



Australian Government

Department of Health

CONTRACT FOR SERVICES

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health

ABN 83 605 426 759

and

[Insert Contractor's Name and ABN]

in relation to Services

**to coordinate and deliver the Information Hubs,
Community Hubs and Specialist Support Workers Trials of
the Aged Care System Navigator Measure**

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THIS DOCUMENT HAS BEEN RELEASED
UNDER THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

This Contract is made between the

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

and

[Insert name and registered address of Contractor] ABN *[insert number]* (**'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 and has submitted a proposal and quotation entitled and dated
- 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:

'Aged Care Provider' means:

- (a) an organisation that has been approved to provide residential care, home and/or flexible care under the *Aged Care Act 1997* (Cth);
- (b) an organisation that is funded by the Commonwealth under the Commonwealth home support programme;
- (c) an organisation that is funded by the Commonwealth under the national Aboriginal and Torres Strait Islander flexible aged care programme; or
- (d) an assessment organisation that provides aged care assessment team or regional assessment service services to the Commonwealth;

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

'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;

'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;

'Commencement Date' means the date the last party to do so signs this Contract;

'Commonwealth' means the Commonwealth of Australia;

'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.

A Conflict includes any situation where the Contractor, one of its Subcontractors or one of its Related Bodies Corporate becomes an Aged Care Provider during the Term;

'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;

'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) includes those individuals (if any) engaged by the Contractor or its Subcontractors on a voluntary basis;

engaged in the performance of the Services;

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

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

'Department Material' means any Material:

- (a) provided by or on behalf of 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);

'Eligible Data Breach' has the same meaning as 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 Department Material;

'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;

'Indigenous Procurement Policy' means the policy of that name, as amended from time to time, available on the [Indigenous Procurement Website](#).

'Initial Contract Term' means the period from the Commencement Date until 30 June 2020;

'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;

'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 Corporate requests such an appointment;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) any application (not withdrawn or dismissed within five (5) 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 (g) is ordered, declared or agreed to;
- (h) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (i) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (j) it stops or suspends payment to all or a class of creditors generally;

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

'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;

'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; and
- (b) the right of integrity of authorship;

'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), as amended or replaced from time to time;

'Related Body Corporate' has the meaning given in section 9 of the Corporations Act;

'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;

'Subcontractor' means an entity that the Contractor enters into a contract with to provide goods or services to the Contractor in relation to the Services or in order for the Contractor to meet obligations under this Contract;

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

'Term' means the Initial Contract Term plus any extension in accordance with clause 1.16;

'Vulnerable Person' means:

- (a) a child; or
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason;

'Web Content Accessibility Guidelines 2.1' means the Guidelines available at [Web Accessibility Guidelines](#);

'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 4.0 (2010)' means the advisory notes released by the Australian Human Rights Commission available at [Disability Discrimination Act Advisory Notes](#).

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\$ or \$A 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 an instrument or documents includes the instrument or document as altered, supplemented or replaced from time to time;
- (j) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;

- (k) 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; and
 - (l) 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.
- 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 shall be deemed to be an original and all of which, taken together, shall 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.
- 1.15 This Contract begins on the Commencement Date and continues for the Initial Contract Term unless terminated earlier in accordance with this Contract.
- 1.16 The Department may elect to extend the Initial Contract Term for up to one further period of one year in duration on the terms and conditions set out in this Contract by giving at least one months' written notice to the Contractor.

2. PROVISION OF SERVICES

2.1 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; and
 - (ii) 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.

2.2 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 2.3, the Department may use that information when considering the Contractor's ability to perform this Contract.

2.3 The Department may consult with the Contractor if any information referred to under clause 2.2 is a cause of concern to the Department.

2.4 Subject to clauses 12 and 13, 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.

3. FEES, ALLOWANCES AND ASSISTANCE

3.1 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.

3.2 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.

3.3 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.

3.4 The Contractor must pay to the Department the full amount of the overpayment specified in the notice referred to in clause 3.3 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.

3.5 The Department may recover the overpayment specified in the notice referred to in clause 3.3, from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Contract.

- 3.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3, 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 3.4, until the amount is paid to the Department in full.
- 3.7 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.
- 3.8 The Contractor agrees to submit invoices for payment in the manner specified in Item H and clause 5.

4. PAYMENTS

- 4.1 The Department will pay the Contractor within 30 days after 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.
- 4.2 For the purposes of this clause an invoice is correctly rendered if it:
- (a) is correctly addressed and calculated in accordance with this Contract; 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*.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 Subject to this clause, 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.
- 5.2 The provisions of this clause in respect of GST apply where the Contractor is registered, or is required to be registered for GST.
- 5.3 The goods, services and other supplies made by the Contractor under this Contract are Taxable Supplies within the meaning of the GST Law.
- 5.4 The Contractor will issue the Department with a 'tax invoice' in accordance with the GST Act together with, or as a part of, each invoice submitted for payment in accordance with clause 3.8.
- 5.5 The amounts payable by the Department to the Contractor, as determined under clause 3, 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.
- 5.6 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, the payer must also pay, and indemnify the payee against the amount of that GST.

5.7 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).

5.8 For the purposes of this clause, 'GST', '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.

6. SUBCONTRACTORS

6.1 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.

6.2 The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 6.1(a).

6.3 Where a Subcontractor specified in Item A or approved by the Department under clause 6.1(a) is unable to perform the work, the Contractor agrees to notify the Department immediately.

6.4 Where clause 6.3 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.

6.5 If the Contractor does not comply with any request made under clause 6.4 the Department may terminate this Contract in accordance with the provisions of clause 23.

6.6 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 Subcontractor has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Services;
- (d) the Subcontractor 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, conflict 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 23 and 24, 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 Subcontractor 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.

7. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 7.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item I.
- 7.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Department immediately.
- 7.3 The Department may request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services.
- 7.4 Where clauses 7.2 or 7.3 apply, the Department may request the Contractor to provide replacement personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.3 or clause 7.4, the Department may terminate this Contract in accordance with the provisions of clause 23.

8. RESPONSIBILITY OF CONTRACTOR

- 8.1 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 the Services; or

- (d) acceptance by the Department of replacement Contractor Personnel (including Specified Personnel).

9. DEPARTMENT MATERIAL

- 9.1 The Department agrees to provide Material to the Contractor as specified in Item J.
- 9.2 The Department grants to the Contractor for the 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 6) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Department Material solely for the purposes of this Contract.
- 9.3 The Contractor agrees to ensure that all Department Material is used strictly in accordance with any conditions or restrictions set out in Item K, and any direction by the Department.
- 9.4 Property in any copy of Department Material (in the form of a document, article or removable medium) vests or remains vested in the Department. The Contractor must:
 - (a) secure all copies of Department Material within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Contract, 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.
- 9.5 This clause survives the expiration or earlier termination of this Contract.

10. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 10.1 Intellectual Property in all Contract Material vests or will vest in the Department.
- 10.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Existing Material but 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 such Existing Material in conjunction with the other Contract Material.
- 10.3 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 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 6) to use, reproduce, modify, adapt, publish, perform, broadcast and

communicate the Intellectual Property in the Contract Material solely for the purposes of this Contract.

- 10.4 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.
- 10.5 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 in the manner provided for in this clause.
- 10.6 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.
- 10.7 This clause survives the expiration or earlier termination of this Contract.

11. MORAL RIGHTS

- 11.1 For the purposes of this clause, 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; or
 - (c) using the Contract Material in a different context to that originally envisaged,
- but does not include false attribution of authorship.
- 11.2 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 Department or any person claiming under or through the Department; 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 Department in relation to the Department's licensed use of such Material.

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

12. DISCLOSURE OF INFORMATION

12.1 Subject to clause 12.5, the Contractor must not disclose any Confidential Information relating to this Contract or the Services without prior approval in writing from the Department.

12.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 12.1 and the Contractor agrees to comply with these conditions.

12.3 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.

12.4 If the Contractor receives a request under clause 12.3, it agrees to promptly arrange for all such undertakings to be given.

12.5 The obligations on the Contractor under this clause will not be taken to have been breached where the Confidential Information is required by Law to be disclosed.

12.6 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.

12.7 The Department gives no undertaking to treat Contractor information, or this Contract, as Confidential Information. The Contractor acknowledges that the Department may disclose Confidential Information, 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 Department.

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

13. ACCESS TO DOCUMENTS

13.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.

13.2 This clause only applies if this is a Contract which complies with the description of 'Commonwealth contract'.

13.3 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.

13.4 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.

14. PROTECTION OF PERSONAL INFORMATION

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

14.2 In this clause, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) overseas recipient;
- (d) registered APP code (RAC); and
- (e) 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.

14.3 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 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 maintain reasonable safeguards against loss, unauthorised access, modification or disclosure, and other misuse, of Personal Information held in connection with the provision of Services under this Contract;
- (h) not to disclose Personal Information to an overseas recipient, or store or transfer Personal Information outside of Australia, without the prior written agreement of the Department;
- (i) 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, whether by the Contractor or any Subcontractor;
- (j) not use or disclose any Personal Information, obtained from the Department or otherwise in connecting with providing the Services under this Contract, for the purposes of direct marketing;
- (k) 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; and
- (l) 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.

- 14.4 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 (3) 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*.
- 14.5 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.
- 14.6 In assessing whether an Eligible Data Breach may have occurred, the Contractor must have regard to any relevant guidelines, resources or information developed and made available by the Office of the Australian Information Commissioner in relation to Eligible Data Breaches.
- 14.7 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, including the requirement in relation to subcontracts.
- 14.8 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.
- 14.9 If the Contractor receives a request under clause 14.8, it agrees to promptly arrange for all such undertakings to be given.
- 14.10 The Contractor agrees to indemnify 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 14.7.

14.11 The Contractor's obligations under this clause 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.

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

15. COMPLIANCE WITH LAWS AND POLICIES

15.1 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) any occupational health and safety legislation applicable to the Contractor;
- (l) the Australian Government's *Lobbying Code of Conduct*;
- (m) the *Protective Security Policy Framework* which is available at: [Protective Security Policy Framework website](#)
- (n) any fraud control guidelines issued by the Department of Finance from time to time; and
- (o) any other policies notified to the Contractor in writing or listed in Item C.

15.2 The Contractor acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.

15.3 The Contractor agrees, when using the Department's premises or facilities, to comply with all reasonable directions and procedures relating to occupational 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.

- 15.4 Without limiting the effect of clause 26, 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.
- 15.5 Clauses 15.6 to 15.9 only apply to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* ('the WGE Act').
- 15.6 The Contractor must comply with its obligations, if any, under the WGE Act.
- 15.7 If the Contractor becomes non-compliant with the WGE Act during the term of this Contract, the Contractor must notify the Department.
- 15.8 If the term of this Contract 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.
- 15.9 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

16. INDIGENOUS PROCUREMENT POLICY

- 16.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- 16.2 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.
- 16.3 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.
- 16.4 The Contractor must provide such written reports and evidence of its compliance with this clause 16 every 6 months during the time frame specified in Item D of the Schedule.

17. CONFLICT OF INTEREST

- 17.1 The Contractor warrants that, in providing the Services, it will respect and facilitate optimal choice for aged care consumers and that no corporate or other relationship between the Contractor and another organisation will influence, impact or restrict this choice due to a real, perceived or potential Conflict.
- 17.2 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at Commencement Date, no Conflict, except as disclosed in writing to the Department, exists or is likely to arise in the performance of obligations under this Contract by the Contractor or the Contractor Personnel.
- 17.3 If, during the 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 discretion of the Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.
- 17.4 If the Contractor fails to notify the Department under this clause 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 24.
- 17.5 The Contractor agrees that it will:
- (a) ensure that a situation does not arise which may result in a Conflict; and
 - (b) will 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 Term that is likely to conflict with or restrict the Contractor in providing the Services to the Department fairly and independently.

18. ACCOUNTABILITY AND ACCESS

- 18.1 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 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.

18.2 The rights referred to in clause 18.1 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.

18.3 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.

18.4 Without limitation to the generality of clause 18.3:

- (a) the assistance to be provided by the Contractor under clause 18.3 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 18.3 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.

18.5 The Department will endeavour to notify the Contractor as early as possible of any assistance required under clause 18.4, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.

18.6 The requirement for access under this clause does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Contract.

- 18.7 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.
- 18.8 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.
- 18.9 This clause survives the expiration or earlier termination of this Contract for a period of seven years.

19. SECURITY

- 19.1 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; and
 - (c) 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 19.1(a) and 19.1(b). 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.
- 19.2 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) it is responsible for all costs associated with obtaining and maintaining security clearances for the Contractor Personnel.
- 19.3 In this clause 19:
- (a) regardless of whether or not the first letter of any word is capitalised, 'Australian Government Information Security Manual', 'information security', 'personnel security', 'physical security', 'protective security', and 'security clearance', 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 19.1, or 19.2 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.

20. INDEMNITY

- 20.1 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.
- 20.2 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 rights of any person.
- 20.3 The Contractor's liability to indemnify the Department under clause 20.2 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.

- 20.4 The right of the Department to be indemnified under this clause:
- (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.

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

21. INSURANCE

21.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 21.2 or 21.3 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.

21.2 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 Term and a policy in like terms for seven years after the expiry or earlier termination of this Contract.

21.3 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 Term.

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

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

22. DISPUTE RESOLUTION

22.1 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 22.1(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.

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

22.3 This clause:

- (a) does not apply to action by the Department under or purportedly under clauses 3.2, 23 or 24; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

23. TERMINATION AND REDUCTION FOR CONVENIENCE

23.1 In addition to any other rights 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.

23.2 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 Department Material and Contract Material.

23.3 Where there has been a termination under clause 23.1, the Department will be liable only for:

- (a) payments and assistance under clause 3 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.

23.4 The Department will not be liable to pay compensation under clause 23.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item E.

23.5 The Contractor will not be entitled to compensation for loss of prospective profits or for any part of this Contract not performed.

- 23.6 If there is a reduction in the Services, the Department's obligation to pay any fee will abate proportionately to the reduction in the Services.
- 23.7 To avoid doubt, the Department has an unfettered discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause.

24. TERMINATION FOR DEFAULT

- 24.1 Where a Party fails to satisfy any of its obligations under this Contract, the other Party 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 24.1(b), by further notice, terminate this Contract immediately.
- 24.2 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 the case may be), an Insolvency Event occurs in respect of the Contractor; or
 - (b) the Contractor breaches a warranty listed in clause 26.

25. DEEMED TERMINATION FOR CONVENIENCE

- 25.1 If a purported termination for cause by the Department under clause 24 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 23 which termination has effect from the date of the notice of termination referred to in clause 24.

26. CONTRACTOR WARRANTIES AND UNDERTAKINGS

- 26.1 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 and 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 claim has not been paid;
- (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.

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

26.3 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.

26.4 Each representation and warranty survives the execution of this Contract.

27. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

27.1 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.

27.2 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.

28. WORK HEALTH AND SAFETY

28.1 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.

29. NOTICES

29.1 A Party giving notice under this Contract must do so in writing, including by email, 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.

29.2 The Parties agree that a notice given in accordance with clause 29.1 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;
- (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.

THE SCHEDULE

Item A Services and Subcontractors

Note to Tenderer: To be completed based on the Statement of Requirement at Schedule 1 of the RFT and the successful Tenderer's response.

Item B Required Contract Material

Please note that there are mandated accessibility requirements which may affect the content of Item B – see obligation on Contractor at clause 2.1(c).

Item C Standards and Best Practice

The Contractor must comply with all applicable Laws regarding working with Vulnerable Persons in relation to the provision of the Services including to:

- (a) ensure that, before engaging any Personnel in relation to the provision of the Services, ensure that no Law prohibits that Personnel from being engaged in a capacity where they may have contact with Vulnerable Persons; and
- (b) comply with all other legal requirements of the place where the Services, or part of the Services, is being conducted in relation to engaging Personnel in a capacity where they may have contact with Vulnerable Persons.

Item D Time-frame

Item E Fees

Item F Allowances and Costs

Item G Facilities and Assistance

Item H Invoice Procedures

Item I Specified Personnel

Item J Department Material to be provided by Department

Item K Use of Department Material

Item L Existing Material

Item M Dealing with Copies

Item N Insurance

The Contractor must take out and maintain the following insurances:

- (a) general liability insurance for an amount no less than \$20 million per claim;
- (b) professional indemnity insurance for an amount no less than \$10 million per claim;
- (c) an appropriate level of workers' compensation insurance for each of the States/Territories in which the Services are to be provided in;
- (d) where Contractor Personnel are operating as an individual, disability income insurance to the value of \$250,000 per claim; and
- (e) where Contractor Personnel include volunteers, voluntary workers' insurance to the value of \$150,000 per claim.

Item O Address for Notices

Department's Address for Notices:

Contractor's Address for Notices:

draft
THIS DOCUMENT HAS BEEN RELEASED
UNDER THE FREEDOM OF INFORMATION ACT 1982 (CTH)
BY THE DEPARTMENT OF HEALTH

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

SIGNED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** acting through the Department of Health ABN 83 605 426 759 on:

Date

by:

Printed name of signatory

Signature

Position of signatory

in the presence of:

Printed name of witness

Signature of witness

COMPANY – MULTIPLE DIRECTORS: **SIGNED** for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]* in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by:

Printed name of Director

Signature of Director

and:

Printed name of Director / Secretary

Signature of Director / Secretary

COMPANY – SOLE DIRECTOR: SIGNED for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]* in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by authority of its sole director and secretary:

Printed name of Sole Director and Secretary

Signature of Sole Director and Secretary

in the presence of:

Printed name of Witness

Signature of Witness

INDIVIDUAL: SIGNED by *[insert name of individual Participant/Contractor]*, ABN *[insert number]*:

Signature of [insert name]

on:

Date

in the presence of:

Printed name of witness

Signature of witness

PARTNERSHIP: SIGNED for and on behalf of *[insert name of partnership]*, ABN *[insert number]*, on:

Date

by:

Printed name of Partner

Signature of Partner

who warrants that they have authority to bind the partnership in this regard, in presence of:

Printed name of witness

Signature of witness

INCORPORATED ASSOCIATION: SIGNED for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]*, on:

Date

by affixing its common seal in accordance with its rules in the presence of:

Printed name of Public Officer

Signature of Public Officer

and:

Printed name of committee Member/secretary

Signature of committee member/secretary

OTHER AUTHORITY: SIGNED for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]*, on:

Date

by:

Printed name of Signatory

Signature

who warrants that they have authority to bind **[the authority or other descriptor]** in this regard, in the presence of:

Printed name of witness

Signature of witness

Signature of Director/Secretary

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