



**FEDERAL COURT
OF AUSTRALIA**



RFT-2020-0019

FOR THE

**Provision of
Transcription, Recording and AV Support
and Maintenance Services**

**PART C
DRAFT CONTRACT**

Draft Contract

Provision of Transcription, Recording and AV Support and Maintenance Services

[Note to Tenderers: This draft Contract includes terms for all of the categories of Services set out in the RFT (i.e. Transcription, Recording Services and AV Support and Maintenance Services). As set out in the RFT, Tenderers may submit a Tender for the first, or both, of the categories of Services. For more information see clause 3 of the RFT.]

Prior to entering into a Contract with a preferred Tenderer (if any) the FCA Entity may vary the terms shown in this Draft Contract to reflect the category or categories of Services that Tenderer has been selected to provide.]

*Federal Court of Australia
and
[Service Provider name]*

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Part 1 Contract Details

[Note to Tenderers: The Contract Details will be completed based on the successful Tender (if any).]

1.	Contract name	Transcription and Recording Services	
2.	Contract number	[INSERT]	
3.	Date	[INSERT]	
4.	Customer	NAME	Federal Court of Australia (being the non-corporate Commonwealth entity listed in paragraph 18ZB(b) of the <i>Federal Court of Australia Act 1976</i> (Cth) and further defined in Schedule 4 (Glossary)).
		ABN	49 110 847 399
		ADDRESS	Level 16, Law Courts Building, Queens Square SYDNEY NSW 2000
5.	Customer Representative	NAME	[INSERT]
		POSITION	[INSERT]
		ADDRESS	[INSERT]
		EMAIL	[INSERT]
6.	Service Provider	NAME	[INSERT]
		ABN	[INSERT]
		ADDRESS	[INSERT]
7.	Service Provider Representative	NAME	[INSERT]
		POSITION	[INSERT]
		ADDRESS	[INSERT]
		EMAIL	[INSERT]
8.	Commencement Date	[INSERT]	
		OR	
			The date on which this Contract is executed by all parties, or if the parties execute on different dates, the date on which this Contract is executed by the last party.
9.	Initial Term	A period of four years.	

10.	Option Period	Two further periods of two years each.
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Recitals

- A. The Customer requires the provision of transcription and recording services, and support and maintenance services for audio visual equipment (the **Services**) which:
- (a) meet the Customer's requirements as set out in this Contract;
 - (b) align with the Customer's expectations for quality, timeliness and efficiency; and
 - (c) operate seamlessly with the Customer's processes and systems.
- B. The Services are required to be provided in respect of the Customer, the Federal Court of Australia, the Family Court of Australia ,the Federal Circuit Court of Australia, and other Users as described in this Contract.
- C. The Customer has conducted a procurement process for the Services, and the Service Provider submitted a tender in which it offered to perform the Services in accordance with the requirements of this Contract.
- D. The Service Provider has fully informed itself of all aspects of the work to be performed for the provision of the Services.
- E. The Customer has agreed to engage the Service Provider to provide the Services, and the Service Provider has agreed to provide the Services, on the terms and conditions of this Contract.
- F. Although this Contract describes some minimum requirements for the Services, the Service Provider will be given some flexibility to determine how to best perform the Services in order to meet the Customer's objectives. Because of this flexibility:
- (a) the Service Provider is expected to deliver the Services in a manner that is efficient, highly responsive, technologically contemporary, cost effective and offers ongoing and increasing value to the Customer;
 - (b) the Service Provider accepts responsibility for meeting the Customer's objectives (with payments appropriately linked to meeting the minimum requirements, Service Levels, Key Success Factors and Key Performance Indicators); and
 - (c) the Service Provider accepts that its performance will be measured both quantitatively and qualitatively.
- G. Another key feature of this Contract is the establishment of a close, working relationship between the Service Provider and the Customer, in which the Service Provider must act as a trusted adviser to the Customer on the Services and strategy and offer holistic and strategic advice on the Customer's requirements.

1. Definitions and Interpretation**Definitions**

- 1.1 In this Contract, unless the contrary intention is expressed, the definitions in Schedule 4 (Glossary) apply.

Interpretation

- 1.2 In this Contract, unless the contrary intention is expressed:
- 1.2.1 a reference to this Contract is to clauses 1 to 68, and includes the Schedules and Attachments as the context requires;
 - 1.2.2 a reference to a Part is to a Part in this Contract;
 - 1.2.3 the singular includes the plural and vice versa, and a gender includes other genders;
 - 1.2.4 another grammatical form of a defined word or expression has a corresponding meaning;
 - 1.2.5 a reference to a clause, paragraph, Schedule or Attachment is to a clause or paragraph of, or Schedule or Attachment to the Contract as the context requires, and a reference to the Contract includes any Schedule or Attachment to this Contract;
 - 1.2.6 a reference to a Document, policy or instrument includes the Document, policy or instrument as novated, altered, supplemented or replaced from time to time;
 - 1.2.7 a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
 - 1.2.8 a reference to time is to the time in the place where the obligation is to be performed;
 - 1.2.9 a reference to a party is to a party to this Contract, as the context requires, and a reference to a party to a Document includes the party's executors, administrators, successors and permitted assignees and substitutes;
 - 1.2.10 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or Entity or other entity;
 - 1.2.11 a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

- 1.2.13 if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- 1.2.14 headings are for ease of reference only and do not affect interpretation;
- 1.2.15 any obligation, agreement, representation, warranty or indemnity in favour of two or more parties, persons or Entities is for the benefit of them jointly and severally; and
- 1.2.16 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of this Contract.

2. Priority of Documents

2.1 Except as expressly specified otherwise in this Contract, in the event of inconsistency between:

- 2.1.1 Clauses 1 to 68 of this Contract;
- 2.1.2 Schedule 4 (Glossary);
- 2.1.3 Schedule 1 (Statement of Requirement);
- 2.1.4 Schedule 2 (Performance Management);
- 2.1.5 Schedule 3 (Charges and Payments);
- 2.1.6 the other Schedules except the Schedules listed above;
- 2.1.7 any attachment or annexure to a Schedule; and
- 2.1.8 any document referred to or incorporated by reference,

the clause or document that is referenced earlier in this paragraph will prevail to the extent of any inconsistency with documents referenced lower in this clause.

3. Term

3.1 This Contract begins on the Commencement Date and continues for the Initial Term unless:

- 3.1.1 this Contract is terminated in accordance with clause 62; or
- 3.1.2 this Contract is extended in accordance with this clause 3.

3.2 The Initial Term may be extended for the Option Periods, on the terms and conditions then in effect, by the Customer giving written Notice to the Service Provider. Such Notice must be provided:

- 3.2.1 at least 20 Business Days before the end of the then current Term; or
- 3.2.2 within another period agreed in writing between the parties.

3.3 Any extension exercised in accordance with clause 3.2 takes effect from the end of the current Term.

- 3.4 If the Transition Period, as determined in accordance with clause 63 (Transition Out), has not ended before this Contract would otherwise have ended but for this clause 3.4 (including through expiry or termination), the Term will be deemed to have been extended until the end of the Transition Period.
- 3.5 For clarity, any perpetual licences granted under this Contract continue beyond the expiry or earlier termination of this Contract.
- 3.6 The Service Provider acknowledges and agrees that despite:
- 3.6.1 the extension option in clause 3.2;
 - 3.6.2 any representations made by the Customer, expressly or implicitly; or
 - 3.6.3 the performance by the Service Provider of its obligations in the Contract,
- the Service Provider is not entitled to expect that the Term will be extended or that the Service Provider will be offered any right to extend or negotiate for any extension of the Term.

4. Provision of Services to the Federal Court, Family Court, Federal Circuit Court and other Users

[Note to Tenderers: As at the release of this RFT, the FCA prefers to enter into a single consolidated Contract for provision of the Transcription and Recording Services for both the FCA and for the FCoA and FCC, and other Users as required by the FCA. However, the FCA may revise this decision depending on (among other things) its evaluation of the Tenders, including the tendered funding, commercial models and approach to the Services.

If a successful Tenderer is selected to also provide the AV Support and Maintenance Services, these will be provided to the FCA, the FCoA and FCC.

The FCA Entity anticipates that the delivery of the Contract(s) will initially be managed for both the FCA and the FCoA and FCC by the FCA Entity (through its Court and Tribunal Services branch and/or Corporate Services branch). However, this may change during the term of the Contract.]

- 4.1 The Service Provider acknowledges and agrees that:
- 4.1.1 the Services are required by, and must be provided to:
 - (a) the Customer;
 - (b) the FCA;
 - (c) the FCoA and FCC; and
 - (d) other Entities, as further set out in the Statement of Requirements or advised by the Customer from time to time; and
 - 4.1.2 while the terms of this Contract are expressed as granting rights and imposing obligations on the Customer:
 - (a) any right or benefit of the Customer under this Contract is also a right or benefit for the Entities referred to in clauses 4.1.1(b) - 4.1.1(d) and may be exercised by the Customer (whether on its own behalf or on behalf of

the Entities referred to in clauses 4.1.1(b) - 4.1.1(d)) or by an entity referred to in clauses 4.1.1(b) - 4.1.1(d) itself; and

- (b) the obligations, representations, warranties or indemnities made or owed to the Customer under this Contract are (to the extent they are also applicable to Services provided to the Entities referred to in clauses 4.1.1(b) - 4.1.1(d)) also made or owed to the Entities referred to in clauses 4.1.1(b) - 4.1.1(d).

4.2 The Service Provider acknowledges and agrees that this Contract may be administered on behalf of the Customer and the Entities referred to in clauses 4.1.1(b) - 4.1.1(d) by another Entity or other person as notified to the Service Provider from time to time.

Part 3 **Scope of Services – General**

5. Objectives

- 5.1 The Objectives of this Contract are to:
- 5.1.1 achieve an outcomes-focussed and strategic relationship between the parties which ensures the Customer has efficient and effective Services that support the Customer's portfolio needs, at a reasonable cost, and for the Service Provider to provide and perform whatever resources and tasks are needed to do so;
 - 5.1.2 ensure the Customer receives Services which are flexible and responsive to the complex and changing business and portfolio needs, strategic direction and environment of the Customer, and that the Service Provider continuously seeks to improve the quality, effectiveness and efficiency of the Services and their delivery;
 - 5.1.3 providing greater access to the Services across all applicable jurisdictions, while minimising costs to the Customer, the FCA, FCoA and FCC;
 - 5.1.4 leverage technology where appropriate in the delivery of the Services;
 - 5.1.5 provide for Services that are capable of expanding to reflect the Customer's needs, including changes to the number of courtrooms or the quantity or location of supported Equipment; and
 - 5.1.6 support a collaborate relationship that enables effective communication and performance management;
 - 5.1.7 protect and maintain security in respect of all Customer Data (including Confidential Information and Personal Information).
- 5.2 Subject to this Contract, the Service Provider must do all things necessary to achieve the Objectives of this Contract. However, this clause 5 is not intended to alter the plain meaning of the terms of this Contract.
- 5.3 To the extent that any part of this Contract does not address a particular circumstance or is otherwise unclear or ambiguous, the terms of that part must be interpreted and construed by reference to the intention of the parties as described in this clause 5 and, in particular, in a manner that would result in the Service Levels, Critical Success Factors (CSFs) and Key Performance Indicators (KPIs) being met.

6. Scope and Services

- 6.1 The purpose of this Contract is to set out the Service Provider's obligation to perform the Services. This Contract sets out:
- 6.1.1 the scope of the Services, including any requirements that must be met in the provision of the Services; and
 - 6.1.2 the Service Levels, CSFs and KPIs,

that must be performed and met by the Service Provider in accordance with this Contract.

6.2 The Service Provider must perform the Services:

- 6.2.1 as specified in the Statement of Requirements;
- 6.2.2 on a flexible basis to meet the Customer's changing needs (including location and number of courtrooms and Equipment) as described in the Statement of Requirements;
- 6.2.3 in accordance with any timeframes, volumes and delivery requirements (including any Milestones) in this Contract;
- 6.2.4 to meet or exceed the Service Levels, CSFs and KPIs in Schedule 2 (Performance Management); and
- 6.2.5 to a standard and quality that is no less than the standard and quality of similar services provided to the Customer as at the Commencement Date;
- 6.2.6 with due skill and care to the standard that would be expected of an experienced and professional supplier of similar services;
- 6.2.7 using Personnel who have the skills needed for the Services, and otherwise comply with the requirements of this Contract;
- 6.2.8 to comply with any standards specified in the Statement of Requirements and any other industry standards or international standards represented by the Service Provider;
- 6.2.9 in accordance with all applicable Laws; and
- 6.2.10 in accordance with any directions given by the Customer from time to time, provided those directions are consistent with this Contract.

6.3 The Service Provider is not relieved of its obligations under this Contract because of any:

- 6.3.1 involvement by the Customer in the provision of the Services;
- 6.3.2 inability of the Service Provider to provide the resources (including Personnel) needed to perform the Services;
- 6.3.3 payment of Charges to the Service Provider; or
- 6.3.4 subcontracting of the performance of the Services.

6.4 The Statement of Requirements sets out the scope of the Services that must be performed by the Service Provider on the terms of this Contract. Without limiting the Statement of Requirements, the Services generally include the following (as further described in the Statement of Requirements):

- 6.4.1 Recording Services;
- 6.4.2 In-Court Monitoring Services;
- 6.4.3 Transcription Services;
- 6.4.4 Administrative Services;

6.4.5 AV Support and Maintenance Services; and

6.4.6 Transition Services.

6.5 The Customer does not guarantee, warrant or otherwise represent that any quantity, or minimum value, of Services will be procured by the Customer under this Contract.

Incidental Services

6.6 Without limiting the Service Provider's obligation to meet the Service Levels, CSFs and KPIs:

6.6.1 the Services, tasks and obligations set out in this Contract do not, and must not be interpreted so as to, limit the Service Provider's obligations under this Contract to the performance of only those Services, tasks and obligations;

6.6.2 the Service Provider must achieve the Service Levels, CSFs and KPIs in a manner that is consistent with this Contract, regardless as to whether or how the individual Services, tasks and obligations are described;

6.6.3 the Service Provider must provide any resources and perform any services, functions or responsibilities that a person experienced in providing services similar to the Services (after considering vendor and customer views) would reasonably consider to be necessary or incidental to meeting the Service Levels, CSFs and KPIs, and achieving the proper performance or provision of the Services; and

6.6.4 except as expressly stated in Schedule 3 - Charges and Payments, the Charges reflect all services, functions and responsibilities the Service Provider must provide and meet in order to comply with the Contract.

6.7 if either party identifies a service, function or responsibility that is within the scope of the Services because of the operation of clause 6.6.3:

6.7.1 the parties will promptly amend the Statement of Requirements to include that service, function or responsibility;

6.7.2 there will be no change to the Charges as a result of that amendment; and

6.7.3 whether or not the Statement of Requirements has been amended, the Service Provider must perform or assume the additional service, function or responsibility.

7. Service Provider flexibility and autonomy

7.1 The parties acknowledge and agree that:

7.1.1 although this Contract describes certain Services, tasks and obligations that must be performed by, or met by, the Service Provider, it is not intended for this Contract to describe every service, function or responsibility that is within the scope of the Service Provider's obligations to meet the Service Levels, CSFs and KPIs and perform the Services;

7.1.2 the Service Provider has, subject to this Contract, the ability to determine how it will perform the Services to meet the Service Levels, CSFs and KPIs; and

7.1.3 the Service Provider may use its experience, resources and expertise to determine how to best perform the Services in order to meet the outcomes, Service Levels, CSFs and KPIs (subject to any requirements as set out in this Contract).

- 7.2 The Service Provider must:
- 7.2.1 deliver the Services in a manner that is efficient, highly responsive, technologically contemporary and cost effective at all times during the Term;
 - 7.2.2 continually plan for the evolution of the Services and modify the manner in which the Services are supplied so as to continue to meet the Service Levels, CSFs and KPIs and to improve the performance standards without increasing the Charges or any other costs to the Customer; and
 - 7.2.3 deliver the Services in a manner that will reduce the costs to the Customer (including the Charges) over the Term and to assist the Customer to meet any future efficiency dividend requirements it is obliged to achieve.
- 7.3 The Service Provider acknowledges and agrees that the Services provided under this Contract need to be readily and rapidly flexible and adaptable to meet the changing needs and requirements of the Customer in order to meet the outcomes, Service Levels, CSFs and KPIs. The Service Provider must continuously seek to improve the quality, effectiveness and efficiency of the Services and their delivery, including as set out in the Statement of Requirements.
-

8. Strategic relationship

- 8.1 The parties acknowledge and agree that it is critical to the Customer that the Customer and the Service Provider establish and maintain a collaborative and strategic relationship that has the following features:
- 8.1.1 the Service Provider acts as a trusted adviser to the Customer on, and provides leadership in relation to the Services and strategy and offers holistic, independent and strategic advice on the Customer's Service requirements;
 - 8.1.2 the Service Provider proactively anticipates and identifies risks and offers solutions and advice which are practical, and reflect industry best practice;
 - 8.1.3 the Service Provider has a comprehensive understanding of the Customer's and other Users' outcomes, requirements, challenges and priorities;
 - 8.1.4 the Service Provider considers achievement of maximum Customer and other User satisfaction to be essential; and
 - 8.1.5 the Service Provider works collaboratively with any Other Third Parties nominated by the Customer, and proactively participates in governance arrangements as required by the Customer.
- 8.2 Consequently, the parties acknowledge and agree that, because of the nature of the relationship of the parties and the flexibility the Service Provider has to provide the Services, it is reasonable and fair in the circumstances:
- 8.2.1 for the Service Provider to accept significant responsibility for complying with the Contract;
 - 8.2.2 that the rights and remedies available to the Customer under this Contract are utilised;
 - 8.2.3 for the Customer to subjectively measure whether or not an outcome or performance standard has been met, in addition to any objective measures; and

- 8.2.4 for full payment of the Charges to be based on the Service Provider meeting the requirements of the Contract, rather than on the cost of the provision of the Services or inputs related to meeting the Service Levels, CSFs and KPIs or performing the Services.

9. Transition In

- 9.1 On and from the Commencement Date, the Service Provider must do all things necessary to perform the Transition In Services:
- 9.1.1 in accordance with the Accepted Transition In Plan;
 - 9.1.2 so that the Transition In Services are completed by the Transition Date; and
 - 9.1.3 so that the Service Provider is able to perform all of the Services and otherwise meet all of its obligations under this Contract on and from the Transition Date.
- 9.2 The Service Provider must, when performing the Transition In Services:
- 9.2.1 ensure that the Transition In Services are conducted in a timely, coordinated, risk managed and otherwise efficient manner without adversely affecting the Customer's functions or operations;
 - 9.2.2 ensure a seamless transition from the Customer's current service arrangements with no avoidable disruptions or delays;
 - 9.2.3 where disruptions or delays are unavoidable, ensure that such disruptions or delays are:
 - (a) minimised (in their impact and duration); and
 - (b) planned, assessed and agreed with the Customer prior to proceeding and implemented in accordance with the Customer's change management processes;
 - 9.2.4 work collaboratively with the Customer, other Users and Stakeholders (as required) to ensure that the Service Provider effectively manages all aspects of the Transition In Services; and
 - 9.2.5 diligently identify and resolve, or assist the Customer to resolve, any problems encountered in the completion of the Transition In Services.
- 9.3 If the Service Provider considers that any disruption to the Customer's operations has or may occur, the Service Provider must:
- 9.3.1 immediately notify the Customer about the actual or potential disruption and provide information sufficient for the Customer to understand the nature and duration of the disruption;
 - 9.3.2 notify the Customer of the steps the Service Provider is taking or will take to mitigate the effects of and resolve any disruption or potential disruption (including to minimise its impact and duration); and
 - 9.3.3 promptly comply with any direction of the Customer in relation to the disruption or potential disruption.

10. Acceptance

General

- 10.1 Unless specified otherwise in this clause or the Statement of Requirements, the Deliverables and Services under this Contract are subject to Acceptance by the Customer.
- 10.2 The Deliverables will be considered for Acceptance in accordance with the requirements set out in this clause 10.
- 10.3 Documentary Deliverables and other data items, that by their nature do not require Acceptance Testing, will be considered for Acceptance on the basis of their compliance with the Acceptance Criteria specified the Statement of Requirements.
- 10.4 Transcripts and Recordings are not subject to Acceptance or Approval, however, they must comply with Acceptance Criteria as set out in the Statement of Requirements. If in the Customer's opinion, a Transcript or Recording does not meet the Acceptance Criteria set out in the Statement of Requirements, the Service Provider must re-provide the Transcript or Recording to the Customer in a form that does meet the Acceptance Criteria.
- 10.5 The issuing of a Certificate of Acceptance in accordance with clause 10.14.1 is not a waiver of rights; and the Customer may, in issuing a Certificate of Acceptance, impose such conditions and qualifications as it reasonably requires.
- 10.6 Despite anything to the contrary in this Contract, the approval or Acceptance of any Deliverable or any course of action by the Customer does not relieve the Service Provider from its obligations under this Contract and does not limit or waive any of the Customer's remedies or rights under this Contract or at Law. Acceptance or approval of any Deliverable or any course of action by the Customer must not be construed as any more than an indication that the Deliverable or course of action appears to the Customer to be capable of being used as a basis for further work.

Acceptance Criteria for Service or Deliverables

- 10.7 The parties agree that:
- 10.7.1 any Acceptance Criteria which relates to the provision, performance or delivery of a Service or Deliverable is deemed to include a requirement that the Service or Deliverable has been provided, performed or delivered so as to meet all requirements of this Contract applicable to that Service or Deliverable; and
- 10.7.2 if a Service or Deliverable is specified as being subject to Acceptance, but no Acceptance Criteria is specified in this Contract or the Acceptance Test Plan for that Service or Deliverable, the Acceptance Criteria will be that the Deliverable complies with all requirements in this Contract for that Service or Deliverable.

Acceptance Testing

- 10.8 Clauses 10.9 to 10.16 apply to any Deliverables that are subject to Acceptance Testing.
- 10.9 The Service Provider must carry out Acceptance Testing of the Deliverables as specified in this Contract, the approved Acceptance Test Plan or as the Customer may reasonably require, to ensure that the Deliverables comply with the applicable criteria set out in the Statement of Requirements and the Acceptance Criteria in the Acceptance Test Plan.
- 10.10 Unless specified to the contrary in clause 10.11, the costs of Acceptance Testing will be borne by the Service Provider.

- 10.11 In accordance with clause 10.8, the Service Provider agrees that the Customer, or any of its contractors, may also carry out the Acceptance Testing or any part of the Acceptance Testing. The direct costs of the Customer undertaking the Acceptance Testing will be borne by the Customer unless the testing shows that the Deliverable failed to comply with the Acceptance Criteria, in which case the cost of the testing must be borne by the Service Provider.
- 10.12 The Service Provider must comply with any reasonable request by the Customer for further testing in relation to the Deliverables.
- 10.13 The Service Provider must allow the Customer or its authorised representative to observe the performance of the Acceptance Testing or other tests by the Service Provider.
- 10.14 If the Customer finds that a Deliverable:
- 10.14.1 has satisfied the Acceptance Criteria, the Customer must within 15 Business Days issue a Certificate of Acceptance in respect of that Acceptance Criteria in accordance with this Contract (and the Deliverables will then be deemed to have been Accepted by the Customer); or
- 10.14.2 has not satisfied the Acceptance Criteria, the Service Provider must (at no cost to the Customer) do all things necessary to rectify any problems to ensure that the Acceptance Criteria are met. The Acceptance Testing must then be repeated as soon as practicable or within the time period agreed by the parties after Notification from the Service Provider that it believes it meets the Acceptance Criteria, and this clause 10.14 will apply to the repeated Acceptance Testing.
- 10.15 If further Acceptance Testing is required under clause 10.14.2 and the Service Provider does not rectify any problems to ensure that Acceptance Criteria are met within:
- 10.15.1 15 Business Days after the commencement of Acceptance Testing for that Deliverable; or
- 10.15.2 such longer period as is notified by the Customer,
- the Customer may treat the non-compliance as a failure by the Service Provider to comply with the relevant obligation under this Contract.
- 10.16 The Service Provider must bear all costs associated with replacing or correcting rejected Deliverables and of complying with the directions of the Customer.

Conditional Acceptance

- 10.17 The Customer may Accept Deliverables despite the existence of minor omissions or defects or other non-conformances in the Deliverables. The Customer must endorse such omissions, defects or non-conforming work by Notice to the Service Provider. The Service Provider must, within 10 Business Days after signature of the Acceptance Certificate by the Customer, or within such time as permitted by the Customer, make good the items identified in the Notice as omissions, defects or non-conforming work so as to meet the Acceptance Criteria.

- 10.18 If the Customer agrees that Acceptance may be achieved despite any minor omissions or defects or other non-compliance and the Customer does not wish to exercise its rights to Accept the Deliverables and require the Service Provider to make good non-conforming work in accordance with clause 10.16, the Customer may, after consultation with the Service Provider:
- 10.18.1 determine revised Charges reflecting the amount of the reduction in value for money attributable to the non-compliance with this Contract (**Reduction Amount**); and
 - 10.18.2 after determining revised Charges that reflect the reduced value for money of the non-complying Services or Deliverables, recover this reduced amount as a debt due to the Customer.

11. Recipients of Services

Changes to the Customer

- 11.1 The Services Provider acknowledges and agrees that the size, scope or operations of the Customer, or any other Users, may change during the Term, including because of:
- 11.1.1 amalgamation of the Customer or other Users with other Entities;
 - 11.1.2 a restructure of the Customer or other Users by the Commonwealth;
 - 11.1.3 all or part of the Customer or other Users becoming part of any other Entity;
 - 11.1.4 changes in the number, or location, of the Sites; or
 - 11.1.5 the Customer or other Users performing functions for other Entities, including the provision of services to those entities.
- 11.2 If the Customer notifies the Service Provider of a change to the size, scope or operations of the Customer or other Users, then the Service Provider must provide the Services in accordance with the changed arrangements on the terms of this Contract.
- 11.3 To the extent the flexibility in clause 11.1 is not already built into this Contract (e.g. covered by the variables in the Charges), the Service Provider may propose an amendment to this Contract to take into account of any changes to the Customer or other Users. Any amendments must:
- 11.3.1 equitably reflect the changes; and
 - 11.3.2 be consistent with the existing cost, resource, pricing and outcomes focus of this Contract.

Service Provider to continue to provide Services for transferred operations

- 11.4 If any part of the operations or business of the Customer or other Users is transferred to another Entity:
- 11.4.1 the Service Provider must, if and as requested by the Customer, continue to provide the Services for the transferred operations or business to that other Entity on the terms of this Contract (including so as to continue to meet the outcomes) for the remainder of the Term;

- 11.4.2 if necessary, the Service Provider and the other Entity will enter into a new agreement on substantially the same terms as this Contract (the amount of Charges payable under any such new agreement must reflect the scope of the transferred operations or business as a result of the transfer to another Entity);
- 11.4.3 the Charges under this Contract will be changed to reflect the reduced scope of the Services provided to the Customer; and
- 11.4.4 the Customer may remove the affected Services from the scope of this Contract in accordance with 62.3 to 62.12, except that no claim for unavoidable costs can be made by the Service Provider because the Services are transferred.

Effect of changes on outcomes

- 11.5 If any changes under this clause 11 impact upon the ability of the Service Provider to meet the outcomes, the parties will discuss those impacts in good faith and may amend this Contract in accordance with clause 32 as required to ensure the Service Provider continues to meet the outcomes. If the Service Provider seeks any amendment to this Contract, it must do so within 3 months from the date the impact upon the ability of the Service Provider to meet the outcomes is known.

No effect on variable Charges

- 11.6 Nothing in this clause 11 limits any process set out in this Contract for determining a variable Charges payable by the Customer (including any Charges which are based on the number of units of resources that are consumed by the Customer in a given period).

12. Services Catalogue

- 12.1 The Service Provider must:
 - 12.1.1 develop, deliver and maintain a Service Catalogue that meets the requirements set out in the Statement of Requirements; and
 - 12.1.2 ensure that the Service Catalogue is accurate, up to date and consistent with the Service Provider's obligations under this Contract at all times.

13. General warranties

- 13.1 The Service Provider represents and warrants that:
 - 13.1.1 it has, and the Service Provider Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Services in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Contract and meets the Customer's requirements in full;
 - 13.1.2 it will provide and use the necessary resources to provide the Services;
 - 13.1.3 it has and will be deemed to have done everything possible to inform itself completely as to:
 - (a) the Customer's requirements for Services under this Contract;

- (b) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Contract; and
 - (c) all things necessary for delivery and management of this Contract and the performance of the Service Provider's obligations under this Contract;
- 13.1.4 it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;
- 13.1.5 it does not rely on any representation, warranty, condition or other conduct, information, statement or document whether forming part of this Contract or not, which may have been made by the Customer or any person purporting to act on behalf of the Customer in entering into this Contract, other than an express warranty contained in this Contract;
- 13.1.6 in providing the Services, it will at all times comply with this Contract;
- 13.1.7 at all times during the Term it will meet, and seek to exceed any Service Levels, CSFs and KPIs specified in this Contract;
- 13.1.8 it has the right to vest all Intellectual Property Rights and grant all licences granted in accordance with this Contract;
- 13.1.9 it will not, nor will it suffer or permit its Personnel or any third party under its direction or control to negligently or wilfully introduce into the Customer's systems any Harmful Code; and
- 13.1.10 if any Harmful Code is introduced into the Customer's systems or any Software, whether through a breach of clause 13.1.9 or otherwise, the Service Provider will:
 - (a) immediately report that introduction to the Customer;
 - (b) if directed by the Customer, take all necessary action to eliminate the Harmful Code; and
 - (c) if directed by the Customer, promptly repair any harm or destruction caused by that Harmful Code, at its cost where the Harmful Code was introduced as a result of a breach of clause 13.1.9.
- 13.2 The Service Provider represents and warrants that:
 - 13.2.1 it has the right to enter into this Contract;
 - 13.2.2 it has:
 - (a) full corporate power and authority; and
 - (b) all rights, title, licences, interests and property necessary,
 to lawfully enter into, perform and observe its obligations under this Contract;
 - 13.2.3 the execution, delivery and performance of this Contract has been duly and validly authorised by all necessary corporate action; and
 - 13.2.4 the Service Provider's signing, delivery and performance of this Contract does not constitute:

- (a) a violation of any judgment, order or decree;
- (b) a material default under any contract which relates in any way to the provision of the Services, and by which it or any of its assets are bound; or
- (c) an event that would, with Notice or lapse of time, or both, constitute such a default.

13.3 The Service Provider represents and warrants that it has disclosed in writing to the Customer prior to the Commencement Date:

13.3.1 any litigation or proceeding whatsoever, actual or threatened, against the Service Provider; and

13.3.2 matters relating to the commercial, technical or financial capacity of the Service Provider or of any Subcontractor proposed to be engaged in respect of this Contract, including the existence of any breach, default or alleged breach or default of any agreement, order or award binding upon the Service Provider,

being matters affecting the Service Provider's ability to perform any of its obligations under this Contract.

13.4 The Service Provider represents and warrants that:

13.4.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);

13.4.2 it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount; and

13.4.3 it is not, and its Personnel are not, an Inappropriate Person.

13.5 The Service Provider warrants that it will promptly Notify and fully disclose to the Customer any event or occurrence actual or threatened during the Term of this Contract that would materially affect the Service Provider's ability to perform any of its obligations under this Contract, including but not limited to any event or occurrence referred to in clauses 13.3 and 13.4.

Effect of warranties

13.6 Nothing in this clause 13:

13.6.1 restricts the effect of any conditions or warranties which may be implied by the *Competition and Consumer Act 2010* (Cth) or any sale of goods or fair trading Laws; or

13.6.2 limits the Customer's right to take action on the basis of the common law that would be applied by the High Court of Australia in respect of a breach of Contract, tort or any other common law or statutory cause of action.

13.7 The Service Provider acknowledges that the Customer is entering into this Contract in reliance on the warranties given by the Service Provider in this clause 13.

13.8 Where the Service Provider supplies Services that have been procured from a third party, the Service Provider assigns to the Customer, to the extent permitted by Law, the benefits of the warranties given by the third party. This assignment does not in any way relieve the

Service Provider of the obligation to comply with warranties provided directly by the Service Provider under this Contract.

13.9 The Customer warrants that:

13.9.1 it has the right and authority to enter into this Contract; and

13.9.2 if any Customer Supplied Items, Sites or facilities are provided to the Service Provider in accordance with this Contract, the Customer has or will obtain the necessary rights to do so.

14. Additional Services

14.1 At any time, the Customer may request the Service Provider to provide a quote for the provision of Additional Services described in the request.

14.2 The Service Provider must, within 10 Business Days of receiving a request pursuant to clause 14.1 (or within the longer period (if any) specified by the Customer in the request), conduct a survey of the task and provide to the Customer a quote in the form reasonably required by the Customer that includes:

14.2.1 a price for the provision of the requested Additional Services calculated by reference to Schedule 3 (Charges and Payments) and the requirements set out in clause 14.4;

14.2.2 if required by the Customer, a breakdown of the quoted price, showing the basis on which the quoted price has been calculated (including the number of days total level of effort by the Service Provider for the Additional Services and the level of Service Provider Personnel required); and

14.2.3 details of the Additional Services which would be performed and the impact of the performance of those Additional Services on this Contract and the Services being performed pursuant to it.

14.3 Subject to clause 14.3.1, the Customer must within 10 Business Days of receiving a quote pursuant to clause 14.2 (or within the longer period (if any) specified by the Service Provider in the quote), either:

14.3.1 Approve the quote and Notify the Service Provider of the Approval of the quote; or

14.3.2 reject the quote and Notify the Service Provider of the reasons for rejection.

14.4 If the Customer gives no Notice under clause 14.3 within the period determined in accordance with that clause, the Customer will be taken to have rejected the quote.

14.5 If the Customer Notifies the Service Provider, in accordance with clause 14.3, that a quote given in accordance with clause 14.2 has been Approved:

14.5.1 the Additional Services will be deemed to be included in the Services;

14.5.2 the Service Provider must provide the Additional Services in accordance with this Contract; and

14.5.3 upon completion of the Additional Services, the Service Provider may make a claim in accordance with the payment provisions of this Contract and the Approved Quote for an amount not exceeding the Approved Quote.

- 14.6 The Service Provider acknowledges that:
- 14.6.1 the Customer has absolute discretion to decide whether, and if so when, to make a request for Additional Services;
 - 14.6.2 the Service Provider must not charge the Customer as Additional Services for anything already included in the scope of the Services;
 - 14.6.3 the Customer has no obligation to reimburse the Service Provider for its costs in surveying and quoting for Additional Services, except to the extent (if any) that the Customer Approves the reimbursement in advance in writing; and
 - 14.6.4 unless otherwise stated in the Statement of Requirements, the Customer may obtain services the same as or similar to the Additional Services from a person other than the Service Provider.
- 14.7 The Service Provider:
- 14.7.1 warrants that the Customer will not be charged any amount for Service Provider or Subcontractor Personnel providing any Additional Services if the Customer is already being charged for those Personnel on a full time equivalent basis; and
 - 14.7.2 must ensure that:
 - (a) it first seeks to use the spare capacity of any Personnel that the Customer is already paying for on a full time equivalent basis to satisfy any request by the Customer for the performance of Additional Services; and
 - (b) any response to a request for Additional Services includes a price that reflects the use of those Personnel at no additional charge.

15. Customer Facilities and Assistance

Access to the Customer's Sites, Equipment and facilities

- 15.1 The Customer must provide access to its Sites, Equipment and facilities as set out in the Statement of Requirements.
- 15.2 The Service Provider must, if using or accessing the Customer's Sites, Equipment and facilities, comply with all reasonable directions and procedures, including documented procedures relating to work health and safety and security, in effect at those Sites or facilities:
- 15.2.1 which the Service Provider is (or ought to be) aware of; or
- 15.2.2 as Notified to the Service Provider in advance.
- 15.3 In addition to the requirements of clause 15.2, the Service Provider agrees that when accessing the Customer's Sites, Equipment or facilities, it will comply with all applicable Commonwealth, State, Customer and local government Laws, regulations and procedures relating to work health and safety.
- 15.4 Access to the Customer's Sites, Equipment or facilities may be temporarily denied or suspended by the Customer, at its sole discretion. The Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

Management decisions

- 15.5 The Customer will where possible, make available, as reasonably requested by the Service Provider, any management decisions or information that are reasonably necessary for the Service Provider to perform or provide the Services.

General

- 15.6 Without limiting clause 15.2, the Service Provider must comply with any terms or conditions set out or referred to in this Contract, or Notified by the Customer, in relation to any provision of assistance by the Customer.

16. Customer Supplied Items

- 16.1 The Customer must provide the Service Provider, or ensure that the Service Provider is provided, with the Customer Supplied Items, as specified in the Statement of Requirements or in an Accepted Deliverable, for use by the Service Provider in the performance of the Services.
- 16.2 Nothing in this Contract affects the ownership of the Customer Supplied Items. If no longer required for the purposes of this Contract, the Customer Supplied Items must be returned to the Customer as soon as practicable unless other arrangements are agreed in writing by the parties.

16.3 The Service Provider must:

- 16.3.1 ensure that all the Customer Supplied Items are used strictly in accordance with any conditions or restrictions which are set out in the Statement of Requirements, set out in an Accepted Deliverable, or which are otherwise Notified or directed by the Customer from time to time (including to ensure that the Service Provider complies with applicable third party licensing restrictions);
- 16.3.2 not use or allow others to use the Customer Supplied Item other than for the purposes of this Contract without the prior written Approval of the Customer;
- 16.3.3 not part with possession of any the Customer Supplied Items unless the Customer has provided its written consent, nor create or allow the creation of any lien, charge or mortgage over any the Customer Supplied Item;
- 16.3.4 take all reasonable care of all the Customer Supplied Items including accounting for, preserving, installing or handling of the Customer Supplied Items;
- 16.3.5 not modify the Customer Supplied Items without the prior written Approval of the Customer, unless expressly required by this Contract;
- 16.3.6 promptly inform the party supplying the Customer Supplied Item of any Loss, destruction or damage to that the Customer Supplied Item and, if requested by the party supplying the Customer Supplied Item and to the extent that such Loss, destruction or damage has been caused by the fault of the Service Provider, as soon as practicable replace the Customer Supplied Items at no cost to the Customer;
- 16.3.7 comply with any reasonable instructions of the Customer for preserving, forwarding or disposing of any damaged Customer Supplied Items, at the Service Provider's own cost if the damage has been caused by the fault of the Service Provider; and
- 16.3.8 indemnify the Customer for any Loss or destruction of, or damage of a tangible nature caused by any act or omission of the Service Provider, to any the Customer Supplied Items.

16.4 The Service Provider acknowledges and agrees that it is responsible for ensuring that all the Customer Supplied Items:

- 16.4.1 are specified in this Contract (including being specified as the Customer Supplied Items in the Statement of Requirements or in an Accepted Deliverable);
- 16.4.2 are suitable and appropriate for use in connection with the performance of the Services; and
- 16.4.3 will allow the Services to be performed in accordance with the requirements of this Contract,

and that the Customer gives no warranty or representation about the suitability or fitness for purpose of the Customer Supplied Items or any particular use or application of them.

16.5 After a Customer Supplied Item is provided, or made available, to the Service Provider (and before any implementation and during any testing of that Customer Supplied Item), the Service Provider must:

- 16.5.1 inspect the Customer Supplied Item for any damage, defects or deficiencies in the Customer Supplied Item's compliance with its published specifications, which will

impact on, or which is likely to impact on, the intended use of the Customer Supplied Item in the performance of this Contract; and

- 16.5.2 report to the Customer on its satisfaction or dissatisfaction with the Customer Supplied Item in accordance with clause 16.5.1.
- 16.6 Unless the Service Provider reports its dissatisfaction with a Customer Supplied Item in accordance with clause 16.5.2, the Service Provider accepts responsibility for the use of the Customer Supplied Item in the performance of the Services. If the Service Provider reports any dissatisfaction in accordance with clause 16.5.2, the Customer will take reasonable steps to correct or replace the Customer Supplied Item as soon as practicable. If the Customer is unable to do so, the Service Provider may request an extension of time to provide related Services or Deliverables in accordance with clause 57.
- 16.7 If the Service Provider is unable to meet a Service Level, CSF or KPI because a Customer Supplied Item has failed to meet, or cannot meet, its published specifications, the Service Provider:
 - 16.7.1 must report this to the Customer;
 - 16.7.2 must, if directed by the Customer, manage resolution of any failure in the Customer Supplied Items; and
 - 16.7.3 may make representations to the Customer in relation to the application of the Service Levels, CSFs and KPIs, in accordance with Error! Reference source not found. (Performance Management).
- 16.8 The Service Provider acknowledges and agrees that it will not be entitled to an extension of time under clause 57 if:
 - 16.8.1 the Service Provider failed to ensure that all items which are necessary to be provided or made available by the Customer were properly specified as the Customer Supplied Items;
 - 16.8.2 the Service Provider should have reasonably identified damage, defect or deficiency with the Customer Supplied Item; or
 - 16.8.3 the Customer Supplied Item does not integrate, perform or otherwise work in or with the Services or any Equipment used by the Service Provider to perform the Services (except where the reason for the failure is because the Customer Supplied Item has not met, or cannot meet, its published specifications).

17. Quality Assurance

- 17.1 The Service Provider must:
 - 17.1.1 ensure that it implements and maintains a quality assurance process that is consistent with best industry practice;
 - 17.1.2 provide Deliverables that have been quality assured as required by the Statement of Requirements before delivery to the Customer; and
 - 17.1.3 work with and cooperate with any quality assurance advisers appointed by the Customer from time to time, as requested by the Customer.

18. Standards and Codes

18.1 The Service Provider must, in supplying the Services and the Deliverables, comply with:

18.1.1 ISO 9001:2015 Quality Management Systems;

18.1.2 AS ISO 15489: 2017 Information and documentation - Records management Concepts and principles;

18.1.3 AS/NZS ISO 16175.1.2012 Principles and Functional Requirements for Records in Electronic Office Environments;

18.1.4 any standards in the Statement of Requirements or an Approved or Accepted Deliverable;

18.1.5 if there are no standards specified under clause 18.1.1, any applicable Australian standards that are consistent with the requirements or this Contract; or if there are no applicable Australian standards, any applicable New Zealand standard; or if there are no applicable New Zealand standards, international standards that are consistent requirements or this Contract; and

18.1.6 any industry codes or best practice methodologies,

and must, if requested by the Customer provide evidence of compliance with the applicable standards. For the purposes of this clause, 'standard' has the same meaning as in the Commonwealth Procurement Rules, and any guidance issued by the Department of Finance in relation paragraphs 10.10 and 10.37 of the Commonwealth Procurement Rules.

18.2 The Service Provider must perform its obligations under this Contract in such a way that the Customer is able to participate in any necessary inspections of work in progress and testing of the Services, and is able to maintain full use of the Services for the purposes for which they are delivered, without being in breach of any occupational the Customer and safety Laws.

19. Language and measurement

19.1 All information delivered as part of the provision of the Services under this Contract, including all Documentary Deliverables must be written in English. Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or if Services or Deliverables are imported, units of measurement as agreed by the Customer.

Part 5

Scope of Services – Specific Services Terms

[Note to Tenderers: Depending on the approach to the Services proposed in the successful Tender (if any), the FCA Entity may include service-specific terms here.]

Part 6 Relationships and Contract Management

20. General

- 20.1 The parties must, at all times:
- 20.1.1 act reasonably in performing their obligations and exercising their rights under this Contract;
 - 20.1.2 diligently perform their respective obligations under this Contract; and
 - 20.1.3 without limiting any other obligation in clause 26 (Cooperation with Other Contractors), work together in a collaborative manner with each other and with other organisations involved with the delivery of the Services.

21. Governance

- 21.1 The Service Provider must comply with the Governance requirements in the Statement of Requirements or any Accepted Deliverable.
- 21.2 The Service Provider must ensure that the Service Provider Representative (or another person agreed in writing by the Customer) is reasonably available to attend meetings and answer any questions relating to the provision of the Services raised by the Customer.

22. Reporting

- 22.1 The Service Provider must provide the Customer with reports in accordance with the reporting requirements specified in the Statement of Requirements Schedule 2 (Performance Management).

23. Directions

- 23.1 If the Customer reasonably considers that the Service Provider:
- 23.1.1 will not be able to meet an obligation under this Contract; or
 - 23.1.2 has failed to meet an obligation under this Contract;
- then the Customer may issue a direction to the Service Provider, including one which:
- 23.1.3 sets out the actions the Service Provider must take to meet the obligation;
 - 23.1.4 clarifies the Service Provider's obligations to co-operate with any other person; and/or

- 23.1.5 clarifies any Governance or reporting arrangements which the Customer reasonably considers necessary to facilitate the Service Provider providing the Services and meeting the requirements of this Contract.
- 23.2 The Service Provider must comply with any directions given by the Customer under clause 23.1.
- 23.3 If a direction given by the Customer under clause 23.1 is unclear (e.g. the direction could be implemented in more than one way) or may adversely affect the performance of the Service Provider's obligations under this Contract, the Service Provider must:
- 23.3.1 consult with the Customer; and
- 23.3.2 follow any subsequent direction by the Customer as to how the initial direction must be implemented.

24. Management Adviser

- 24.1 Without limiting the Customer's rights under clause 23.1, in the circumstances described in clauses 23.1.1 or 23.1.2 the Customer may also (at its discretion and at its own cost) appoint an adviser to perform functions determined by the Customer (**Management Adviser**), which may include:
- 24.1.1 advising the Service Provider on:
- (a) the Service Provider's operations and corporate governance arrangements relevant to the Contract;
 - (b) the management of the Services; or
 - (c) the management of the Service Provider's Personnel;
- 24.1.2 with the Service Provider's consent, assisting the Service Provider with the performance of this Contract; and
- 24.1.3 providing any other advice to the Service Provider that the Customer requires.
- 24.2 The Customer must give the Service Provider notice of its intention to appoint a Management Adviser that specifies:
- 24.2.1 the proposed period of the appointment;
- 24.2.2 the proposed roles and responsibilities of the Management Adviser; and
- 24.2.3 if the Customer considers it appropriate and practicable, a summary of reasons why the Customer intends to make the appointment.
- 24.3 Without limiting the Customer's discretion to appoint a Management Adviser, the Service Provider will have 14 days after receipt of notice under clause 24.2 to provide the Customer with reasons why a Management Adviser should not be appointed.
- 24.4 Upon appointment of a Management Adviser, the Customer must inform the Service Provider of the scope of the appointment and its duration.
- 24.5 The Service Provider agrees to cooperate with a Management Adviser and comply with any directions and recommendations given by the Management Adviser in relation to the performance of this Contract.

- 24.6 A Management Adviser that provides a report to the Customer:
- 24.6.1 does so independently of the Service Provider; and
 - 24.6.2 does not reduce the Service Provider's reporting obligations under this Contract.
- 24.7 A Management Adviser is not the Service Provider's Personnel, nor an agent or Personnel of the Customer, and is not appointed to act, and does not act, in any such capacity. A Management Adviser is not appointed to act, and does not act, as a member or shadow member of the Service Provider's governing board. A Management Adviser cannot enter into agreements or incur debts for or on behalf of the Customer or the Service Provider.
- 24.8 For clarity:
- 24.8.1 the Service Provider is not relieved of its obligations or liability (whether under this Contract or at Law) because it complies with a recommendation by the Management Adviser; and
 - 24.8.2 the Service Provider remains responsible for the performance of the Services in accordance with this Contract including where parts of the Services are performed by the Management Adviser.

25. Limitation of Relationship

- 25.1 The Service Provider must not represent itself, and must ensure that its Personnel do not represent themselves, as being an officer, employee, partner or agent of the Customer, or as otherwise able to bind or represent the Customer.
- 25.2 This Contract does not create any relationship of employment, agency or partnership between the parties.

26. Cooperation with Other Third Parties

[Note to Tenderers: If the FCA elects to enter into different Contracts with separate entities for the Recording and Transcription Services and the AV Support Services, the FCA may require the providers to enter into a collaboration deed that documents the Service Providers' obligations to cooperate with each other in the performance of the Services. If required, the collaboration deed will be provided by the FCA.]

- 26.1 The Service Provider must, at no additional cost to the Customer, cooperate with:
- 26.1.1 Other Service Providers identified in this Contract or otherwise nominated by the Customer from time to time; and
 - 26.1.2 other Users or third party entities who may use the Services, the Sites from which the Services are provided, or infrastructure used to provide the Services,
- (together the "**Other Third Parties**"). Without limiting this obligation, the Service Provider must comply with any specific cooperation obligations set out in the Statement of Requirements.
- 26.2 The Service Provider must respond to requests for information, assistance or support from the Other Third Parties, as requested by the Customer, on the terms of this Contract.

- 26.3 Where this Contract permits the Customer to perform or retain a third party to perform any services that form part of or are related to the Services, the Service Provider must cooperate with the Customer or the third party to ensure that all services (including the Services) are able to be carried out in a co-ordinated, effective and timely manner, including by:
- 26.3.1 providing access to all necessary Equipment, Products, Documents, Service Provider Personnel, accommodation and facilities, subject to the Service Provider's reasonable intellectual property, confidentiality and security requirements and procedures as specified in this Contract;
 - 26.3.2 providing any information which a person with reasonable technical and commercial skills and expertise would find reasonably necessary for the Customer or the third party to perform the relevant services;
 - 26.3.3 providing any assistance to the Customer or the third party as required to:
 - (a) connect or interface any Equipment or Product; or
 - (b) make any Equipment, Product or the output of any Services compatible with Equipment, Products or the Services; and
 - 26.3.4 agreeing on procedures with the Customer and other third parties for the division of responsibilities in relation to services and functions that may overlap between the Service Provider and those other third parties.

27. Service Provider and its Personnel Obligations

Overview

- 27.1 The Service Provider must utilise such Personnel as are necessary to enable it to fulfil its obligations under this Contract. The Service Provider must actively manage the performance of Service Provider Personnel at all times.

Service Provider obligations

- 27.2 The Service Provider must:
- 27.2.1 provide, or procure the provision of, such information as can be Lawfully provided and which is reasonably requested by the Customer concerning the Service Provider Personnel it is using or proposes to use in performing its obligations under this Contract;
 - 27.2.2 provide suitable replacement Service Provider Personnel should the Customer deny access to or request removal of any Service Provider Personnel;
 - 27.2.3 ensure Service Provider Personnel are aware of all requirements under this Contract that relate to their duties in respect of the provision of Services, and take all reasonable action to ensure that Service Provider Personnel strictly comply with those requirements;
 - 27.2.4 if the Customer requires, ensure that each person engaged in the provision of the Services executes a deed of confidentiality in a form acceptable to the Customer (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the Customer in accordance with any requirements that the Customer notifies;

- 27.2.5 perform on-going checks of the Service Provider Personnel during the period of their employment or engagement;
- 27.2.6 report unauthorised access to Customer Data by Service Provider Personnel and third parties;
- 27.2.7 Notify the Customer of any incident that may affect or has affected the Services or any Deliverables to enable the Customer to assess and manage the associated impact; and
- 27.2.8 not embarrass the Customer or otherwise bring the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or the proper performance of its duties, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Contract.

Personnel obligations

- 27.3 The Service Provider must ensure that its Personnel involved in performing the Services:
 - 27.3.1 have the requisite skills, qualifications and experience for the tasks they are given;
 - 27.3.2 behave with integrity, in an ethical manner and do not breach the terms and conditions of this Contract including, without limitation, those relating to confidentiality, privacy, security and safety;
 - 27.3.3 comply with the Customer's directions in accordance with clause 21;
 - 27.3.4 when on the Customer's Sites or when accessing the Customer's facilities and information, comply as necessary with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the Customer by Law);
 - 27.3.5 do not embarrass the Customer or otherwise bring the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer or the proper performance of its duties, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Contract; and
 - 27.3.6 do not represent in any way that they are employees of the Customer.

Key Personnel

- 27.4 Where a Key Person is specified in the Statement of Requirements as being responsible for the performance of key roles or tasks under this Contract, the Service Provider must:
 - 27.4.1 provide those individuals to perform those roles or tasks;
 - 27.4.2 ensure the Key Person that it uses for the role or tasks has the necessary education, training, qualifications and skills to fulfil that role or those tasks; and
 - 27.4.3 ensure the Key Person complies with the obligations of this Contract.
- 27.5 If a person specified as a Key Person is unavailable at any time, the Service Provider must promptly advise the Customer and propose a substitute. The substitute provided must also have the necessary education, training, qualifications and skills to fulfil those tasks.

- 27.6 Any substitute Key Person must be approved by the Customer. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under this Contract.
- 27.7 The unavailability of a Key Person during the substitution process will not limit the Service Provider's obligations to provide the Services under this Contract.

Personnel payments

- 27.8 The Service Provider is responsible for all wages, salaries and other payments to Service Provider Personnel and must fully comply with all relevant Laws and other Customer requirements in relation to Service Provider Personnel including labour and industrial relations Laws, awards and agreements, and those relating to working conditions, salary, wages, the payment of any relevant tax, superannuation, 'pay as you go' or other income tax remissions and any other amounts, remissions, or allowances. Upon request, the Service Provider must demonstrate that it has complied with these obligations.
- 27.9 The Service Provider must undertake all necessary recruitment, training, security clearance preparation and other functions as necessary, to ensure its Personnel have the requisite skills, experience and qualifications for the Service Provider to meet the requirements of this Contract.

Right to replace Personnel

- 27.10 The Customer may, at any time and in its discretion, give the Service Provider a Notice in writing directing the Service Provider to remove any Service Provider Personnel (including Key Personnel) from work in respect of the Services.
- 27.11 If the Customer gives the Service Provider a Notice under clause 27.10, the Service Provider must, within the time specified in the notice:
- 27.11.1 remove the Personnel from work in respect of the Services; and
 - 27.11.2 nominate, at the earliest opportunity, a suitable replacement for the Customer's consideration if the Personnel removed were Key Personnel.
- 27.12 If the Customer is satisfied that a person nominated by the Service Provider under clause 27.11.2 is a suitable replacement for the relevant Key Personnel, the Customer must Notify the Service Provider that the nomination has been Approved.
- 27.13 If the Customer is not satisfied that a person nominated by the Service Provider under clause 27.11.2 is a suitable replacement for the relevant Key Personnel, the Customer must Notify the Service Provider in writing, which need not include any reasons, that the nomination has not been Approved.
- 27.14 If the Service Provider receives a notice under clause 27.13, the Service Provider must, at the Customer's request, nominate a further replacement person for the Customer's consideration. The provisions of clause 27.12 or 27.13 will apply (as applicable) with respect to that further nomination.
- 27.15 Any requirement to remove or replace any Personnel under this clause, and the Service Provider's inability to find a suitable replacement person, will not be taken to be an event beyond the reasonable control of the Service Provider for the purposes of any performance relief.
- 27.16 If the Service Provider is unable to provide acceptable replacement Key Personnel, the Customer may terminate this Contract in accordance with the provisions of clause 62.

- 27.17 The Customer is not obliged to pay Charges for any Contractor Personnel who the Customer has requested be removed after the date the request was made.

28. Subcontractors

- 28.1 The Service Provider must:
- 28.1.1 not subcontract any aspect of the performance of this Contract without the prior written Approval of the Customer, which will not be unreasonably withheld;
 - 28.1.2 not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Service Provider, constitute a breach of this Contract;
 - 28.1.3 not subcontract with an entity that has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;
 - 28.1.4 not subcontract with an entity that is, or which has one or more employees that are, or which is a member of an entity that is an Inappropriate Person;
 - 28.1.5 comply with its obligations in respect of Subcontractors set out in Schedule 8; and
 - 28.1.6 ensure that any Subcontractor Approved under this Contract complies with the terms of this Contract that are applicable to the subcontracted services, including:
 - (a) clause 51 (Confidentiality);
 - (b) clause 52 (Privacy);
 - (c) clause 54 (Security);
 - (d) clause 63 (Transition Out);
 - (e) clause 64 (Knowledge transfer);
 - (f) clause 29 (Conflict of Interest); and
 - (g) clause 10 in Schedule 8 (Audit and Access).
- 28.2 The Service Provider must structure its arrangements with its Subcontractors of services associated with the Services (including for any Software, Software Services, support contracts or Equipment leases) so that:
- 28.2.1 the subcontracts with those Subcontractors permit novation or transfer of the relevant services to the Customer (or another provider nominated by the Customer) in the form reasonably required by the Customer following removal of the relevant Services from, or termination or expiry of, this Contract;
 - 28.2.2 no novation or transfer fee is payable on novation or transfer of the subcontract to the Customer on removal of Services or termination or expiry of this Contract;
 - 28.2.3 the ongoing fees under those arrangements payable by the Customer after any removal of the Services from, or termination or expiry of, this Contract are consistent with, and no higher than, the fees payable by the Service Provider prior to removal of the Services or termination or expiry; and

- 28.2.4 any non-disclosure clause contained in those arrangements does not prevent disclosure of the details of the transaction to the Customer.
- 28.3 The Service Provider must provide information as requested by the Customer about its subcontracts. This information may include the details of Subcontractors engaged to provide products or services under this Contract. The Service Provider acknowledges that the Customer may be required to publicly disclose such information and the Service Provider must inform Subcontractors engaged to provide products or services under this Contract that their details may be publicly disclosed.
- 28.4 The Service Provider must provide the Customer with a copy of the subcontract between the Service Provider and a Subcontractor within 5 Business Days of receiving a request from the Customer to provide the subcontract.
- 28.5 For clarity, where any part of the Services is directly or indirectly provided to the Customer by a Subcontractor:
- 28.5.1 the Service Provider is and remains fully responsible in accordance with this Contract for providing those Services and maintaining the Service Levels, CSFs and KPIs with respect to those Services, regardless of the legal relationship (if any) between the Customer and the Subcontractor;
- 28.5.2 any Approval of a Subcontractor by the Customer does not in any way relieve the Service Provider of any its obligations or responsibilities under this Contract;
- 28.5.3 the rights and remedies of the Customer under this Contract against the Service Provider for any default in the Service Provider's obligations under this Contract are not affected or in any way diminished by any such legal relationship between the Customer and the Subcontractor; and
- 28.5.4 the Service Provider will manage the delivery of Services by the Subcontractor as if it were the Service Provider. In particular, the Service Provider will maintain full responsibility for managing procurement, billing, fault management, Service Requests, Intellectual Property Rights issues, privacy and confidentiality issues, Service Level, CSF and KPI attainment and defaults.
- 28.6 Clause 28.5 is in addition to, and does not waive, the Customer's right to seek any other remedy under this Contract, at Law, or in equity.

29. Conflict of Interest

Warranty that there is no Conflict of Interest

- 29.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict of Interest (either perceived or actual) exists or is likely to arise in the performance of its obligations under this Contract. A 'Conflict of Interest' for the purposes of this clause 29, is defined as including:
- 29.1.1 the Service Provider accepting benefits or bribes from a third party or providing benefits or bribes to Personnel of the Customer in respect of this Contract, including for the purposes of influencing the Customer to enter into this Contract with the Service Provider or a third party; or
- 29.1.2 unauthorised distribution of the Customer's Confidential Information by the Service Provider for the purposes of the Service Provider gaining financial benefit from a third party.

Notification of a Conflict of Interest

- 29.2 If, during the performance of this Contract, a Conflict of Interest (either perceived or actual) arises, or appears likely to arise, the Service Provider must:
- 29.2.1 Notify the Customer Representative immediately in writing;
 - 29.2.2 make full disclosure of all relevant information relating to the conflict; and
 - 29.2.3 take such steps as the Customer requires to resolve or otherwise deal with the conflict.
-

30. Consents and Approvals

- 30.1 The Service Provider is responsible for obtaining any consents or approvals from third parties (including Subcontractors and Other Contractors) which are required in connection with the provision of the Services.
-

31. Representatives

- 31.1 In addition to the arrangements in the Statement of Requirements, this clause sets out the contacts that the parties will use for the day-to-day administration of this Contract.
- 31.2 The Service Provider and the Customer must each appoint a representative with the authority to represent it and to:
- 31.2.1 give and receive Notices under this Contract;
 - 31.2.2 exercise rights, and in the case of the Customer give Approvals or Acceptances, under this Contract; and
 - 31.2.3 conduct the day-to-day administration of this Contract.
- 31.3 A party must Notify the other party of a change to its Representative or its Representative's contact details, including address for Notices.
- 31.4 The Service Provider Representative is responsible for the administration of this Contract on behalf of the Service Provider and is the only representative authorised to agree to changes to this Contract on behalf of the Service Provider.
- 31.5 The Customer Representative is responsible for administration of this Contract on behalf of the Customer and is the only representative authorised to agree to changes to this Contract on behalf of the Customer.
- 31.6 The Customer Representative and the Service Provider Representative must meet and communicate as required by the Customer or as specified in the Statement of Requirements. The Service Provider must provide progress reports as specified in the Statement of Requirements.
- 31.7 The Customer Representative and Service Provider Representative may each delegate their functions, or authorise that their functions be carried out on their behalf, and will Notify the other party of any such delegation or authorisation.

- 31.8 Any oral directions given by a party that, in the other party's opinion will impact scope, costs, timing or resources relevant to this Contract, must be confirmed by Notice within a reasonable period.

32. Variations to this Contract

- 32.1 Variations to this Contract will be dealt with as follows:
- 32.1.1 either party may request a variation by providing a draft Variation Proposal to the other party setting out the proposed variations;
 - 32.1.2 within 10 Business Days of receipt of the draft Variation Proposal or within another period agreed by the parties, the parties must meet to consider the draft Variation Proposal. At the meeting, the Service Provider must advise and discuss as required the impact the variations will have on:
 - (a) the Charges;
 - (b) the Services;
 - (c) the Service Provider's ability to perform its obligations under this Contract; and
 - (d) this Contract;
 - 32.1.3 at the meeting of the parties, or within a period after that meeting that is agreed by the parties, each party must Notify the other party whether it accepts or rejects the draft Variation Proposal (based on the stated impact of the variations); and
 - 32.1.4 if all parties accept the draft Variation Proposal, the parties must execute the Variation Proposal.
- 32.2 Any changes to the Charges associated with a variation to this Contract must:
- 32.2.1 not exceed any reasonable additional cost and the Service Provider must substantiate any proposed additional resource costs; and
 - 32.2.2 take fully into account any reduction in the cost of provision of the Services from efficiency improvements, increased volume or otherwise.
- 32.3 Any variation to this Contract takes effect from the date on which the parties execute a Variation Proposal or as otherwise agreed by the parties.
- 32.4 The parties must comply with any other change of control obligations (including in respect of roles, responsibilities and change logging) as set out in the Statement of Requirements.

33. Contract Review

- 33.1 The parties will, at least annually, comprehensively review the operation of this Contract, including for compliance by the Service Provider with the obligations specified in this Contract.
- 33.2 The annual review of the Service Provider's obligations referred to in clause 33.1 includes review of the Service Provider's reporting obligations in accordance with clause 22.

- 33.3 The Service Provider must comply with any reasonable obligations for review specified by Notice from the Customer.
- 33.4 In addition, if a review reveals that the Service Provider has not met any timing obligations under this Contract for the supply of Deliverables, the Customer may direct the Service Provider to deliver those Deliverables within a period reasonably specified in that direction.
- 33.5 Each party must bear its own costs of any review conducted under this clause 33.

34. Charges, Payment and Invoicing

Charges and Payment

[Note to Tenderers: This clause will be reviewed based on the successful Tender (if any). The FCA Entity's preference is to enter into one contract for the Recording and Transcription Services for both the FCA and the FCoA and FCC. If a single contract is entered into, the Service Provider may be required to provide separate invoices for Recording and Transcription Services for the FCA and the FCoA and FCC. Schedule 3 may also set out separately Charges payable by the FCA and FCoA and FCC.]

If both of the Transcription and Recording Services and the AV Support Services are provided under the same Contract, then the AV Support Services may also need to be invoiced separately to the FCA Entity.]

34.1 Subject to the Contract, and the satisfactory performance of the Services:

34.1.1 the Customer must pay the Charges set out in Schedule 3 (Charges and Payments) to the Service Provider; and

34.1.2 the Customer will pay the Charges within 20 Business Days of receiving a Correctly Rendered Invoice from the Service Provider.

34.2 For clarity and consistent with clause 34.1, the Customer is not obliged to pay any invoice for Services which were not performed satisfactorily or in accordance with this Contract.

34.3 The Service Provider acknowledges and agrees that the Charges set out in Schedule 3 (Charges and Payments) fully compensate the Service Provider for all effort, input, equipment and services required for the provision of the Services.

34.4 The Charges are the only costs payable by the Customer for provision of the Services. The Customer is not required to pay any other amounts, including in respect of any cost variables (including for changes in data storage costs or in relation to any third party fees, costs or charges), or any other costs or amounts in connection with this Contract (irrespective of whether those costs or amounts are set out in, or referred to as part of, this Contract, or are otherwise made known to the Customer).

34.5 The parties agree that payments may be effected by electronic transfer of funds.

34.6 If the Customer disputes an invoice or an amount payable pursuant to an invoice:

34.6.1 the Customer will promptly Notify the Service Provider of the details and nature of the disputed portion;

34.6.2 the Customer may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion;

34.6.3 if required by the Customer, the Service Provider must cancel the original invoice and issue a new Correctly Rendered Invoice for the undisputed portion, and the Customer will pay the new invoice within the period specified in clause 34.1.2; and

34.6.4 the provisions of clause 61 (Dispute Resolution) will apply in relation to the disputed portion. If that Issue resolution process results in a determination that the Customer should pay the disputed portion, the Service Provider may issue a new Correctly Rendered Invoice for that amount and the Customer must pay that invoice in accordance with clause 34.1.

34.7 The Service Provider must not Charge the Customer for any Services that are cancelled prior to performance, except where the Statement of Requirements expressly provides that a cancellation fee is payable.

Timeframe for providing invoices

34.8 Where Schedule 3 (Charges and Payments) requires Charges for Services to be invoiced on a monthly or annually in arrears basis, the Customer is not obliged to pay the amount specified in any invoice for those Services where the invoice is provided 3 or more months after:

34.8.1 for a monthly invoice, the date those Services were performed; and

34.8.2 for an annual invoice, 3 or more months after the expiration of the annual period of the invoice.

Requirements for invoices

34.9 An invoice is a Correctly Rendered Invoice if it :

34.9.1 is correctly addressed and calculated in accordance with this Contract;

34.9.2 relates only to Services that have been delivered to the Customer in accordance with this Contract; and

34.9.3 is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and

34.9.4 includes the items set out in clause 34.10.

34.10 The Service Provider must ensure that its invoices include:

34.10.1 the date of the invoice;

34.10.2 the name or title of the Customer Representative;

34.10.3 the details of the Charges claimed for that invoice including:

(a) the total Charges excluding GST;

(b) the GST payable on the total Charges;

(c) the total Charges including GST; and

34.10.4 if applicable, the relevant dates and periods to which the invoice relates;

34.10.5 expenses and costs payable, attaching original receipts (if required by the Customer);

34.10.6 written certification in a form acceptable to the Customer that the Service Provider has paid all remuneration, wages, entitlements, charges, or other amounts payable to an employee, agent or Subcontractor performing Services under this Contract

including under any industrial instrument (as that term is defined by the *Corporations Act 2001 (Cth)*);

- 34.10.7 the Service Provider's ABN;
 - 34.10.8 the reference number for this Contract;
 - 34.10.9 the title of the Services; and
 - 34.10.10 details of cumulative Charges correctly invoiced and paid in the financial year in which the invoice is rendered (but not including that invoice).
- 34.11 The Service Provider must provide Correctly Rendered Invoices to the Customer for all amounts payable by the Customer under this Contract.
 - 34.12 The Service Provider must provide separate invoices for Charges payable in respect of Services provided to the Customer and to the Family Court and Federal Circuit Court.
 - 34.13 The Customer is not required to pay any amount which is not invoiced in accordance with this Contract.
 - 34.14 If the Charge for a Service varies depending on the timeframe for providing that Service (e.g. a higher Charge is payable for Transcript ordered with a shorter turnaround time), invoices must be based the actual time taken to provide the Service, not the ordered time. For example, if the Customer orders a Transcript for next day delivery, and the Transcript is actually delivered in two days, the invoice must reflect the Charges for a two day turnaround.

35. Cost Investigation

- 35.1 Without limiting clause 10 of Schedule 8, for the purposes of any or all of the following:
 - 35.1.1 substantiating whether the Charges payable or paid by the Customer are accurate;
 - 35.1.2 gathering such information as required to confirm the Charges payable or paid by the Customer are accurate (including the basis for the calculation of the Charges such as the unit resources consumed in any period); and
 - 35.1.3 establishing that the Services are being met,

the Customer may, at its discretion, conduct a cost investigation in relation to the Charges by its cost investigation Personnel or the Customer's nominee at any time as the Customer elects.
- 35.2 On request by the Customer, the Service Provider must facilitate any cost investigation conducted under clause 35.1.
- 35.3 The Service Provider must, for the purpose of clause 35.1 and on request by the Customer:
 - 35.3.1 allow access for the Customer cost investigation Personnel or the Customer's nominee to the Service Provider's premises, financial systems and information; and
 - 35.3.2 provide detailed information in response to any requests from the Customer in connection with the cost investigation, including information which will allow a breakdown of the Service Provider's Charges and supporting information.

36. Performance and Remedies

- 36.1 The Service Provider acknowledges the importance of ensuring the Services provided fully meet the requirements of this Contract, and agrees that it is reasonable that the Customer has a range of remedies available to it to deal with any non-compliances. The Customer agrees to act reasonably in exercising its remedies under this Contract, but this obligation does not limit the Customer's ability to exercise its rights as needed to ensure the Customer can meet its obligations to other Users and Stakeholders.
- 36.2 The Service Provider acknowledges that, if it fails to perform the Services in accordance with this Contract, the Customer may (without limiting any other right or remedy under this Contract or at Law):
- 36.2.1 direct the Service Provider to remedy the non-compliance within a specified time in accordance with clause 23;
 - 36.2.2 direct the Service Provider to re-perform the Services in a specific manner in accordance with clause 23, for example to reproduce a Transcript that does not accurately reflect the underlying Recording;
 - 36.2.3 appoint a Management Adviser in accordance with clause 24.1 to 24.8;
 - 36.2.4 use the Governance arrangements applicable to this Contract to seek a prompt resolution of the failure. The Service Provider must promptly respond and participate in such arrangements as requested by the Customer, including to escalate the issue to senior Personnel for urgent attention;
 - 36.2.5 dispute an invoice provided for those Services or decline to pay any Charges for those Services in accordance with clause 34;
 - 36.2.6 for Transcription Services, apply a reduced Charge in accordance with clause 40;
 - 36.2.7 apply liquidated damages in accordance with clause 41, for a failure to achieve a Milestone in respect of which liquidated damages apply;
 - 36.2.8 where the Service Provider fails to achieve a Service Level, , CSFs and KPIs adjust the Charges to reflect the application of Service Credits in accordance with clause 38 and Schedule 2 (Performance Management);
 - 36.2.9 require the Service Provider to re-perform the Services in accordance with clause 39;
 - 36.2.10 exercise its rights in clause 39.5 to obtain the Services or remediation services from an alternative provider, and deduct the cost of those services from any Charges payable to the Service Provider under this Contract; or
 - 36.2.11 terminate or reduce the scope of the Services in accordance with clause 62.
- 36.3 The Service Provider must comply with the Customer's exercise of any of the rights referred to in this clause, in accordance with this Contract.

37. Reduction in Charges and Set Off

- 37.1 If at any time prior to the delivery and Acceptance or Approval of any Service required to be provided under this Contract, the Charges for that Service are reduced (whether generally to

the market place or for other similar customers), the Charges for that Service will be deemed to be reduced to the same extent.

- 37.2 If an invoice is found to have been rendered incorrectly after payment, any overpayment will be a debt due to the Customer under this Contract. Any such overpayment, Service Credit or other discount or refund due to the Customer, without limiting any other right or remedy of the Customer, may be offset against any amount subsequently due by the Customer to the Service Provider under this Contract.

38. Performance Management

38.1 The Service Provider acknowledges and agrees that:

38.1.1 the Customer has relied on the Service Provider's representations, as reflected in this Contract, and on the Service Provider's ability to:

- (a) meet each Milestone or other date specified for the performance of the Services;
- (b) comply in full with the quality, architectural, functional and performance requirements for the Services; and
- (c) meet the performance management framework specified in this Contract (including the Service Levels, , CSFs and KPIs or other performance standards described in this Contract); and

38.1.2 the Customer's value for money assessment of the Service Provider's representations depends on the Service Provider complying in full with this Contract.

38.2 The parties agree that the Charges will be adjusted to reflect the application of Service Credits in accordance with the performance management framework specified the Statement of Requirements, Schedule 2 (Performance Management) and Schedule 3 (Charges and Payments).

38.3 The parties will comply with the details in the performance management framework specified in the Statement of Requirements, **Error! Reference source not found.** (Performance Management) and Schedule 3 (Charges and Payments) including in relation to measuring and reporting on the Service Provider's performance under this Contract.

39. Performance and Re-performance

39.1 The Customer must not exercise its rights under this clause 39 in respect of a failure:

- 39.1.1 of Services that are subject to Service Credits;
- 39.1.2 to which liquidated damages may apply; or
- 39.1.3 to achieve a Milestone.

39.2 If any Services have not been performed in accordance with this Contract, the Customer may (within a reasonable time of the Services being performed) issue a direction:

- 39.2.1 requiring the Service Provider to perform or re-perform (as the case may be) the Services;

- 39.2.2 requiring the Service Provider to take all steps reasonably necessary to:
 - (a) mitigate the effect on the Customer of the failure to perform the Services in accordance with the Contract; and
 - (b) put the Customer (as closely as possible) in the position in which it would have been if the Contract had performed the Services in accordance with this Contract; and
- 39.2.3 stating the reasonable time within which the Service Provider must commence and complete (as the case may be):
 - (a) performance or re-performance of the Services under clause 39.2.1;
 - (b) the mitigating steps under clause 39.2.2(a).
- 39.3 The Service Provider must comply with a direction under clause 39.2.
- 39.4 The Service Provider will be responsible for all of the Service Provider's costs involved in complying with a direction under clause 39.2.
- 39.5 Without limiting clause 39.2, if any Services have not been performed in accordance with this Contract, the Customer may engage a third party to provide those Services or to remediate the Services.
- 39.6 If the Customer exercises its rights under clause 39.5, then:
 - 39.6.1 the Customer must give the Service Provider Notice as soon as reasonably practicable;
 - 39.6.2 the Service Provider must provide all reasonable assistance to the Customer or its nominee for the provision of the Services;
 - 39.6.3 the Customer will be entitled to withhold from the Charges an amount equal to the third party's reasonable costs to provide the Services; and
 - 39.6.4 if the reasonable costs withheld under clause 39.6.3 exceed the Charges, the Customer may recover the difference from the Service Provider as a debt due and payable to the Customer.
- 39.7 Nothing in this clause affects or limits:
 - 39.7.1 the Service Provider's obligations to continue performing the Contract;
 - 39.7.2 the Customer's rights or remedies under this Contract or at Law; or
 - 39.7.3 any other part of this Contract.

40. Reductions in Charges - Service Credits

- 40.1 The Service Provider acknowledges that:
 - 40.1.1 its failure to meet a Service Level, CSF or KPI may have a materially adverse impact on the business and operations of the Customer;
 - 40.1.2 Service Credits:

- (a) represent a reduction in Charges to reflect the provision by the Service Provider of a lower level of Service than is required of it under this Contract; or
- (b) are a reasonable pre-estimate of the Loss likely to be suffered by the Customer as a result of the Service Provider's actions,

and whether or not they are a reasonable pre-estimate of the Loss, constitute an agreed amount by which the Charges may be reduced in accordance with this Contract.

40.2 Where Service Credits apply then, subject to the process in **Error! Reference source not found.** (Performance Management):

40.2.1 the Service Provider must adjust the next invoice, or pay to the Customer on demand, any Service Credit that corresponds to the failure to meet that Service Level, CSF or KPI; or

40.2.2 the Customer may set-off any Service Credit that corresponds to the failure to meet that Service Level, CSF or KPI from Charges payable to the Service Provider.

40.3 the Customer's rights under clauses 40.1 and 40.2 are in addition to, and do not waive, the Customer's right to seek any other remedy under this Contract, at Law, or in equity.

40.4 To avoid any doubt, where clause 40.1 applies, the Customer may exercise any right it has under a financial undertaking or performance guarantee provided under this Contract.

41. Liquidated Damages

41.1 This clause applies if:

41.1.1 there is a failure by the Service Provider to achieve Acceptance of a Critical Milestone specified in Schedule 3 (Charges and Payments) by the date for Acceptance for that Critical Milestone as specified in Schedule 3 (Charges and Payments); and

41.1.2 Schedule 3 (Charges and Payments) specifies that liquidated damages may be claimed in relation to that Critical Milestone.

41.2 The parties acknowledge that if the Service Provider fails to achieve a Critical Milestone by the date for Acceptance of that Milestone:

41.2.1 the Customer will suffer loss and damage;

41.2.2 such loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the work of the Customer, be impossible, complex or expensive to quantify accurately in financial terms; and

41.2.3 therefore, the parties agree that the amount of liquidated damages specified in Schedule 3 (Charges and Payments) is a genuine pre-estimate of (and not out of proportion to) the damage which would be suffered by the Customer as a result of the delay in achieving the Critical Milestone.

41.3 If the Service Provider fails to achieve Acceptance of a Critical Milestone by the date for required Acceptance, the Customer is entitled to recover from the Service Provider as liquidated damages, and not as a penalty, the amount specified in Schedule 3 (Charges and Payments) for each day of that the delay in achieving Acceptance of that Critical Milestone.

However, no amount will be owed to the Customer unless the Customer elects, in accordance with clause 41.4, to recover any such liquidated damages.

- 41.4 Upon becoming entitled to recover liquidated damages under clause 41.3, the Customer may, within the period determined under clause 41.5, elect in respect of the relevant period of delay to do either or both of the following:
- 41.4.1 set-off the amount of liquidated damages against any amount subsequently due by the Customer to the Service Provider under this Contract; or
 - 41.4.2 recover the amount of liquidated damages as a debt due and payable to the Customer.
- 41.5 Unless some other period is agreed in writing between the parties, the period within which the Customer may make an election under clause 41.4 will be:
- 41.5.1 any time during the period of the delay in achievement of the Milestone;
 - 41.5.2 4 months after the end of the relevant period of delay, if there is an end to that period; or
 - 41.5.3 if any limit on the amount of liquidated damages (specified in Schedule 3 (Charges and Payments)) is reached before the end of the relevant period of delay, 4 months after the Customer receives written Notification from the Service Provider that the limit has been reached.
- 41.6 If the Customer makes no election under clause 41.4 within the period determined in accordance with clause 41.5, then the Customer will be taken to have elected to recover the amount of liquidated damages payable as a debt due to the Customer, on the day after the period referred to in clause 41.5 ends.
- 41.7 The amount of liquidated damages payable under this clause will be calculated in accordance with Schedule 3 (Charges and Payments), including any adjustments calculated in accordance with Schedule 3 (Charges and Payments).
- 41.8 The Customer's right to claim liquidated damages under this clause 41 will not be the Customer's sole right, and will not limit any other right or remedy of the Customer under this Contract or at Law, to compensation for loss or damage arising from the failure to achieve a Critical Milestone by the date for Acceptance of that Milestone. However, any liquidated damages recovered by the Customer under this clause 41 will be taken into account when assessing any other compensation that may be due to the Customer.
- 41.9 For the purposes of this clause 41, the "relevant period of delay" means the whole period of each delay for which liquidated damages are recoverable by the Customer under clause 41.3, or one or more periods within the whole period of delay which the Customer may nominate in writing to the Service Provider, as the case requires.
- 41.10 Where the Service Provider is required to achieve a Milestone by a date specified in this Contract, and the original due date is changed to a later date in accordance with the Contract variation procedures in clause 32 ('**amended due date**') then, unless and to the extent specifically stated otherwise in writing, the Customer's entitlement to recover liquidated damages commences from the original due date and not the amended due date and continues until the Milestone is achieved.

42. Taxes

- 42.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract (subject to clause 43) must be met by the Service Provider and are included in the Charges. If any government or authority imposes a duty, tax (other than income tax), levy, or fee in respect of the Services provided under this Contract, or a rate of tax change, that is not otherwise provided for in the amount payable, the Service Provider may propose an amendment to this Contract (in accordance with clause 32) to adjust the Charges to take into account that change, but any amendment is subject to the prior written agreement of the Customer Representative.

43. GST

Interpretation

- 43.1 In this clause 43, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

GST gross up

- 43.2 If a party (Supplier) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount).
- 43.3 Clause 43.2 does not apply if the amount payable for the supply is expressed as 'GST inclusive'.

Reimbursements

- 43.4 If a party must reimburse or indemnify another party for a Loss, cost, or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, cost or expense, and then increased in accordance with clause 43.2.

Exclusion of GST from calculations

- 43.5 If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment will be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.

Adjustments

- 43.6 If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 43.2, such that a further amount of GST is payable in relation to the supply or a refund or credit of GST in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 43.6 is deemed to be a payment, credit or refund of the GST Amount payable under clause 43.2.
- 43.7 If an adjustment event referred to under clause 43.2 occurs in relation to a supply, the Supplier must give an adjustment note to the Recipient in relation to that supply within ten Business Days after becoming aware of the adjustment.

Tax invoice

- 43.8 A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

44. Competitive Pricing

- 44.1 The Service Provider must ensure that the Charges are not, during the Term, higher than the prices it charges to any other Entity for supplying services substantially similar to the Services and in substantially similar circumstances (**Similar Services**).
- 44.2 If the Service Provider does charge lower prices to any Entity for any Similar Services:
- 44.2.1 the Service Provider must assist the Customer for a 3 month period to determine the causes of the uncompetitive pricing; and
 - 44.2.2 on and from the conclusion of the 3 month period, the Service Provider must lower the Charges to match the prices of the Similar Services.
- 44.3 The Service Provider must charge the lower Charges referred to in clause 44.2 even if a dispute has arisen between the Parties about the reduced Charges until (at least) the dispute is resolved in accordance with this Contract.
- 44.4 The Service Provider must actively investigate the use and application of new technology and innovation to achieve cost efficiencies, while maintaining quality of Service delivery, for the Customer. For clarity, cost efficiencies achieved by the Service Provider and passed on to the Customer will be considered as a factor in determining whether or not to extend this Contract beyond the Initial Term.
- 44.5 Within 30 days after each anniversary of the Commencement Date, the Service Provider must certify in writing to the Customer that the Service Provider has complied with this clause 44 during that previous year, and must provide the information reasonably requested by the Customer to verify that compliance. The Customer acknowledges that confidentiality obligations may apply to the information referred to in this clause 44.5. The Service Provider acknowledges and agrees that it will not withhold or otherwise prevent the release of any third party information if the third party consents to the release to the Customer of that information.
- 44.6 The Parties acknowledge and agree that the provision of the Services allows the Service Provider to meet the Objectives and consequently, the requirement for the Service Provider to meet the Objectives does not:
- 44.6.1 prevent a service from being a Similar Service; or
 - 44.6.2 constitute a unique requirement of the Customer.

Part 8 Intellectual Property

[Note to Tenderers: The Intellectual Property rights and obligations in this Part will be reviewed based on the successful Tenderer's (if any) Tender.]

45. Intellectual Property Rights – General

- 45.1 The Service Provider acknowledges and agrees that this Part is intended to operate to ensure that (both during the Term and following the expiration or termination of this Contract) the Customer and other Users have all Intellectual Property Rights required to receive the full benefit of the Services and ensure continuity of services that are the same as or similar to the Services.

46. Intellectual Property Rights – New Material including Transcripts and Recordings

New Material - General

- 46.1 Ownership of Intellectual Property Rights in New Material is vested in the Commonwealth of Australia, as represented by the Customer, from the date of creation.
- 46.2 If requested by the Customer, the Service Provider must bring into existence, sign, execute or otherwise deal with any document that may be necessary to give effect to clause 46.1.

Licence to New Material

- 46.3 To the extent that the Service Provider needs to use any of the New Material to perform its obligations under this Contract the Customer grants to the Service Provider a revocable, royalty free, non-exclusive, non-transferable licence to use, reproduce, modify, distribute and communicate that Material solely for the purpose of providing the Services.
- 46.4 The licence granted under clause 46.3:
- 46.4.1 includes the right to permit the Service Provider's Personnel to use the Material for the purpose of providing the Services; and
 - 46.4.2 is subject to any limitations, conditions or restrictions set out in this Contract or otherwise advised by the Customer from time to time (which may include limitations imposed by a third party owner of that Material).
- 46.5 The licence granted under clause 46.3 above does not apply to Intellectual Property Rights in Transcripts and Recordings, which are addressed in clauses 46.9 to 46.15 below.

Licence to Customer Material

- 46.6 Nothing in this Contract is intended to affect the ownership of any Customer Material.
- 46.7 To the extent that the Service Provider needs to use any of the Customer Material to perform its obligations under this Contract the Customer grants to (or will procure for) the Service Provider a licence to use the Customer Material that is consistent with the licence to New Material provided under clauses 46.3 to 46.5 above.

Termination or expiry

- 46.8 The licence granted under clause 46.3 expires, and the Service Provider must return the Customer Material and New Material to the Customer (or to a third party nominated by the Customer), on the earlier of:
- 46.8.1 in respect of a particular item of Material, the date that the item ceases to be required for the performance of the Services; or
- 46.8.2 the last calendar day of the Transition Period.

New Material – Transcripts and Recordings

- 46.9 The Service Provider acknowledges that copyright in the Transcripts and Recordings or any part of the Transcripts and Recordings is and remains the property of the Customer.
- 46.10 Subject to clause 46.11, the Customer grants to the Service Provider during the Term, for the performance of the Services, a non-transferable, royalty free licence to the copyright in the Transcripts and Recordings to:
- 46.10.1 use, access and maintain the Transcripts and Recordings; and
- 46.10.2 reproduce and sell the Transcripts, subject to the terms of the Statement of Requirements to the extent that it addresses the reproduction or sale of the Transcripts.
- 46.11 The Customer may, at its discretion and with immediate effect by giving the Service Provider Notice, vary the licence granted under clause 46.9.
- 46.12 If the Statement of Requirements identifies a Site as one where the Service Provider is the exclusive provider of the Services, then the licence granted to the Service Provider under clause 46.10.2 in relation to Transcripts and Recordings undertaken at that Site is exclusive. Otherwise, the licence in clause 46.10.2 is non-exclusive.
- 46.13 In addition, the Service Provider's rights to reproduce and sell the Transcripts under clause 46.10.2 do not apply in the case of Transcripts that:
- 46.13.1 the Customer, FCA, FCoA or FCC orders or directs are made available (with or without charge and subject to any conditions or requirement as may be imposed by the Customer, FCA, FCoA or FCC) to impecunious litigants or their representatives; or
- 46.13.2 are provided:
- (a) by the Customer or any other Court for which the Services are provided;
and

- (b) other than on a commercial basis, for a public interest purpose such as research, study, analysis, peer review, professional or other education, development, discourse, commentary or writing of any nature.

- 46.14 For clarity, and subject to clause 46.11, the exclusive licence granted to the Service Provider under clause 46.12 entitles the Service Provider to enforce copyright in the Transcripts against third parties, in the manner prescribed by Part V, Division 3 of the *Copyright Act 1968* (Cth).
- 46.15 In relation to the exercise of its rights under clause 46.14 to enforce copyright against infringing third parties, the Service Provider must:
 - 46.15.1 promptly advise the Customer of any legal proceedings or any threatened legal proceedings which may involve the Transcripts;
 - 46.15.2 keep the Customer advised of the progress of any legal proceedings involving the Transcripts;
 - 46.15.3 if requested by the Customer, give the Customer copies of any documents or other material relating to the legal proceedings, including legal advice; and
 - 46.15.4 if requested by the Customer, comply with reasonable directions of the Customer in relation to the conduct of the legal proceedings.

47. Intellectual Property Rights – Existing Material

Existing Material – General

- 47.1 Nothing in this Contract is intended to affect the ownership of Intellectual Property Rights in Existing Material.
- 47.2 Without limiting its other obligations in this Part, the Service Provider must obtain all necessary Intellectual Property Rights and permissions before using or making available any Existing Material for the purposes of this Contract (including obtaining all necessary authorisations and consents from third party owners of any Existing Material to the extent required to provide the Services).

Existing Material – Service Provider Owned

- 47.3 The Service Provider grants to the Customer a perpetual, irrevocable, worldwide, non-exclusive and royalty free licence (including a right of sublicense) to Existing Material that is owned by the Service Provider and is:
 - 47.3.1 incorporated in, or provided with, the New Material;
 - 47.3.2 otherwise provided or made available to the Customer in connection with this Contract; or
 - 47.3.3 otherwise needed by the Customer to obtain the benefit of this Contract;to do anything with, and to permit any use of, that Material in connection with the New Material.

Existing Material – Third Party Owned

- 47.4 For Existing Material that is owned by a Third Party and is:

- 47.4.1 incorporated in, or provided with, the New Material;
- 47.4.2 otherwise provided or made available to the Customer in connection with this Contract; or
- 47.4.3 otherwise needed by the Customer to obtain the benefit of this Contract;

the Service Provider must procure for the Customer a licence on the same terms as clause 47.3.

48. Intellectual Property Warranty

48.1 The Service Provider warrants, represents and undertakes that:

- 48.1.1 the Services will not infringe the Intellectual Property Rights of any person;
- 48.1.2 it has the necessary rights to vest the Intellectual Property Rights and grant the licences in this Contract; and
- 48.1.3 the Service Provider has undertaken all necessary investigations (for example, ensuring that the Services do not infringe any current patent) in order to provide the warranties in clauses 48.1.1 and 48.1.2.

48.2 This clause 48 survives the expiration or earlier termination of this Contract.

49. Moral Rights

49.1 To the extent permitted by applicable Laws and for the benefit of the Customer, the Service Provider must ensure that each of the Personnel used by the Service Provider in the production or creation of the New Material gives genuine consent in writing, in a form acceptable to the Customer, to the use of the New Material for the Specified Acts, even if such use would otherwise be an infringement of its Moral Rights.

49.2 In clause 49.1, '**Specified Acts**' means:

- 49.2.1 falsely attributing the authorship of any New Material, or any content in the New Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- 49.2.2 materially altering the style, format, colours, content or layout of the New Material and dealing in any way with the altered New Material;
- 49.2.3 reproducing, communicating, adapting, publishing or exhibiting any New Material; and
- 49.2.4 adding any additional content or information to the New Material.

Part 9 Information Management

50. General

- 50.1 The Service Provider acknowledges that the performance of the Services will involve the creation and storage of and access to records (including Transcripts and Recordings) that may incorporate highly sensitive information. While these records may be accessed by Stakeholders or other members of the public, the Customer is concerned that such information is not accessed, used or disclosed contrary to this Contract and applicable Laws.

51. Confidentiality

Disclosure of Confidential Information

- 51.1 Subject to clause 51.6, a party must not, without prior Notice of consent from the other party, disclose any Confidential Information of the other party to a third party.
- 51.2 In giving Notice of consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party must comply with these conditions if it proceeds to make the disclosure.

Written undertakings

- 51.3 Each party must take all reasonable steps to ensure that, subject to clause 51.6, its Personnel engaged to perform work under this Contract do not disclose Confidential Information of the other party obtained during the course of performing such work.
- 51.4 The Service Provider must ensure that any of its Personnel to whom information may be disclosed pursuant to clauses 51.6.1 or 51.6.2 provide a written undertaking of acknowledgement of the Service Provider's obligations of confidentiality under this Contract in the form of the Deed of Confidentiality set out at Schedule 5 (Deed of Confidentiality).
- 51.5 If the Service Provider receives a request for a copy of the undertakings given pursuant to clause 51.4, it must promptly arrange for copies of all such undertakings to be given to the Customer.

Exceptions to obligations

- 51.6 The obligations of the parties under this clause 51 will not be taken to have been breached to the extent that Confidential Information:
- 51.6.1 is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
 - 51.6.2 is disclosed to a party's Personnel solely to enable effective management, review or auditing of the Contract and Contract-related activities;
 - 51.6.3 is shared by the Customer within the Customer's organisation, or with another Entity, where this serves the Commonwealth's legitimate interests;

- 51.6.4 is disclosed by the Customer to the responsible Minister;
- 51.6.5 is disclosed by the Customer, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- 51.6.6 is information for which disclosure is authorised or required by Law, including under this Contract, under a licence or otherwise, to be disclosed; or
- 51.6.7 is in the public domain otherwise than due to a breach of this clause 51.

51.7 In clause 51.6, references to “a party” and “the Customer” include references to another User.

Additional Confidential Information

51.8 The parties may agree in writing at any time that certain additional information is to constitute Confidential Information for the purposes of this Contract, and that documentation will be Confidential Information from the date agreed.

No reduction in privacy obligations

51.9 Nothing in clauses 51.1 to 51.8 derogates from any obligation which either party may have either under the Privacy Act as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

Announcements

51.10 The Service Provider must, before making any public announcement in connection with this Contract or any transaction contemplated by this Contract, obtain the Customer’s agreement to the announcement, except if the public announcement is required by Law or a regulatory body (including the rules of a relevant stock exchange).

51.11 If the Service Provider is required by Law or a regulatory body to make a public announcement in connection with:

51.11.1 this Contract; or

51.11.2 any transaction contemplated by this Contract,

the Service Provider must limit the public announcement to the extent required by the relevant Law or regulatory body, and, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.

51.12 For clarity, clauses 51.10 and 51.11 are not intended to affect the Service Provider’s right to enter into public debate or criticism of the Commonwealth or Commonwealth Entities, including the Customer or other Users.

52. Privacy

Obligations

52.1 The Service Provider acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act and must in respect of the performance of its obligations under this Contract (and must ensure its Personnel do likewise):

52.1.1 comply with its obligations under the Privacy Act including all applicable regulations and registered APP Codes;

- 52.1.2 not perform, or omit to perform, any act or practice in connection with this Contract which, if performed or omitted by the Customer or another User, would be a breach of the Privacy Act;
 - 52.1.3 not perform, or omit to perform, any act or practice in connection with this Contract which may or would cause the Customer or another User to be in breach of the Customer's obligations under the Privacy Act;
 - 52.1.4 only collect, use, disclose, store, retain and dispose of any Personal Information obtained in the course of providing Services under this Contract for the purposes of, and as required by, this Contract;
 - 52.1.5 without limiting anything else in this clause 52, not use any Personal Information obtained in the course of providing the Services for the purposes of direct marketing (as that term is used in the Privacy Act);
 - 52.1.6 comply with the security obligations set out in this Contract in relation to the collection, storage, use or disclosure of any Personal Information obtained in the course of providing Services under this Contract;
 - 52.1.7 not transfer any Personal Information obtained as a result of, or in connection with, providing the Services to, or allow access to such Personal Information from, a location outside of Australia unless the Customer Representative has given prior written permission and then only to the extent permitted and in accordance with any conditions contained in that permission; and
 - 52.1.8 comply with all directions, guidelines, determinations and recommendations of the Customer in respect of the collection, storage, use and transfer of Personal Information, to the extent they are not contrary to the Privacy Act.
- 52.2 The Service Provider must ensure that:
- 52.2.1 all its Personnel required to deal with Personal Information obtained in the course of providing the Services are made aware of the obligations of Service Provider set out in this clause 52; and
 - 52.2.2 any Subcontract entered into by Service Provider imposes on the Subcontractor the same obligations that the Service Provider has under this clause 52 (including this requirement in relation to Subcontracts).
- 52.3 The Service Provider must Notify the Customer Representative immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 52.
- 52.4 Without limiting any other obligations set out in this clause 52, the Service Provider must comply with all applicable State and Territory privacy Laws, including all applicable State and Territory Law regulating the use or disclosure of Personal Information.

53. Notifiable Data Breach

- 53.1 If the Service Provider becomes aware of an event which could amount to an Eligible Data Breach in connection with the provision of the Services:
 - 53.1.1 the Service Provider must as soon as possible, but within 2 Business Days, Notify the Customer;
 - 53.1.2 comply with its obligations under the Privacy Act in relation to that event;

- 53.1.3 provide the Customer with all information requested by the Customer about the event; and
- 53.1.4 if requested, allow the Customer to participate in the Service Provider's assessment of the event and whether it amounts to an Eligible Data Breach.
- 53.2 If the Service Provider determines, or the Customer determines and Notifies the Service Provider, that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act:
 - 53.2.1 the parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then the Customer will, acting reasonably, decide which party will issue that notification);
 - 53.2.2 if the Service Provider is to issue a notification, then:
 - (a) the Service Provider must as soon as possible, but within 2 Business Days, provide the Customer with a draft of the notification;
 - (b) make any changes to the draft notification that are reasonably required by the Customer; and
 - (c) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).
- 53.3 If the Customer is to issue the notification, then:
 - 53.3.1 the Customer must as soon as possible, but within 2 Business Days, Notify the Service Provider and provide a draft of the notification;
 - 53.3.2 make any changes to the notification that are reasonably required by the Service Provider for consistency with the Privacy Act; and
 - 53.3.3 issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).
- 53.4 The Service Provider must ensure that:
 - 53.4.1 the Customer is promptly notified of any investigation or other action taken by the Information Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
 - 53.4.2 the Customer is kept informed in relation to that investigation or other action.
- 53.5 The parties acknowledge and agree that nothing in clauses 53.1 to 53.5 affects their obligations under the Privacy Act.

54. Security

Compliance with Customer requirements

- 54.1 The Service Provider must, and must ensure that its Subcontractors and Personnel comply with, all relevant security procedures and other security requirements as set out in the Statement of Requirements or as otherwise Notified from the Customer.

- 54.2 The Service Provider must comply with such a security procedure or other security requirement immediately if directed by the Customer or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- 54.3 The Service Provider must send the Customer a Notice identifying any potentially relevant security procedure or other security requirement of the Customer of which it is aware and which is not the subject of a Notice in accordance with clause 54.1.

Supply chain integrity

- 54.4 The Service Provider must:
- 54.4.1 ensure the security, confidentiality and availability of all hardware, software and other technology (including cloud services and telecommunications equipment) used to provide the Services; and
 - 54.4.2 maintain the integrity of the supply chain in relation to any hardware and software used to provide the Services.
- 54.5 On request, the Service Provider must provide the Customer with information about:
- 54.5.1 its local and global supply chain as it relates to or affects the performance of the Services. This information might include:
 - (a) the identity of the Service Provider's Subcontractors; or
 - (b) details of alliances, partnerships and contracts with third party suppliers; and
 - 54.5.2 the removal or addition of a supply chain element from the Service Provider's supply chain.

Security requirements

- 54.6 The Service Provider must:
- 54.6.1 ensure that all Customer Data (including stored Recordings and Transcripts), in respect of which the Service Provider has custody or control for purposes connected with this Contract:
 - (a) is protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person; and
 - (b) has protective measures as required by this Contract, including administrative, physical, and technical safeguards that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Customer Data;
 - 54.6.2 at the Customer's request in a Notice, the Service Provider must provide details of the Service Provider's security measures in place to reduce the risk of a Security Incident on the Service Provider's systems;
 - 54.6.3 not transfer, store or access Customer Data outside of Australia (or allow such transfer, storage, or access), unless expressly permitted by this Contract or the Customer in writing;

- 54.6.4 ensure that if the Service Provider is permitted to store Customer Data in any location outside of Australia (including through the remote access or control of any server or other hardware or software) access is restricted to those Service Provider Personnel with the appropriate authorisations who have a need for such access, and that access is limited to the minimum access necessary to enable the Service Provider to comply with its obligations under this Contract;
- 54.6.5 comply with the Protective Security Policy Framework and any other security requirements or procedures in this Contract or specified by the Customer from time to time regarding any aspect of security of, or access to, the Customer, Data (including Customer Data), Stakeholders or Sites;
- 54.6.6 take reasonable and prudent steps for disaster recovery and business continuity consistent with good industry practice to ensure that Customer's Data on the Service Provider's systems is not lost, corrupted or rendered inaccessible;
- 54.6.7 when using or accessing the Customer Sites or facilities comply with (and ensure its Personnel are aware of and comply with) all reasonable directions of the Customer and any security and safety requirements Notified to the Service Provider by the Customer;
- 54.6.8 ensure that access to the Service Provider's systems is controlled so that only the Service Provider's Personnel with a need to access the Customer's Data for a purpose relating to the performance of this Contract are able to access the Customer's Data;
- 54.6.9 ensure that the Service Provider's systems are configured so that the Service Provider's Personnel who are not permitted under this Contract to access the Customer's Confidential Information cannot access the Customer's Confidential Information;
- 54.6.10 Notify the Customer immediately (or as soon as practicable in the circumstances) in the event of any requests from foreign governments or agencies for access to any Customer Data (unless such Notification is prohibited by Law) and attempt to redirect any foreign government or agency requesting access to Customer Data to request the access directly from the Customer; and
- 54.6.11 inform the Customer Representative, by telephone as soon as possible after it becomes aware of any Security Incident or any other contravention of the security requirements under this Contract, and as soon as practicable (and at least within 1 Business Day) confirm the details by Notice in writing. In the event of any Security Incident, the Service Provider must comply with all directions of the Customer to resolve the incident, including in relation to:
- (a) Notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Customer;
 - (b) obtaining evidence about how, when and by whom the Service Provider's information system and/or the Customer Data has or may have been compromised, providing it to the Customer on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (c) implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident; and
 - (d) preserving and protecting Customer Data (including as necessary reverting to any backup or alternative site or taking other action to recover Customer Data).

Data Protection Protocols

The Service Provider must develop a Data Protection Plan and Data Protection Protocols that specifies how stored Recordings and Transcripts will be protected from unauthorised access.

Misuse of Customer Data

- 54.7 The Service Provider acknowledges and agrees that:
- 54.7.1 the publication or communication of any information or Document by a person which has come to their knowledge or into their possession or custody by virtue of this Contract (other than to whom the Service Provider is authorised to publish or disclose the fact or Document) may be an offence under Part 5.6 of the Schedule to the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment;
 - 54.7.2 the giving of false or misleading information to the Customer or its Personnel is a serious offence under Division 137 of Schedule to the *Criminal Code Act 1995* (Cth);
 - 54.7.3 any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Services may be an offence under Part 10.7 of Schedule to the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment; and
 - 54.7.4 under section 121(1) of the *Family Law Act 1975* (Cth), it is an offence punishable by imprisonment for up to one year to provide an account of family law proceedings to the public or a section of the public that identifies parties or other persons involved in family law proceedings, other than in the limited circumstances outlined in section 121(9).

Warranty in respect of Customer Data

- 54.8 The Service Provider warrants, represents and undertakes that no Customer Data will be lost or corrupted in the course of the provision of the Services as a result of a breach by the Service Provider or any Service Provider Personnel of the obligations set out in this Contract.

Security clearance

- 54.9 The Customer may, from time to time, Notify the Service Provider of the level of security or access clearance required for the Service Provider's Personnel, and the date from which, or the period during which, that clearance will be effective and the Service Provider must comply with and ensure its Subcontractors and Personnel act in accordance with that Notice.
- 54.10 The Service Provider is responsible for all costs associated with obtaining security clearances.
- 54.11 If the Customer denies access to or requests removal of any Personnel on the basis that they have failed to obtain or ceased to hold the level of security or access clearance required by a Notice given in accordance with clause 54.9 within the time specified in the Notice, the Service Provider must provide suitable replacement Personnel in accordance with clause 27.

Personnel security

54.12 The Service Provider must ensure that the Service Provider's Personnel involved in the performance of the Services:

54.12.1 to the extent applicable, comply with the Service Provider's security obligations under this Contract;

54.12.2 are fit and proper persons to perform the Services for the Customer, the other Users and the Stakeholders; and

54.12.3 have undergone a Federal police check within the previous 12 month period.

Technology Security Tools

54.13 The Service Provider must ensure that:

54.13.1 for the technology it uses to provide the Services, it installs, uses and maintains as operational, the best available security controls and features, including any controls and features recommended by any IRAP or other security assessors; and

54.13.2 it ensures that its technology providers comply with the obligation in clause 54.13.1; and

54.13.3 it provides information on its compliance with this clause as requested.

55. Risk Management Plan

55.1 The Service Provider must:

55.1.1 develop a Risk Management Plan for Acceptance by the Customer within 20 Business Days of the Commencement Date; and

55.1.2 maintain and update the Risk Management Plan as required, and at least annually, during the Term to ensure it remains current.

55.2 The Risk Management Plan must:

55.2.1 describe how the Service Provider will identify, control, manage and mitigate risks in relation to this Contract, including in relation to the introduction of Harmful Code into the Customer's systems, the risk of Loss or corruption of the Customer's Data and of delay;

55.2.2 include a risk register that:

(a) identifies the risks arising in relation to this Customer;

(b) specifies the mitigation strategies required to handle any identified risks; and

(c) defines the procedures and methodology for capturing, analysing, assessing, prioritising, monitoring and reviewing risks applicable to the obligations of the Service Provider; and

55.2.3 include any other information required by the Customer from time to time.

55.3 The Service Provider must comply with the Accepted Risk Management Plan.

55.4 The Service Provider must:

55.4.1 provide a copy of the current Risk Management Plan to the Customer as soon as practicable following a request by the Customer;

55.4.2 provide to the Customer any information or documentation in relation to the Service Provider's risk management that the Customer reasonably requests as soon as practicable following a request by the Customer;

55.4.3 consider any reasonable suggestions made by the Customer for the development or revision of any aspect of the Service Provider's risk management approach and take such suggestions into account as appropriate; and

55.4.4 report to the Customer on the status of the Risk Management Plan and any significant new or changed risks as soon as practicable following a request by the Customer.

56. Insurance

Obligation to maintain insurance

56.1 The Service Provider must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels:

[Note to Tenderers: the FCA may review and change the amount of insurances required based on its risk assessment for the successful Tenderer (if any) and the Services.]

56.1.1 for the Term of the Contract and any Transition Period:

- (a) AUD 20,000,000 per claim and AUD 20,000,000 in the aggregate public liability;
- (b) AUD 20,000,000 per claim and AUD 20,000,000 in the aggregate either professional indemnity or errors and omissions;
- (c) AUD 20,000,000 per claim and AUD 20,000,000 in the aggregate product liability;
- (d) workers' compensation as required by Law; and
- (e) any other, or increased, insurance specified in this Contract;

56.1.2 for 7 years following the later of expiry or termination of this Contract, AUD 20,000,000 per claim and AUD 20,000,000 in the aggregate either professional indemnity or errors and omissions.

56.2 With the exception of workers' compensation insurance, and unless otherwise Approved by the Customer in writing, the insurances referred to in clause 56.1 must be effected with insurers with a financial security rating of "A-" or better by Standard & Poor's (or the equivalent rating from another recognised rating agency) .

56.3 The Service Provider must ensure that its Subcontractors are insured as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of the services or work to be performed by them and in a manner consistent with the Service Provider's obligations under this clause 56.

Evidence of insurance

56.4 The Service Provider must, upon request by the Customer, provide:

56.4.1 evidence that it has current insurance policies which comply with the requirements of this clause 56 to the Customer; and

56.4.2 details of any exclusions and other information about the required insurances as reasonably requested by the Customer.

Annual Review

56.5 The Customer will annually review the amounts of insurance to ensure that they are sufficient and may request a variation to the Contract insurance amounts.

Notices

- 56.6 The Service Provider must, in respect of the insurances required by this clause 56:
- 56.6.1 promptly inform the Customer if it becomes aware of any actual, threatened or likely claims which could materially reduce the available limits of indemnity or which may involve the Customer, and must reinstate or replace any depleted aggregate limit resulting from claims that are unrelated to the work under this Contract, if requested to do so in writing by the Customer; and
- 56.6.2 do everything reasonably required by the Customer to enable the Customer to claim and to collect or recover monies due under any insurance policy.
-

57. Extension of time

- 57.1 The Service Provider must, on becoming aware that it will be unable to meet a Milestone or any other obligation under this Contract, promptly Notify the Customer and provide details of the cause of the anticipated delay or failure and of the Service Provider's proposal for managing the delay.
- 57.2 Without limiting the parties' obligations to minimise and manage risk in accordance with this Contract (including in accordance with the Accepted Risk Management Plan), if the Service Provider is delayed in the provision of the Services and the event giving rise to the delay:
- 57.2.1 is beyond the Service Provider's reasonable control; and
- 57.2.2 could not have reasonably been contemplated by the Service Provider; or
- 57.2.3 is caused by the Customer,
- then the Service Provider may request an extension of time for the provision of the Services in accordance with the variation procedures in clause 32.
- 57.3 If the Customer agrees to any extension of time, the parties will vary the Contract in accordance with the variation procedures in clause 32.
-

58. Guarantees

[Note to Tenderers: The need for guarantees will be considered on the basis of the Customer's risk assessment of the Successful Tenderer's Tender. The clauses below represent options should the risk assessment identify that a guarantee is necessary.]

Performance Guarantee

- 58.1 The Service Provider must provide within ten Business Days of the Commencement Date of this Contract, a performance guarantee in the form set out at Schedule 6 (Performance Guarantee), or an alternative form agreed by the Customer Representative.
- 58.2 The purpose of the performance guarantee referred to in clause 58.1 is to ensure the due performance of this Contract by the Service Provider and, in the event of default, for the Service Provider's Guarantor to perform this Contract on behalf of the Service Provider.

Financial Undertaking

- 58.3 The Service Provider must, at its expense, provide to the Customer, within ten Business Days of the Commencement Date, security in the form of an unconditional and irrevocable banker's undertaking which must be:
- 58.3.1 executed by a financial institution Approved by the Customer and be stamped (if required);
 - 58.3.2 materially in the form of the undertaking appearing at Schedule 7 (Financial Undertakings), or an alternative form agreed by the Customer Representative; and
 - 58.3.3 for the sum specified in Schedule 3 (Charges and Payments).
- 58.4 The Financial Undertaking referred to in clause 58.3 is for the purpose of ensuring the due and proper performance of this Contract by the Service Provider, and the Customer may (without reference to the Service Provider) demand any sum under that banker's security from the financial institution referred to in clause 58.3 in respect of any of the following matters:
- 58.4.1 amounts owed to the Customer by the Service Provider;
 - 58.4.2 damages suffered by the Customer and its Personnel as a result of a breach of this Contract by the Service Provider; and
 - 58.4.3 any Loss suffered by the Customer and its Personnel that is the subject of an indemnity under this Contract.
- 58.5 If the Financial Undertaking referred to in clause 58.3 is subject to a time limit, and the Term of this Contract is extended under clause 3 beyond that time limit, the Service Provider must, prior to the commencement of that extension, provide to the Customer a further Financial Undertaking in accordance with clause 58.3 for a period that continues for the relevant Term or such longer period as is reasonably requested by the Customer. No Charges or other payments will be due in the extended Term until the Contractor has provided a further Financial Undertaking in accordance with this clause.

59. Liability**Relevant Law**

- 59.1 The liability of a party for breach of this Contract, or in tort, 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.

Limitation of Liability – the Customer and the Service Provider

- 59.2 The liability of each of the Customer and the Service Provider arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 59.1, limited to:

59.2.1 ***[Note to Tenderers: Any agreed limitations will be specified here]***

- 59.3 Any limit on the liability of the Customer or the Service Provider under clause 59.2 does not apply in relation to liability relating to:

59.3.1 personal injury (including sickness and death);

59.3.2 Loss of, or damage to, tangible property;

59.3.3 loss of Customer Data;

59.3.4 an infringement of Intellectual Property Rights;

59.3.5 a breach of any obligation of confidentiality, data protection, security or privacy; or

59.3.6 fraud, breach of a statute or any unlawful act or omission.

- 59.4 The parties agree to review the limitations on liability before any extension of the Term of this Contract under clause 3.2, with the intent that the parties may agree, for the extended Term, to maintain the limits of the liability applicable to this Contract. If no change is agreed, the existing limits will apply to the extended Term.

Mitigation

- 59.5 Each party must use all reasonable endeavours to mitigate its Loss, damages and expenses arising under and/or in connection with a breach of this Contract, or in tort, or for any other common law or statutory cause of action arising under and/or in connection this Contract.

Contribution

- 59.6 The liability of a party for any Losses incurred by another party will be reduced proportionately to the extent that:

59.6.1 any negligent act or omission of the party that incurred the Loss (or of its Subcontractors or Personnel); or

59.6.2 any failure by the party that incurred the Loss to comply with its obligations under this Contract,

contributed to those Losses, regardless of whether legal proceedings are brought by either party for negligence or breach of Contract.

60. Indemnity

Service Provider's Indemnity

60.1 The Service Provider indemnifies the Customer, and each of its subcontractors and Personnel (together the **Indemnified Persons**), against Losses incurred in connection with:

60.1.1 loss of or damage to property of the Indemnified Persons or any other person;

60.1.2 personal injury or death of any person;

60.1.3 any other liability owed by the Indemnified Persons;

arising from or as a consequence of:

60.1.4 any act or omission of the Service Provider or its Personnel in connection with this Contract;

60.1.5 any breach of this Contract by the Service Provider or its Personnel;

60.1.6 any breach of any Law by the Service Provider;

60.1.7 any fraudulent, reckless, negligent, unlawful or deliberately wrongful act or omission of the Service Provider or its Personnel;

60.1.8 a breach or alleged breach by the Service Provider or Service Provider Personnel of their obligations under clause 52 (Privacy); and

60.1.9 any loss or corruption of the Customer Data or Personal Information caused by the Service Provider (other than loss or corruption due to an act or omission of the Customer or its Personnel, not including an act or omission which the Service Provider has advised or recommended to the Customer or its Personnel).

60.2 The Customer's rights to be indemnified under clause 60 (including clause 60.3 below) are in addition to, and not exclusive of, any other right, power or remedy provided under this Contract or by Law.

Service Provider's Intellectual Property Right Indemnity

60.3 The Service Provider indemnifies the Customer and its subcontractors and its Personnel, against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with an allegation that any Services infringe the Intellectual Property Rights or Moral Rights of a third party, except to the extent that any deliberately wrongful, reckless, negligent or unlawful act or omission of the Customer directly contributed to the relevant liability.

60.4 For the purposes of clause 60.3, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

Customer obligations

- 60.5 Where the Customer wishes to enforce an indemnity under clauses 60.1 or 60.3 it must:
- 60.5.1 give written Notice to the Service Provider as soon as practical;
 - 60.5.2 subject to the Service Provider agreeing to comply at all times with clause 60.6, permit the Service Provider, at the Service Provider's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
 - 60.5.3 in the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 60.5.2, provide all reasonable assistance to the Service Provider in the handling of any negotiations and litigation.

Service Provider's obligations

- 60.6 In the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 60.5.2 the Service Provider must:
- 60.6.1 comply with government policy and obligations, as if the Service Provider were the Customer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction given by the Attorney General to the Commonwealth or delegate;
 - 60.6.2 keep the Customer informed of any significant developments relating to the conduct of the litigation or settlement of any claim;
 - 60.6.3 provide to the Customer such information and documentation as are reasonably requested by the Customer, to enable it to ascertain whether settlement by the Service Provider of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality; and
 - 60.6.4 comply with any conditions imposed by the Customer (including any condition requiring the provision of a financial undertaking).

Rights held on trust

- 60.7 Where an indemnity in this clause 60 provides a benefit to a person who is not a party to this Contract, that benefit will be held on trust for that person by the Customer through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by the Customer as trustee.

61. Dispute Resolution

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

61.1.1 the party claiming that there is a dispute will send to the other a Notice setting out the nature of the dispute;

61.1.2 the parties must use their best endeavours to resolve the dispute or difference at the working or operational level within 10 Business Days or within such other timeframe as the parties may agree;

61.1.3 if the dispute or difference cannot be resolved by the parties in accordance with clause 61.1.2, the parties must refer the dispute to senior management of the parties with authority to intervene and direct some form of resolution;

61.1.4 the parties have ten (10) Business Days from the date the dispute is referred to senior management in accordance with clause 61.1.3 (or such other time as is agreed by the parties) to reach a resolution or to agree that the dispute will be referred to mediation or some other form of alternative dispute resolution procedure; and

61.1.5 either party may commence legal proceedings if:

(a) there is no resolution or agreement within the period referred to in clause 61.1.4 and the parties have not agreed to refer the dispute to mediation or some other form of alternative dispute resolution procedure; or

(b) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission (or such extended time as the parties may agree in writing before the expiration of the fifteen (15) Business Days).

61.2 Despite the existence of a dispute, the Service Provider must continue to provide the Services unless Notified otherwise by the Customer.

Confidentiality

61.3 Any information or documents disclosed by a party under this clause 61:

61.3.1 must be kept confidential; and

61.3.2 may only be used to attempt to resolve the dispute.

Costs

61.4 Each party to a dispute must pay its own costs of complying with this clause 61. The parties to the dispute must equally pay the costs of any mediator.

Termination of process

- 61.5 A party to a dispute may terminate the dispute resolution process by giving Notice to each other party after it has complied with clause 61.1.

Survival

- 61.6 Clauses 61.3 and 61.4 survive termination of the dispute resolution process.

Breach of this clause

- 61.7 If a party to a dispute breaches clauses 61.1 to 61.5, the other party does not have to comply with those clauses in relation to the dispute.

Exemption

- 61.8 Clause 61.1 does not apply to:
- 61.8.1 action by the Customer under or purportedly under clause 62;
 - 61.8.2 action by the Customer under or purportedly under or in accordance with clauses 34.2 or 40; or
 - 61.8.3 either party commencing legal proceedings for urgent interlocutory relief.

62. Termination

Termination by the Customer for default

- 62.1 Without limiting any other rights or remedies the Customer may have against the Service Provider arising out of or in connection with this Contract, the Customer Representative may terminate this Contract in whole or in part, effective immediately, by giving Notice to the Service Provider if:
- 62.1.1 the Service Provider commits a breach of this Contract where that breach is not capable of remedy; or
 - 62.1.2 the Service Provider commits a material breach of this Contract and fails to remedy the breach within 20 Business Days or such other timeframe as is agreed in writing after receiving Notice requiring it to do so.
- 62.2 Without limitation, for the purposes of clause 62.1, each of the following constitutes a material breach:
- 62.2.1 a failure to Notify the Customer of a Conflict of Interest under clause 29 or an inability to resolve that Conflict of Interest to the reasonable satisfaction of the Customer; or
 - 62.2.2 a failure to comply with the Service Provider's obligations under clauses 45 to 49 (Intellectual Property Rights);
 - 62.2.3 a failure to comply with clause 51 (Confidentiality) or any other obligation of confidentiality under the Contract, including as set out in the Statement of Requirements;
 - 62.2.4 a failure to comply with clause 52 (Privacy);

- 62.2.5 a failure to comply with clause 54 (Security);
- 62.2.6 a failure to comply with clause 56 (Insurance);
- 62.2.7 if permitted by Law, an event specified in clause 62.3 happens to the Service Provider;
- 62.2.8 a breach of the obligation in clause 65.1.

62.3 The Service Provider must Notify the Customer immediately if:

- 62.3.1 the Service Provider being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Service Provider which may have an adverse effect on the ability of the Service Provider to perform its obligations under this Contract;
- 62.3.2 the Service Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- 62.3.3 the Service Provider ceases to carry on business;
- 62.3.4 the Service Provider ceases to be able to pay its debts as they become due;
- 62.3.5 the Service Provider being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed; or
- 62.3.6 where the Service Provider is a partnership, any step is taken to dissolve that partnership.

Termination and reduction for convenience

- 62.4 The Customer may by Notice terminate this Contract in whole or in part or reduce the scope of the Services under this Contract at any time.
- 62.5 Without limiting clause 62.4, the Customer may by Notice terminate this Contract at any time for a machinery of government change or to implement a government directive.
- 62.6 For clarity, the right to reduce the scope of the Services under clause 62.4 includes removing Sites or categories of Services from scope.
- 62.7 If this Contract is terminated under clauses 62.4 or 62.5, the Customer, as appropriate, is liable only for:
 - 62.7.1 payments due under this Contract for Services provided in accordance with this Contract before the effective date of termination of this Contract (less any amount that the Customer is entitled to deduct);
 - 62.7.2 any charges applicable under the Accepted Transition Out Plan; and
 - 62.7.3 reasonable costs (if any) incurred by the Service Provider and directly attributable to the termination that are substantiated to the Customer's reasonable satisfaction.
- 62.8 If the scope of this Contract is reduced, the Customer's liability to pay the Charges and any other relevant the Customer obligations abate in accordance with the reduction in the scope.
- 62.9 The Customer is not liable to pay compensation under clause 62.6 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Contract, exceed the total Charges payable under this Contract or Contracts.

62.10 For the purposes of clause 62.6, the Customer will not be liable for payments that would be due after the date of termination or for Loss of prospective profits, loss of business revenue, loss of opportunity, economic loss, indirect, special or consequential loss or any special or punitive damages.

After termination

62.11 On termination (in whole or part) of this Contract, the Service Provider must:

62.11.1 stop performance of:

- (a) this Contract; or
- (b) if this Contract is terminated in part, the terminated part of this Contract;

62.11.2 take all available steps to minimise Loss resulting from that termination and to protect material in which Intellectual Property Rights or Confidential Information of the Customer subsists;

62.11.3 return all of the Customer's Confidential Information associated with:

- (a) this Contract; or
- (b) if this Contract is terminated in part, the terminated part of this Contract, to the Customer Representative as appropriate;

62.11.4 follow any reasonable direction of the Customer; and

62.11.5 continue to perform any part of this Contract not affected by the Notice (and the Charges will abate in accordance with the reduction in the scope of the Contract).

Consequences of termination

62.12 If this Contract is terminated (in whole or part) under this clause 62:

62.12.1 subject to the terms of this Contract, the parties are relieved from future performance, without prejudice to any rights or remedies that have accrued at the date of termination; and

62.12.2 subject to this Contract, all licences and authorisations relating to or concerning this Contract granted to the Service Provider by the Customer terminate immediately despite anything to the contrary contained in the licence or authorisation.

63. Transition Out

Transition Period

63.1 The Transition Period will commence on the earliest of:

63.1.1 the date on which a Notice of termination is given in accordance with clause 62; and

63.1.2 3 months before this Contract will expire in accordance with clause 3,

and the Transition Period will end on the date the Customer Notifies the Service Provider that all Services have been either transferred or completed in accordance with this Contract.

Service Provider's Obligations in relation to Transition Out

- 63.2 The Service Provider must:
- 63.2.1 undertake all activities described in the Statement of Requirements in relation to the Transition Out of Services, including providing a Transition Out Plan for Acceptance, and then updating it in accordance with the Statement of Requirements; and
 - 63.2.2 without limiting those activities, comply with the requirements as set out in this clause 63.
- 63.3 At all times, the Service Provider must perform all Services in a manner that will effectively and efficiently allow Transcripts and Recordings to be prepared, used and accessed by, the Customer or an alternative service provider after the expiry or termination of this Contract.
- 63.4 During the Transition Period, the Service Provider must take all reasonable actions to ensure there is an efficient and effective disengagement from provision of the Services by the Service Provider to alternative arrangements as Notified to the Service Provider by the Customer. Without limiting this, the Service Provider must:
- 63.4.1 liaise with the Customer as needed to finalise and submit to the Customer for Acceptance an updated Transition Out Plan in accordance with the Statement of Requirements, and otherwise plan and implement all necessary actions for the Transition Period;
 - 63.4.2 report to the Customer on a weekly basis on the progress of the Transition Out;
 - 63.4.3 ensure the Customer is kept fully informed on all aspects of the Transition Out;
 - 63.4.4 implement the Accepted Transition Out Plan (including an Accepted updated Transition Out Plan) so as to ensure all transition activities are completed within the required timeframe;
 - 63.4.5 ensure adequate Personnel are available to complete the Transition Out Services in accordance with this Contract and the Accepted Transition out Plan;
 - 63.4.6 transfer to the Customer or its nominee all New Material and Customer Material in a non-proprietary format that is readily usable by the Customer or its nominee;
 - 63.4.7 not delete or destroy any New Material or Customer Material unless the Customer has confirmed that this may occur, in which case the Service Provider must:
 - (a) remove, delete or destroy the relevant Material in accordance with any directions from the Customer; and
 - (b) ensure that all back-up versions of the relevant Material are similarly removed, deleted or destroyed;
 - 63.4.8 continue to comply with all security and data protection obligations in this Contract; and
 - 63.4.9 if required, provide to the Customer such evidence as the Customer or its nominee requires verifying the Service Provider's performance of its obligations under this clause 63.

63.5 During the Transition Period:

63.5.1 the terms of this Contract continue (except that after the time that the Term would have ended but for clause 3.4, the only amounts payable to the Service Provider are those expressly stated to be payable during this time in Schedule 3 (Charges and Payments) (if any)); and

63.5.2 if requested by the Customer or specified in the Transition Out Plan, the Service Provider must continue to perform any Services that have not been transferred to another entity and must discontinue performing any of the Services that have been transferred.

64. Knowledge transfer

64.1 The Service Provider must, at no additional cost to the Customer, provide the following assistance to the Customer or its nominee as required during the Transition Period:

64.1.1 transfer or provide access to all information, stored by whatever means, held by the Service Provider or under the control of the Service Provider which is relevant to the future performance of the Services after the end of this Contract;

64.1.2 make Service Provider Personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer provided that the Service Provider is not required to reveal any Confidential Information of the Service Provider if that information is not otherwise required to be provided under this Contract; and

64.1.3 comply with any additional requirements in the Statement of Requirements and the Transition Out Plan.

65. Laws and policies

- 65.1 The Service Provider must, in performing its obligations under this Contract, comply with all applicable Laws and Commonwealth policies, including those set out in Schedule 8 (Commonwealth Law and Policy), the Statement of Requirements, Schedule 9 (Approved AIP Plan) and as Notified to the Service Provider from the Customer from time to time.

66. Books and records**Maintenance of Records**

- 66.1 The Service Provider must, at all times, maintain full, true, and up-to-date accounts and records relating to this Contract. Such accounts and records must:
- 66.1.1 include appropriate audit trails for transactions performed;
 - 66.1.2 record all receipts and expenses in relation to the provision of Services and Support and all matters on which the Service Provider is obliged to report;
 - 66.1.3 be kept in a manner that permits them to be conveniently and properly audited, and enables the amounts payable by the Customer under this Contract to be determined;
 - 66.1.4 be drawn in accordance with any applicable Australian Accounting Standards;
 - 66.1.5 in the case of any Services provided on a time and materials or cost plus basis, identify the time spent by the Service Provider's Personnel in providing those Services; and
 - 66.1.6 be made available to the Customer as required for monitoring and reviewing the performance of the Service Provider's obligations under this Contract.

Subcontractor requirements

- 66.2 The Service Provider must securely retain and require its Subcontractors to securely retain, for a period of seven years after termination or expiration of this Contract, whichever is later, all accounts and records referred to in clause 66.1.

Survival

- 66.3 This clause 66 applies for the Term and for a period of 7 years from the termination or expiry of this Contract, whichever is later.

Archival Requirements

- 66.4 The Service Provider agrees to comply with, and to follow any reasonable directions by the Customer which are relevant to, any applicable Commonwealth, State or Customer legislation relating to archival requirements.

Costs

66.5 The Service Provider must bear its own costs of complying with this clause 66.

67. Notices and other communications

Service of Notices

67.1 A Notice must be in written English and signed by:

67.1.1 in the case of a Notice from the Customer, the Customer Representative; or

67.1.2 in the case of a Notice from the Service Provider, the Service Provider Representative.

67.2 A Notice or other communication is properly given or served by a party if that party:

67.2.1 delivers it by hand;

67.2.2 posts it;

67.2.3 transmits it by email; or

67.2.4 transmits it by any other electronic means,

to the recipient's address for Notices specified in clause 67.4, marked for the attention of the person who at that time is the Service Provider Representative, or the Customer Representative, as appropriate.

Deemed Receipt

67.3 A Notice or other communication is deemed to be received if:

67.3.1 delivered by hand – when it is delivered by hand to the party's Representative;

67.3.2 sent by post from and to an address within Australia and correctly addressed – 3 Business Days after posting;

67.3.3 sent by post from or to an address outside Australia and correctly addressed – 10 Business Days after posting;

67.3.4 sent by email – when it reaches the receiving party's email server, unless the sending party receives an error message indicating that the receiving party's Representative has not received the message; or

67.3.5 sent by any other electronic means – only in the event that the other party acknowledges receipt in person, by phone or by message which has been generated by the intended recipient and not purely by a machine, or by other means agreed in writing by the parties.

Address for Notices

67.4 Subject to clause 67.5, the Service Provider Representative and the Customer Representative's address for Notices are as set out in the Contract Details.

Change of Address

- 67.5 Each party must Notify the other parties of any change in its address for Notices, or in the identity of the Service Provider Representative or the Customer Representative (as applicable), including through delegation or authorisation under clause 31.7.

68. General

Approvals and consents

- 68.1 Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

Costs of Contracting

- 68.2 Each party must pay its own costs of negotiating, preparing and executing this Contract.

Further action

- 68.3 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by those documents.

Assignment and Novation

- 68.4 Subject to clause 68.7, a party may only assign its rights under this Contract with the prior written consent (by Notice) of the other party, and this consent must not be unreasonably withheld.
- 68.5 The Service Provider must not assign, in whole or in part, its benefits under this Contract without the prior written consent of the other party, and this consent must not be unreasonably withheld.
- 68.6 The Service Provider must not enter into discussions or facilitate a novation of this Contract without the prior written approval of the Customer.
- 68.7 The Customer may, at any time, assign its rights under this Contract to another Commonwealth Entity where that Entity is to have administrative responsibility for this Contract.

Waiver

- 68.8 Waiver of any provision of or right under the Contract:
- 68.8.1 must be by Notice from the party entitled to the benefit of that provision or right;
and
- 68.8.2 is effective only to the extent set out in such Notice.
- 68.9 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another party.

Severability

- 68.10 A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of that document will continue in force.

Entire Agreement

- 68.11 This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

Rights are Cumulative

- 68.12 The rights, powers and remedies provided in this Contract are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

No merger

- 68.13 The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

Recovery of moneys due to the Customer

- 68.14 Any money due or owing to the Customer under this Contract may be recovered as a debt due to the Customer and set off against any payment due under this Contract.

Survival

- 68.15 The following clauses survive the termination and expiry of the Contract:
- 68.15.1 clauses 45 to 49 (Intellectual Property Rights);
 - 68.15.2 clause 54 (Security);
 - 68.15.3 clause 51 (Confidentiality);
 - 68.15.4 clause 52 (Privacy);
 - 68.15.5 clause 56 (Insurance);
 - 68.15.6 clause 60 (Indemnity);
 - 68.15.7 clause 63 (Transition Out) and 64 (Knowledge transfer);
 - 68.15.8 clause 66 (Books and records);
 - 68.15.9 clause 10 in Schedule 8 (Audit and Access);
 - 68.15.10 the termination provisions so far as they relate to rights and obligations arising on termination;
 - 68.15.11 any clauses that are expressed to or which by their nature survive termination or expiry, including warranties, limitations on liability, licensing and Intellectual Property Rights; and
 - 68.15.12 all clauses required to give effect to the clauses referred to in clauses 68.15.1 to 68.15.11.

Counterparts

68.16 This Contract may be executed in any number of counterparts. All executed counterparts constitute the same Contract.

Governing Law

68.17 The Laws of the Australian Capital Customer apply to this Contract. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this Contract.

Execution

Executed as an Agreement.
Executed for and on behalf of the
Commonwealth of Australia represented by
the Customer by its duly authorised delegate:

.....
Signature of witness
.....
Name of witness (print)
.....
Date

.....
Signature of delegate
.....
Name of delegate (print)
.....
Position of delegate (print)
.....
Date

Executed by **[name of Service Provider] ABN**
[ABN] acting by the following persons or, if the
seal is affixed, witnessed by the following
persons in accordance with s 127 of the
Corporations Act 2001 (Cth):

.....
Signature of director
.....
Name of director (print)
.....
Date

.....
Signature of director/company secretary
.....
Name of director/company secretary (print)
.....
Date

Schedule 1 Statement of Requirements

[Note to Tenderers: A document based on the Statement of Requirements in the RFT will be included here, but it will be tailored as necessary for inclusion in this Contract (rather than as part of the RFT) and to reflect any agreed aspects of the Successful Tenderer's Tender.]

Schedule 2 Performance Management

[Note to Tenderers: To be completed in accordance with the RFT and the successful Tenderer's Tender. The proposed performance management arrangements are currently contained in the Statement of Requirements.]

Schedule 3 Charges and Payments

[Note to Tenderers: To be completed in accordance with the RFT and the successful Tenderer's Tender.]

Schedule 4 Glossary

Term	Meaning
Accept	Means the Customer's acceptance of a Milestone, Service or Deliverable in accordance with clause 10 of this Contract. Accepted and Acceptance have corresponding meanings.
Acceptance Criteria	Means the criteria which are used to determine if the Milestone, Service or Deliverable meets the requirements of this Contract and is fit to be Accepted by the Customer, and if applicable, whether payment should be made pursuant to this Contract. Acceptance Criteria are described in the Statement of Requirements or any Acceptance Test Plan, or otherwise agreed by the parties in writing.
Acceptance Test Plan	Means a plan which sets out the Acceptance Criteria for specified Deliverables, as approved by the Customer.
Acceptance Testing	Means the performance of tests in accordance with clause 10 of this Contract, including to determine whether a Milestone, Service or Deliverable meets the applicable Acceptance Criteria, for the purpose of considering the Milestone, Services or Deliverables for Acceptance.
Additional Services	Means services which are, in the opinion of the Customer, related to the Services but which are not within the scope of the Services at the time of the Customer's request for a quote for those Services.
Approval	<p>Means a confirmation by the Customer in writing to the Service Provider that a document or action appears to meet the requirements of this Contract but does not:</p> <ul style="list-style-type: none"> (a) limit the Service Provider's responsibility to ensure the document or action meets the requirements of this Contract; or (b) waive any right the Customer has under this Contract if the document or action does not meet such requirements.
Approved Quote	Means a quote approved by the Customer for Additional Services in accordance with clause 14 of this Contract.
AV Support Services	Means the support and maintenance services for audio visual equipment owned by the FCA, FCoA or FCC, which are described in the Statement of Requirements.
Business Day	Any day that is not a Saturday, Sunday or a national public holiday in the place where the Services are to be performed.
Business Hours	Means 8:00 am to 6 pm Monday to Friday excluding national public holidays.

Term	Meaning
Certificate of Acceptance	Means a certificate issued by the Customer stating that the Milestone, Service or Deliverable that is subject to Acceptance has been Accepted.
Charges	Means any amount payable in accordance with this Contract as specified in Schedule 3 (Charges and Payments).
Commencement Date	The date specified in Item 8 of the Contract Details.
Commonwealth	Means the Commonwealth of Australia.
Confidential Information	<p>Means:</p> <p>(a) in relation to the Customer, information that:</p> <ul style="list-style-type: none"> i. is by its nature confidential; ii. is designated by the Customer as confidential; iii. the Service Provider knows or ought to know is confidential including: <ul style="list-style-type: none"> A. information comprised in or relating to any of the Customer's Intellectual Property; B. information relating to the policies, strategies, practices and procedures of the Customer and any information in the Contractor's possession relating to the Customer; C. information relating to other Entities or other contractors of the Customer or other Entities; and D. security classified information; or iv. is Customer Data, <p>but does not include information which:</p> <ul style="list-style-type: none"> v. is or becomes public knowledge other than by breach by the Service Provider of any confidentiality obligation; or vi. has been independently developed or acquired by the Service Provider as established by written evidence <p>and</p> <p>(b) in relation to the Service Provider, the following information [INSERT INFORMATION] to the extent that it is consistent with the Department of Finance's guidance on confidentiality located at https://www.finance.gov.au/node/34576/principles.html</p>

Term	Meaning
	[Note to Tenderers: any information specified as Confidential Information in the Successful Tenderer's Tender will be included here].
Conflict of Interest	Has the meaning in clause 29.1 of this Contract.
Contract	This Contract for the provision of the Services including all its Schedules and other attachments and any other documents (including plans) referred to in this Contract, as amended from time to time in accordance with this Contract.
Contract Details	Means the Contract Details in Part 1 of this Contract.
Correctly Rendered Invoice	Means an invoice rendered in accordance with clause 34.9 of this Contract and any other requirements specified for an invoice in this Contract.
Critical Milestone	Means a Milestone specified in Schedule 3 (Charges and Payments) as a Critical Milestone.
Critical Success Factors or CSFs	Means the critical success factors described in Schedule 2 (Performance Management). [Note to Tenderers: The CSF are currently set out in the Statement of Requirements.]
Customer	Means the non-corporate Commonwealth entity known as the Federal Court of Australia listed in paragraph 18ZB(b) of the <i>Federal Court of Australia Act 1976</i> (Cth) which provides corporate services (including information technology) to the Federal Court of Australia, Family Court of Australia, Federal Circuit Court of Australia and National Native Title Tribunal, or any other Entity with responsibility for administration of this Contract.
Customer Data	Means all data and information (including Personal Information) generated by or relating to the Services or the Customer and its functions (including data and information relating to the Customer Personnel, Users, Stakeholders and other Entities) in whatever form that data and information may exist. For clarity, Customer Data includes the Transcripts and Recordings.
Customer Material	Means all Material belonging to the Customer and includes the Customer Data.
Customer Representative	Means the person appointed by the Customer to represent it in relation to the performance of this Contract, being (as at the Commencement Date) the person identified in Item 5 of the Contract Details.
Customer Supplied Item	Means an item (including a Product) specified in the Statement of Requirements or an Accepted Deliverable as a Customer Supplied Item in an Accepted Deliverable.
Deliverable	Any document, product or other thing required to be created or provided by the Service Provider to meet the requirements of this Contract. 'Deliverable' includes the Transcripts and Recordings which must be provided by the Service

Term	Meaning
	Provider in accordance with this Contract.
Document	Includes: (a) any paper or other material on which there is works, figures, symbols or perforations having a meaning for persons qualified to interpret them; and (b) any article or material in which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.
Eligible Data Breach	Has the meaning given to that term in Division 2 of Part IIIC of the <i>Privacy Act 1988</i> (Cth).
Entity	Means: (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including an external territory or a local authority); (b) a body established by the Governor-General, State or Territory Governor or Administrator or by a Minister of State of the Commonwealth or a State or Territory, including departments, agencies, courts (including of an external territory), tribunals (including of an external territory), commissions (including Royal Commissions) and other statutory offices or bodies authorised by law to hear, receive or examine evidence; or (c) an incorporated company over which the Commonwealth or a State or Territory exercises control.
Equipment	Means equipment, including hardware, which is, or is required to be, provided as part of the implementation, operation or support of the Services.
Existing Material	Means Material owned or provided by the Service Provider that: (a) is in existence prior to the Commencement Date of this Contract; or (b) is subsequently brought into existence other than as a result of the performance of obligations under this Contract.
Family Court of Australia or FCoA	Means the Family Court of Australia created by subsection 21(1) of the <i>Family Law Act 1975</i> (Cth).
Federal Circuit Court of Australia or FCC	Means the Federal Circuit Court of Australia continued in existence by subsection 8(1) of the <i>Federal Circuit Court of Australia Act 1999</i> (Cth).
Federal Court of Australia or FCA	Means the Federal Court of Australia created by subsection 5(1) of the <i>Federal Court of Australia Act 1976</i> (Cth).
GST	Has the meaning given to that term in the <i>A New Tax System (Goods and</i>

Term	Meaning
	<i>Services) Tax Act 1999 (Cth).</i>
Harmful Code	Means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code, or any other mechanism (including but not limited to automatic and/or random expiry date) which is likely to disable or reduce the functionality or performance of the Customer's information and communication technology environment or the Services.
High Value Contract	Means a contract where: (a) the relevant goods and/or services will be delivered in Australia; (b) the value of the goods and/or services is \$7.5 million (GST inclusive) or more; and (c) more than half the value of this Contract is being spent in one or more of the industry sectors specified in the Commonwealth's Indigenous Procurement Policy.
Illegal Worker	Means a person who: (a) has unlawfully entered and remains in Australia; (b) has lawfully entered Australia but remains in Australia after his or her visa has expired; or (c) is working in breach of his or her visa conditions.
Inappropriate Person	Means any person or organisation that is listed on one or more of the following lists: (a) 'Regulation 8 Consolidated List' maintained by the Australian Government Department of Foreign Affairs and Trade (www.dfat.gov.au/icat/UNSC_financial_sanctions.html)' or (b) 'Listing of Terrorist Organisations' maintained by the Australian Government (https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx).
Indigenous Enterprise	Means an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Participation Plan	Means a plan detailing how the Service Provider will meet the minimum mandatory requirements for the Commonwealth's Indigenous Procurement Policy.
Indigenous Procurement Policy	Means the policy of that name, as amended from time to time, available at https://www.niaa.gov.au/sites/default/files/publications/indigenous-procurement-policy.pdf .
Information Security	Means the manual that is the standard which governs the security of Australian

Term	Meaning
Manual or ISM	Government ICT systems. It complements the Protective Security Policy Framework.
Intellectual Property Rights or IPR	Means all intellectual property rights, including but not limited to, the following rights: <ul style="list-style-type: none"> (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and business, company and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Issue	Means an issue which arises in relation to the interpretation, conduct, enforcement or any other aspect of this Contract.
Key Performance Indicators or KPIs	Means the key performance indicators described in Schedule 2 (Performance Management). [Note to Tenderers: The KPIs are currently set out in the Statement of Requirements.]
Key Person	Means Service Provider Personnel specified or referred to in the Statement of Requirements as a key person and referred to in clause 27.10 of this Contract.
Law	Any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory (including an external Territory), the Commonwealth, or a local government, and includes the common law as applicable from time to time.
Legal Services Directions	Means the Legal Services Directions made under clause 55ZF of the <i>Judiciary Act 1903</i> (Cth).
Loss	Includes all losses, liabilities, damages, fines, costs and expenses, including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.
Management Adviser	Has the meaning given in clause 24.1.
Material	Means any tangible thing in which Intellectual Property Rights can subsist, including without limitation software, firmware, documentation, reports, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material.

Term	Meaning
Milestone	A planned or scheduled event specified in this Contract and which the Service Provider must achieve by the applicable Milestone Date. Milestones are used to measure and report progress and may be linked to a payment amount.
Milestone Charges	Means Charges payable in accordance with this Contract upon achievement of a Milestone.
Milestone Date	Means the date by which a Milestone must be achieved, as specified in this Contract.
Moral Rights	Means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
New Material	Means the Material created by the Service Provider on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract, and includes any modifications that may be required for that purpose.
Notice	Means a notice under this Contract that is sent in accordance with clause 62 of this Contract. Notify and Notification have the corresponding meaning.
Objectives	Means the Customer's objectives for the Services including as set out in clause 5 of this Contract.
Option Period	Means an option period described in 10 of the Contract Details, which may be exercised in accordance with clause 3 of this Contract.
Other Service Provider	Means any other Service Provider, consultant, government entity, service provider or other person engaged to perform work of any description upon or that may impact upon the Services or otherwise in connection with the Customer's information and communications technology functions or requirements.
Personal Information	Has the meaning given in the <i>Privacy Act 1988</i> (Cth), as amended from time to time.

Term	Meaning
Personnel	<p>Means:</p> <p>(a) in respect of the Customer, its officers, employees, agents and contractors other than the Service Provider and Service Provider Personnel;</p> <p>(b) in respect of the Service Provider, its officers, employees, agents, Subcontractors and Subcontractor Personnel, and</p> <p>(c) in respect of any Subcontractor, its officers, employees, agents and contractors.</p>
Privacy Act	Means the <i>Privacy Act 1988</i> (Cth), as amended from time to time.
Proceeding	Means any proceeding conducted in the courtrooms of the Customer or the FCA, FCoA or FCC, and includes an incidental or interlocutory proceeding in the course of, or in connection with, a proceeding in the FCA, FCoA or FCC or any other Entity as set out in the Statement of Requirements or advised by the Customer from time to time as well as an appeal or an application in an appeal.
Product	Means any cloud service, Software, Equipment or related Documents used, or for use in or with, the Services, including as specified in the Statement of Requirements and/or Schedule 3 (Charges and Payments).
Protective Security Policy Framework or PSPF	The Australian Government Protective Security Policy Framework first issued by the Attorney General's Department in June 2018 and updated and re-issued from time to time.
Record	Means evidence of a business activity.
Recording	Means a recording of Proceedings whether audio or otherwise and whether on disk or other medium.
Records Authority	Means the specific authority provided by the National Archives of Australia that specifies Retention Periods for Records associated with unique Entity business functions.
Related Body Corporate	Means an entity which falls within the definition of a 'Related Body Corporate' for the purposes of the <i>Corporations Act 2001</i> (Cth).
Representative	Means either the Service Provider Representative or Customer Representative as the context requires.
Risk Management Plan	Means the plan to be provided by the Service Provider under clause 55.
Schedule	Means documents identified as Schedules to this Contract.
Security Incident	Has the same meaning as in the PSPF.

Term	Meaning
Security Interest	Has the same meaning as s12 of the <i>Personal Properties Security Act 2009</i> (Cth).
Service Catalogue	Means the list of IT services which can be ordered by the Customer and its authorised Personnel. The Service Catalogue is provided and maintained by the Service Provider in accordance with the Statement of Requirements.
Service Credits	Means any amount calculated in accordance with Schedule 2 (Performance Management) that is payable to the Customer by the Service Provider in accordance with clause 39 of this Contract if the Service Provider fails to meet a Service Level, Critical Success Factor or Key Performance Indicator required under this Contract (and the Customer elects to recover that Service Credit).
Service Level	Means the outcomes and performance standards which the Service Provider must achieve in providing the Services, if any, as set out in Schedule 2 (Performance Management).
Service Provider	Means [Note to Tenderers: The name of the Successful Tenderer (if any) that enters into a Contract with the Customer as a result of this RFT will be included here] , and includes its Personnel, as the context permits.
Service Provider Representative	Means the person appointed by the Service Provider to represent it in relation to the performance of this Contract, being (as at the Commencement Date) the person identified in Item 7 of the Contract Details.
Services	All or part of the services, functions and responsibilities that must be performed by the Service Provider to the Customer in accordance with this Contract, as amended from time to time. The Services include the provision of the Transcripts and Recordings.
Similar Services	Has the meaning given in clause 44.
Site	Means the Customer's premises or other locations including Court Locations as defined in the Statement of Requirements where the Services must be provided, as set out in the Statement of Requirements.
Software	Means software that falls within the definition of 'computer program' in the <i>Copyright Act 1968</i> (Cth) and which is used, or for use in or with, the Services, including as specified in the Statement of Requirements and/or Schedule 3 (Charges and Payments).
Stakeholders	Includes participants in proceedings in any Court for which the Services are provided (including as set out in the Statement of Requirements) and any other person entitled to access, use or benefit from the Services.
Statement of Requirements or SOR	Means the detailed descriptions of the requirements for the Services in Schedule 1 (Statement of Requirements).

Term	Meaning
Subcontract	Means an agreement or other arrangement between the Service Provider and its Subcontractor.
Subcontractor	Means an entity engaged under a Subcontract to perform any part of the work under this Contract and its Personnel.
Term	Means the term of this Contract and includes the Initial Term, the Option Periods (if exercised by the Customer) and the Transition Period.
Transcription	Means the conversion of a Recording into text. Transcript has a corresponding meaning.
Transcription and Recording Services	Means the Transcription and Recording services for the FCA, FCoA, and FCC, or any other Entity as set out in the Statement of Requirements or advised by the Customer from time to time.
Transition In Date	Means the Milestone Date for completion of the Transition In Services.
Transition In Services	Means the Services required to transition the Services from the Customer's current service arrangements to provision by the Service Provider, as described in this Contract and (in particular) in the Statement of Requirements.
Transition In Plan	Means the plan for the Transition In Services to be provided by the Service Provider in accordance with the Statement of Requirements.
Transition Out	Means the transition out of the Services in accordance with clause 63 of this Contract.
Transition Out Charges	Means the Charges payable in accordance with Schedule 3 (Charges and Payments).
Transition Out Plan	Means the plan of that name described in clause 63 of this Contract and the Statement of Requirements.
Transition Out Services	Means the Services specified as such in the Statement of Requirements.
Transition Period	Means the period specified in clause 63 of this Contract.
User	Means the Customer, the FCA, FCoA, FCC and any other Entity advised by the Customer as a user of the Services.
Variation Proposal	Means a proposal (in a form approved by the Customer) to vary this Contract as referred to in clause 32 of this Contract.
WOG Arrangement	Means a whole of government arrangement for the supply of ICT goods or services entered into between a provider and the Commonwealth, generally acting through the Department of Finance.

Schedule 5 Deed of Confidentiality

THIS DEED POLL IS MADE ON THE DAY OF 20

IN FAVOUR OF

THE COMMONWEALTH OF AUSTRALIA, represented by and acting through the Federal Court of Australia ABN 49 110 847 399 of Level 16, Law Courts Building, Queens Square SYDNEY NSW 2000

(‘Customer’)

and

[Insert Name of Confidant] of [Insert Address]

(‘Confidant’)

BACKGROUND

- A. The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.
- B. The Contract is the Contract between the Customer and [Insert Service Provider] under a contract [insert details of the Contract, including date].

IT IS AGREED AS FOLLOWS

1. Interpretation

Definition

‘Information’ means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Customer and includes information relating to:

- (a) any intellectual property rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer; and
- (e) the Customer’s clients or suppliers,

and information of the Customer that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information.

2. Non-disclosure

- 2.1 I will treat as secret and confidential all Information to which I have access or which is disclosed to me.

2.2 If the Customer grants its consent for me to disclose information, it may impose conditions on that consent. In particular, the Customer may require that I obtain the execution of a Deed in these terms by the person to whom I propose to disclose the Information.

2.3 My obligations under this Deed will not be taken to have been breached where I am legally required to disclose the Information.

3. **Acknowledgment**

3.1 I acknowledge that I may have access to information in the course of work that I undertake for the Family Court and/or Federal Circuit Court that may include information about the identity of parties or other persons involved in family law proceedings.

3.2 I acknowledge that, under section 121(1) of the *Family Law Act 1975* (Cth), it is an offence punishable by imprisonment for up to one year to provide an account of family law proceedings to the public or a section of the public that identifies parties or other persons involved in family law proceedings, other than in the limited circumstances outlined in section 121(9).

3.3 I acknowledge that, under section 121(3) of the *Family Law Act 1975* (Cth), providing certain details about a person (such as their name, address, description of dress, beliefs etc) is taken to be information that identifies a person for the purpose of the offence described in section 121(1).

3.4 I also acknowledge that a direction or order may be made that the whole or part of proceedings and any transcript are confidential. This includes under the *Federal Court of Australia Act 1976* (Cth) and the *Migration Act 1958* (Cth). If any such direction or order is made, I acknowledge that I must comply with the order.

4. **Restriction on use**

4.1 I will use the Information only for the purpose of my dealings with the Customer (whether directly or indirectly).

4.2 I will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in my control.

5. **Survival**

This Deed will survive the termination or expiry of any contract between the Customer and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

6. **Powers of the Customer**

6.1 Immediately upon request by the Customer, I must deliver to the Customer all documents in my possession or control containing Information.

6.2 If at the time of such a request I am aware that documents containing Information are beyond my possession or control, then I must provide full details of where the documents containing the Information are, and the identity of the person who has control of them.

7. **Applicable law**

7.1 This Deed will be governed in accordance with the law in the Australian Capital Territory.

EXECUTED AND DELIVERED AS A DEED POLL

AT [INSERT PLACE]

Signed sealed and delivered by the Confidant in the)
presence of:)

)
Signature of Confidant

.....
Witness

Schedule 6 Performance Guarantee

[To be included, if required]

Schedule 7 Financial Undertaking

[To be included, if required]

Schedule 8 Commonwealth Law and Policies

In performing its obligations under this Contract, the Service Provider must comply with all applicable Laws and Commonwealth policies including as set out in this Schedule.

1. ARCHIVES ACT REQUIREMENTS

- 1.1 The Service Provider acknowledges that the Service Provider may not dispose of any Customer Data (which may include Commonwealth Records) unless directed in writing to do so by the Customer.
- 1.2 The Service Provider must:
 - 1.2.1 comply with, and follow any reasonable directions by the Customer which are relevant to, any applicable Commonwealth legislation relating to archival requirements; and
 - 1.2.2 ensure that it implements minimum metadata requirements in providing the Services that comply with the *Australian Government Recordkeeping Metadata Standard* (AGRkMS) Version 2.2 available at: <http://www.naa.gov.au/information-management/managing-information-and-records/describing/metadata/AGRkMS/index.aspx>
- 1.3 For the purposes of clauses 1.1 and 1.2, '**Commonwealth Record**' has the meaning given under clause 3 of the *Archives Act 1983* (Cth).

2. OBLIGATIONS OF CONFIDENTIALITY

3. The Service Provider acknowledges that under section 121(1) of the *Family Law Act 1975* (Cth), it is an offence punishable by imprisonment for up to one year to provide an account of family law proceedings to the public or a section of the public that identifies parties or other persons involved in family law proceedings, other than in the limited circumstances outlined in section 121(9).
4. The Service Provider acknowledges that obligations may be imposed on the Service Provider under legislation including, under sections 23HC and 37AF of the *Federal Court of Australia Act 1976* (Cth) and section 91X of the *Migration Act 1958* (Cth). The Service Provider also acknowledges that a direction or order may be made that the whole or part of proceedings, including any transcript of the proceedings, is confidential. The Service Provider must comply with any such direction or order.

5. ANTI-DISCRIMINATION

- 5.1 The Service Provider must comply with all Commonwealth, State or Territory Laws relevant to anti-discrimination as may be applicable to this Contract, the Services or the Service Provider, including but not limited to the:
 - 5.1.1 *Disability Discrimination Act 1992* (Cth);
 - 5.1.2 *Race Discrimination Act 1975* (Cth);
 - 5.1.3 *Sex Discrimination Act 1984* (Cth); and
 - 5.1.4 *Age Discrimination Act 2004* (Cth).

6. APS VALUES

- 6.1 The Service Provider must ensure that all of its Personnel engaged in providing the Services comply with the APS Values and Code of Conduct while at the Customer's premises and while liaising with the Customer Personnel, other Users, Stakeholders or members of the public in connection with the provision of the Services . In these clauses 6.1 and 6.2 '**APS Values**' and '**Code of Conduct**' have the same meaning as they have in the *Public Service Act 1999* (Cth).
- 6.2 The Service Provider must provide all reasonable assistance to the Customer with any investigation of a report of a breach of the APS Code of Conduct.
- 6.3 When the Service Provider's Personnel are accessing the Customer's systems, using any of the Customer's equipment or accessing the Customer's Confidential Information, the Service Provider must ensure that those Personnel comply with all policies and procedures applicable to the Customer's employees and/or contractors that Customer has notified to the Service Provider.

7. FREEDOM OF INFORMATION

- 7.1 If an application is made to the Customer under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Service Provider, the Customer:
- 7.1.1 may, before making a decision, consult with the Service Provider, without prejudice to any decision to release the information; and
- 7.1.2 must determine the application in accordance with the requirements of the *Freedom of Information Act 1982* (Cth).
- 7.2 In clauses 7.3 to 7.5 'document' and 'Commonwealth Contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 7.3 The Service Provider acknowledges that this Contract is a Commonwealth Contract.
- 7.4 Where the Customer has received a request for access to a document created by, or in the possession of, the Service Provider or any Subcontractor that relates to the performance of this Contract (and not to the entry into that Contract), the Customer may at any time by written Notice require the Service Provider to provide the document to the Customer and the Service Provider must, at no additional cost to the Customer, promptly comply with the Notice.
- 7.5 The Service Provider must include in any subcontract relating to the performance of this Contract provision that will enable the Service Provider to comply with its obligations under clause 7.4.

8. FRAUD

- 8.1 The Service Provider must comply with the Commonwealth Fraud Control Framework at: <https://www.ag.gov.au/Integrity/FraudControl/Pages/FraudControlFramework.aspx>
- 8.2 The Service Provider must Notify the Customer immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Contract (including by the Service Provider or its Personnel).

9. ILLEGAL WORKERS

- 9.1 The Service Provider must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract.
- 9.2 Upon becoming aware of the involvement of an Illegal Worker, the Service Provider must:

- 9.2.1 promptly Notify the Customer; and
 - 9.2.2 remove, or cause to be removed, the Illegal Worker and arrange for their replacement at no cost to the Customer immediately.
- 9.3 If requested in writing by the Customer, the Service Provider must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

10. AUDIT AND ACCESS

Right to conduct audits

- 10.1 The Customer, or a representative of the Customer may conduct audits relevant to the performance of the Service Provider's obligations under this Contract at any time. Audits may be conducted of:
- 10.1.1 the Service Provider's operational practices and procedures as they relate to this Contract, including security procedures;
 - 10.1.2 the accuracy of the Service Provider's invoices and reports in relation to the performance of this Contract;
 - 10.1.3 the Service Provider's compliance with its confidentiality, privacy and security and other obligations under this Contract;
 - 10.1.4 material (including books and records) in the possession of the Service Provider relevant to this Contract; and
 - 10.1.5 any other matters determined by the Customer, or a representative to be relevant to this Contract.

Access by the Customer

- 10.2 The Customer, or the Customer representative may, at reasonable times and on giving reasonable Notice to the Service Provider:
- 10.2.1 access the premises of the Service Provider to the extent relevant to the performance of this Contract;
 - 10.2.2 require the provision by the Service Provider, its Personnel, agents or Subcontractors, of records and information in a data format and storage medium accessible by the Customer, or a representative by use of the Customer's existing computer hardware and software;
 - 10.2.3 inspect and copy relevant documentation, books and records, however stored, in the custody or under the control of the Service Provider or its Personnel; and
 - 10.2.4 require assistance in respect of any inquiry into or concerning this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Customer's organisation as appropriate), any request for information directed to the Customer as appropriate, and any inquiry conducted by Parliament or any Parliamentary Committee.

Conduct of audit and access

10.3 The Service Provider must provide access to its premises to the extent necessary for the Customer to exercise its rights under this clause 10, and provide the Customer with any reasonable assistance requested by the Customer.

10.4 The Customer must use reasonable endeavours to ensure that:

10.4.1 audits performed pursuant to clause 10.1; and

10.4.2 the exercise of the general rights granted by clause 10.2,

do not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under this Contract.

Costs

10.5 Except as set out in clause 10.6, each party must bear its own costs of any inspections, access and/or audits.

10.6 If the Service Provider is able to substantiate that it has incurred direct expenses in the Customer's exercise of the rights granted under clause 10.1 or clause 10.2 which, having regard to the value of this Contract, are substantial, the Customer and the Service Provider will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated, and will not be payable to the extent the audit reveals failures by the Service Provider to comply with this Contract.

Audit by an Accountability Body

10.7 In this clause 10, "**Accountability Body**" means the Commonwealth Parliament (including Committees); a Commonwealth Minister; the Auditor-General (including the Australian National Audit Office); the Australian Privacy Commissioner; the Australian Information Commissioner; the Commonwealth Ombudsman; and any person (including a commission or inquiry) whose functions include reviewing, inquiring into, auditing or investigating the Service Provider.

10.8 The rights of the Customer under clauses 10.2.1 to 10.2.3 apply equally to an Accountability Body or a delegate of an Accountability Body for the purpose of performing its statutory functions or powers.

10.9 The Service Provider to comply with Accountability Body's requirements

10.10 The Service Provider must do all things necessary to comply with the requirements of an Accountability Body Notified under clause 10.2 provided such requirements are legally enforceable and within the power of the Accountability Body.

No restriction

10.11 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of an Accountability Body. The rights of the Customer under this clause 10 are in addition to any other power, right or entitlement of the Accountability Body.

No reduction in responsibility

10.12 The requirement for, and participation in, audits does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with this Contract.

Subcontractor requirements

- 10.13 The Service Provider must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 10.

Consequences of audit

- 10.14 The Service Provider must promptly take, at no additional cost to the Customer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Service Provider has performed its obligations under this Contract, including but not limited to, the way the Service Provider has:

10.14.1 provided any Service; or

10.14.2 calculated Charges, or any other amounts or fees billed to the Customer.

Survival

- 10.15 This clause 10 applies for the Term and for a period of 7 years from the termination or expiry of this Contract, whichever is later.

11. WORK HEALTH AND SAFETY

- 11.1 In clauses 11.1 to 11.4 below:

11.1.1 **'Act'** means the *Work Health and Safety Act 2011 (Cth)*.

11.1.2 **'Person Conducting a Business or Undertaking (PCBU)'** as defined by the Act means a person conducting a business or undertaking:

(a) whether the person conducts the business or undertaking alone or with others; and

(b) whether or not the business or undertaking is conducted for profit or gain.

- 11.2 The Service Provider must ensure that the Services are provided in a manner that does not pose any avoidable health or safety risk to the Service Provider's Personnel, to the Customer's Personnel, or to any other person.

- 11.3 Without limiting in any way the health and safety obligations that the Service Provider has under this Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Supplier must:

11.3.1 ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;

11.3.2 ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act or corresponding State or Territory legislation

11.3.3 notify the Customer of:

(a) any work related injury that causes death or serious personal injury;

(b) any notifiable incident as defined at sections 35, 36 and 37 of the Act, or corresponding State or Territory legislation; and

(c) each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, or the relevant work health and safety legislation in that jurisdiction,

within 1 Business Day after the incident has occurred or within 2 hours if the injury causes death.

- 11.4 At the Customer's request, the Service Provider must provide reasonable assistance to the Customer, or Comcare (including giving the Customer, Comcare and their agents access to the Service Provider's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Services .

12. WORKPLACE GENDER EQUALITY

- 12.1 Clauses 12.1 to 12.6 apply only to the extent that the Service Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the '**WGE Act**').
- 12.2 The Service Provider must comply with its obligations, if any, under the WGE Act.
- 12.3 The Service Provider must not enter into any subcontracts with an entity named in a report tabled in the Australian Parliament by the Director of Workplace Gender Equality as a supplier that has not complied with the WGE Act.
- 12.4 If the Service Provider becomes non-compliant with the WGE Act, the Service Provider must:
- 12.4.1 immediately Notify the Customer of the non-compliance with the WGE Act;
 - 12.4.2 become compliant with the WGE Act within 40 Business Days from the date of non-compliance; and
 - 12.4.3 Notify the Customer when it becomes compliant with the WGE Act.
- 12.5 If the Contract Term exceeds 18 months, the Service Provider must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Representative for the Customer as relevant.
- 12.6 The Customer compliance with the WGE Act does not relieve the Service Provider from its responsibility under this Contract.

13. ENVIRONMENT

- 13.1 The Service Provider must perform its obligations under this Contract in a way that does not place the Service Provider or the Customer in breach of any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 13.2 The Service Provider must seek to implement any best practice environmental or green standards applicable to the Services and must implement any such standards which are Notified to it by the Customer.

14. HAZARDOUS SUBSTANCES

- 14.1 The Service Provider must not provide any part of the Services containing any Ozone Depleting Substances or Hazardous Substances, except for those substances authorised in writing by the Customer.
- 14.2 The Service Provider must ensure that, for all Hazardous Substances:

- 14.2.1 full details of the authorised substances incorporated into the any part of the Services, including the location and protective measures adopted, are provided to the Customer in the format of a Material Data Safety Sheet in accordance with NOHSC 2011 (2003) 'National Code of Practice for the Preparation of Material Safety Data Sheets';
 - 14.2.2 all Documents supporting the part of Services containing Hazardous Substances clearly identifies the nature of the hazard; and
 - 14.2.3 any part of the Services containing the authorised substance are labelled to clearly identify the nature of the substance and its associated hazards.
- 14.3 To the extent consistent with their function, all parts of the Services must not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to Personnel, the environment or the operation of other equipment.

15. WHOLE OF GOVERNMENT (WOG) ARRANGEMENTS

Service Provider acknowledgement

- 15.1 The Service Provider acknowledges that the Commonwealth has, and will continue to, set up WOG Arrangements that enable or facilitate the provision of certain goods and services to one or more Commonwealth Entities.
- 15.2 The Service Provider acknowledges and agrees that part or all of the Services under this Contract may be affected by a WOG Arrangement and if the Services are affected, the Customer, in its discretion, may exercise any option available to it under this clause 15 or otherwise, as required to deliver value for money to the Commonwealth.

Acquiring services from a WOG Arrangement

- 15.3 The parties agree that if:
 - 15.3.1 during the Term the Commonwealth implements a WOG Arrangement in respect of services similar to the Services;
 - 15.3.2 the Customer, in its absolute discretion, decides to obtain some or all of the Services from a service provider on the panel of a WOG Arrangement rather than under this Contract; and
 - 15.3.3 the Customer Notifies the Service Provider that Services under this Contract are no longer required from the Service Provider,

then:

- 15.3.4 the parties must amend this Contract to reflect the Notice referred to in clause 15.3.3, so that:
 - (a) the services to be provided by a service provider on the panel of a WOG Arrangement will be removed from the Services to be provided by the Service Provider;
 - (b) this Contract will be amended to reflect the change in the scope of the Services to be provided by the Service Provider under this Contract (including any relevant adjustments in the Charges); and
 - (c) to the extent that there is no such inconsistency, the terms of this Contract will continue.

- 15.4 The Notice referred to in clause 15.3.3 must include details of the Services to be provided to the Customer under the WOG Arrangement, rather than under this Contract.

Variation process and reduction costs do not apply to WOG Arrangement

- 15.5 The Customer will not be required to pay the Service Provider any costs for reduction of the scope of the Services due to a WOG Arrangement. Clause 62.4 does not apply to any amendment to this Contract under this clause 15 as a result of a WOG Arrangement.
- 15.6 The Customer will prepare the necessary documentation to reflect any amendment to this Contract effected by the Notice given under this clause 15 and forward that documentation to the Service Provider.

Subcontractors

- 15.7 The Service Provider must ensure that any Subcontractors agree to the inclusion, in each Subcontract, of a clause substantially in the same terms as this clause 15 which will allow:
- 15.7.1 the Customer to take advantage of any WOG Arrangement to which any of the Subcontractors are a party; and
- 15.7.2 the Service Provider to reduce the scope of the Subcontract in the event that the Customer exercises its rights in this clause 15 to reduce the scope of this Contract in order to transfer part of the Services to a WOG Arrangement.

16. PIGGYBACKING

- 16.1 The Service Provider acknowledges that the Services supplied under this Contract may be of value to other Entities.
- 16.2 The Service Provider offers to provide the Services to any Entity in accordance with clauses 16.3 to 16.5.
- 16.3 Any other Entity who wishes to enter into a separate contract with the Service Provider, with provisions that are equal to, or no less favourable than, those set out in the Contract, for the Services may Notify the Customer and the Service Provider.
- 16.4 If the Service Provider receives a request for a separate contract under clause 16.3 from another Entity:
- 16.4.1 the Service Provider must negotiate in good faith with that Entity the terms of a separate contract with provisions that are equal to, or are no less favourable than, those set out in the Contract, for provision of the Services to that other Entity, except that:
- (a) unless otherwise agreed by the Customer, the Piggybacking Contract must include:
 - (b) a clause requiring the Service Provider to provide information about the Piggybacking Contract (including information in relation to performance and payments) to the Customer upon request; and
 - (c) charges for the provision of the Services to the other Entity under the Piggyback Contract do not exceed the amounts specified in Schedule 3 (Charges and Payments);
 - (d) if the Service Provider and the other Entity negotiate and agree terms for the Piggybacking Contract (including in relation to pricing) which are

more favourable to the other Entity than the terms in the Contract, the Service Provider must:

- (e) promptly Notify the Customer of the more favourable terms;
- (f) unless the Service Provider can substantiate, to the Customer's satisfaction, that the services to be provided to the other Entity under the Piggybacking Contract are significantly different to those provided to the Customer under the Contract (or there are significantly different circumstances or other valid reasons for the more favourable terms), offer the more favourable terms to the Customer; and
- (g) if the Customer accepts the Service Provider's offer in clause (f), agree to vary the Contract in accordance with clause 32 (Variations to the Contract) to implement the relevant change(s); and
- (h) the Service Provider must not enter into a Piggybacking Contract with another Entity unless the Customer has confirmed in writing that the Service Provider may do so. The Customer may grant its permission under this clause on such conditions as it, in its absolute discretion, considers appropriate.

16.5 For clarity, any Piggybacking Contract agreed and executed in accordance with clause 16.4 will create a separate contract between the Service Provider and the other Entity.

17. INDIGENOUS PROCUREMENT POLICY

17.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy available at <https://www.niaa.gov.au/sites/default/files/publications/indigenous-procurement-policy.pdf>).

17.2 The Service Provider must use its reasonable endeavours to increase its:

17.2.1 purchasing from Indigenous Enterprises; and

17.2.2 employment of Indigenous Australians,

in the performance of the Services.

17.3 Purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a Subcontractor and use of Indigenous Enterprises in the Service Provider's supply chain.

17.4 Without limiting clause 17.2, if this Contract becomes a High Value Contract, then clauses 17.4 to 17.12 will apply.

17.5 The Service Provider must provide an Indigenous Participation Plan for Acceptance by the Customer. Once Accepted, the Indigenous Participation Plan will become part of this Contract and the Service Provider must comply with it.

17.6 The Service Provider must provide a written report on its compliance with the Indigenous Participation Plan to the Commonwealth:

17.6.1 at least once every Quarter during the Term; and

17.6.2 within 5 Business Days after the end of the Term (**End of Term Report**).

- 17.7 The End of Term Report must identify whether the Service Provider:
- 17.7.1 met the mandatory minimum requirements as set out in the Indigenous Participation Plan; and
 - 17.7.2 complied with the Indigenous Participation Plan.
- 17.8 If the Service Provider has not complied with the Indigenous Participation Plan, it must provide an explanation for its non-compliance in its End of Term Report.
- 17.9 If the Customer considers, in its absolute discretion at any time during the Term, that it has concerns in relation to the Service Provider's:
- 17.9.1 compliance with the Indigenous Participation Plan; or
 - 17.9.2 overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,
- the Customer may request the Service Provider to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.
- 17.10 The Service Provider must comply with all reasonable directions issued by the Customer in relation to the Service Provider's implementation of the Indigenous Participation Plan.
- 17.11 Without limiting its other rights under this Contract or at law, any material failure by the Service Provider to:
- 17.11.1 implement the Indigenous Participation Plan; or
 - 17.11.2 comply with a direction issued by the Customer under clause 17.10,
- will be a breach of this Contract, and the Commonwealth may terminate this Contract in accordance with clause 62.1 of the Contract.
- 17.12 Notwithstanding any other clause of this Contract, the Service Provider acknowledges and agrees that the reports it submits under clause 17.6:
- 17.12.1 will be recorded in a central database that is able to be accessed by Commonwealth Entities and may be made publicly available;
 - 17.12.2 will not be considered to be Confidential Information; and
 - 17.12.3 may be used by Commonwealth Entities for any purpose, including for evaluation of an offer to provide goods or services to a Commonwealth Entity.

18. AUSTRALIAN INDUSTRY PARTICIPATION PLAN

- 18.1 In this clause 18, unless the context indicates otherwise:
- 18.1.1 Australian Industry Participation Plan or AIP Plan means the plan in Schedule 9 to this Contract;
 - 18.1.2 Australian Industry Participation Plans: User Guide or AIP Plans User Guide means the Australian Industry Participation Plans User Guide for developing an AIP Plan published by the Department of Industry, Innovation and Science as at the date this approach to market was issued a copy which can be obtained at www.industry.gov.au/aip; and

- 18.1.3 Implementation Report means a report provided to the Customer in accordance with clause 18.5.
- 18.1.4 Implementation Report User Guide means the Australian Industry Participation Plans: User guide for developing an Implementation Report published by the Department of Industry, Innovation and Science as at the date this approach to market was issued a copy which can be obtained at www.industry.gov.au/aip .
- 18.1.5 Implementation Report Requirements means the requirements for an Implementation Report set out in the Australian Industry Participation Plans: User Guide for developing an Implementation Report.
- 18.2 The Service Provider must comply with the AIP Plan.
- 18.3 If any conflict arises between any part of the AIP Plan and any other part of the Contract, the other part of the Contract prevails.
- 18.4 The AIP Plan must not be construed as limiting the Service Provider's responsibility to provide the Services in accordance with and otherwise comply with the requirements of the Contract.
- 18.5 The Service Provider must provide the Customer with an Implementation Report that meets the Implementation Report Requirements within 60 days after the first anniversary of the commencement of this Contract.

[Note to Tenderers: The Service Provider will be required to provide a single Implementation Report on Implementation of the AIP Plan under the Contract.]

- 18.6 Where the Customer considers that the Implementation Report does not meet the Implementation Report Requirements, the Customer may, by written notice to the Service Provider, reject the Implementation Report. Where the Customer rejects the Implementation Report, the Customer will provide the Supplier with reasons for the rejection.
- 18.7 Where the Customer has rejected the Implementation report pursuant to clause 18.6, the Service Provider must provide the Customer with the Implementation Report amended to address the reasons advised by the Customer and that otherwise meets the Implementation Report Requirements within 10 Business Days of the date of the notice issued under clause 18.6.
- 18.8 The Service Provider consents to the Customer or any other Commonwealth agency:
 - 18.8.1 publishing the executive summary of its AIP Plan at www.industry.gov.au/aip;
 - 18.8.2 providing a copy of the Implementation Report to the Department of Industry, Innovation and Science; and
 - 18.8.3 publishing or reporting on the Service Provider's performance in relation to the AIP Plan including the level of Australian industry goods and services purchased on the project and level of compliance with the AIP Plan.
- 19. If requested, the Service Provider agrees to assist the Commonwealth with the collection of information from the project to help monitor and report on the performance of its AIP policy.
- 19.1 In this clause 19:

Black Economy means the *Black economy – increasing the integrity of*

Procurement Connected Policy	<i>government procurement. Procurement connected policy guidelines March 2019</i> available at https://treasury.gov.au/publication/p2019-t369466 .
Satisfactory	means meets the conditions set out in Part 6.b of the Black Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Black Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Black Economy Procurement Connected Policy.
Statement of Tax Record	means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR .
Valid	means valid in accordance with Part 7.e of the Black Economy Procurement Connected Policy.

- 19.2 The Service Provider warrants in relation to any first tier subcontractor it has engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) that the Service Provider either:
- 19.2.1 provided a Valid and Satisfactory Statement of Tax Record for the subcontractor as part of its response for the approach to market that resulted in the entry of this Contract; or
 - 19.2.2 holds a Satisfactory Statement of Tax Record for the Subcontractor that was Valid at the time of entry into the subcontract by the Service Provider and the subcontractor.
- 19.3 If the Service Provider, is a partnership, the Service Provider will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the customer as soon as possible after they become a partner to the partnership.
- 19.4 The Service Provider warrants that at the Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.
- 19.5 The Service Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the Contract term (including any extension) and, on request by the Customer, provide to the Customer a copy of any such Statement of Tax Record.
- 19.6 Without limiting its other rights under this Contract or at Law, any failure by the Service Provider to comply with the requirements outlined in clauses 19.4 and 19.5 will be a breach of this Contract.
- 19.7 The Service Provider must ensure that any first tier subcontractor engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- 19.8 The Service Provider must retain a copy of any Statement of Tax Record held by any first tier subcontractor in accordance with clause 19.7 and must, on request by the Customer, provide to the Customer a copy of any such Statement of Tax Record.

20. OTHER POLICY REQUIREMENTS

- 20.1 Without limiting specific provisions of this Contract, the Service Provider must:
- 20.1.1 ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism, including "terrorist organisations" as defined in Division 102 of the Schedule to the

Criminal Code Act 1995 (Cth) and listed in regulations made under the Act and regulations made under the *Charter of the United Nations Act 1945* (Cth);

20.1.2 comply with the obligations imposed under the Lobbying Code of Conduct (Cth), if applicable;

20.1.3 comply with all relevant legislation of the Commonwealth, or of any State, Territory or local government authority and other applicable Laws including, without limitation the:

(a) *Crimes Act 1914* (Cth);

(b) *Criminal Code Act 1995* (Cth); and

(c) *Competition and Consumer Act 2010* (Cth) and the applicable State and Territory Australian Consumer Laws.

Schedule 9 Approved AIP Plan

[Note to Tenderers: The Service Provider's Approved AIP Plan will form Schedule 9 to the Contract.]