



Australian Government
Department of Defence

SOPVET

(STANDING OFFER PANEL VOCATIONAL EDUCATION AND TRAINING)

ADMINISTRATION MANUAL

DEED OF AGREEMENT

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SOPVET DEED OF AGREEMENT

NOTE: Table of Contents located within document's Table of Contents at start of document.

The Deed made between the Commonwealth of Australia represented by the Department of Defence A.B.N. 68 706 814 312 (the "Commonwealth") and as indicated in the Deed of Agreement Signatory Page } (the "Contractor").

RECITALS

- A. The Commonwealth from time to time may require the provision of Services identified in the Deed and specified in an Official SOPVET Contract.
- B. The Contractor has offered to provide the Services on the terms set out in the Deed.
- C. When the Commonwealth requires Services it shall submit an Official SOPVET Contract to the Contractor and the Contractor shall provide an unconditional acceptance before providing the Services in accordance with the Deed and the Official SOPVET Contract.

THE PARTIES AGREE AS FOLLOWS

CONDITIONS OF CONTRACT

1 CONTRACT FRAMEWORK

1.1 Definitions

1.1.1 In the Contract, unless the contrary intention appears:

“**Attachment**” means an attachment to the Contract listed in the table of contents.

“**Background IP**” means IP, other than Third Party IP, that:

is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Contract;

is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services; and

is listed in the the Attachment A - Statement of Work..

“**Commercial-in-Confidence Information**” means information including trade secrets, know-how and any information comprised in Technical Data that:

is by its nature confidential; or

the receiving party knows or ought to know is confidential;

but does not include information which:

is or becomes public knowledge other than by breach of the Contract;

is in the possession of a party without restriction in relation to disclosure before the date of receipt; or

has been independently developed or acquired by the receiving party.

“**Commonwealth Representative**” means the person holding or performing the office of Defence’s SOPVET Contract Manager or any other person appointed pursuant to the Contract as the Commonwealth Representative.

“**Contract**” means the conditions of contract, the Attachments including A - Statement of Work, B – Commercial Schedule, C – Intellectual Property Schedule, D – Commercial-in-Confidence Information, E – Contract Change Requests and any document expressly incorporated as part of the Contract.

“**Contract Price**” means the amount set out in Attachment B – Commercial Schedule and which excludes personnel and miscellaneous expenses.

“**Contractor Furnished Materials**” (CFM) means the material not furnished by Defence, but required and provided by the Contractor for the Contract and which is

listed in Attachment A - Statement of Work; required materials which are not included in GFM are considered to be the Contractor's responsibilities as part of the CFM.

“**day**” means a calendar day.

“**Defence**” means the Australian Department of Defence.

“**DPPM**” means the *Defence Procurement Policy Manual* version as specified in Project Definition Attachment A: Statement of Work.

“**document**” includes:

any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and

any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.

“**Defence Purposes**” means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes purposes that are necessary or incidental to that purpose.

“**Effective Date**” means the date on which an Official SOPVET Contract has been presented by the Commonwealth Representative to the Contractor and unconditionally accepted in writing by the Contractor, or if presented and accepted on different dates, the date of unconditional acceptance.

“**Foreground IP**” means IP which is created under or otherwise in connection with the Contract, other than Third Party IP.

“**Government Furnished Material**” (GFM) means the material listed in Project Definition Attachment A: Statement of Work and to be provided under the Contract by Defence to the Contractor for a duration which will support the efficient and effective completion of the Contract.

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions “adjustment note”, “taxable supply” and “tax invoice” have the meanings given to those expressions in the GST Act.

“**Intellectual Property**” or “**IP**” means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know-how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

“**month**” means a calendar month.

“**Moral Rights**” means:

- a right of attribution of authorship;
- a right not to have authorship falsely attributed; or
- a right of integrity of authorship.

“Official SOPVET Contract” means SOPVET contract (Template B - SOPVET CONTRACT), Project Definition (Template D – PD Attachments), conditions of contract (Appendix A – SOPVET Deed of Agreement) and arrangements (SOPVET Administration Manual).

“Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Services” means the services and goods to be provided under the Contract, including documents, equipment, reports, Intellectual Property, Technical Data, plans, charts, drawings, calculations, tables, schedules, models, software, goods, information and data stored by any means, that are:

- brought, or required to be brought into existence, as part of, or for the purposes of, performing the Services;
- incorporated in, supplied, or required to be supplied along with the Services; or
- copied or derived from the material provided.

“Specified Personnel” means the personnel specified in Attachment A - Statement of Work as personnel required to undertake the Services or part of the work constituting the Services.

“Statement of Work” (SOW) means the statement of the work at Project Definition Attachment A and includes any specification referred to in the Statement of Work.

“Subcontractor” means any person (excluding Defence) that for the purposes of the Contract, furnishes Services directly to the Contractor or indirectly to the Contractor through another person; and “Subcontract” has a corresponding meaning.

“Technical Data” or “TD” means all technical know-how and information reduced to material form produced or acquired by the Contractor or Subcontractors in relation to the Services and includes all data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, software design data, software updates and other items describing or providing information relating to the Services or their operations.

“Third Party IP” means that IP which is owned by a party other than the Commonwealth or the Contractor and is embodied in the Services, or attaches to the Services or is otherwise necessarily related to the functioning or operation of the Services, and is not limited to commercial off the shelf items.

“Working Day” in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

1.2 Interpretation

- 1.2.1 In the Contract, unless the contrary intention appears:
- a. headings are for the purpose of convenient reference only and do not form part of the Contract;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to one gender includes the other;
 - d. a reference to a person includes individual people, body politic, body corporate or a partnership;
 - e. where the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
 - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - g. a reference to a clause includes a reference to a subclause of that clause;
 - h. a reference to a “dollar”, “\$”, “\$A” or AUD means the Australian dollar unless otherwise stated;
 - i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
 - j. the word “includes” in any form is not a word of limitation; and
 - k. a reference to a party includes that party’s administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.
- 1.2.2 The objectives of the parties in entering into this Deed are:
- a. to ensure that the Contractor delivers the Services on time, on budget, to the required safety, quality and capability, in accordance with the Deed and any contract;
 - b. to provide an effective capability to the ADF that:
 - supports the ADF’s mission to ‘fight and win’; and
 - supports the Commonwealth’s policy of Defence self-reliance;

- c. to develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the Contractor;
- d. to obtain for the Contractor as a commercial entity a reasonable return on its investment when it performs the deed and any contract efficiently and successfully, and a return that appropriately reflects properly managed risks involved in the performance of the deed and any contract;
- e. to have appropriate IP for acquisition, whole of life support and disposal;
- f. to facilitate the retention and enhancement of strategically important Australian capabilities and skills;
- g. to encourage the most efficient possible use of resources for the achievement of vocational education and training; and
- h. to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.

1.2.3 Without in any way affecting or overriding the other terms of this Deed, each party agrees to perform its obligations and enforce its rights under the Deed having regard to, and with the aim of, satisfying the objectives described in clause 1.2.2.

1.3 Commencement of Operation

1.3.1 The Contract commences on the Effective Date.

1.4 Entire Agreement

1.4.1 The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

1.5 Precedence of Documents

1.5.1 If there is any inconsistency between provisions of the Contract, a descending order of precedence shall be accorded to:

- a. the conditions of contract;
- b. the Statement of Work as specified in Attachment A;
- c. the Attachments other than Attachment A - Statement of Work; and
- d. any document incorporated by express reference as part of the Contract,

so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

1.6 Contracted Requirement

1.6.1 The Contractor shall, for the Contract Price and any other payment required under the Contract, provide the Services and fulfil all its other obligations under the Contract.

2 ROLES AND RESPONSIBILITIES

2.1 Commonwealth Representative

- 2.1.1 The Commonwealth Representative is responsible for administering the Contract on behalf of the Commonwealth. The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of the Contract. If given orally a direction shall be confirmed in writing within 14 days. Unless otherwise specified in the Contract, the Commonwealth Representative shall have no authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 8.1.

2.2 Notices

Unless the contrary intention appears, any notice or communication under the Contract shall be valid if it is in writing, signed and delivered to the Commonwealth Representative or Contractor's representative, as the case may be, at the address as specified in Attachment A – Statement of Work.

- 2.2.1 A notice or communication shall be deemed to have been delivered:
- a. by prepaid post, in 3 Business Days if sent within Australia and in 8 Business Days if sent by air mail from one country to another; or
 - b. by facsimile, at the time recorded by the transmitting machine, unless within 1 Working Day the sender is informed that the transmission was received in incomplete or garbled form; in which case a re-transmitted notice or other communication shall be received when it is effectively delivered in accordance with clause 2.2.

3 PROVISION OF THE SERVICES

3.1 Language and Measurement

3.1.1 All information delivered as part of the Services under the Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960* or if Services are imported, units of measurement as agreed by the Commonwealth Representative.

3.2 Government and Contractor Furnished Material

3.2.1 The Commonwealth shall provide GFM to the Contractor as specified in Attachment A – Statement of Work.

3.2.2 For use during the Contract, the Commonwealth shall also provide (unless the contrary is specified in Attachment A – Statement of Work) a desk, chair, document storage and utilities (lighting and power) for each of the Contractor's professional staff concurrently working on the contracted project.

3.2.3 The Commonwealth grants or shall procure a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the GFM for the purposes of the Contract.

3.2.4 The Contractor shall ensure that all GFM is used strictly in accordance with any conditions or restrictions set out at Attachment A– Statement of Work, and any direction by the Commonwealth.

3.2.5 The Contractor is required to provide to each of their personnel working on the project a personal workstation, including laptop (or personal computer) and software (including MS-WORD, MS-EXCEL, MS-ACCESS, MS-PowerPoint and MS-Project) and office supplies as required during the SOPVET assignment. Contractor is also to supply for their personnel's use telecommunications, printer and supplies as these are required. Contractor's equipment is not allowed to be connected to Defence's network, which also restricts the use of CD/DVD burners and USB ports.

3.2.6 The Contractor shall provide CFM for use on the Contract as specified in Attachment A - Statement of Work.

3.2.7 The Contractor grants or shall procure a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the CFM for the purposes of the Contract.

3.2.8 The Contractor shall ensure that all CFM is used in connection with the Services and strictly in accordance with any conditions or restrictions set out at Attachment A – Statement of Work, and any direction by the Commonwealth.

3.2.9 Any materials not included in GFM and CFM are considered to be materials furnished by the Contractor unless specifically included by the Commonwealth Representative within the GFM by a Contract variation.

3.3 Contracted Deliverables and Outcomes

- 3.3.1 Where applicable, the Contractor will present both hard (printed) and soft (on CD/DVD) copies of the outcomes and/or deliverables which are to be reviewed by Defence for acceptance approvals.
- 3.3.2 Delivery should be performed in a timely manner, avoiding large volumes being delivered at one time.
- 3.3.3 At Project Management Meetings, anticipated delivery of outcomes and deliverables should be discussed, so Defence may efficiently and effectively plan for SME resources to perform the review process.
- 3.3.4 Defence will make its best efforts to review and provide formal acceptance (using SOPVET Sign-Off and Approval Form) of contracted deliverables within ten (10) days or as otherwise specified in Attachment A – Statement of Work. Acceptance may be ‘Accepted’ (final acceptance allowing 40% final deliverable payment to be made), ‘Conditionally Accepted’ (specified conditions have to be met before deliverable is re-reviewed), ‘Rejected’ (because of poor quality or incompleteness the deliverable was not able to be fully reviewed and therefore unable to be conditionally accepted).

3.4 Governance

- 3.4.1 The Defence Contract Manager and Contractor Contract Manager (and/or their nominated representatives) shall attend (or telephone conference or electronically communicate) Project Management Meetings to report and discuss project (financial, resource, personnel, deliverables, etc) performance and address challenges that may have arisen.
- 3.4.2 The Project Management Meeting shall be preceded by the Contractor’s Project Manager preparing and distributing (at least 24 hours in advance) a Project Status Report (see template **G** – SOPVET PSR (Project Status Report)). After the meeting, the Project Status Report shall be updated and circulated to appropriate personnel (Sponsor, Contract Managers, etc).
- 3.4.3 Best efforts shall be undertaken by Defence and the Contractor to hold Project Management Meetings on a maximum monthly basis or as otherwise specified in Attachment A – Statement of Work.
- 3.4.4 At Project Management Meeting, the project’s risks and issues, which may effect the successful completion of the project and/or quality of deliverables, should be identified and discussed including but not limited to:
- a. Personnel Resourcing Issues: Contractor and Defence personnel requirements for next fortnight and beyond, including availability issues (including leave, etc), personnel issues (personal, professional;
 - b. Scheduling Issues: progress against schedule and unanticipated delays; and

- c. Quality and Conformity Issues: correctness and completeness, fit for purpose, conformity to standards and linguistic quality.
- 3.4.5 At Project Management Meetings, the Project's Key Performance Indicators (KPI) shall be discussed and recorded in the Project Status Report.

3.5 Time Recording

- 3.5.1 Specified Personnel shall maintain template E - SOPVET Timesheets.
- 3.5.2 SOPVET Timesheets will be filled-in at least once per day (preferable at each start and stop of work) by the personnel.
- 3.5.3 At end of each month, the timesheets will be printed and signed by personnel, Contractor's Project Manager and Defence's Project Manager. Signed copies and a softcopy will be given to the Defence Project Manager each month.

3.6 Work Product

- 3.6.1 Where a Contractor's work product is not located on Defence's network, at each Project Management meeting, the Contractor's Project Manager shall present to Defence's Project Manager a softcopy (CD or DVD) of all work product created by the project team to date. Work product includes, but is not necessarily limited to, documents, spreadsheets, databases, graphics and other digital items created to progress the project. This is to include all work products whether notes, preliminary, draft, ready for review or final.
- 3.6.2 This progressive transfer of data and information will act as a Defence back-up of project materials, reducing the risk of loss by the Contractor. When it is deemed necessary, it will also enable Defence's Project Manager to assure themselves of the progress of the project and quality of work being performed.

4 INTELLECTUAL PROPERTY

4.1 Ownership of Intellectual Property

- 4.1.1 Nothing in the Contract affects the ownership of Background IP or Third Party IP.
- 4.1.2 Ownership of all Foreground IP vests on its creation in the Commonwealth which has the exclusive right to apply for registration of that Foreground IP in all countries of the world.

4.2 Intellectual Property Licence

- 4.2.1 The Contractor grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP as part of the Services and owned by the Contractor, including the right to sub-licence to use, maintain, modify, develop and dispose of the Services for Defence Purposes.
- 4.2.2 The Contractor shall ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.
- 4.2.3 The Commonwealth may, on request, grant the Contractor a licence to exercise Foreground IP owned by the Commonwealth. A licence to use Foreground IP for teaching, academic or research purposes will not be unreasonably withheld.

4.3 Provision of Technical Data

- 4.3.1 The Contractor shall provide with the Services, all Technical Data (TD) necessary to allow the Commonwealth to exercise its IP rights as defined in clause 4.
- 4.3.2 The Contractor shall ensure that all TD provided to the Commonwealth under this clause 4 will enable a person reasonably skilled in performing the acts referred to in clause 4 to perform those acts efficiently and effectively.

4.4 IP Schedule

- 4.4.1 The Contractor shall maintain and update Attachment C – Intellectual Property Schedule.
- 4.4.2 The Contractor shall deliver updated versions of Attachment C – Intellectual Property Schedule by submitting Contract change proposals in accordance with clause 8.1, to reflect the changes to Attachment C – Intellectual Property Schedule.

4.5 Release to Third Parties

- 4.5.1 If the Commonwealth makes available to another person any Background IP owned by the Contractor, the Commonwealth shall obtain from that person a deed of confidentiality.

4.6 Moral Rights

- 4.6.1 Where the Contractor is a natural person and the author of the Services, he or she

consents to:

- a. the performance of any acts permitted under clause 4.2; and
- b. any dealings with the Foreground IP by the Commonwealth, its licensees, or any person authorised by the Commonwealth to exercise the Commonwealth's rights as owner of the Foreground IP pursuant to clause 4.1;

with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Services by the Commonwealth or any person claiming under or through the Commonwealth.

4.6.2 In any other case, the Contractor shall:

- a. obtain from each author a written consent which extends directly or indirectly to
 - (i) the performance of acts permitted under clause 4.2.1; and
 - (ii) any dealings with the Foreground IP by the Commonwealth, its licensees, or any person authorised by the Commonwealth to exercise the Commonwealth's rights as owner of the Foreground IP pursuant to clause 4.1;
 - (iii) with or without attribution of authorship (but excluding an act amounting to false attribution of authorship) to all or any part of the Services by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
- b. upon request, provide the executed original of any such consent to the Commonwealth.

4.6.3 This clause 4.6 does not apply to any GFM incorporated in the Services.

5 PRICE AND PAYMENT

5.1 Price and Price Basis

- 5.1.1 The Contract Price is set out in Attachment B - Commercial Schedule to the Contract, and is payable, subject to satisfactory performance of the Services, in accordance with the Contract. Unless noted otherwise, all prices and rates listed in the Contract are unalterable.
- 5.1.2 The Commonwealth shall be entitled, without derogating from any other rights it may have, to defer payment of a claim until the Contractor has completed, to the satisfaction of the Commonwealth Representative, that part of the Services to which the claim relates.

5.2 Payment

- 5.2.1 The Contractor shall submit a claim for payment in accordance with Attachment B – Commercial Schedule.
- 5.2.2 On receipt of a claim for payment the Commonwealth Representative shall within 14 days either:
- a. approve the claim where it is submitted in accordance with clause 5.2.1 and where the Services are to the satisfaction of the Commonwealth; or
 - b. reject the claim.
- 5.2.3 Where a claim is approved under clause 5.2.2, the Commonwealth shall make payment within 30 days of the approval of the claim.
- 5.2.4 Where the Commonwealth Representative rejects the claim, the Commonwealth Representative shall, within 14 days of rejection of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection, which may include that the Services do not conform with the requirements of the Contract, and any action to be taken by the Contractor for the claim to be rendered correct for payment.
- 5.2.5 Upon receipt of a notice issued pursuant to clause 5.2.4, the Contractor shall immediately take all necessary steps to make the Services and the claim for payment conform to the requirements of the Contract and shall submit a revised claim to the Commonwealth Representative when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.
- 5.2.6 It is Commonwealth policy to pay its Contractors by direct credit. If it has not done so in the past, the Contractor should, with the acceptance of a purchase order, provide Defence's Contract Manager with details of the bank account into which payments should be directed.
- 5.2.7 Claims for payment forwarded by the Contractor shall be correctly addressed, and shall include the following information:

- a. SOPVET Project's name;
 - b. contract reference (and/or purchase order number);
 - c. sequential number of the invoice within the SOPVET Assignment;
 - d. name of the Contractor's Contract Manager;
 - e. name of Defence's Contract Manager;
 - f. itemised details of invoice amounts (date and/or period in which goods/services were received, description of good or name service provider's personnel, quantity / number of billable hours), date, task item, number of hours (where applicable), rate and amount; and
 - g. total invoice amount (excluding GST), amount of GST, and invoice total (including GST).
- 5.2.8 All claims for payment are to be submitted to Defence's Contract Manager at the address specified in the Statement of Work.
- 5.2.9 For each Milestone Deliverable (Attachment B – Commercial Schedule 1.1.1.d), 60% of Milestone Amount may be invoiced on the monthly invoice after Defence has accepted draft deliverable for review, while the remaining 40% shall be invoiced on the monthly invoice after the deliverable's final acceptance as evidenced by signed Acceptance Form.

5.3 Price Variations

5.3.1 Fixed Price Contract

- a. For the first twenty-four (24) months of the Contract, the contract price, service rates and miscellaneous charge rates are fixed.
- b. Only after the 24 months, the Contractor's Contract Manager may apply to Defence's Contract Manager for increases as follows:

The Unpaid Amount of the Contract Price (UACP) may be increased by $UACP \times V/V_0 - UACP$ where V (index number¹ of the quarter containing the Contract Date + 24 months) and V₀ (index number of the quarter of the Contract Date). At the end of 36 months, the UACP may be increased by $UACP \times V/V_0 - UACP$ where V (index of quarter containing Contract Date + 36 months) and V₀ (index number of the quarter containing the Contract Date + 24 months). For subsequent years, the same process will apply where the V and V₀ values will advance 12 months.

If Contractor is concerned about receiving no variance for twenty-four months, then they should take this into consideration when submitting the proposal

5.3.2 T&M Contract

- a. For the first twelve (12) months the Contracted Service Rates (CSR) are fixed.

¹ Index Number as stated in the ABS Catalogue 6345 (for Australian Rates) Table 6, Private Sector – Education.

- b. Only after 12 months, the Contractor's Contract Manager may apply to Defence's Contract Manager for increases as follows:

The CSR may be increased by $CSR \times V/V_0 - CSR$ where V (index number of the quarter containing the Contract Date + 12 months) and V_0 (index number of the quarter of the Contract Date). At the end of 24 months, the CSR may be increased by $CSR \times V/V_0 - CSR$ where V (index of quarter containing Contract Date + 24 months) and V_0 (index number of the quarter containing the Contract Date + 12 months). For subsequent years, the same process will apply where the V and V_0 values will advance 12 months.

5.4 Ownership and Control of Services

- 5.4.1 Subject to clause 4, ownership of Services shall pass to the Commonwealth upon payment of a claim relating to those Services in accordance with clause 5.
- 5.4.2 Where ownership of the Services vests in the Commonwealth, the Contractor shall deliver to the Commonwealth all Services remaining in its possession upon expiration or termination of the Contract.

5.5 Taxes and Duties

- 5.5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract shall be met by the Contractor and shall be included within the Contract Price.
- 5.5.2 The Contract Price set out in Attachment B includes Goods and Services Tax (GST) for Services to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.
- 5.5.3 The Contractor shall submit each claim for payment pursuant to clause 5 in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.
- 5.5.4 Where the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 5.5.5 If the Commonwealth makes, or is assessed by the Australian Taxation Office (ATO) as having made, a taxable supply to the Contractor under or in connection with the Contract, the Commonwealth shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 5.5.6 Any amount of GST to be paid by the Contractor under clause 5.5.5 shall be a debt recoverable by the Commonwealth.

5.6 Personnel and Miscellaneous Expenses

- 5.6.1 Where the Commonwealth Representative has provided its prior consent, the Contractor shall be entitled to reimbursement for personnel expenses including travel, accommodation and incidentals, and daily sustenance expenses.
- 5.6.2 Travel expenses shall be reimbursed to a maximum of the actual cost where the Contractor has used best efforts in obtaining competitive economy travel.
- 5.6.3 Accommodation and incidentals expenses shall be reimbursed to a maximum of the actual cost where the Contractor has used best efforts in obtaining competitive accommodation to the maximum specified within the Commonwealth Non SES Travelling Allowance rates for accommodation and incidentals.
- 5.6.4 Daily sustenance (breakfast, lunch and dinner) shall be compensated at the rates specified within Commonwealth Non SES Travelling Allowance rates for breakfast, lunch and dinner, but only where the Contractor's personnel has had to be accommodated overnight.
- 5.6.5 As an alternative to reimbursement of such expenses, and at the discretion of the Commonwealth Representative, the Commonwealth may undertake to arrange travel and accommodation required by the Contractor's personnel for the purposes of the Contract. The Contractor shall promptly supply all necessary information required by the Commonwealth Representative to make these arrangements.
- 5.6.6 All claims for personnel expenses reimbursement shall be recorded on the personnel's timesheets and be verifiable through receipts except for daily sustenance expenses. If requested by the Commonwealth Representative, the Contractor shall provide satisfactory evidence to substantiate any specified claim for reimbursement of travel, accommodation and incidentals prior to any payment of the related claim.
- 5.6.7 All expenses require prior approval of the Commonwealth Representative and will be reimbursed at the rates specified in the Contract.
- 5.6.8 Personnel expenses and miscellaneous expenses shall be reimbursable to the maximums specified in Attachment B – Commercial Schedule. It is the responsibility of the Contractor to ensure that these maximum totals are not exceeded. The Commonwealth Representative will only approve contract variations where there has been a change of circumstances outside of the control of the Contractor.
- 5.6.9 Travelling Allowance Rates provided to the Contractor under the Contract have been supplied to the Department of Defence under licence by the Department of Employment and Workplace Relations for Defence Purposes only. The Contractor shall not make public or disclose the Travelling Allowance Rates to other agencies, organisations or individuals without the prior written consent of the Department of Defence. This clause shall survive the expiration or termination of the Contract and shall apply regardless of whether the Travelling Allowance Rates are or become public knowledge.

5.7 Investigation of Costs and Prices

- 5.7.1 The Commonwealth reserves the right to investigate all costs and pricing matters in relation to the Contract, including those associated with submissions of claims for payment.
- 5.7.2 In order to assist in the investigation of any costs and pricing matters, the Contractor shall provide, and ensure that any Subcontractors provide, the Commonwealth, or any person nominated by the Commonwealth, with full access to the Contractor's or Subcontractor's records and accounts relating to the Contract. The Commonwealth shall seek the prior written approval of the Contractor, which shall not be unreasonably withheld, for any person nominated by the Commonwealth who is not an officer of the Commonwealth, prior to the Contractor granting access to the Contractor's or Subcontractor's records.

6 INSURANCE AND LIABILITY

6.1 Indemnity

6.1.1 The Contractor shall indemnify the Commonwealth, its officers, employees and agents against liability, loss, damage, costs (on a solicitor and own client basis) and expenses arising out of or as a consequence of a default or unlawful or negligent act or omission on the part of the Contractor, its officers, employees, agents or Subcontractors. The Contractor's liability to indemnify the Commonwealth shall be reduced proportionally to the extent that any act or omission on the part of the Commonwealth or any person acting through the Commonwealth contributed to the liability, loss, damage, costs or expenses.

6.2 Insurance

6.2.1 Before commencing work under the Contract, the Contractor shall:

- a. be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Contractor, including liability under statute and common law;
- b. have professional liability insurance and other insurances as specified in Attachment A – Statement of Work.

6.2.2 The Contractor shall ensure each Subcontractor is insured against the Subcontractor's corresponding liabilities.

6.2.3 The Contractor shall maintain the insurance or registration required under this clause 6.2 for the duration of the work under the Contract and for the obligations that survive expiry or termination of the Contract, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth. The Contractor shall, on request, produce satisfactory evidence of the insurance to the Commonwealth Representative.

6.3 Liability

6.3.1 The liability of either party for breach of this Contract or for any other common law or statutory cause of action arising out of the operation of this Contract will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

6.3.2 Liability arising under this clause 6.3 will be limited to three times the value of the Contract or \$5.0 million whichever is higher unless otherwise specified in the Statement of Work. Unless expressly stated otherwise in the Statement of Work, the limit on liability specified by clause 6.3.2 will apply for the benefit of both parties in respect of each single occurrence or a series of related occurrences arising from a single cause. Except as otherwise provided in the Statement of Work, this limitation does not apply to liability for:

- a. personal injury, including sickness and death;
- b. loss of, or damage to, tangible property;

- c. an indemnity in respect of third party claims under clause 6.1; or
 - d. infringement of Intellectual Property Rights.
- 6.3.3 The liability of a party ('the party at fault') for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Contract and/or to the extent that the negligence of the other party has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.
- 6.3.4 The Contractor will not be held accountable for a failure to meet its contractual obligations to the extent that the failure is attributable to the provision by the Commonwealth of inaccurate or incomplete information which is required by the Contractor for the purposes of the Contract. The Contractor must notify the Commonwealth as soon as practicable if it becomes aware that the provision by the Commonwealth of incomplete or inaccurate information in any instance might prevent the Contractor from complying with its obligations under this Contract.
- 6.3.5 Clause 6.3 will survive the termination or expiry of this Contract.

7 WARRANTIES

7.1 Fitness for Purpose

7.1.1 The Contractor warrants that the Services provided under the Contract shall be fit for the purpose or purposes for which Services of that kind would be reasonably expected to be applied by the Commonwealth.

7.2 Warranties and Representations

7.2.1 The Contractor warrants that it has the necessary expertise, experience, capacity and capability required to perform the Services in a proper, professional manner consistent with best industry practice and that the Services shall conform with the requirements of the Contract.

7.2.2 The Contractor shall remedy any errors or defects in the Services that are notified to the Contractor by the Commonwealth Representative during the “warranty period” as specified in Attachment A – Statement of Work starting from the delivery of Services.

7.2.3 The liability of the Contractor to remedy errors or defects in the Services under clause 7.2 shall not apply to the extent that the defect arises from the Commonwealth’s negligent or wilful damage of the Services.

7.2.4 The Contractor, unless the Commonwealth Representative otherwise allows, shall meet all costs of, and incidental to the discharge of the warranties under clause 7.2.

7.2.5 The Contractor acknowledges that the Commonwealth enters into the Contract in reliance on the Contractor’s warranties in this clause 7.2, and the Contractor’s skill and judgement in rendering the Services.

7.2.6 Where the Contractor fails within the “rectification period” as specified in Attachment A – Statement of Work after notification by the Commonwealth Representative, to rectify a defect pursuant to clause 7.2 the Commonwealth, without limiting the Contractor’s warranties and obligations under clause 6.3.4, may perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt to the Commonwealth in accordance with clause 10.4.

7.2.7 The rights and remedies provided in clause 7.2 are in addition to, and shall not limit, any other rights of the Commonwealth under the Contract or otherwise.

7.3 Conflict of Interest

7.3.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry at the date of signing the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its officers, employees, agents or Subcontractors.

7.3.2 If during the term of the Contract a conflict of interest arises, or appears likely to arise, the Contractor undertakes to notify the Commonwealth immediately in writing and to take such steps as the Commonwealth may reasonably require to resolve or otherwise

deal with the conflict. If the Contractor fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate the Contract in accordance with the provisions of clause 10.2.

- 7.3.3 The Contractor shall not, and shall ensure that any officer, employee, agent or Subcontractor of the Contractor does not, engage in any activity or obtain any interest during the course of the Contract that is likely to conflict with or restrict the Contractor in providing the Services to the Commonwealth fairly and independently.

8 CONTRACT MANAGEMENT

8.1 Change to the Contract

8.1.1 Either party may propose a change to the Contract. The Contract may only be varied in writing and signed by both parties using Attachment E - Contract Change Request Form. Where both parties sign a change to the Contract the Commonwealth Representative shall issue an amendment to the Contract. The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the variation is in accordance with clause 8.1.

8.2 Waiver

8.2.1 Failure by either party to enforce a provision of the Contract shall not be construed as in any way affecting the enforceability of that provision or the Contract as a whole.

8.3 Commercial-in-Confidence Information

8.3.1 Where in connection with the Contract, Commercial-in-Confidence Information is provided or produced, the relevant party shall ensure that any person receiving or producing the information protects the confidential nature of the information, except:

- a. where disclosure of the information is required by law or statutory or portfolio duties; or
- b. to the extent that the Commonwealth would be prevented from exercising its Intellectual Property rights under the Contract but subject to clause 4.5.1.

8.3.2 The Commonwealth may at any time require the Contractor to give and to arrange for its officers, employees, agents and Subcontractors engaged in performance of the Services to give written undertakings in a form required by the Commonwealth relating to the non-disclosure of specified material. The Contractor shall promptly arrange for such undertakings to be given.

8.3.3 Where it is necessary to disclose Commercial-in-Confidence Information belonging to the other party, to a third party, other than a legal adviser or for a purpose within an exception listed in clause 8.3.1 the party wishing to make the disclosure shall obtain the written consent of the other party to the Contract.

8.3.4 The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term "Commercial-in-Confidence" or the Contractor's equivalent. The marking of information as "Commercial-in-Confidence" shall not affect the legal nature and character of the information.

8.3.5 The parties agree that the conditions of contract and Attachments, or the parts of them, listed in Attachment D are Commercial-in-Confidence Information to the relevant party as at the Effective Date.

8.4 Assignment and Novation

8.4.1 Neither party may, without the written consent of the other, assign in whole or in part,

its rights under the Contract.

- 8.4.2 Where the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify the Commonwealth Representative within a reasonable period prior to the proposed novation.

8.5 Negation of Employment and Agency

- 8.5.1 The Contractor shall not represent itself, and shall ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 8.5.2 Without limiting clause 8.5.1, the contractor shall clearly identify itself, and shall ensure that its officers, employees, agents and Subcontractors clearly identify themselves, as a contractor to the Commonwealth when communicating through telephone, facsimile, email or any other communication tool in the course of performing the Services.
- 8.5.3 The Contractor, its officers, employees, agents and Subcontractors shall not by virtue of the Contract be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.

8.6 Commonwealth Access

- 8.6.1 During the performance of the Contract, the Contractor shall permit the Commonwealth Representative or any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts in connection with performance of work under the Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.
- 8.6.2 Without limiting the generality of clause 8.6.1, the purposes for which the Commonwealth Representative may require access include:
- a. investigating the reasonableness of proposed prices or costs in any Contract change proposal submitted in accordance with clause 8.1;
 - b. inspecting, conducting or checking stocktakes of Government Furnished Material, or removing Government Furnished Material no longer required in the performance of the Contract; and
 - c. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP.
- 8.6.3 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor safety and security requirements or codes of behaviour for the premises.

8.7 Contractor Access

- 8.7.1 The Commonwealth shall allow the Contractor or its Specified Personnel access to Commonwealth premises for the purpose of performing the Contract.

- 8.7.2 The Contractor shall comply with, and require persons afforded access under clause 8.7 to comply with, any relevant Commonwealth safety requirements, regulations, standing orders, or codes of behaviour for the Commonwealth premises.
- 8.7.3 The Commonwealth retains the right to deny access on occasions to the Contractor or its Specified Personnel because of safety and security arrangements or as a result of failure by the Contractor or Specified Personnel to comply with clause 8.9.

8.8 Subcontracts

- 8.8.1 The Contractor shall not subcontract any part of the work without the prior written approval of the Commonwealth Representative.
- 8.8.2 The Contractor, by subcontracting any part of the work under the Contract shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 8.8.3 The Contractor shall not enter into a Subcontract under the Contract with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Equal Opportunity for Women in the Workplace Act 1999.
- 8.8.4 The Contractor shall on request make available to the Commonwealth Representative details of all Subcontractors engaged in activities in respect to this Contract and the Contract shall agree to public disclosure of the names of any Subcontractors engaged in activities in respect to this Contract. The Contractor shall ensure that the contracts between the Contractor and these Subcontractors include provision for these requirements.

8.9 Defence Security

- 8.9.1 Where the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence, the Contractor shall:
- a. comply with any security requirements notified to the Contractor by the Commonwealth Representative from time to time, including those specified in Attachment A – Statement of Work; and
 - b. ensure that any of its personnel or Subcontractors are aware of the Commonwealth's security requirements and comply with those requirements.
- 8.9.2 The Contractor shall, and shall arrange with any of its personnel or Subcontractors involved in the provision of Services, to:
- a. agree to and co-operate with any security checks or clearances as required by the Commonwealth;
 - b. notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and

- c. provide any written undertakings in respect of security or access to the Commonwealth's place, area or facility in the form required by the Commonwealth.

8.9.3 The Contractor shall ensure that, where a Subcontractor is required to have access to security classified information, the Subcontractor possesses a facility clearance of the appropriate type and level of classification, issued by the Defence Security Authority in the case of an Australian based Subcontractor or the relevant government industrial security authority in the case of an overseas based Subcontractor where Australia has a bilateral security agreement in place.

8.9.4 The Contractor shall ensure the requirements of clause 8.9 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information in order to perform the obligations of the Subcontract.

8.10 Security Clearances

8.10.1 **Information Security Clearance** (as specified in Attachment A – Statement of Work clause 3.1)

- a. The security classification of work to be performed under the Contract will be up to and including RESTRICTED level. The Contractor shall comply with the requirements of Defence industrial security policy as set out in Part I of the Defence Security Manual (DSM), as amended from time to time.
- b. All security classified information furnished or generated under the Contract, shall not be released to a third party, including a representative of another country, without prior written approval of the originator through the Defence's Contract Manager.
- c. The Contractor shall promptly report to the Defence's Contract Manager any instance in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country.
- d. All security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the provisions of the Defence industrial security policy, as set out in Part I of the DSM, as amended from time to time.

8.10.2 **Personnel Security Clearance** (as specified in Attachment A – Statement of Work clause 3.2)

The security classification of work to be performed under the Contract will be up to and including the level specified in Attachment A – Statement of Work clause 3.2.a. The Contractor shall possess a personnel facility clearance at the level specified in Attachment A – Statement of Work clause 3.2.b and shall comply with the requirements and procedures of Part I of the Defence Security Manual (DSM) as amended from time to time.

8.10.3 **Facility Security Clearance:** (as specified in Attachment A – Statement of Work clause

3.3)

The security classification of work to be performed under the Contract will be up to and including the level specified in Attachment A – Statement of Work clause 3.3.a. The Contractor shall possess a facility security clearance at the level specified in Attachment A – Statement of Work clause 3.3.b for the level specified in Attachment A – Statement of Work clause 3.3.c and shall comply with the requirements and procedures of Part I (Defence Industrial Security Program) and Part C (Information Security) of the Defence Security Manual (DSM), as amended from time to time.

8.10.4 COMSEC Material Transmitted in Australia: (as specified in Attachment a – Statement of Work clause 3.4)

- a. All Communications Security (COMSEC) material transmitted between the parties or a party and a Subcontractor, in Australia, shall in addition to the provisions of clause 8.9 above, be subject to the special security provisions of the Australian Department of Defence publication Australian Communications Security Instruction 53, as amended from time to time.
- b. All security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or in another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.

8.10.5 COMSEC Material Transmitted Overseas {(as specified in Attachment A – Statement of Work clause 3.5)

All Communications Security (COMSEC) material transmitted between the parties or a party and Subcontractor located overseas, shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), Department of Defence, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. Once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director DSD and to any bilateral security instrument between Australia and the overseas country. Where there has been a breach by the Contractor, a Subcontractor or any of their officers, employees or agents, or Subcontractors of clause 8.9, the Contract Manager may give the Contractor a notice of termination for default.

8.11 Specified Personnel

8.11.1 The Contractor shall ensure that the Services are undertaken by personnel who:

- a. are suitably qualified, with appropriate skills and experience; and
- b. hold an appropriate current certificate, authorisation or accreditation at all times during the provision of the Services.

8.11.2 The Contractor shall use the Specified Personnel detailed at Attachment A - Statement of Work to deliver the Services under the Contract.

- 8.11.3 During the Contract, the Contractor shall make best efforts to keep Specified Personnel assigned to the Contract, including not assigning Specified Personnel to another project without written permission of the Commonwealth Representative.
- 8.11.4 Where the Specified Personnel are unable to undertake work in respect of the Contract, the Contractor shall immediately notify the Commonwealth Representative. The Contractor shall provide replacement personnel acceptable to the Commonwealth Representative at no additional charge, and at the earliest opportunity.
- 8.11.5 Any additional cost incurred due to a change in Specified Personnel will be at the Contractor's expense unless other financial arrangements are negotiated and agreed to by the Commonwealth Representative prior to the replacement personnel's commencement. This may include additional expenses (especially travel and away from home expenses) and other costs directly related to the replacement of personnel.
- 8.11.6 The Commonwealth may, at its absolute discretion, give notice requiring the Contractor to remove personnel from work in respect of the Services. The Contractor shall arrange for their replacement at the earliest opportunity with personnel of appropriate skills and experience.
- 8.11.7 If the Contractor is unable to provide a replacement with suitable skills or in a sufficient time to enable the Contractor to complete the Services, the Commonwealth may terminate the Contract in accordance with clause 10.2.
- 8.11.8 Any requirement to replace any of the Contractor's personnel during the course of a Contract (whether at the request of the Commonwealth or not) shall not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Contract.

9 POLICY AND LAW

9.1 Applicable Law

- 9.1.1 The laws of the State or Territory specified in Attachment A – Statement of Work shall apply to the Contract. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.

9.2 Australian Content

- 9.2.1 The Contractor shall use its best endeavours to maximise Local Content in sourcing the Services.

9.3 Legal Requirements

- 9.3.1 The Contractor shall comply with and require its officers, employees, agents and as far as practicable its Subcontractors to comply with materially relevant laws.

9.4 Policy Requirements

- 9.4.1 The Contractor shall comply with and require its officers, employees, agents and Subcontractors to comply with the following Commonwealth policies of general application relevant or applicable to the Contract:
- a. Defence Equity and Diversity policy as detailed in the *Defence Plain English Guide to Managing and Reporting Unacceptable Behaviour; Departmental Personnel Instruction No 1/2001 Equity and Diversity in the Department of Defence; and Defence Instruction (General) Personnel 35-3 – Managing and Reporting of Unacceptable Behaviour;*
 - b. Fraud Control policy as detailed in *DI(G) FIN 12-1, The Control Of Fraud In Defence And The Recovery of Public Moneys;*
 - c. Equal Opportunity for Women in the Workplace policy as detailed in *the Defence Procurement Policy Manual, Version 6.0 Update 6.6, Section 3, Chapter 3.10;*
 - d. Freedom of Information policy as detailed in the *Defence Procurement Policy Manual, Version 6.0 Update 6.6, Section 5, Chapter 5.7;*
 - e. Hazardous Substances policy as detailed in the *Defence Procurement Policy Manual Version 6.0 Update 6.6, Section 3, Chapter 3.10;*
 - f. Information Management policy as detailed in *Defence Information Management Policy Instruction No 1/2004 – Telephones and Related Goods and Services, Defence Information Management Policy Instruction No 5/2001 - Defence Information Environment Provision of Defence Email and Internet Services and Defence Instruction (General) ADMIN 10-6 – Use of Defence Telephone and Computer Resources;*
 - g. Information Privacy Principles and National Privacy Principles of the *Privacy Act 1988;*

- h. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the *Defence Procurement Policy Manual* Version 6.0 Update 6.6, Section 3, Chapter 3.10; and
- i. Ozone Depleting Substances Policy as detailed in the *Defence Procurement Policy Manual* Version 6.0 Update 6.6, Section 3, Chapter 3.16.

9.5 Occupational Health and Safety

- 9.5.1 The Contractor shall perform its obligations under the Contract in such a way that:
- a. Commonwealth employees (as defined in Section 9(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*) are able to participate in any necessary inspections of work in progress and tests and evaluations of the Services without the Commonwealth being in breach of; and
 - b. the Commonwealth is, as from delivery of the Services, or any part of the Services, to the satisfaction of the Commonwealth, able to maintain and to make full use of the Services for the purposes for which they are intended without being in breach of,
 - (iv) any Occupational Health and Safety statutory requirements which apply to the Services.

9.6 Severability

- 9.6.1 If any part of the Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Contract shall not be affected and shall be read as if that part had been severed.

9.7 Privacy

- 9.7.1 The Contractor shall:
- a. use or disclose Personal Information obtained during the course of providing Services under the Contract, only for the purposes of the Contract;
 - b. not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the *Privacy Act 1988*, which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
 - c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the *Privacy Act 1988*, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
 - (ii) in the case of a National Privacy Principle or an Approved Privacy Code - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract, and

the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;

- d. notify individuals whose Personal Information is held by the Contractor or Subcontractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to the Contractor;
- e. disclose in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code, binding a party to the Contract;
- f. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act; and
- g. ensure that any employee or agent of the Contractor who is required to deal with Personal Information for the purposes of the Contract, is made aware of the obligations of the Contractor as set out in this clause 9.7.

9.7.2 The Contractor shall promptly notify the Commonwealth Representative where:

- a. it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in clause 9.7, whether by the Contractor or Subcontractor;
- b. it becomes aware that a disclosure of Personal Information may be required by law; or
- c. it is approached by the Privacy Commissioner, or by any individual to whom any Personal Information relates.

9.7.3 The Contractor shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to Subcontracts.

9.8 Judicial Decisions

9.8.1 The Contractor shall promptly notify the Commonwealth Representative where a judicial decision has ruled against them in respect of unpaid employee entitlements.

9.9 Australian Government Accountability

9.9.1 The Contractor shall comply with the public accountability requirements of the Australian Government. In particular, all requested documentation and Contract provisions regarding public accountability and disclosure requirements shall be made available to the Australian National Audit Office for audit purposes.

10 DISPUTES AND TERMINATION

10.1 Resolution of Disputes

10.1.1 If a dispute arising between the Commonwealth Representative and the Contractor cannot be settled by negotiation within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.

10.1.2 Unless otherwise directed by the Commonwealth Representative the Contractor shall at all times during the dispute proceed to fulfil its obligations under the Contract.

10.2 Contractor Default

10.2.1 The Commonwealth may, in addition to any other right or remedy it may have, by notice in writing to the Contractor, immediately terminate the Contract or reduce the scope of the Contract in the event that the Contractor or Subcontractor:

- a. becomes bankrupt or insolvent, becomes subject to any form of administration or assigns its rights otherwise than in accordance with the Contract;
- b. commits any breach for which the Contract provides a notice of termination for default may be given; or
- c. fails to take action to remedy a default by the Contractor or another obligation to be performed or observed under the Contract within 14 days of being given notice in writing by the Commonwealth Representative to do so or, where action is taken within 14 days, the Contractor fails to remedy the default within the period specified in the notice.

10.2.2 If the Contract is terminated under this clause or otherwise:

- a. the parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination; and
- b. rights to recover damages, including full contractual damages, shall not be affected.

10.3 Termination for Convenience

10.3.1 The Commonwealth may terminate this Contract in whole or in part at any time by giving written notice. If this Contract is so terminated, the Commonwealth shall be liable only for:

- a. payments under the payment provisions of the Contract for Services rendered before the effective date of termination; and
- b. subject to clauses 10.3.3 and 10.3.4, any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract.

10.3.2 Upon receipt of a notice of termination the Contractor shall:

- a. stop work as specified in the notice;

- b. take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and the Contract Deliverable(s); and
 - c. continue work on any part of the Services not affected by the notice.
- 10.3.3 In the event of partial termination the Commonwealth's liability to pay the Contract price detailed in Attachment B – Commercial Schedule, in the absence of agreement to the contrary, shall abate proportionately to the reduction in the Services.
- 10.3.4 The Commonwealth shall not be liable to pay compensation in any amount which would, in addition to any amounts paid or due, or becoming due, be greater than the contract price payable to the Contractor under this Contract. The Contractor shall not be entitled to compensation for loss of prospective profits.
- 10.3.5 Where the Commonwealth has specified in Attachment A – Statement Of Work that the contracted work is to be performed in discrete phases, then the Commonwealth shall have the right to terminate for convenience this Contract at the end of a specified termination phase.

10.4 Right of Commonwealth to Recover Money

- 10.4.1 Without limiting the Commonwealth's rights under the Contract, where the Contractor owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may at its discretion exercise one or both of the following:
- a. deduct the amount of the debt from payment of any claim; or
 - b. provide the Contractor with written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.
- 10.4.2 Where any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor shall pay to the Commonwealth interest at the Department of Finance and Administration sourced overdraft rate current at the date the payment was due for each day the payment is late.
- 10.4.3 Nothing in clause 10.4 shall affect the right of the Commonwealth to recover from the Contractor the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

10.5 Survivorship

- 10.5.1 Any provision of the Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Contract and any rights arising on termination or expiration shall survive, including Commercial-in-Confidence Information, Privacy, Intellectual Property and the right of the Commonwealth to recover money, Defence Security and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Contract.

Append SOPVET DoA (Deed of Agreement) Signatory Pages.