terminate this Contract in accordance with the provisions of clause 35.

27.4 The Contractor agrees that it will:

- (a) ensure that a situation does not arise which may result in a Conflict; and
- (b) use its best endeavours (including making all appropriate enquiries) to ensure that any Contractor Personnel do not engage in any activity or obtain any interest during the Contract Term that is likely to conflict with or restrict the Contractor in providing the Services to the Department fairly and independently.

28. PUBLIC INTEREST DISCLOSURE

28.1 Where a Contractor suspects wrongdoing within the Commonwealth public sector, the Contractor may raise their concerns under the Public Interest Disclosure Act 2013. Prior to making a disclosure, the Contractor must refer to information available at: <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>

28.2 All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	Authorised Officer
Email Address:	publicinterestdisclosure@health.gov.au
Telephone:	02 s47E(d)

29. SECURITY

29.1 The Contractor must, and must ensure that the Contractor Personnel, comply with:

- (a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
- (b) the requirements of the Department's protective policies and procedures under the PSPF;
- (c) any additional security requirements specified in the Schedule; and
- (d) any other security requirements that are notified in writing by the Department to the Contractor from time to time, including any changes to the requirements referred to in clauses 29.1(a) to 29.1(c). Such other security requirements must be complied with from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

29.2 The Contractor acknowledges and agrees that:

- (a) it must not, and must not permit any Contractor Personnel, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;
- (b) it must provide written notification to the Department immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental access, or by any of the Contractor Personnel), and must comply with any reasonable directions

of the Department in order to rectify the security incident; and

- (c) it must, and must ensure that the Contractor Personnel, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.

29.3 The Contractor acknowledges and agrees that:

- (a) if and when requested by the Department, it, and the Contractor Personnel, must promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Department, relating to the use and non-disclosure of official information in connection with this Contract;
- (b) it must promptly provide written notification and disclose to the Department any conflict of interest affecting it, or the Contractor Personnel, that may impact on security in the performance of the Contractor's obligations with respect to official information under this Contract;
- (c) it must promptly inform, and keep informed, the Contractor Personnel in respect of all of the Department's security requirements, and the security obligations of the Contractor under this Contract, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);
- (d) it must, and must ensure that the Contractor Personnel, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;
- (e) it must, and must ensure that the Contractor Personnel, provide written notification to the Department immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Services, or official information held by or in the control of the Contractor; and
- (f) on termination or expiry of this Contract it must, and must ensure that the Contractor Personnel:
 - (i) delete all official information from their respective ICT systems; and
 - (ii) return all the Department resources and assets to the Department, except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements under this Contract.

29.4

- (a) Clause 29.4 does not apply.

29.5 In this clause 29:

- (a) regardless of whether or not the first letter of any word is capitalised, 'asset', 'Australian Government Information Security Manual', 'confidentiality', 'conflict of interest', 'ICT system', 'information security', 'need-to-know', 'official information', 'personnel security', 'physical security', 'protective security', 'resources', 'security classified information', 'security breach', 'security clearance' and 'security incident', have the meaning given to them in

the PSPF Australian Government protective security policy framework – glossary of security terms; and

- (b) an obligation of the Contractor under any of clauses 29.1, 29.2, 29.3 or **Error! Reference source not found.** is additional to and does not affect nor derogate from the obligations of the Contractor under:
 - (i) one or more of the other of those clauses; or
 - (ii) any other provision of this Contract.

30. ACCOUNTABILITY AND ACCESS

30.1 The Contractor must give to:

- (a) the Auditor-General or his/her delegate;
- (b) the Privacy Commissioner or his/her delegate;
- (c) the Ombudsman or his/her delegate;
- (d) the persons appointed under the *Australian Information Commissioner Act 2010* as the Information Commissioner and the FOI Commissioner or his/her delegate; and
- (e) any persons authorised in writing by the Department, (referred to in this clause collectively as 'those permitted') access to premises:
 - (f) at which Materials associated with this Contract are stored; or
 - (g) work associated with this Contract is undertaken; and
 - (h) to the Contractor Personnel,

in order for those permitted to be able to inspect and copy Material for purposes associated with this Contract or any review of performance under this Contract.

30.2 The rights referred to in clause 30.1 are, wherever practicable, subject to:

- (a) the provision of reasonable prior notice from the Department (except where there is an actual or apprehended breach of the Law);
- (b) access being sought during reasonable times (except where the Department believes there is an actual or apprehended breach of the Law); and
- (c) the Contractor's reasonable security procedures.

30.3 The Contractor agrees to provide all reasonable assistance requested by the Department in respect of any inquiry into or concerning the Services or this Contract.

30.4 Without limitation to the generality of clause 30.3:

- (a) the assistance to be provided by the Contractor under clause 30.3 will include, as appropriate, the provision of Material, and making available relevant Contractor Personnel to provide information or answer questions on any matters relevant to or arising from this Contract or the performance of the Services which might reasonably be expected to be within the knowledge of the Contractor; and
- (b) an inquiry referred to in clause 30.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.

30.5 The Department will endeavour to notify the Contractor as early as possible of any

assistance required under clause 30.4, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.

- 30.6 The requirement for access under this clause 30 does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Contract.
- 30.7 The Contractor agrees to ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause permitting those permitted to have access as specified in this clause 30.
- 30.8 Nothing in this Contract limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates. The rights of the Department under this Contract are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates.
- 30.9 This clause 30 survives the expiration or earlier termination of this Contract for a period of seven years.

31. INDEMNITY

- 31.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Contract.
- 31.2 The Contractor indemnifies the Department, its officers, employees and agents from and against any:
- (a) loss or liability incurred by the Department;
 - (b) loss of or damage to property of the Department; or
 - (c) loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department, arising from:
 - (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Contract, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
 - (e) any breach by the Contractor of its obligations or warranties under this Contract; or
 - (f) any claim that the provision of the Services, Existing Material or Contract Material infringes the Intellectual Property of any person.
- 31.3 The Contractor's liability to indemnify the Department under clause 31.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Department contributed to the relevant liability, loss, damage, or expense.
- 31.4 The right of the Department to be indemnified under this clause 31:
- (a) is in addition to, and not exclusive of, any other right, power or remedy

provided by law; and

- (b) does not entitle the Department to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

31.5 This clause 31 survives the expiration or earlier termination of this Contract.

32. INSURANCE

32.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 32.2 or 32.3 as applicable, all appropriate types and amounts of insurance to cover the Contractor's obligations under this Contract, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item N.

32.2 If the Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy during the Contract Term and a policy in like terms for seven years after the expiry or earlier termination of this Contract.

32.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the Contract Term.

32.4 The Contractor must, on request, promptly provide to the Department any relevant insurance policies or certificates of currency for inspection.

32.5 This clause 32 survives the expiration or earlier termination of this Contract.

33. DISPUTE RESOLUTION

33.1 The Parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) first, the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) thirdly, the Parties have 10 Business Days from the receipt of the notice in clause 33.1(a) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,
 then, either Party may commence legal proceedings.

33.2 Despite the existence of a dispute, the Contractor must (unless requested in writing

not to do so) continue to perform the Services.

33.3 This clause:

- (a) does not apply to action by the Department under or purportedly under clauses 4.2, 34 or 35; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

34. TERMINATION AND REDUCTION FOR CONVENIENCE

34.1 In addition to any other right the Department has under this Contract, the Department may, at any time by notice to the Contractor, terminate this Contract in whole or reduce the scope of the Services immediately.

34.2 Upon receipt of a notice of termination or reduction the Contractor must:

- (a) stop or reduce work as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material.

34.3 Where there has been a termination under clause 34.1, the Department will be liable only for:

- (a) payments and assistance under clause 4 for Services properly rendered before the effective date of termination; and
- (b) reasonable costs unavoidably incurred by the Contractor and directly attributable to the termination and which the Contractor fully substantiates to the Department's reasonable satisfaction.

34.4 The Department will not be liable to pay compensation under clause 34.3(b) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item E.

34.5 The Contractor will not be entitled to compensation for loss of prospective profits, redeployment and redundancy costs or for any part of this Contract not performed.

34.6 If there is a reduction in the scope of the Services, the Department's obligation to pay any fee will abate proportionately to the reduction in the Services.

34.7 To avoid doubt, the Department has an absolute discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause 34.

35. TERMINATION FOR DEFAULT

35.1 Where the Contractor fails to satisfy any of its obligations under this Contract, the Department may:

- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately;
- (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
- (c) if the failure is not remedied in accordance with a notice given under clause 35.1(b), by further notice, terminate this Contract immediately.

35.2 The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may

have) if:

- (a) subject to sections 415D, 434J and 451E of the Corporations Act (as applicable), an Insolvency Event occurs in respect of the Contractor;
- (b) a Change in Control occurs in relation to the Contractor without the prior written consent of the Department; or
- (c) the Contractor breaches a warranty listed in clause 37.

36. DEEMED TERMINATION FOR CONVENIENCE

36.1 If a purported termination for cause by the Department under clause 35 is determined by a competent authority not to be properly a termination for cause, then that termination by the Department will be deemed to be a termination for convenience under clause 34 which termination has effect from the date of the notice of termination referred to in clause 35.

37. CONTRACTOR WARRANTIES AND UNDERTAKINGS

37.1 The Contractor represents, warrants and undertakes to the Department that:

- (a) it will promptly notify and fully disclose to the Department in writing any event or occurrence actual or threatened which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Contract;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Contract;
- (c) the execution, delivery and performance of this Contract has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Department in writing if an Insolvency Event occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Contract do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any contract or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Contract or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that resulting order has not been satisfied;
- (h) unless otherwise disclosed in this Contract, it is not entering into this Contract

as trustee of any trust or settlement;

- (i) it has not made any false declaration in respect of any current or past dealings with the Department or any Government Agency, including in any tender or application process or in any contract;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Department or any Government Agency;
- (k) it has, and will continue to have and to use, the skills, qualifications and experience to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Contract; and
- (l) it has and will continue to have the necessary resources, including financial resources, to perform the Services and will use those resources to perform the Services.

37.2 The Contractor acknowledges that the Department in entering into this Contract is relying on the warranties and representations contained in this Contract.

37.3 The Contractor:

- (a) acknowledges that it has been chosen to provide the Services in an area of expertise that is outside those of the Department; and
- (b) represents to the Department that it has the necessary knowledge and expertise to provide the Services,
and the Department:
- (c) relies on the Contractor's representation that it is an expert; and
- (d) has engaged the Contractor to provide the Services on that basis.

37.4 Each representation and warranty is given on a continuing basis throughout the Contract Term.

38. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

38.1 The Contractor is not, by virtue of this Contract, an officer, employee, partner or agent of the Department, nor does the Contractor have any power or authority to bind or represent the Department.

38.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel do not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.

39. WORK HEALTH AND SAFETY

39.1 In carrying out this Contract the Contractor must ensure that the Services are performed in a safe manner and in compliance with the WHS legislation.

40. NOTICES

40.1 A Party giving notice under this Contract must do so in writing that is:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or email to that address.

The Parties' address details are as specified in Item O.

40.2 The Parties agree that a notice given in accordance with clause 40.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting; or
- (c) if sent by email, when received by the addressee or when the sender's computer generates written notification that the notice has been received by the addressee, whichever is earlier.

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the Freedom of Information Act 1982
by the Department of Health, Disability and Ageing

THE SCHEDULE**Item A Services and Subcontractors**

The Cancer Council Australia (the Contractor) is engaged to partner with the Department of Health and Aged Care (the Department) to run a national skin cancer awareness campaign over summer 2022-23 (Phase One), which will include paid media, owned media, public relations activity (including things such as events) and evaluation. The

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Item B**Required Contract Material**

1. The Cancer Council Australia (the Contractor) is engaged to partner with the Department of Health and Aged Care (the Department) to run a national skin cancer awareness campaign.

Key areas of work include:



During the term of this Contract the Contractor must provide the Department with reports as set out in the table below. These reports will be approved by the Department.

Report/Deliverable	Detailed Description	Due Date
s47(1)(b)		

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Materials must be provided by the Contractor to the Department with a minimum of two (2) full business days for clearance. If amends are required, the Contractor must provide the Department with updated materials with a minimum of one (1) full business day for clearance.

Item C Standards and Best Practice

The Contractor must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Contractor must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

Item D Time-frame

Contract Start Date: 4 November 2022

Contract End Date: June 2024

No extension options are included within the contract

Item E

Fees (inclusive of GST)

The total fee for the Services for Phase One is s47(1)(b) exclusive of GST and all taxes and charges, s47(1)(b) inclusive of GST and all taxes and charges.

The total fee for the Services for Phase Two is s47(1)(b) exclusive of GST and all taxes

and charges, s47(1)(b) inclusive of GST and all taxes and charges.

Progress payments of the Fees (inclusive of any GST and all taxes and charges) will be made as follows:

Phase One			
	Estimated Date	Milestone Description/Required Deliverable	Payment Amount
s47(1)(b)			
Phase Two			
s47(1)(b)			
			SUB TOTAL s47(1)(b)
			GST
			TOTAL CONTRACT VALUE

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Item F Allowances and Costs (inclusive of GST)

The Contractor must perform its obligations under this Contract at its own cost and expense. The Department will not reimburse the Contractor for any additional expenses (including travel, accommodation and taxi travel).

Item G Facilities and Assistance

N/A

Item H Invoice Procedures

The Contractor must forward correctly addressed invoices that are in the form of a tax invoice directly to the AP Invoices mailbox s47E(d) @concursolutions.com), in PDF file format only.

- a. The invoice must be in a form approved by the Department which sets out:
- b. The Purchase Order number to which the payment relates;
- c. The amount of any allowances, costs and interest to be paid by the Department together with any substantiating material required;
- d. The name of the Department Representative s22 and
- e. Invoice must be the front page of the PDF document, followed by supporting documents (e.g. delivery note, reports etc.)
- f. Such other information as the Department requires.
- g. Maximum of 3 attachments per email.

Item I Specified Personnel

N/A

Item J Commonwealth Material to be provided by Department

Commonwealth Coat of Arms and Department of Health and Aged Care logo.

Item K Use of Commonwealth Material

1. The Department will provide the Contractor with any Commonwealth Material necessary to perform the Services.
2. Any Commonwealth Material that is considered to contain information that is commercial-in-confidence, has personal information or both, the Department will inform the Contractor on the appropriate handling of such information.
3. Use of the Commonwealth Coat of Arms and the Department of Health logo are limited to approved campaign materials only.
4. Materials produced or updated for this campaign must acknowledge the campaign has been produced with the support of the Australian Government, with the acknowledgement sighted and agreed to by the Director, Communication and Partnerships Section of the Department of Health, or their agreed delegate.
5. Materials must include the Commonwealth Coat of Arms and reference the Commonwealth in accordance with the current published Australian Government Branding Guidelines.
6. If written acknowledgement is possible, it must read 'Proudly supported by the Australian Government, Canberra', with the Commonwealth crest displayed.'
7. All Commonwealth Material is considered to contain information that is commercial-in-confidence, has personal information or both.
8. The Contractor must ensure that all Commonwealth Material is kept and maintained in a secure place and manner to ensure that this Commonwealth Material is not accessed by, or disclosed to, unauthorised persons. For the avoidance of doubt, disclosure to other officers in the Department of Health is authorised.
9. It is a condition of access to the Commonwealth Material that, before such access is given, the Contractor must arrange at its own cost for their staff or subcontractors to

sign a Confidentiality, Conflict of Interest, Privacy and Secrecy Deed Poll, in the form provided at Attachment A, relating to the non-disclosure of the Customer's Confidential Information. On or before the Contract Start Date, the Service Provider must deliver to the Department a Confidentiality Undertaking signed by the staff involved in delivering the campaign, or the CEO on behalf of those staff members or sub contractors.

10. The Contractor acknowledges and agrees that only Personnel who have signed the Confidentiality Undertaking will be given access to the Commonwealth Material, and that it or any other Contractor Personnel will not be given, or require, access to the Commonwealth Material at any time.

Item L Existing Material

1. Materials used must wherever possible acknowledge the campaign has been produced with the support of the Australian Government.
2. Materials used must wherever possible include the Commonwealth Coat of Arms and reference the Commonwealth in accordance with the current published Australian Government Branding Guidelines.
3. If written acknowledgement is possible, it must read 'Proudly supported by the Australian Government', with the Commonwealth crest displayed.
4. s47E(d)



Item M Dealing with Copies

Upon completion of the Services, the Contractor may retain one hard copy of the Contract Material for its internal record-keeping purposes only.

Item N Insurance

The Contractor agrees to maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for an amount of not less than 20 million dollars (\$20,000,000); and
- (c) professional indemnity insurance for an amount of not less than 10 million dollars (\$10,000,000).

Item O**Address for Notices**

Department's Address for Notices:

The person for the time-being holding, occupying or performing the duties of Director of Communication and Partnerships Section, Cancer Screening Program Branch.

Director of Communication and Partnerships Section
Department of Health and Aged Care
GPO Box 9848
Canberra ACT 2601

Contractor's Address for Notices:

Cancer Council Australia
Level 2, 320 Pitt St
Sydney NSW 2000

Item P**Commencement Date**

Upon contract execution, 4 November 2022

Item Q**Initial Contract Term**

4 November 2022 – 30 June 2024

Item R**Extension Period**

No extension option is available for this contract.

Item S**Existing Material and Ownership of Contract Material**

- Ⓟ clause 12 (Existing Material and Department Ownership of Intellectual Property in Contract Material) is to apply
- ⋯ clause 13 (Existing Material and Contractor Ownership of Intellectual Property in Contract Material) is to apply

Item T**Moral Rights**

- Ⓟ Option 1: clause 14.3 (Specified Acts includes falsely attributing authorship of any Contract Material) is to apply
- ⋯ Option 2: clause 14.4 (Specified Acts does not include falsely attributing authorship of any Contract Material) is to apply

Item U**Indigenous Participation Plan**

- Ⓟ Option 1: clause 21 (the Contract is NOT a High Value Contract) applies
- Ⓟ Option 2: clause 22 (the Contract is a High Value Contract) applies

Item V**Payment Terms**

N/A

Item W**Payment Times**

- Ⓟ Option 1: clause 25 (Payment Times Procurement Policy) applies.
- ⋯ Option 2: clause 25 (Payment Times Procurement Policy) does not apply.

This Contract is **SIGNED** as a contract.

SIGNED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Health and Aged Care ABN 83 605 426 759 on:

23 June 2023

Date

by:

Peedi Mitchell

Printed name of signatory
Signature

s47F

Assistant Secretary

Position of signatory

in the presence of:

s22

Printed name of witness

s47F

Signature of witness

SIGNED for and on behalf of **Cancer Council Australia**, ABN 91 130 793 725 in accordance with the Board approved Delegation of Authority:

23 June 2023

Date

by:

s47F

Printed name of Authorised Signatory

s47F

Signature of Authorised Signatory

and:

s47F

Printed name of Authorised Signatory

s47F

Signature of Authorised Signatory

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Australian Government

**Department of Health
and Aged Care**

CONTRACT FOR SERVICES

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Aged Care

ABN 83 605 426 759

and

Cancer Council Australia

ABN 91 130 793 725

in relation to Services for

***a National Skin Cancer Prevention Campaign 2024/25
and 2025/26***

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SCHEDULE

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Item X	Payment Times
Item Y	Agreed Delivery Model and Approvals Framework

This Contract is made between the

COMMONWEALTH OF AUSTRALIA for the purposes of this Contract represented by and acting through the Department of Health and Aged Care ABN 83 605 426 759

and

Cancer Council Australia, Level 2, 320 Pitt St, Sydney NSW 2000 ABN 91 130 793 725 ('the Contractor').

RECITALS

- A. The Department requires the provision of certain services to the Department as specified in the Schedule.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed s47(1)(b)
- C. The Department has agreed to engage the Contractor to provide the Services upon the terms and conditions contained in this Contract.

OPERATIVE PART

1. INTERPRETATION AND OPERATION OF CONTRACT

1.1 In this Contract, unless the contrary intention appears:

'Auditor-General' means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

'Australian Standards' means the documents published under that name by Standards Australia;

'Bankruptcy Act' means *Bankruptcy Act 1966*;

'Business Day' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in the place where the act is to be performed;

'Change in Control' means:

- (a) a body corporate or entity that Controls the Contractor ceases to Control the Contractor; or
- (b) a body corporate or entity that does not Control the Contractor comes to Control the Contractor.

For the purposes of the definition of 'Change in Control', 'Control' means, in relation to the Contractor any of the following:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Contractor;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Contractor;

- (c) the ability to appoint or remove a majority of the directors of the Contractor;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the Contractor; or
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Contractor;

'Commencement Date' means the date on which this Contract commences, as specified in Item P;

'Commonwealth' means the Commonwealth of Australia;

'Commonwealth Material' means any Material:

- (a) provided by the Department to the Contractor for the purposes of this Contract; or
- (b) copied or derived at any time from the Material referred to in paragraph (a);

'Confidential Information' means information that:

- (a) is by its nature confidential;
- (b) is designated by the Department as confidential; or
- (c) the Contractor knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;
- (e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Department; or
- (f) has been independently developed or acquired by the Contractor;

'Conflict' means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Contractor (or the Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in performing the Services fairly and independently;

'Contract' means this document as amended from time to time and includes its Schedules and any attachments;

'Contract Material' means all Material:

- (a) created for the purposes of this Contract;
- (b) provided or required under this Contract to be provided to the Department as part of the Services; or
- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b); and

including the Material described in Item B;

'Contract Term' means the Initial Contract Term plus any extension in accordance with clause 2.2 of the Contract;

'Contractor Personnel' means:

- (a) officers, employees, agents or subcontractors of the Contractor;
- (b) officers, employees, agents or subcontractors of the Contractor's subcontractors; and
- (c) those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis,

engaged in the performance of the Services;

'Control':

- (a) has the meaning given in section 50AA of the Corporations Act;
- (b) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in Marketable Securities, bonds or instruments of the entity or otherwise); and
- (c) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity;

'Corporations Act' means the *Corporations Act 2001*;

'Department' means the Commonwealth as represented by the Department of Health and Aged Care or any department or agency of the Commonwealth that is from time to time responsible for the administration of this Contract;

'Eligible Data Breach' means an 'Eligible Data Breach' as defined in the *Privacy Act 1988*;

'Existing Material' means all Material in existence prior to the commencement of this Contract that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Contract Material and includes Material identified as Existing Material in Item L but excludes Commonwealth Material;

'Extension Period' has the meaning given in clause 2.2 of the Contract;

'External Administrator' means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;

'Government Agency' means:

- (a) a 'Commonwealth entity' or 'Commonwealth company' as defined in the *Public Governance, Performance and Accountability Act 2013*;
- (b) an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (c) a body established by the Commonwealth Parliament, or either House of Parliament, or by the Governor-General or by a Minister of State of the Commonwealth; or
- (d) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution,

acting directly or through an agent;

'GST' has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*;

'Indigenous Procurement Policy' means the policy of that name available on the Indigenous Procurement Website at <https://www.njaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>;

'Initial Contract Term' means the initial period of time for which this Contract is intended to continue, as specified in Item 6;

'Insolvency Event' means in respect of a person, any of the following:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
- (b) except with the Department's consent:
 - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (d) it becomes the subject of an Ipso Facto Event;
- (e) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (f) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;

- (g) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the Bankruptcy Act;
- (h) any application (not withdrawn or dismissed within five Business Days) is made to a court for an order, a meeting is convened, a resolution is passed, or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) a personal insolvency agreement;
 - (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
 - (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
 - (v) or any agreement or other arrangement of the type referred to in this paragraph (h) is ordered, declared or agreed to;
- (i) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (j) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (k) it stops or suspends payment to all or a class of creditors generally;

'Intellectual Property' means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia);

'Ipso Facto Event' with respect to a person occurs if the person is or becomes the subject of:

- (a) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), section 434J(1) or section 451E(1) of the Corporations Act; or
- (b) any process which under any Law may give rise to a stay on, or prevention of, the exercise of contractual rights;

'Item' means an item in the Schedule;

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

'Liquidation' means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them;

'Marketable Security' means:

- (a) a 'marketable security' as defined in section 9 of the Corporations Act;
- (b) a negotiable instrument;
- (c) a unit or other interest in a trust or partnership; and
- (d) a right or an option in respect of any of the above, whether issued or unissued;

'Material' means documents, records, equipment, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

'Moral Rights' includes the following rights of an author of copyright Material:

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

'Ombudsman' means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

'Party' means a party to this Contract;

'Personal Information' has the meaning given in the *Privacy Act 1988*;

'Privacy Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* when performing the 'privacy functions' as defined in the Act;

'Protective Security Policy Framework' or 'PSPF' means the Australian Government's protective security requirements for the protection of its people, information and assets (which replaced the *Commonwealth Protective Security Manual 2005*);

'Public Interest Disclosure' has the meaning given in the *Public Interest Disclosure Act 2013*;

'Related Body' means, regardless of any body's trustee or other capacity:

- (a) a body corporate which would be related under section 50 of the Corporations Act on the basis that the term 'subsidiary' in that section had the meaning given in this document; or
- (b) an entity which Controls, is Controlled by, or is under common Control with, that body;

'Schedule' means the schedule to this Contract;

'Services' means the services described in the Schedule including as set out in Item A and the provision to the Department of the Material specified in Item B;

'Significant Event' means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

'Specified Personnel' means the Contractor Personnel specified in Item I;

'Web Content Accessibility Guidelines 2.1' means the Guidelines available at <http://www.w3.org/TR/WCAG>;

'WHS legislation' means the *Work Health and Safety Act 2011*, any regulations made under that act and any 'corresponding WHS law' within the meaning of section 4 of the *Work Health and Safety Act 2011* and Regulation 6A of the *Work Health and Safety Regulations 2011*; and

'World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014)' means the advisory notes released by the Australian Human Rights Commission available at <https://www.humanrights.gov.au/our-work/disability-rights/world-wide-web-access-disability-discrimination-act-advisory-notes-ver>.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (e) all references to dollars, A\$, \$A or \$ are to Australian dollars;
- (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (g) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;

- (h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;
 - (j) the term 'may' when used in the context of a right or remedy exercisable by the Department means that the Department may exercise that right or remedy in its sole and absolute discretion and the Department has no obligation to the Contractor to do so unless expressly stated;
 - (k) a reference to an instrument or document includes the instrument or document as altered, supplemented or replaced from time to time; and
 - (l) references to clauses are to clauses in this Contract, references to 'Items' are to Items in the Schedule to this Contract, references to 'Schedule' are to the Schedule to this Contract and references to Annexures or Attachments are references to documents attached to this Contract.
- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Contract and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Contract and any part of the Annexures or Attachments (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the Annexures or Attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Contract. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Contract.
- 1.5 This Contract records the entire contract between the Parties in relation to its subject matter.
- 1.6 This Contract may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, will constitute one and the same agreement.
- 1.7 No variation of this Contract is binding unless agreed in writing between the Parties.
- 1.8 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.9 A waiver of any provision of, or right under, this Contract must be in writing.
- 1.10 No waiver of a term or condition of this Contract will operate as a waiver of another breach of the same or of any other term or condition contained in this Contract.
- 1.11 If a Party does not exercise, or delays in exercising, any of its rights under this Contract or at Law, that failure or delay does not operate as a waiver of those rights.

- 1.12 A single or partial exercise by a Party of any of its rights under this Contract or at Law does not prevent the further exercise of any right.
- 1.13 The Contractor must not assign or transfer its rights or obligations under this Contract without prior approval in writing from the Department.
- 1.14 The Contractor agrees not to consult with any person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Department.

2. **TERM**

- 2.1 This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Term unless terminated earlier in accordance with this Contract or extended in accordance with clause 2.2.
- 2.2 The Initial Contract Term may be extended by the Department for further term(s), specified in Item R (each an 'Extension Period'), on the terms, including the fees, allowances and costs, then in effect, by giving written notice to the Contractor at least 20 Business Days before the end of the current Contract Term. Any extension in accordance with this clause 2.2 takes effect from the end of the then current Contract Term.

3. **PROVISION OF SERVICES**

- 3.1 The Contractor must:
 - (a) perform the Services in accordance with this Contract, with due care and skill and in accordance with relevant best practice, including any applicable Australian Standards and any Commonwealth and industry standards and guidelines specified in either Item B or Item C;
 - (b) ensure that the Services and Contract Material are fit for the purpose for which they are provided;
 - (c) ensure that any Contract Material which is to be placed on a Departmental website or the intranet complies with the:
 - (i) Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.1;
 - (ii) the accessibility standard contained within the Digital Service Standard issued by the Digital Transformation Agency and available at <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria>; and
 - (iii) World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014);
 - (d) comply with the time-frame for the performance of the Services specified in Item D;

- (e) liaise with the Department, provide any information the Department may reasonably require, and comply with any reasonable directions of the Department;
 - (f) ensure that it and its Contractor Personnel, when carrying out their duties and performing work under this Contract, do not:
 - (i) cause any unreasonable or unnecessary disruption to the routines, procedures and responsibilities of the Department; or
 - (ii) damage the reputation of the Department or the Commonwealth more broadly in the community;
 - (g) meet with the Department at the times set out in Item A (or as otherwise reasonably required by the Department to discuss the provision of the Services). The Contractor must ensure that the Specified Personnel are reasonably available to attend such meetings; and
 - (h) deliver to the Department all deliverables, plans and reports specified in Item A.
- 3.2 The Contractor acknowledges that:
- (a) the Department collects or may come into possession of information concerning the Contractor that is either publicly available information or information obtained through the course of the Department conducting its affairs; and
 - (b) subject to clause 3.3, the Department may use that information when considering the Contractor's ability to perform this Contract.
- 3.3 The Department may consult with the Contractor if any information referred to under clause 3.2 is a cause of concern to the Department.
- 3.4 Subject to clauses 15 and 16, no right or obligation in this Contract is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Commonwealth, its entities, officers, employees or agents.

4. FEES, ALLOWANCES AND ASSISTANCE

- 4.1 The Department agrees to:
- (a) pay the fees specified in Item E;
 - (b) pay the allowances and meet the costs, if any, specified in Item F; and
 - (c) provide the facilities and assistance, if any, specified in Item G.
- 4.2 The Department will be entitled, in addition to any other right it may have, to withhold or reduce any payment of fees or allowances until the Contractor has completed to the satisfaction of the Department that part of the Services to which the payment relates.
- 4.3 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Department may issue

the Contractor with a written notice requiring repayment of the full amount of the overpayment.

- 4.4 The Contractor must pay to the Department the full amount of the overpayment specified in the notice referred to in clause 4.3 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.
- 4.5 The Department may recover the overpayment specified in the notice referred to in clause 4.3, from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Contract.
- 4.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 4.3, the Department may require that Interest be paid on the amount after the expiry of the twenty (20) Business Days' notice referred to in clause 4.4, until the amount is paid to the Department in full.
- 4.7 The Contractor must provide the Department with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where the Contractor repays to the Department some or all of the fees or expenses.
- 4.8 The Contractor agrees to submit invoices for payment in the manner specified in Item H and clause 6.

5. PAYMENTS

- 5.1 Subject to clause 5.3, the Department will pay the Contractor within:
 - (a) if it is specified in Item W that the Parties agree to use the Pan-European Public Procurement On-Line framework for electronic invoicing for this Contract, 5 calendar days; or
 - (b) otherwise, 20 calendar days,

('Payment Period')

after the Department acknowledges the satisfactory delivery of the Services and receipt of a correctly rendered invoice .
- 5.2 The Payment Period starts on the next calendar day after the receipt of the correctly rendered invoice. If the Payment Period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 5.3 For clarity, clause 5.1 does not require the Department to make payment to the Supplier within the Payment Period if:
 - (a) the Services have not been satisfactorily performed in accordance with this Contract;
 - (b) the invoice is not correctly rendered; or
 - (c) the Department disputes the amount of the invoice.
- 5.4 Subject to clause 5.5, for payments made by the Department after the Payment Period, the Department must pay the unpaid amount, and where the interest accrued

on the unpaid amount is more than A\$100, the Department must also pay the interest accrued on the unpaid amount.

5.5 For clarity, clause 5.4 does not require the Department to pay interest on the unpaid amount where the Department did not make payment within the Payment Period if:

- (a) the Services were not satisfactorily performed in accordance with this Contract;
- (b) the invoice was not correctly rendered; or
- (c) the Department disputed the amount of the invoice.

5.6 Interest payable under clause 5.2 will be simple interest on the unpaid amount calculated in respect of each calendar day from the day after the Payment Period ends, up to and including the day that the Department effects payment as represented by the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the end of the Payment Period up to and including the day that payment is made.

5.7 In this clause 5 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

5.8 For the purposes of this clause 5 an invoice is correctly rendered if it:

- (a) is correctly addressed and calculated in accordance with this Contract, including the requirements specified in Item W; and
- (b) relates only to supplies that have been delivered to the Department in accordance with this Contract; and
- (c) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.

6. TAXES, DUTIES AND GOVERNMENT CHARGES

6.1 Subject to this clause 6, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be paid by the Contractor or as the Contractor might arrange.

6.2 The remainder of this clause 6 (apart from clause 6.8) only apply where the Contractor is registered, or is required to be registered for GST.

6.3 The goods, services and other supplies made by the Contractor under this Contract are 'taxable supplies' within the meaning of the GST Law.

6.4 Unless it can demonstrate to the Department's reasonable satisfaction that it is not registered or required to be registered for GST, the Contractor will issue the Department with a 'tax invoice' in accordance with the GST Law together with, or as a

part of, each invoice submitted for payment in accordance with clause 4.8. The Department will not be required to pay or provide any consideration for any taxable supply unless and until it has received a tax invoice for that supply.

- 6.5 The amounts payable by the Department to the Contractor, as determined under clause 4, are stated inclusive of GST but must not include any amount which represents GST paid by the Contractor for which the Contractor may claim an input tax credit.
- 6.6 If a payment to satisfy a claim or a right to claim under or in connection with this Contract gives rise to a liability to pay GST, subject to the payee issuing a tax invoice to the payer, the payer must also pay, and indemnify the payee against the amount of that GST. For the avoidance of doubt, this clause does not apply to the Fees or other payments for the Contractor's services as specified in the Schedule.
- 6.7 If a Party has a claim under or in connection with this Contract for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit). The Contractor will be presumed to be entitled to a full input tax credit unless it can demonstrate to the Department's reasonable satisfaction why this is not the case.
- 6.8 If and to the extent that any supply made to the Department under this Contract is not a taxable supply:
- (a) the consideration payable by the Department for that supply will, if required by the Department, be reduced by 1/11th (GST component); and
 - (b) if the Department has already paid the price for that supply and the Department requires the Contractor to refund the GST component, the Contractor must refund the GST component.
- 6.9 For the purposes of this clause, 'GST Law', 'supply', 'input tax credit' and other terms relevant to GST, have any meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* and any applicable rulings of the Australian Taxation Office.

7. SUBCONTRACTORS

- 7.1 The Contractor agrees that:
- (a) it will not subcontract the performance of any part of the Services without the prior approval in writing of the Department; and
 - (b) the subcontractors, if any, specified in Item A will perform work in relation to the Services in accordance with this Contract and are approved by the Department to do so.
- 7.2 The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 7.1(a).
- 7.3 Where a subcontractor specified in Item A or approved by the Department under clause 7.1(a) is unable to perform the work, the Contractor agrees to notify the Department immediately.

- 7.4 Where clause 7.3 applies, the Department may request the Contractor to secure a replacement subcontractor acceptable to the Department at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.4 the Department may terminate this Contract in accordance with the provisions of clause 36.
- 7.6 In respect of subcontractors listed in Item A or approved by the Department under this clause, the Contractor must ensure that:
- (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
 - (b) the subcontract will not conflict with or detract from the rights and entitlements of the Department under this Contract;
 - (c) the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Services;
 - (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the performance of the Services;
 - (e) the subcontract contains all the relevant terms of this Contract including those relating to compliance with the Law, conflicts of interest, subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded the Department by clauses 35 and 36, in the event of this Contract being terminated;
 - (f) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Department will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
 - (g) the other party to the subcontract is prohibited from further subcontracting the Services without the prior written approval of the Department; and
 - (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Department.

8. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 8.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item I.
- 8.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Department immediately.

- 8.3 The Department may request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services.
- 8.4 Where clauses 8.2 or 8.3 apply, the Department may request the Contractor to provide replacement personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 8.5 If the Contractor does not comply with any request made under clause 8.3 or clause 8.4, the Department may terminate this Contract in accordance with the provisions of clause 36.

9. **RESPONSIBILITY OF CONTRACTOR**

- 9.1 The Contractor agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
 - (a) involvement by the Department in the performance of the Services;
 - (b) payment made to the Contractor on account of the Services;
 - (c) subcontracting of any aspect of the Services; or
 - (d) acceptance by the Department of replacement Contractor Personnel (including Specified Personnel).

10. **COMMONWEALTH MATERIAL**

- 10.1 The Department agrees to provide the Commonwealth Material to the Contractor as specified in Item J.
- 10.2 The Department grants to the Contractor a royalty-free, licence fee-free, non-exclusive, non-transferrable, revocable licence (including a limited right of sub-licence to sub-licence to a subcontractor specified in Item A or approved by the Department under clause 7) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material solely for the purposes of this Contract.
- 10.3 To the extent the Contractor develops or creates any improvements, modifications, derivatives or enhancements of Commonwealth Material as part of the provision of the Services, such Material forms part of the Commonwealth Material and the Intellectual Property in such Material automatically vests in the Department upon its creation and the Contractor assigns all of its existing and future rights, title and interest in such Material (including all Intellectual Property) to the Department.
- 10.4 The Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Item K, and any direction by the Department.

- 10.5 Property in any copy of Commonwealth Material (in the form of a document, article or removable medium) vests or remains vested in the Department. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Contract, to deliver to the Department, or, in accordance with Department directions erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.
- 10.6 This clause 10 survives the expiration or earlier termination of this Contract.

11. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 11.1 The ownership model for Intellectual Property in Contract Material is that set out in Item 5.
- 11.2 If no ownership model is selected in Item 5, clause 12 applies and clause 13 in its entirety, does not apply to this Contract.

12. EXISTING MATERIAL AND DEPARTMENT OWNERSHIP OF INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 12.1 Intellectual Property in all Contract Material vests or will vest in the Department.
- 12.2 Clause 12 does not affect the ownership of Intellectual Property in any Existing Material.
- 12.3 The Contractor grants, or undertakes to arrange for a third party to grant, to the Department a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in any Existing Material in conjunction with the Contract Material.
- 12.4 To the extent that the Contractor needs to use any of the Contract Material for the purpose of performing its obligations under this Contract, the Department grants to the Contractor for the Contract Term a royalty-free, licence fee-free, non-exclusive, non-transferable, revocable licence (including a limited right of sub-licence to sub-licence to a subcontractor specified in Item A or approved by the Department under clause 7) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Contract Material solely for the purposes of this Contract.
- 12.5 If requested by the Department, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12.

- 12.6 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and Existing Material in the manner provided for in this clause 12.
- 12.7 Property in any copy of Contract Material (in the form of a document, article or removable medium) vests or will vest in the Department. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Contract, to deliver to the Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.
- 12.8 This clause 12 survives the expiration or earlier termination of this Contract.

13. EXISTING MATERIAL AND CONTRACTOR OWNERSHIP OF INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 13.1 Intellectual Property in all Contract Material vests or will vest in the Contractor.
- 13.2 Clause 13 does not affect the ownership of Intellectual Property in any Existing Material or Commonwealth Material.
- 13.3 The Contractor grants, or undertakes to arrange for a third party to grant, to the Department and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in any Existing Material in conjunction with the Contract Material.
- 13.4 The Contractor grants to the Department and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in the Contract Material for the Department's or the Commonwealth's purpose.
- 13.5 If requested by the Department, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 13.
- 13.6 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and Existing Material in the manner provided for in this clause 13.
- 13.7 This clause 13 survives the expiration or earlier termination of this Contract.

14. MORAL RIGHTS

- 14.1 The applicable definition of 'Specified Acts' for the purposes of this clause 14 is that set out in Item T.

- 14.2 If no option is selected in Item T, clause 14.3 applies and clause 14.4 in its entirety does not apply to this Contract.
- 14.3 For the purposes of this clause 14, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Department:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material, with or without attribution of authorship;
 - (b) supplementing the Contract Material with any other Material;
 - (c) using the Contract Material in a different context to that originally envisaged; and
 - (d) falsely attributing authorship of any Contract Material, or any content in the Contract Material.
- 14.4 For the purposes of this clause 14, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Department:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material, with or without attribution of authorship;
 - (b) supplementing the Contract Material with any other Material; and
 - (c) using the Contract Material in a different context to that originally envisaged, but does not include false attribution of authorship.
- 14.5 The Contractor must use its best endeavours to ensure that:
- (a) where there is no consent already in place, a written consent will be given by the author of any Contract Material, other than Existing Material, to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
 - (b) where there is no consent already in place, the author of any Existing Material will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Commonwealth in relation to the Commonwealth's licensed use of such Material.
- 14.6 This clause 14 survives the expiration or earlier termination of this Contract.

15. DISCLOSURE OF INFORMATION

- 15.1 Subject to clause 15.5, the Contractor agrees not to disclose any Confidential Information relating to this Contract or the Services without prior approval in writing from the Department.

- 15.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 15.1 and the Contractor agrees to comply with these conditions.
- 15.3 The Department may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Department, relating to the non-disclosure of Confidential Information.
- 15.4 If the Contractor receives a request under clause 15.3, it agrees to promptly arrange for all such undertakings to be given.
- 15.5 The obligations on the Contractor under this clause 15 will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- 15.6 Property in any copy of Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Department. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Contract, to deliver to the Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.
- 15.7 The Department gives no undertaking to treat Contractor information, or this Contract, as confidential information. The Contractor acknowledges that the Department may disclose information relevant to this Contract, or this Contract itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (d) to Department third party service providers for the purposes of providing goods and services to, or on behalf of, the Department; or
 - (e) for any other requirements of the Commonwealth.
- 15.8 This clause 15 survives the expiration or earlier termination of this Contract.

16. ACCESS TO DOCUMENTS

- 16.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
- 16.2 This clause 16 only applies if this is a Contract which complies with the description of 'Commonwealth contract'.
- 16.3 Where the Department has received a request for access to a document created by or in the possession of, the Contractor or any subcontractor that relates to the

performance of this Contract (and not to the entry into this Contract), the Department may at any time by written notice require the Contractor to provide the document to the Department and the Contractor must, at no additional cost to the Department, promptly comply with the notice.

- 16.4 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this clause 16.

17. NOTIFIABLE DATA BREACHES

- 17.1 If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor agrees to:

- (a) notify the Department in writing as soon as possible, which must be no later than within three days of becoming aware; and
- (b) unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the *Privacy Act 1988*.

- 17.2 Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Department notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor must:

- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
- (b) unless otherwise directed by the Department, take all other action necessary to comply with the requirements of the *Privacy Act 1988*; and
- (c) take any other action as reasonably directed by the Department.

- 17.3 This clause 17 survives the expiration or earlier termination of this Contract.

18. PROTECTION OF PERSONAL INFORMATION

- 18.1 This clause 18 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services under this Contract.

- 18.2 In this clause 18, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code (RAC); and
- (d) Australian Privacy Principle (APP),

have the same meaning as they have in the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

- 18.3** The Contractor acknowledges that it may be treated as a 'contracted service provider' and agrees in respect of the provision of the Services under this Contract:
- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an APP;
 - (c) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (d) comply with the obligations contained in the APPs that apply to the Contractor;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Contractor, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the APP or RAC, whichever is applicable to the Contractor;
 - (f) to comply with any request under section 95C of the Privacy Act;
 - (g) to immediately notify the Department if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 18, whether by the Contractor or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 18;
 - (i) to ensure that any officers, employees or agents of the Contractor who are required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 18; and
 - (j) not use or disclose any Personal Information, obtained from the Department, for the purposes of direct marketing.
- 18.4** The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Contractor has under this clause 18, including the requirement in relation to subcontracts.
- 18.5** The Department may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Department, relating to the non-disclosure of Personal Information.
- 18.6** If the Contractor receives a request under clause 18.5, it agrees to promptly arrange for all such undertakings to be given.

- 18.7 The Contractor indemnifies the Department in respect of any loss, liability or expense suffered or incurred by the Department which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in clause 18.4.
- 18.8 The Contractor's obligations under this clause 18 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Contractor but for the application of this clause.
- 18.9 This clause 18 survives the expiration or earlier termination of this Contract.

19. COMPLIANCE WITH LAWS AND POLICIES

- 19.1 The Contractor agrees, in carrying out this Contract, to comply with all Laws and any relevant policies, including:
- (a) the *Crimes Act 1914*;
 - (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Disability Discrimination Act 1992*;
 - (e) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*;
 - (f) the *Archives Act 1983*;
 - (g) the *Privacy Act 1988*;
 - (h) the *Freedom of Information Act 1982*;
 - (i) the *Criminal Code Act 1995*;
 - (j) the *Public Interest Disclosure Act 2013*;
 - (k) the *Modern Slavery Act 2018*;
 - (l) the *Payment Times Reporting Act 2020*;
 - (m) any work health and safety legislation applicable to the Contractor;
 - (n) the Australian Government's *Lobbying Code of Conduct*;
 - (o) the Protective Security Policy Framework;
 - (p) any fraud control policy, rules or guidelines issued by the Australian Government from time to time; and
 - (q) any other policies notified to the Contractor in writing or listed in Item C.
- 19.2 The Contractor acknowledges that under section 137.1 of the Criminal Code, giving false or misleading information to the Commonwealth is a serious offence.
- 19.3 The Contractor agrees, when using the Department's premises or facilities, to comply with all reasonable directions and procedures relating to work health, safety and security in operation at those premises or in regard to those facilities (including the

Department's smoke-free work-place policy) whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

- 19.4 Without limiting the effect of clause 38, the Contractor must comply with, and require Contractor Personnel to comply with, the behaviours specified in:
- (a) the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Contractor and those Contractor Personnel were APS employees as defined in that Act; and
 - (b) the general duties of officials at sections 25-29 of the *Public Governance, Performance and Accountability Act 2013* as if the Contractor and those Contractor Personnel were officials as defined in that Act.
- 19.5 Clauses 19.6 to 19.9 only apply to the extent that:
- (a) this Contract is entered into following a procurement which is at, or above, the relevant procurement thresholds as defined in the *Commonwealth Procurement Rules* but not where that procurement is listed in Appendix A to those Rules; and
 - (b) the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* ('the WGE Act').
- 19.6 The Contractor must comply with its obligations, if any, under the WGE Act.
- 19.7 If the Contractor becomes non-compliant with the WGE Act during the Contract Term, the Contractor must notify the Department.
- 19.8 If the Contract Term exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Department.
- 19.9 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

20. INDIGENOUS PROCUREMENT POLICY

- 20.1 In this clause 20, the term 'Indigenous Enterprise' has the meaning given in the Indigenous Procurement Policy.
- 20.2 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- 20.3 The Contractor must use its reasonable endeavours to increase its:
- (a) purchasing from Indigenous enterprises; and
 - (b) employment of Indigenous Australians,
- in the delivery of the Services as specified in the Schedule.

- 20.4 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor and use of Indigenous suppliers in the Contractor's supply chain.
- 20.5 The Contractor must provide such written reports and evidence of its compliance with this clause 20 every 6 months during the Contract Term.
- 20.6 The option selected for the Indigenous Procurement Policy is that set out in Item U.
- 20.7 If no option is selected in Item U, clause 21 applies and clause 22 does not apply to this Contract.

21. INDIGENOUS PROCUREMENT POLICY – NOT HIGH VALUE CONTRACT

- 21.1 In this clause 21, the terms 'High Value Contract', 'Indigenous Enterprise' and 'Remote Area' all have the meaning given in the Indigenous Procurement Policy.
- 21.2 If during the Contract Term the value of this Contract exceeds \$7.5 million, and more than half of the value of this Contract is being spent in one or more of the industry sectors specified in the Indigenous Procurement Policy then this Contract will become a High Value Contract for the purposes of the Indigenous Procurement Policy, in which case the Contractor must:
- (a) within 60 days after the \$7.5 million value is reached, develop an Indigenous Participation Plan as required for the purposes of the Indigenous Procurement Policy and using a template provided by the Department that addresses:
 - (i) how the Contractor intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
 - (ii) the Contractor's current rate of Indigenous employment and supplier use;
 - (iii) the Contractor's commitment to Indigenous participation; and
 - (iv) if any part of this Contract is being or will be delivered in a Remote Area, how the Contractor will ensure that its provision of the Services will deliver significant Indigenous employment or supplier use outcomes in that Remote Area; and
 - (b) submit the draft Indigenous Participation Plan to the Department for its review and, if appropriate, approval.
- 21.3 Upon approval of the draft Indigenous Participation Plan under clause 21.2(b), the Contractor must:
- (a) comply with the Indigenous Participation Plan (which will by contract variation form an Annexure to the Contract);
 - (b) report against its compliance with the Indigenous Participation Plan quarterly during the Contract Term; and
 - (c) comply with any directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.

22. INDIGENOUS PROCUREMENT POLICY – HIGH VALUE CONTRACT

22.1 In this clause 22:

- (a) 'Indigenous Participation Plan' means the plan referenced at Item U; and
- (b) 'Powering Indigenous Procurement reporting portal' means the online portal where Contractors report on their progress against their mandatory minimum requirements under the Indigenous Procurement Policy.

22.2 Without limiting clause 20.2, the Contractor must comply with the Indigenous Participation Plan.

22.3 The Contractor must submit a written report to the Department via the Powering Indigenous Procurement reporting portal on its compliance with the Indigenous Participation Plan, as follows:

- (a) at least once every quarter during the Contract Term; and
- (b) within 5 Business Days after the end of the Term ('End of Term Report').

22.4 The End of Term Report must identify whether the Contractor:

- (a) met the mandatory minimum requirements; and
- (b) complied with the Indigenous Participation Plan.

22.5 Throughout the Contract Term, the Contractor is responsible for managing the Contractor's access to the Powering Indigenous Procurement reporting portal including by managing the:

- (a) enabling of its authorised Personnel's access; and
- (b) disabling of its authorised Personnel's access.

If the Contractor did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.

22.6 If the Department considers, in its absolute discretion at any time during the Contract Term, that it has concerns in relation to the Contractor's:

- (a) compliance with the Indigenous Participation Plan; or
- (b) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Department may request the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Contractor must comply with all reasonable directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.

22.7 Without limiting its other rights under the Contract or at Law, any material failure by the Contractor to:

- (a) implement the Indigenous Participation Plan; or
- (b) comply with a direction issued by the Department under clause 22.6,

will be a breach of this Contract, and the Department may terminate this Contract in accordance with clause 36.

- 22.8 Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under clause 22.3:
- (a) will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
 - (b) will not be considered to be Confidential Information; and
 - (c) may be used by Commonwealth entities for any purpose, including for evaluation of an offer to provide goods and/or services to a Commonwealth entity.

23. MODERN SLAVERY ACT 2018

- 23.1 The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
- 23.2 If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Contract, the Contractor must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- 23.3 In this clause 23:
- (a) **'Modern Slavery'** has the same meaning as it has in the in the *Modern Slavery Act 2018*.

24. BLACK ECONOMY PROCUREMENT CONNECTED POLICY

- 24.1 In this clause 24:
- (a) **'Black Economy Procurement Connected Policy'** means the *Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>;
 - (b) **'Satisfactory'** means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy;
 - (c) **'Statement of Tax Record'** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR); and
 - (d) **'Valid'** means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.
- 24.2 The Contractor must hold a Valid and Satisfactory Statement of Tax Record at all times during the Contract Term and, on request by the Department, provide to the Department a copy of any such Statement of Tax Record.

- 24.3 If the Contractor fails to hold and maintain a Valid and Satisfactory Statement of Tax Record in accordance with clause 24.2 the Department may terminate this Contract in accordance with the provisions of clause 36.
- 24.4 The Contractor warrants that, in relation to any subcontractor engaged to deliver the Services, where the estimated value of the Services to be undertaken by that subcontractor is over \$4 million (GST inclusive), that the Contractor holds and will retain a copy of a Satisfactory Statement of Tax Record for that subcontractor that was Valid at the time of entry into the subcontract by the Contractor and the subcontractor.
- 24.5 The Contractor must retain a copy of any Satisfactory Statement of Tax Record held by any subcontractor in accordance with clause 24.4 and must, on request by the Department, provide the Department a copy of any such Statement of Tax Record.
- 24.6 If the Contractor is a partnership, the Contractor will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Department as soon as possible after they become a partner to the partnership. The Contractor must provide a Valid and Satisfactory Statement of Tax Record in respect of each partner that is directly involved in the delivery of the partnership.

25. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

25.1 In this clause 25:

- (a) **'Commonwealth Entity'** has the meaning given to this term in the *Public Governance, Performance and Accountability Act 2013* (Cth).
- (b) **'Entrusted Person'** has the meaning given to this term in the PTR Act.
- (c) **'General Interest Charge Rate'** has meaning given to this term in clause 5.7.
- (d) **'Policy Team'** means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.
- (e) **'PT PCP'** means the Commonwealth's 'Payment Times Procurement Connected Policy'.
- (f) **'PT PCP Evaluation Questionnaire'** means a questionnaire in substantially the form of Appendix C of the PT PCP.
- (g) **'PT PCP Purpose'** means:
- (i) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those of the Commonwealth's suppliers and their subcontractors that are Reporting Entities; or
 - (ii) improving payment times to PT PCP Subcontractors.
- (h) **'PT PCP Remediation Plan'** means a written remediation plan substantially in the form of Appendix D of the PT PCP.

- (i) **'PT PCP Subcontract'** means a subcontract between a Reporting Entity and another party (**Other Party**) in respect of which:
- (i) the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Contract;
 - (ii) both parties are carrying on business in Australia; and
 - (iii) the component of the subcontract for the provision of goods or services for the purposes of this Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offers (panel arrangements),
- but does not include the following subcontracts:
- (iv) subcontracts entered into prior to the date of submission of the Reporting Entity's tender response for this Contract;
 - (v) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
 - (vi) subcontracts for the purposes of:
 - (A) procuring and consuming goods or services overseas; or
 - (B) procuring real property, including leases and licences.
- (j) **'PTR Act'** means the *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the PTR Act.
- (k) **'Reporting Entity'** has the meaning given to this term in the PTR Act.
- (l) **'Reporting Entity Subcontractor'** means any person that:
- (i) is a Reporting Entity; and
 - (ii) provides goods or services directly or indirectly to the Contractor for the purposes of this Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive).
- 'Reporting Entity Subcontract'** has a corresponding meaning.
- (m) A reference to the Department in clauses 25.8, 25.12(b), 25.13 and 25.14 includes the Policy Team.

PT PCP Subcontracts

25.2 The Contractor must comply with the PT PCP.

- 25.3 If the Contractor enters into a PT PCP Subcontract, the Contractor must include in that subcontract:
- (a) a requirement for the Contractor to pay the PT PCP Subcontractor:
 - (i) subject to clause 25.5, within 20 calendar days after the acknowledgement of the satisfactory delivery of the services and receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (ii) subject to clause 25.6, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 25.7;
 - (b) a statement that the PT PCP applies to that subcontract; and
 - (c) a statement that the subcontractor may make a complaint to the Policy Team, or to the Commonwealth as represented by the Department, in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 25.3.
- 25.4 If the Contractor enters into a Reporting Entity Subcontract in anticipation of (or after) entering this Contract, the Contractor must use reasonable endeavours to include in that subcontract:
- (a) obligations equivalent to those in clause 25.2; and
 - (b) a requirement that, if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (i) obligations equivalent to those in clause 25.2; and
 - (ii) obligations equivalent to this clause 25.4(b) (such that the obligations in this clause 25.4(b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 25.5 Clause 25.3(a) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 25.3(a)(i).
- 25.6 The Contractor is not required to pay interest in accordance with clause 25.3(a)(ii) if either:
- (a) the Department has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - (b) the amount of the interest payable is less than \$100 (GST inclusive).
- 25.7 Interest payable under clause 25.3(a)(ii) will be simple interest calculated in accordance with the formula in clause 5.5.

PT PCP Evaluation Questionnaire

- 25.8 If requested in writing by the Department, the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non-Compliance and Remediation

25.9 If the Department considers or becomes aware that the Contractor has not or may not have complied with:

- (a) the requirements of this clause 25; or
- (b) the payment requirements of a PT PCP Subcontract,

the Department may direct the Contractor to provide to the Department either or both of the following within the timeframes specified by the Department:

- (c) information to enable the Department to review the Contractor's compliance; or
- (d) a properly completed PT PCP Remediation Plan.

25.10 The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 25.9(d).

25.11 If the Department considers that the Contractor has failed to comply with any of its obligations under this clause 25, without limiting the Department's rights and remedies at law or otherwise under this Contract, the Department may do either or both of the following:

- (a) take the failure or non-compliance into account as part of the Department's monitoring of the Contractor's performance under this Contract; or
- (b) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.

25.12 The Contractor agrees that, if it is the subject of a complaint in relation to its compliance with this clause 25 or the associated payment provisions of a PT PCP Subcontract:

- (a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
- (b) it will cooperate in good faith with the Department in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

25.13 For any PT PCP Purpose, the Contractor consents to the Department:

- (a) using and sharing with any other Commonwealth Entity the information provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan or otherwise received or obtained by the Department in connection with this Contract or a PT PCP Subcontract; and
- (b) receiving information obtained under, or in accordance with, the PTR Act ('**Protected Information**') from an Entrusted Person and using such Protected Information.

25.14 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any Personal Information, the Contractor warrants and represents that it has obtained all necessary consents in accordance with the Privacy Act to the collection, use and

disclosure of such information in the manner contemplated by clause 25.13. The Contractor will provide evidence of such consents to the Department on request.

26. CHILD SAFETY

- 26.1 If any part of the Services involves the Contractor employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Contractor agrees:
- (a) to comply with all State, Territory or Commonwealth law relating the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
 - (b) if requested, provide the Department at the Contractor's cost, an annual statement of compliance with this clause 26, in such form as may be specified by the Department.
- 26.2 When child safety obligations may be relevant to a subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under this Contract imposes on the subcontractor the same obligations regarding child safety that the Contractor has under this Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

27. CONFLICT OF INTEREST

- 27.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract, except as disclosed in writing to the Department, no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Contractor or the Contractor Personnel.
- 27.2 If, during the Contract Term, a Conflict arises, or appears likely to arise, in respect of the Contractor or any of the Contractor Personnel, the Contractor agrees to:
- (a) notify the Department immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Contractor, or at the absolute discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.
- 27.3 If the Contractor fails to notify the Department under this clause 27 or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Contract in accordance with the provisions of clause 36.
- 27.4 The Contractor agrees that it will:
- (a) ensure that a situation does not arise which may result in a Conflict; and

- (b) use its best endeavours (including making all appropriate enquiries) to ensure that any Contractor Personnel do not engage in any activity or obtain any interest during the Contract Term that is likely to conflict with or restrict the Contractor in providing the Services to the Department fairly and independently.

28. NOTIFICATION OF SIGIFICANT EVENTS

- 28.1 The Contractor must immediately issue the Department a notice on becoming aware of a Significant Event.
- 28.2 The notice issued under clause 28.1 must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the goods and/or Services were involved.
- 28.3 The Department may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a notice under clause 28.1 in relation to the event within three (3) Business Days of being notified by the Department.
- 28.4 Where reasonably requested by the Department, the Contractor must provide the Department with any additional information regarding the Significant Event within three (3) Business Days of the request.
- 28.5 If requested by the Department, the Contractor must prepare a draft remediation plan and submit that draft plan to the Department's representative specified in Item O for approval within ten (10) Business Days of the request.
- 28.6 A draft remediation plan prepared by the Contractor under clause 28.5 must include the following information:
 - (a) how the Contractor will address the Significant Event in the context of the goods and/or Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the goods and/or Services or compliance by the Contractor with its other obligations under the Contract; and
 - (b) how the Contractor will ensure events similar to the Significant Event do not occur again; and
 - (c) any other matter reasonably requested by the Department.
- 28.7 The Department will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by the Department and resubmit the draft remediation plan to the Department for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the Department. This clause 28.7 will apply to any resubmitted draft remediation plan.
- 28.8 Without limiting its other obligations under the Contract, the Contractor must comply with the remediation plan as approved by the Department. The Contractor agrees to

provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by the Department.

- 28.9 A failure by the Contractor to comply with its obligations under this clause 28 will be a material breach of the Contract, which may give rise to a right of the Department to terminate for default. The Department's rights under this clause are in addition to and do not otherwise limit any other rights the Department may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Department.

29. PUBLIC INTEREST DISCLOSURE

- 29.1 Where a Contractor suspects wrongdoing within the Commonwealth public sector, the Contractor may raise their concerns under the Public Interest Disclosure Act 2013. Prior to making a disclosure, the Contractor must refer to information available at: <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>

- 29.2 All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	Authorised Officer
Email Address:	publicinterestdisclosure@health.gov.au
Telephone:	02 s47E(d)

30. SECURITY

- 30.1 The Contractor must, and must ensure that the Contractor Personnel, comply with:
- all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
 - the requirements of the Department's protective policies and procedures under the PSPF;
 - any additional security requirements specified in the Schedule; and
 - any other security requirements that are notified in writing by the Department to the Contractor from time to time, including any changes to the requirements referred to in clauses 30.1(a) to 30.1(c). Such other security requirements must be complied with from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.
- 30.2 The Contractor acknowledges and agrees that:
- it must not, and must not permit any Contractor Personnel, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any

such individual whose security clearance has lapsed or been revoked or who no longer requires such access;

- (b) it must provide written notification to the Department immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental access, or by any of the Contractor Personnel), and must comply with any reasonable directions of the Department in order to rectify the security incident; and
- (c) it must, and must ensure that the Contractor Personnel, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.

30.3 The Contractor acknowledges and agrees that:

- (a) if and when requested by the Department, it, and the Contractor Personnel, must promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Department, relating to the use and non-disclosure of official information in connection with this Contract;
- (b) it must promptly provide written notification and disclose to the Department any conflict of interest affecting it, or the Contractor Personnel, that may impact on security in the performance of the Contractor's obligations with respect to official information under this Contract;
- (c) it must promptly inform, and keep informed, the Contractor Personnel in respect of all of the Department's security requirements, and the security obligations of the Contractor under this Contract, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);
- (d) it must, and must ensure that the Contractor Personnel, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;
- (e) it must, and must ensure that the Contractor Personnel, provide written notification to the Department immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Services, or official information held by or in the control of the Contractor; and
- (f) on termination or expiry of this Contract it must, and must ensure that the Contractor Personnel:
 - (i) delete all official information from their respective ICT systems; and
 - (ii) return all the Department resources and assets to the Department,

except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements under this Contract.

30.4 The Contractor acknowledges and agrees that:

- (a) upon reasonable written notice from the Department, it must ensure that each of the Contractor Personnel hold and maintain a security clearance at the level and for the period as notified by the Department to the Contractor, from time to time; and
- (b) unless otherwise specified in Item F, it is responsible for all costs associated with obtaining and maintaining security clearances for the Contractor Personnel.

30.5 In this clause 30:

- (a) regardless of whether or not the first letter of any word is capitalised, 'asset', 'Australian Government Information Security Manual', 'confidentiality', 'conflict of interest', 'ICT system', 'information security', 'need-to-know', 'official information', 'personnel security', 'physical security', 'protective security', 'resources', 'security classified information', 'security breach', 'security clearance' and 'security incident' have the meaning given to them in the PSPF Australian Government protective security policy framework – glossary of security terms; and
- (b) an obligation of the Contractor under any of clauses 30.1, 30.2, 30.3 or 30.4 is additional to and does not affect nor derogate from the obligations of the Contractor under:
 - (i) one or more of the other of those clauses; or
 - (ii) any other provision of this Contract.

31. ACCOUNTABILITY AND ACCESS

31.1 The Contractor must give to:

- (a) the Auditor-General or his/her delegate;
- (b) the Privacy Commissioner or his/her delegate;
- (c) the Ombudsman or his/her delegate;
- (d) the persons appointed under the *Australian Information Commissioner Act 2010* as the Information Commissioner and the FOI Commissioner or his/her delegate; and
- (e) any persons authorised in writing by the Department, (referred to in this clause collectively as 'those permitted') access to premises:
 - (f) at which Materials associated with this Contract are stored; or
 - (g) work associated with this Contract is undertaken; and
 - (h) to the Contractor Personnel,

in order for those permitted to be able to inspect and copy Material for purposes associated with this Contract or any review of performance under this Contract.

- 31.2 The rights referred to in clause 31.1 are, wherever practicable, subject to:
- (a) the provision of reasonable prior notice from the Department (except where there is an actual or apprehended breach of the Law);
 - (b) access being sought during reasonable times (except where the Department believes there is an actual or apprehended breach of the Law); and
 - (c) the Contractor's reasonable security procedures.
- 31.3 The Contractor agrees to provide all reasonable assistance requested by the Department in respect of any inquiry into or concerning the Services or this Contract.
- 31.4 Without limitation to the generality of clause 31.3:
- (a) the assistance to be provided by the Contractor under clause 31.3 will include, as appropriate, the provision of Material and of access to its computer hardware, software and equipment, and making available relevant Contractor Personnel to provide information or answer questions on any matters relevant to or arising from this Contract or the performance of the Services which might reasonably be expected to be within the knowledge of the Contractor; and
 - (b) an inquiry referred to in clause 31.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.
- 31.5 The Department will endeavour to notify the Contractor as early as possible of any assistance required under clause 31.4, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 31.6 The requirement for access under this clause 31 does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Contract.
- 31.7 The Contractor agrees to ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause permitting those permitted to have access as specified in this clause 31.
- 31.8 Nothing in this Contract limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates. The rights of the Department under this Contract are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates.
- 31.9 This clause 31 survives the expiration or earlier termination of this Contract for a period of seven years.

32. INDEMNITY

- 32.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Contract.
- 32.2 The Contractor indemnifies the Department, its officers, employees and agents from and against any:
- (a) loss or liability incurred by the Department;
 - (b) loss of or damage to property of the Department; or
 - (c) loss or expense incurred by the Department in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department, arising from:
 - (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Contract, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
 - (e) any breach by the Contractor of its obligations or warranties under this Contract; or
 - (f) any claim that the provision of the Services, Existing Material or Contract Material infringes the Intellectual Property of any person.
- 32.3 The Contractor's liability to indemnify the Department under clause 32.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Department contributed to the relevant liability, loss, damage, or expense.
- 32.4 The right of the Department to be indemnified under this clause 32:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (b) does not entitle the Department to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 32.5 This clause 32 survives the expiration or earlier termination of this Contract.

33. INSURANCE

- 33.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 33.2 or 33.3 as applicable, all appropriate types and amounts of insurance to cover the Contractor's obligations under this Contract, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item N.
- 33.2 If the Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the

period of insurance, the Contractor must maintain the policy during the Contract Term and a policy in like terms for seven years after the expiry or earlier termination of this Contract.

- 33.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the Contract Term.
- 33.4 The Contractor must, on request, promptly provide to the Department any relevant insurance policies or certificates of currency for inspection.
- 33.5 This clause 33 survives the expiration or earlier termination of this Contract.

34. DISPUTE RESOLUTION

34.1 The Parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) first, the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) thirdly, the Parties have 10 Business Days from the receipt of the notice in clause 34.1(a) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
- (i) there is no resolution or agreement; or
- (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days, then, either Party may commence legal proceedings.

34.2 Despite the existence of a dispute, the Contractor must (unless requested in writing not to do so) continue to perform the Services.

34.3 This clause:

- (a) does not apply to action by the Department under or purportedly under clauses 4.2, 35 or 36; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

35. TERMINATION AND REDUCTION FOR CONVENIENCE

- 35.1 In addition to any other right the Department has under this Contract, the Department may, at any time by notice to the Contractor, terminate this Contract in whole or reduce the scope of the Services immediately.
- 35.2 Upon receipt of a notice of termination or reduction the Contractor must:
- (a) stop or reduce work as specified in the notice; and
 - (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material.
- 35.3 Where there has been a termination under clause 35.1, the Department will be liable only for:
- (a) payments and assistance under clause 4 for Services properly rendered before the effective date of termination; and
 - (b) reasonable costs unavoidably incurred by the Contractor and directly attributable to the termination and which the Contractor fully substantiates to the Department's reasonable satisfaction.
- 35.4 The Department will not be liable to pay compensation under clause 35.3(b) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item E.
- 35.5 The Contractor will not be entitled to compensation for loss of prospective profits, redeployment and redundancy costs or for any part of this Contract not performed.
- 35.6 If there is a reduction in the scope of the Services, the Department's obligation to pay any fee will abate proportionately to the reduction in the Services.
- 35.7 To avoid doubt, the Department has an absolute discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause 35.

36. TERMINATION FOR DEFAULT

- 36.1 Where the Contractor fails to satisfy any of its obligations under this Contract, the Department may:
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately;
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
 - (c) if the failure is not remedied in accordance with a notice given under clause 36.1(b), by further notice, terminate this Contract immediately.
- 36.2 The Department may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if:
- (a) subject to sections 415D, 434J and 451E of the Corporations Act (as applicable), an Insolvency Event occurs in respect of the Contractor;

- (b) a Change in Control occurs in relation to the Contractor without the prior written consent of the Department; or
- (c) the Contractor breaches a warranty listed in clause 38.

37. DEEMED TERMINATION FOR CONVENIENCE

- 37.1 If a purported termination for cause by the Department under clause 36 is determined by a competent authority not to be properly a termination for cause, then that termination by the Department will be deemed to be a termination for convenience under clause 35 which termination has effect from the date of the notice of termination referred to in clause 36.

38. CONTRACTOR WARRANTIES AND UNDERTAKINGS

- 38.1 The Contractor represents, warrants and undertakes to the Department that:
- (a) it will promptly notify and fully disclose to the Department in writing any event or occurrence actual or threatened which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Contract;
 - (b) it has full power and authority to enter into, perform and observe its obligations under this Contract;
 - (c) the execution, delivery and performance of this Contract has been duly and validly authorised by the Contractor;
 - (d) it will promptly notify and fully disclose to the Department in writing if an Insolvency Event occurs in respect of the Contractor;
 - (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Contract do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any contract or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
 - (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Contract or the Contractor's reputation;
 - (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that resulting order has not been satisfied;

- (h) unless otherwise disclosed in this Contract, it is not entering into this Contract as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Department or any Government Agency, including in any tender or application process or in any contract;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Department or any Government Agency;
- (k) it has, and will continue to have and to use, the skills, qualifications and experience to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Contract; and
- (l) it has and will continue to have the necessary resources, including financial resources, to perform the Services and will use those resources to perform the Services.

38.2 The Contractor acknowledges that the Department in entering into this Contract is relying on the warranties and representations contained in this Contract.

38.3 The Contractor:

- (a) acknowledges that it has been chosen to provide the Services in an area of expertise that is outside those of the Department; and
- (b) represents to the Department that it has the necessary knowledge and expertise to provide the Services,

and the Department:

- (c) relies on the Contractor's representation that it is an expert; and
- (d) has engaged the Contractor to provide the Services on that basis.

38.4 Each representation and warranty is given on a continuing basis throughout the Contract Term.

39. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

39.1 The Contractor is not, by virtue of this Contract, an officer, employee, partner or agent of the Department, nor does the Contractor have any power or authority to bind or represent the Department.

39.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel do not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.

40. WORK HEALTH AND SAFETY

40.1 In carrying out this Contract the Contractor must ensure that the Services are performed in a safe manner and in compliance with the WHS legislation.

41. NOTICES

41.1 A Party giving notice under this Contract must do so in writing that is:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or email to that address.

The Parties' address details are specified in Item O.

41.2 The Parties agree that a notice given in accordance with clause 41.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting; or
- (c) if sent by email, when received by the addressee or when the sender's computer generates written notification that the notice has been received by the addressee, whichever is earlier.

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THE SCHEDULE

Item A Services and Subcontractors

- 1 Cancer Council Australia (the Contractor) is engaged to partner with the Department of Health and Aged Care (the Department) to run a national skin cancer prevention campaign over summer 2024/25 and summer 2025/26 and provide input to support the evaluation of that campaign.
- 2 The Contractor will consult and work collaboratively with the Department, on the deliverables outlined in **Item B**, according to the streamlined delivery model outlined in **Item Y**. Work outside of this scope will be negotiated with the Contractor as required.
- 3 Required Contract Materials must be provided by the Contractor and/or subcontractors to the Department as per the streamlined delivery model (outlined in **Item Y**) with a minimum of two (2) full business days for clearance, where possible, and unless expedited timelines are otherwise agreed between the Contractor and the Department. If amendments are required, the Contractor must provide the Department with updated materials with a minimum of one (1) full business day for clearance. The parties agree to the following approval process:
 - (a) The Department must review and provide (a) written approval, or (b) amendments to the Contractor within two (2) full business days of receipt.
 - (b) Any extension or reduction to the timelines may be agreed to by both parties in writing and each party agrees to endeavour to resolve any delay in approving or amending.
 - (c) It is the responsibility of each party to arrange appropriate delegation of authority mechanisms to ensure approval timelines are maintained in the event individuals are on leave or unavailable in which case the campaign approver may delegate approval to appropriate staff.
 - (d) It is the responsibility of each party to arrange relevant stakeholder escalation on materials where required, within the agreed two (2) day period, unless otherwise agreed between both parties.
- 4 The Department or Contractor will endeavour to have a representative attend all work in progress meetings including creative briefing and production, brand partnership meetings, influencer briefings and weekly optimisation meetings.
 - (a) If a Department or Contractor representative is unable to attend, all parties acknowledge that these meetings will proceed as scheduled to ensure timely delivery of the campaign.
- 5 The campaign will include two components, with the following target audiences and objectives:

s47(1)(b)

s47(1)(b)

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s47(1)(b)



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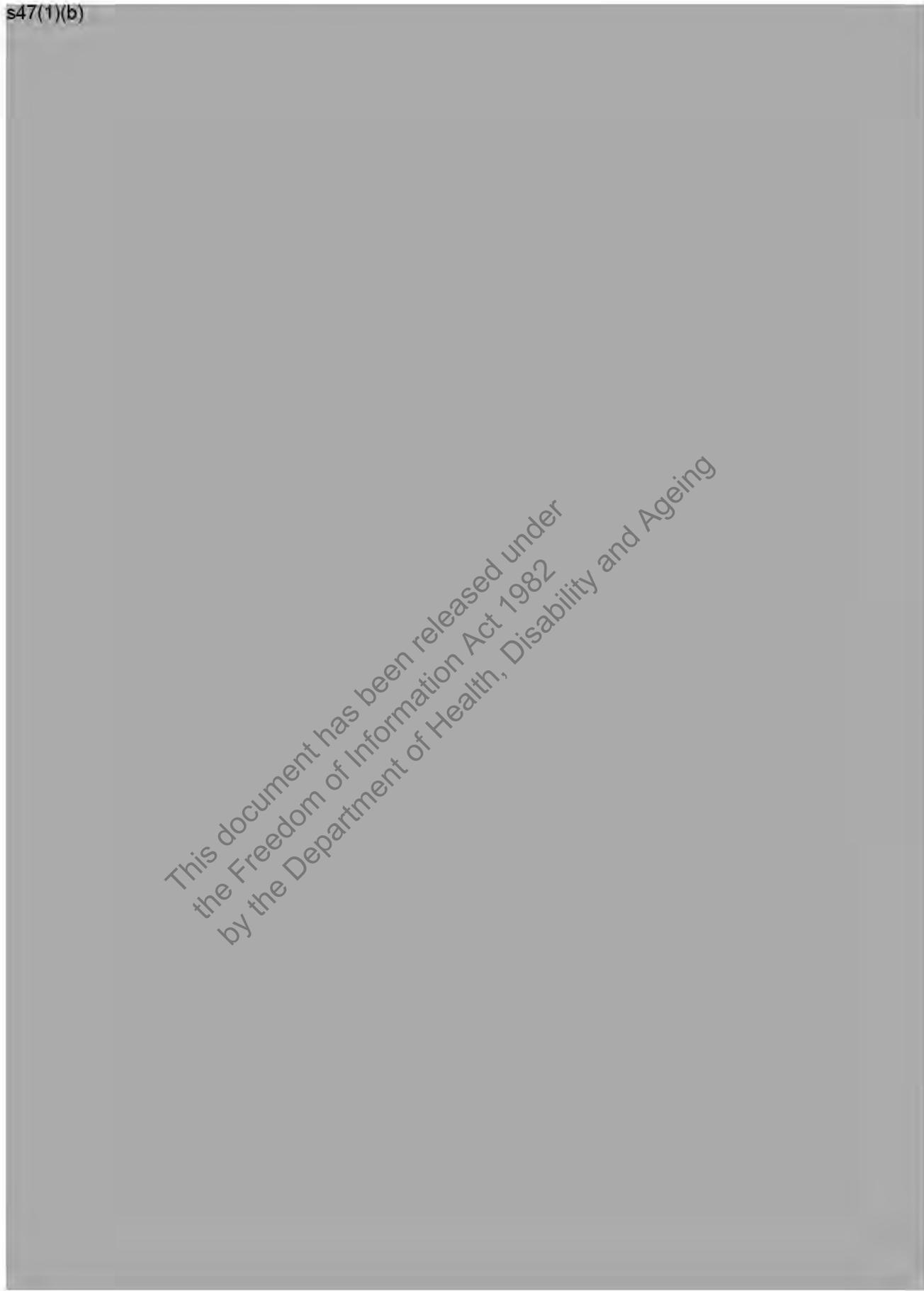
Item B

Required Contract Material

s47(1)(b)

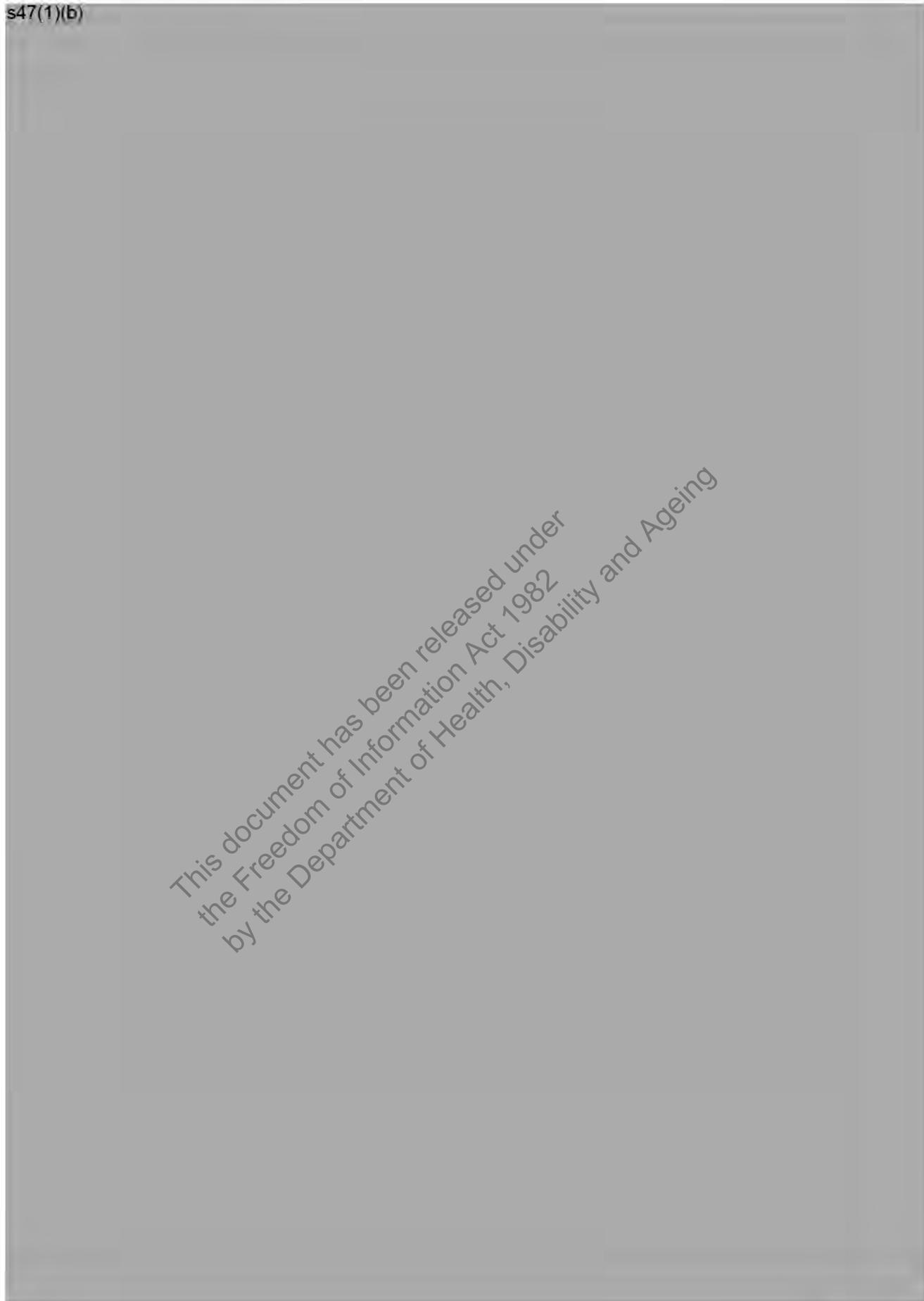


s47(1)(b)



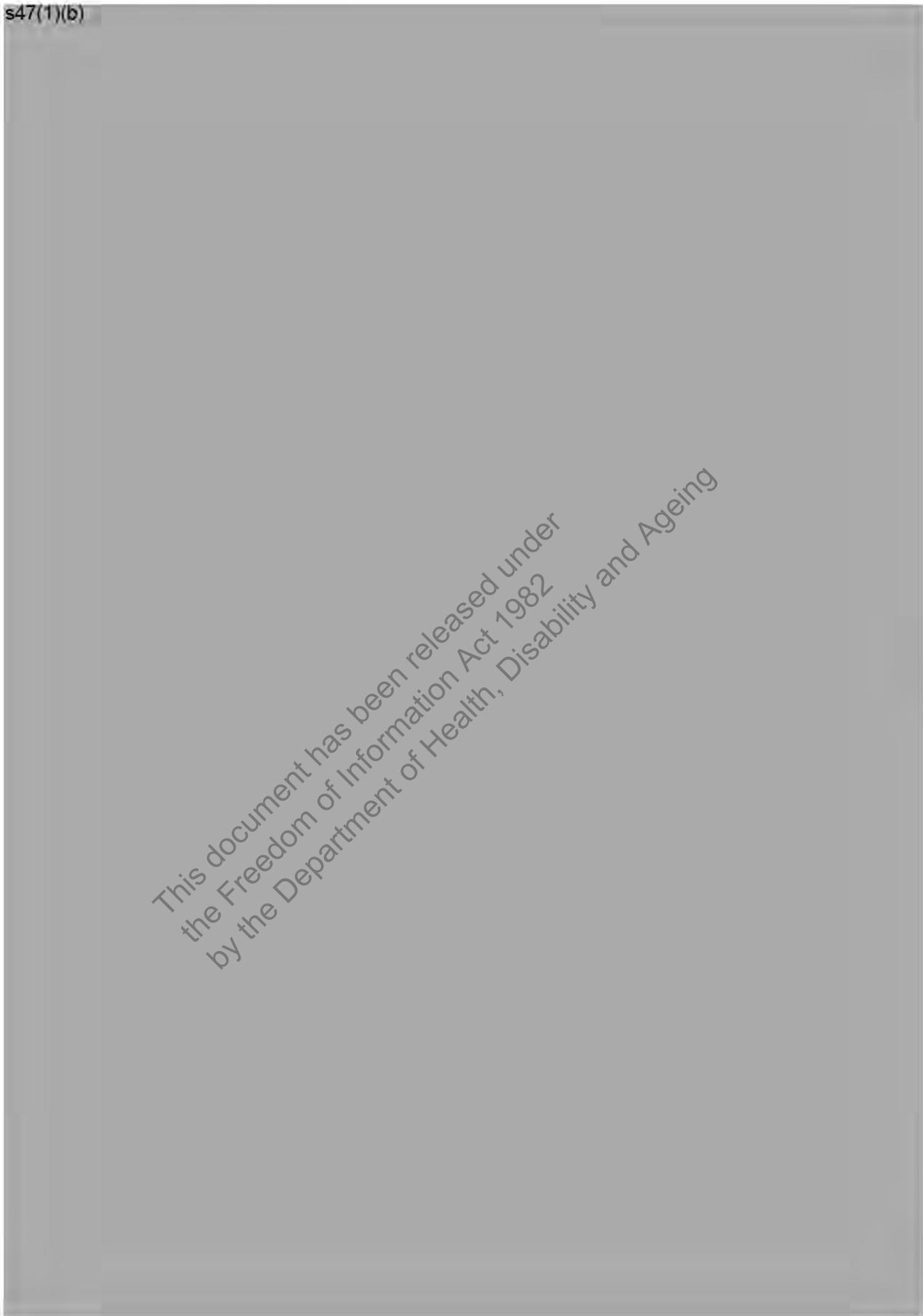
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s47(1)(b)



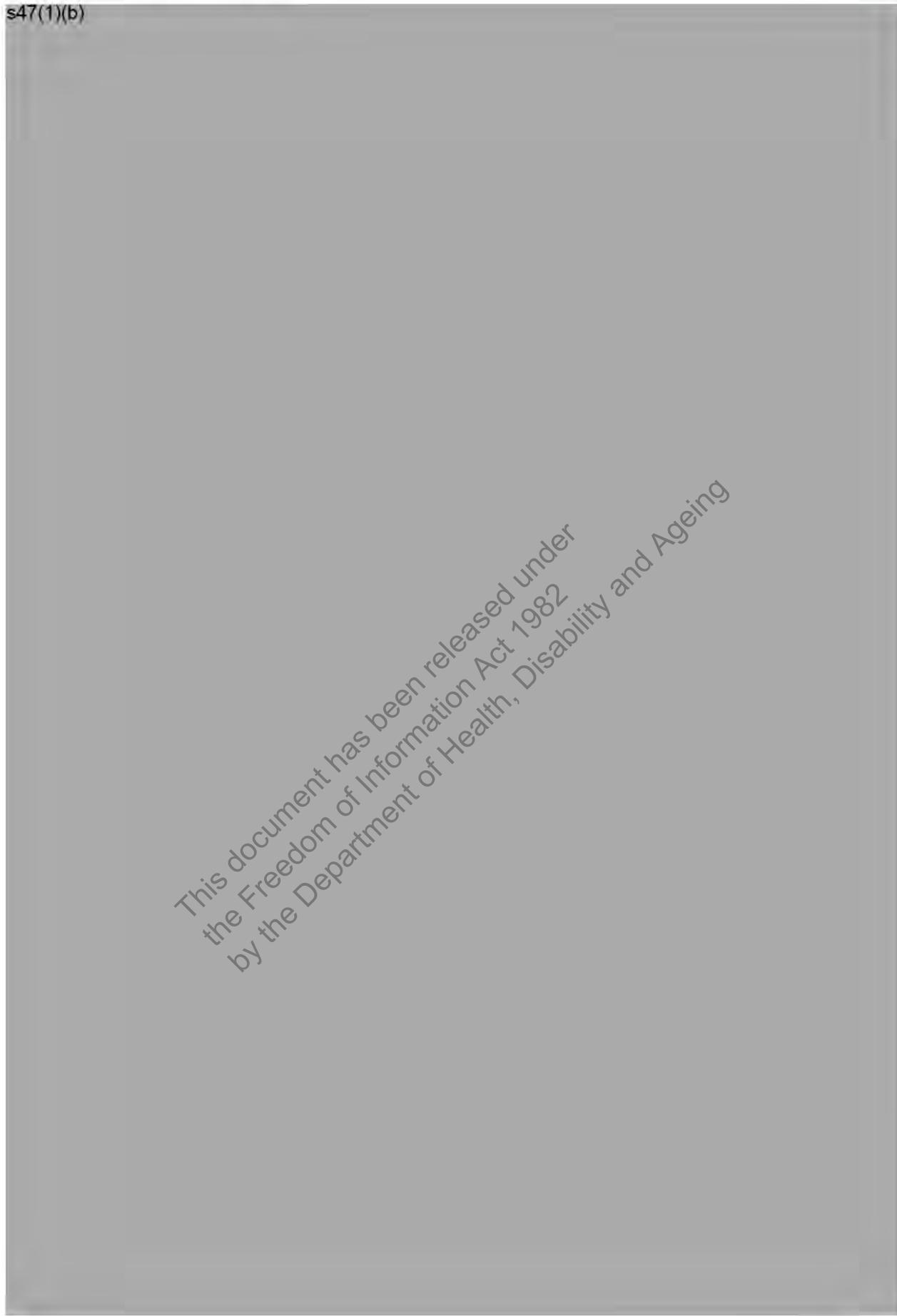
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s47(1)(b)



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s47(1)(b)



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s47(1)(b)

Item C Standards and Best Practice

The Contractor must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Contractor must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

Item D Time-frame

Contract Start Date: upon contract execution (expected August 2024).

Contract End Date: 31 December 2026.

No extension options are included within the contract.

Item E Fees (inclusive of GST)

The total fee for the Services is up to s47(1)(b) (GST Inclusive). Progress payments of the Fees (inclusive of any GST and all taxes and charges) will be made as follows:

s47(1)(b)

s47(1)(b)

**Item F Allowances and Costs (inclusive of GST)**

The Contractor must perform its obligations under this Contract at its own cost and expense. The Department will not reimburse the Contractor for any additional expenses (including travel, accommodation and taxi travel).

Item G Facilities and Assistance

N/A

Item H Invoice Procedures

The Contractor must forward correctly addressed invoices that are in the form of a tax invoice directly to the AP Invoices mailbox s47E(d) @health.gov.au), in PDF file format only.

- a. The invoice must be in a form approved by the Department which sets out:
- b. The Purchase Order number to which the payment relates;
- c. The amount of any allowances, costs and interest to be paid by the

- Department together with any substantiating material required;
- d. The name of the Department Representative (s22 [redacted]); and
 - e. Invoice must be the front page of the PDF document, followed by supporting documents (e.g. delivery note, reports etc.)
 - f. Such other information as the Department requires.
 - g. Maximum of 3 attachments per email.

Item I Specified Personnel

Role	Organisation	Name / Title
Campaign Approver	Cancer Council Australia	s47F [redacted], Head of Campaigns
Stream Lead (Project Management)	Cancer Council Australia	s47F [redacted]s, Senior Project Officer
Stream Lead (Creative Optimisation / Paid Media)	Cancer Council Australia	TBC
Stream Lead (Earned Media & Influencers / Publishers & Partners)	Cancer Council Australia	s47F [redacted], Senior Media & Communications Manager
Stream Lead (Owned Media)	Cancer Council Australia	s47F [redacted], Senior Content Strategist
Campaign Approver	Department of Health and Aged Care	s22 [redacted] Director
Stream Lead	Department of Health and Aged Care	s22 [redacted] Assistant Director
Stream Lead	Department of Health and Aged Care	s22 [redacted] Communications Officer

Note: roles outlined below in agreed delivery model and approvals framework (Item Y).

Item J Commonwealth Material to be provided by Department

1. Commonwealth Coat of Arms and Department of Health and Aged Care logo.
2. All End the Trend creative assets, elements, and applications.

Item K Use of Commonwealth Material

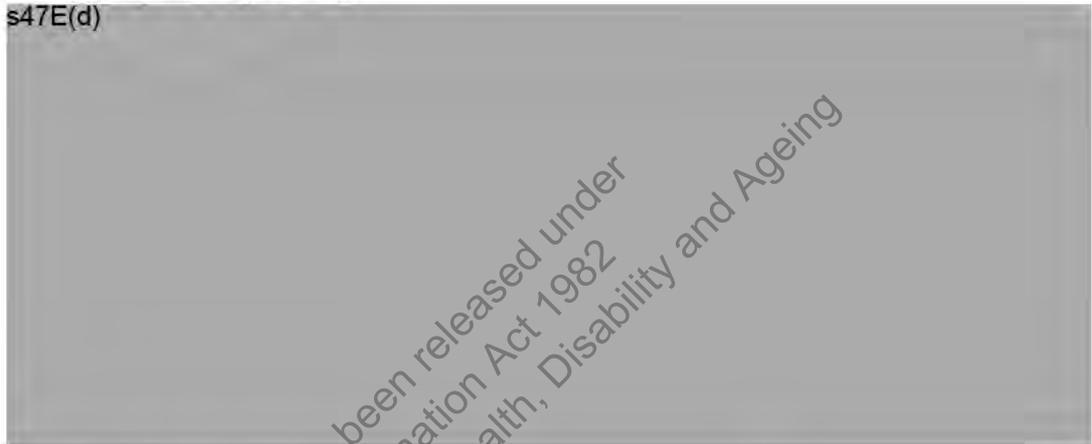
1. The Department will provide the Contractor with any Commonwealth Material necessary to perform the Services.
2. Any Commonwealth Material that is considered to contain information that is commercial-in-confidence, has personal information or both, the Department will

- inform the Contractor on the appropriate handling of such information.
3. Materials produced or updated for this campaign must acknowledge Australian Government support by featuring the Commonwealth Coat of Arms in a position of prominence in the logo hierarchy alongside Contractor logos, unless otherwise agreed in writing between the Contractor and the Department. Australian Government acknowledgment and logo placements will be reviewed and approved by the Director, Communication and Partnerships Section of the Department, or their agreed delegate.
 4. Materials produced for management and development of the campaign including all campaign briefs by the Contractor and subcontractors, draft creative, reports, media and partnership activity must acknowledge Australian Government support by featuring the Commonwealth Coat of Arms in a position of prominence in the logo hierarchy in accordance with the Commonwealth Brand Guidelines alongside Contractor logos unless specified otherwise.
 5. Materials must include the Commonwealth Coat of Arms and reference the Commonwealth in accordance with the current published Australian Government Branding Guidelines.
 6. If written acknowledgement is possible, it must read 'Proudly supported by the Australian Government, Canberra', with the Commonwealth crest displayed or as agreed, in writing, by the Department.
 7. If the Commonwealth Coat of Arms cannot be included on materials a written acknowledgement as detailed in Item K.5 above must be included.
 8. The exception to Items K.3, K.4, K.5, K.6, and K.7 is where specialist advice is received that the effectiveness of the materials will be compromised by inclusion of acknowledgement of the Commonwealth.
 9. All Commonwealth Material is considered to contain information that is commercial-in-confidence, has personal information or both.
 10. The Contractor must ensure that all Commonwealth Material is kept and maintained in a secure place and manner to ensure that this Commonwealth Material is not accessed by, or disclosed to, unauthorised persons. For the avoidance of doubt, disclosure to other officers in the Department of Health is authorised.
 11. It is a condition of access to the Commonwealth Material that, before such access is given, the Contractor must arrange at its own cost for their staff or subcontractors to sign a Confidentiality, Conflict of Interest, Privacy and Secrecy Deed Poll, in the form provided at Attachment A, relating to the non-disclosure of the Customer's Confidential Information. On or before the Contract Start Date, the Service Provider must deliver to the Department a Confidentiality Undertaking signed by the staff involved in delivering the campaign, or the CEO on behalf of those staff members or sub contractors.
 12. The Contractor acknowledges and agrees that only Personnel who have signed the Confidentiality Undertaking will be given access to the Commonwealth Material, and

that it or any other Contractor Personnel will not be given, or require, access to the Commonwealth Material at any time.

Item L Existing Material

1. Materials used must wherever possible acknowledge the campaign has been produced with the support of the Australian Government.
2. Materials used must wherever possible include the Commonwealth Coat of Arms and reference the Commonwealth in accordance with the current published Australian Government Branding Guidelines.
3. If written acknowledgement is possible, it must read 'Proudly supported by the Australian Government', with the Commonwealth crest displayed or as agreed, in writing, by the Department.
4. s47E(d)



Item M Dealing with Copies

Upon completion of the Services, the Contractor may retain one hard copy of the Contract Material for its internal record-keeping purposes only.

Item N Insurance

The Contractor agrees to maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for an amount of not less than 20 million dollars (\$20,000,000); and
- (c) professional indemnity insurance for an amount of not less than 10 million dollars (\$10,000,000).

Item O Address for Notices

Department's Address for Notices:

The person for the time-being holding, occupying or performing the duties of Director of Communication and Partnerships Section, Cancer Screening

Program Branch.

Director of Communication and Partnerships Section

Department of Health and Aged Care

GPO Box 9848

Canberra ACT 2601

Contractor's Address for Notices:

Cancer Council Australia

Level 2, 320 Pitt St

Sydney NSW 2000

Item P Commencement Date

Upon contract execution

Item Q Initial Contract Term

Upon contract execution – 31 December 2026

Item R Extension Period

No extension option is available for this contract.

Item S Existing Material and Ownership of Contract Material

- clause 12 (Existing Material and Department Ownership of Intellectual Property in Contract Material) is to apply
- clause 13 (Existing Material and Contractor Ownership of Intellectual Property in Contract Material) is to apply

Item T Moral Rights

- Option 1: clause 14.3 (Specified Acts includes falsely attributing authorship of any Contract Material) is to apply
- Option 2: clause 14.4 (Specified Acts does not include falsely attributing authorship of any Contract Material) is to apply

Item U Indigenous Participation Plan

- Option 1: clause 21 (the Contract is NOT a High Value Contract) applies
- Option 2: clause 22 (the Contract is a High Value Contract) applies

Item V Modern Slavery

- Option 1: clause 23 (the Contract is assessed as very low/risk risk) applies
- Option 2: clause 23 (the Contract is assessed as medium/ high risk) applies

Item W Payment Terms

N/A

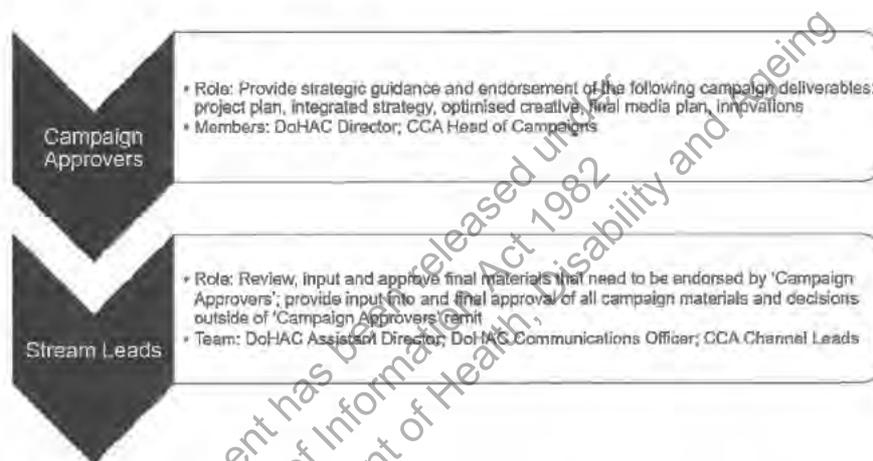
Item X Payment Times

- Option 1: clause 25 (Payment Times Procurement Policy) applies.
- Option 2: clause 25 (Payment Times Procurement Policy) does not apply.

Item Y Agreed Delivery Model and Approval Framework

The contractor and the Department agree to work collaboratively, per the below streamlined delivery model and approval process. Any deviation from this model must be agreed in writing between both parties.

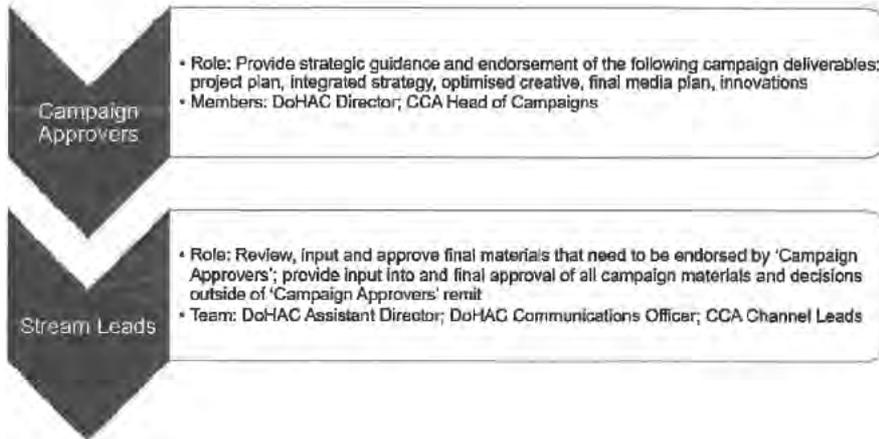
Streamlined delivery model



Campaign streams

Creative Optimisation	Paid Media	Earned Media / Influencer	Publishers / Partners	Owned Media
<ul style="list-style-type: none"> • DoHAC stream lead DoHAC Lead • CCA stream lead Senior Campaigns Manager • Execution team CCA Campaigns Team 	<ul style="list-style-type: none"> • DoHAC stream lead DoHAC Lead • CCA stream lead Senior Campaigns Manager • Execution team CCA Campaigns Team 	<ul style="list-style-type: none"> • DoHAC stream lead DoHAC Lead • CCA stream lead Senior Media & Communications Manager • Execution team CCA National Communications Team 	<ul style="list-style-type: none"> • DoHAC stream lead DoHAC Lead • CCA stream lead Senior Media & Communications Manager • Execution team CCA National Communications Team, CCA Campaigns Team, CCA Content Team 	<ul style="list-style-type: none"> • DoHAC stream lead DoHAC Lead • CCA stream lead Senior Content Strategist • Execution team CCA Content Team, CCA Digital Team
Project Management				
•DoHAC stream lead DoHAC Lead		•CCA stream lead Project Manager		•Execution team CCA Projects Team

Streamlined delivery model



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This Contract is **SIGNED** as a contract.

SIGNED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Health and Aged Care ABN 83 605 426 759 on:

2 September 2024

Date

by:

Perdi Mitchell

Printed name of signatory

s47F

[Redacted signature area]

Signature

Assistant Secretary

Position of signatory

in the presence of:

s22

[Redacted witness name]

Printed name of witness

s47F

[Redacted witness signature]

Signature of witness

SIGNED for and on behalf of **Cancer Council Australia**, ABN **91 130 793 725** in accordance with delegated authority on:

2 September, 2024

Date

by:

s47F

[Redacted director name]

Printed name of Director

s47F

[Redacted director signature]

Signature of Director

and:

s47F

[Redacted director name]

Printed name of Director

s47F

[Redacted director signature]

Signature of Director

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Australian Government
**Department of Health,
Disability and Ageing**

DEED OF VARIATION

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Parties

This Deed is between the Commonwealth and the Existing Party.

Recitals

- A. The Commonwealth and the Existing Party are parties to the Existing Agreement.
- B. The Parties now wish to vary the Existing Agreement in accordance with the terms and conditions of this Deed.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- Commonwealth** means the entity specified in Item 1;
- Deed** means this document and includes the Schedule and any other attachments;
- Effective Date** means the date specified in Item 4;
- Existing Agreement** means the existing agreement and the variations described in Item 3;
- Existing Party** means the entity specified in Item 2;
- Item** means an item forming part of the Schedule;
- Party** means a party to this Deed; and
- Schedule** means the schedule to this Deed.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) capitalised words defined in the Existing Agreement have the same meaning when used in this Deed;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) headings are inserted for convenience and do not affect the interpretation of this Deed;
- (f) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and

- (g) a rule of construction will not apply to the disadvantage of a Party just because that Party was responsible for the preparation of this Deed or any part of it.

2. Variation to Existing Agreement

2.1 Variation

The Parties agree that on and from the Effective Date the Existing Agreement is varied as set out in Item 5.

3. Confirmation

3.1 Continuation of Existing Agreement

The Parties confirm and agree that the Existing Agreement, as amended by clause 2 of this Deed:

- (a) continues in full force and effect; and
- (b) is the entire agreement between the Parties in relation to its subject matter.

4. General

4.1 Counterparts

This Deed may be executed in any number of counterparts and the counterparts taken together constitute one and the same instrument.

4.2 Variation

This Deed may only be varied in writing signed by both Parties.

4.3 Waiver

A provision of, or a right created under, this Deed may not be waived except in writing signed by the Party to be bound.

4.4 Further steps

Each Party must, at its own cost and expense, promptly do all things reasonably required by the other Party to give full effect to this Deed and the matters contemplated by it.

4.5 Costs and stamp duty

- (a) Each Party must pay its own cost and expense arising out of the negotiation, preparation and execution of this Deed.
- (b) The Existing Party must pay all duties (including stamp duty and associated fines, penalties and interest) payable on this Deed and on any transaction or instrument executed under it.

4.6 Law and jurisdiction

This Deed is governed by and construed in accordance with the same laws that govern the Existing Agreement.

4.7 Severability

Any provision of this Deed which is wholly or partially illegal, void or unenforceable is severed from this Deed to the extent it is illegal, void or unenforceable. The validity or enforceability of the remaining provisions are not affected and continue in force.

4.8 Acting as trustee

If a Party acts as trustee of a trust in relation to this Deed:

- (a) it is liable both personally, and in its capacity as trustee of that trust; and
- (b) it represents and warrants (upon which the other Party relies) that it has full power and authority:
 - (i) to enter into this Deed and to be legally bound by it; and
 - (ii) to be able to comply with, and perform, all its obligations under it.

4.9 Inconsistency

If there is any conflict or inconsistency within this Deed, the following order of descending priority will apply:

- (a) the terms and conditions;
- (b) the Schedule;
- (c) any attachments or annexures to the Schedule; and
- (d) any documents incorporated by reference into this Deed.

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Schedule – Deed Details

Item	Description	Details
1.	Commonwealth details	<p>Legal entity name: Commonwealth of Australia as represented by the Department of Health, Disability and Ageing</p> <p>ABN: 83 605 426 759</p> <p>Physical address: Furzer Street, Woden, 2606</p> <p>Contact person: s22</p> <p>Email: [redacted]@health.gov.au</p>
2.	Existing Party details	<p>Legal entity name: Cancer Council Australia</p> <p>ABN: 91 130 793 725</p> <p>Physical address: Level 2, 320 Pitt Street, SYDNEY NSW 2000</p> <p>Contact person: s47F</p> <p>Email: [redacted]@cancer.org.au</p>
3.	Existing Agreement	<p>The agreement for the provision of National Skin Cancer Prevention Campaigns entered into between the Commonwealth and the Existing Party dated 2 September 2024 is varied as follows:</p> <ol style="list-style-type: none"> 1. Additional funds of s47(1)(b) (GST Exclusive) added to total contract value 2. Payment milestones in Item E amended with additional funds
4.	Effective Date	The date this Deed is executed by the last Party to do so.
5.	Variations	<p>The following variations will be made to the contract.</p> <p>Delete From The Schedule:</p> <p>Item E Fees (inclusive of GST)</p> <p>The total fee for the Services is up to s47(1)(b) (GST Inclusive). Progress payments of the Fees (inclusive of any GST and all taxes and charges) will be made as follows:</p> <p>s47(1)(b)</p> <p>[redacted]</p>

Item	Description	Details
		<p>s47(1)(b)</p> <p>This document has been released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing</p>

Item	Description	Details
		<p>s47(1)(b)</p> <p>And Replace With:</p> <p>Item E Fees (inclusive of GST)</p> <p>The total fee for the Services is up to s47(1)(b) (GST Inclusive). Progress payments of the Fees (inclusive of any GST and all taxes and charges) will be made as follows:</p> <p>s47(1)(b)</p> <p>This document has been released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing</p>

Item	Description	Details
		<p>s47(1)(b)</p>  <p>This document has been released under the Freedom of Information Act 1982 by the Department of Health, Disability and Ageing</p>

Execution

Executed as a deed

SIGNED, SEALED AND DELIVERED for and on behalf of the Commonwealth of Australia as represented by the **Department of Health, Disability and Ageing** ABN 83 605 426 759 by a duly authorised representative:

Perdi Mitchell

Name of authorised representative (print)

s22

Name of witness (print)

s47F

Signature of authorised representative

s47F

Signature of witness

18 June 2025

Date

SIGNED SEALED AND DELIVERED by **CANCER COUNCIL AUSTRALIA** ABN 91 130 793 725 by the properly authorised officer in accordance with their Constitution:

s47F

Name of authorised officer

s47F

Name of witness (print)

s47F

Signature of authorised officer

s47F

Signature of witness

17 June 2025

Date

17 June 2025

Date

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s22

OFFICIAL

From: s22 [redacted]@Health.gov.au>
Sent: Friday, June 27, 2025 2:19 PM
To: s47F [redacted]@cancer.org.au>; s22 [redacted]@Health.gov.au>
Cc: s47F [redacted]@cancer.org.au>
Subject: RE: 2025/26 Skin Campaign - Subcontract Register [SEC=OFFICIAL]

Hi s47F [redacted]

Thanks again for sending through. Happy to proceed with the following subcontracts.

Thanks,
s22 [redacted]

A/g Assistant Director

Communication and Partnerships Section

Cancer Screening Programs Branch



The Department of Health and Aged Care 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 [redacted]@cancer.org.au>
Sent: Wednesday, 25 June 2025 9:52 AM
To: s22 [redacted]@Health.gov.au>; s22 [redacted]@Health.gov.au>
Cc: s47F [redacted]@cancer.org.au>
Subject: 2025/26 Skin Campaign - Subcontract Register

REMINDER: Think before you click! This email originated from outside our organisation. Only click links or open attachments if you recognise the sender and know the content is safe.

Hi s22 [redacted]

Please find attached the updated 2025/26 Subcontractor and Service Agreement Register's for your approval as we progress with contract variations for the skin campaign.

- [Skin 2526 Service Agreement Register.pdf](#)
- [Skin 2526 SubContract Register.pdf](#)

We will continue to update these documents as partners requiring direct contracting are confirmed.

For your reference, the approved variation amounts for key agency subcontracts are as follows:

- Spark Foundry will be varied for the full amount as per the budget (as detailed below).
- Saatchi & Saatchi and Herd MSL will be varied only as scopes are received and approved, however their full budget is below for your approval.

Sub Contractors	Budget
Spark Foundry	s47(1)(b)
Saatchi & Saatchi	[redacted]
Herd MSL	[redacted]

If you could please respond via email with your approval, that would be much appreciated.

Thanks,
s47F [redacted]

Senior Projects Officer
Cancer Council Australia
Eora Country

T: 02 s47F [redacted]

Address: 320 Pitt Street, Sydney NSW 2000 Australia.

Website: www.cancer.org.au



We acknowledge the Traditional Custodians of the lands on which we work and live, and pay our respects to Elders past, present and future.

Please consider our environment before printing this email. The information contained in this message is intended for the

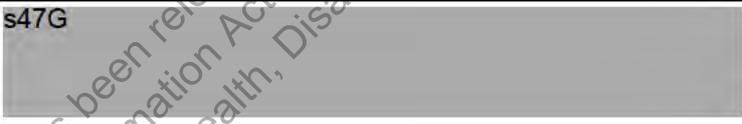
named addressee

only, and is confidential to the sender and intended recipient. If you have received this message in error please notify us immediately.

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Skin Campaign 25/26
SubContract Register

Date: 18th June

Subcontractor 1	
Business or trading name	Saatchi & Saatchi
Full legal name	Saatchi & Saatchi a division of Publicis Communications Australia Pty Ltd
Entity type (e.g. company, sole trader, incorporated association, statutory authority, partnership, trustee on behalf of a trust, or other (as specified))	Australian Private Company
ABN (if applicable)	86 001 720 921
ACN (if applicable)	
Details of principal place of business / head office (including street address and telephone)	21 Harris St, Pyrmont NSW 2009
Details of the part(s) of the Services which will be delivered by the Subcontractor	s47G 

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Subcontractor 2	
Business or trading name	Spark Foundry
Full legal name	Spark Foundry a division of Publicis Communications Australia Pty Ltd
Entity type (e.g. company, sole trader, incorporated association, statutory authority, partnership, trustee on behalf of a trust, or other (as specified))	Australian Private Company
ABN (if applicable)	40 001 786 858
ACN (if applicable)	
Details of principal place of business / head office (including street address and telephone)	21 Harris St, Pyrmont NSW 2009
Details of the part(s) of the Services which will be delivered by the Subcontractor	s47G [REDACTED]

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Subcontractor 3	
Business or trading name	Herd MSL
Full legal name	N2N Communications a division of Publicis Communications Australia Pty Ltd
Entity type (e.g. company, sole trader, incorporated association, statutory authority, partnership, trustee on behalf of a trust, or other (as specified))	Australian Private Company
ABN (if applicable)	86 001 720 921
ACN (if applicable)	
Details of principal place of business / head office (including street address and telephone)	21 Harris St, Pyrmont NSW 2009
Details of the part(s) of the Services which will be delivered by the Subcontractor	s47G 

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Subcontractor 4	
Business or trading name	Luminary Digital Pty Ltd
Full legal name	Luminary Digital Pty Ltd
Entity type (e.g. company, sole trader, incorporated association, statutory authority, partnership, trustee on behalf of a trust, or other (as specified))	Proprietary limited company
ABN (if applicable)	11 126 117 619
ACN (if applicable)	
Details of principal place of business / head office (including street address and telephone)	Level 1, 195 Little Collins St, Melbourne 3000
Details of the part(s) of the Services which will be delivered by the Subcontractor	s47G 

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