

# **SERVICES AGREEMENT**

**between the**

**Commonwealth of Australia**  
**(as represented by**  
**the Department of Veterans' Affairs),**  
**the Repatriation Commission**  
**and**  
**the Military Rehabilitation and**  
**Compensation Commission**  
*(Australian Business Number 23 964 290 824)*

**and**

**Providence Consulting Group Pty Ltd**  
*(Australian Business Number 49 117 321 552)*

**for the provision of a site capacity analysis and risk**  
**assessment review at Gallipoli, Turkey**

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# THE SCHEDULE

*Note: Terms are subject to the interpretation clause 26 and definitions in specific clauses and in clause 32.*

## Part

### A Purpose

*[Relates to clause 1]*

The purpose of this **agreement** is for the provision of a site capacity analysis and risk assessment review at Gallipoli, Turkey.

### B Term of agreement

*[Relates to clause 1]*

- (1) This agreement commences on the date of the last signature and shall end on 30 September 2011. The end date can be extended only under Schedule Part B(2).
- (2) **DVA** has an option to extend this agreement by periods up to a total of one month. DVA may exercise the option by giving notice in writing [clause 9] to the **contractor** no later than one week prior to the end date.

### C Contractor's legal identity

*[Relates to clauses 1.1(a), 8.1 and 9.1]*

Full legal name of contractor	Providence Consulting Group Pty Ltd
Legal identity (eg, individual, trust, company, partnership etc)	Company
Trading or business name	Providence Consulting Group Pty Ltd
Australian Business Number (ABN)	49 117 321 552
Australian Company Number (ACN)	117 321 552
Registered office (street address)	Suite 6, 2 Phipps Close DEAKIN ACT 2600
Relevant business place (if different)	
Postal address	PO Box 248 DEAKIN WEST ACT 2600
Telephone number (General)	(02) 6162 3023
Fax number (General)	(02) 6162 3025
E-mail address (General)	info@providenceconsulting.com.au

### D Contractor's representative

*[Relates to clauses 8.1 and 9.1]*

*(if the contractor is not an individual)*

Contractor's representative (name)	Exempt s47F	
Position		
Postal/street address(es)		
Telephone (business) and mobile numbers		
Fax number		
E-mail address		

**E Specified personnel of contractor***[Relates to clause 2.1]*

If applicable, the **personnel** listed below are specified personnel:

Full legal name of person	Exempt s47F
Any relevant qualifications, skills or licences	
Nature of work to be performed under this agreement	
Telephone (business) and mobile numbers	
E-mail address	info@providenceconsulting.com.au

Full legal name of person	Exempt s47F
Any relevant qualifications, skills or licences	
Nature of work to be performed under this agreement	
Telephone (business) and mobile numbers	
E-mail address	

**F Subcontractors of contractor***[Relates to clause 2.4]*

The contractor does not propose to use a subcontractor to provide the services.

Full legal name of subcontractor	
Trading or business name	
Authorised role of subcontractor	
Telephone (business) and mobile numbers	Tel: M:
Fax number	
E-mail address	

**G DVA Delegate***[Relates to clause 32]*

Delegate (Name)	Allan (Tim) Evans
Position	National Manager, Commemorations Operations
Street Address	Lovett Tower, 13 Keltie Street, WODEN ACT 2606
Postal Address	GPO Box 9998, CANBERRA ACT 2601
Telephone (business) and mobile numbers	Tel: (02) 6289 6068 M: 0401 148 595
Fax number	(02) 6289 4849
E-mail address	tim.evans@dva.gov.au

## **H DVA Contract Manager**

*[Relates to clause 32]*

Contract Manager (Name)	Allan (Tim) Evans
Position	National Manager, Commemorations Operations
Street Address	Lovett Tower, 13 Keltie Street, WODEN ACT 2606
Postal Address	GPO Box 9998, CANBERRA ACT 2601
Telephone (business) and mobile number	Tel: (02) 6289 6068 M: 0401 148 595
Fax number	(02) 6289 4849
E-mail address	tim.evans@dva.gov.au

## **I Services and deliverables**

*[Relates to clause 4.1(a)]*

(1) The contractor shall provide, or shall arrange for the provision of:

(a) Analyse the Anzac Commemorative Site, Lone Pine and Chunuk Bair to determine the safe site capacity at each location given the present infrastructure set-up and design.

(b) Review existing Risk Assessments relating to security, infrastructure failure, and transport and provide comment and guidance on their adequacy and currency. The focus should be on measures to improve existing mitigation strategies and the cost implications of addressing mitigation strategies.

(c) Undertake crowd modelling of movements and areas of risk in the event of managed evacuation or spontaneous crowd movement.

(d) The analysis will be done through consultation with the Department of Veterans' Affairs, Attorney General's Department and other agencies as required, and with the contracted services provider Definitive Events. It will build on the existing corporate knowledge and site plans that are available rather than by conducting a 'green fields' analysis of the site.

(e) The report will be completed by Friday 2 September 2011. Key milestones prior to the final report will be agreed between Providence Consulting and the Department of Veterans' Affairs.

(d) Any travel to be undertaken as part of the performance of this contract is to be approved in advance by the Department of Veterans' Affairs.

## **J Implementation issues**

*[Relates to clause 1.2]*

(1) The parties agree that the clauses adequately reflect their agreement.

## **K Quality standards**

*[Relates to clause 4]*

(1) The parties agree that the clauses adequately reflect their agreement.

## **L Payments**

*[Relates to clause 7]*

Subject to all other terms of this agreement, the contractor will be paid fees, exclusive of GST, as follows:

- (1) Exempt s47 for services provided by Exempt s47F
- (2) Exempt s47 for services provided by Exempt s47F
- (3) Travel costs as approved in advance by the Department of Veterans' Affairs.
- (4) The maximum combined total cost of this contract is capped at Exempt s47

**M Assistance to be provided by DVA**

*[Relates to clause 7.2]*

(1) DVA is not required to provide assistance other than that specified or implied elsewhere in the agreement.

**N Jurisdiction governing interpretation**

*[Relates to clauses 29]*

The applicable law is that of the Australian Capital Territory.

# THE CLAUSES

## — KEY PEOPLE AND SERVICES —

### 1. Parties, services and timing

- 1.1 **[Parties]** The parties to this agreement are:
- (a) the contractor, as described in Schedule Part C; and
  - (b) DVA (ABN 23 964 290 824) which, in this agreement, collectively refers to the:
    - *Repatriation Commission* - a Commonwealth body corporate continued in existence under the *Veterans' Entitlements Act 1986*;
    - *Military Rehabilitation and Compensation Commission* - a Commonwealth body corporate established by the *Military Rehabilitation Compensation Act 2004*; and
    - *Commonwealth of Australia* as represented by the Department of Veterans' Affairs, which, among other matters, assists the Repatriation Commission, and the Military Rehabilitation and Compensation Commission with the administration of their respective Acts.
- 1.2 **[Implementation]** The contractor agrees to perform the implementation tasks listed in Schedule Part J before commencing the services.
- 1.3 **[Disengagement]** Both parties agree to do all things necessary to ensure a smooth and well ordered hand-over to any person who takes over the provision of the services.
- 1.4 **[Survival]** Rights and obligations that survive relevant end dates are those in:
- (a) clauses 7.8 [Deferment] and 7.9 [Discrepancies];
  - (b) clause 11 [Managing disputes];
  - (c) clause 13 [Governmental framework];
  - (d) clause 14 [Privacy];
  - (e) clause 15 [Confidentiality];
  - (f) clause 18 [Protective security];
  - (g) clause 19 [Ownership and custody of material];
  - (h) clause 20 [Moral rights];
  - (i) clauses 22 and 23 [Insurance and indemnity]; and
  - (j) this clause.

### 2 Personnel and subcontractors

- 2.1 **[Managing personnel]** The contractor agrees to ensure that any personnel (including any specified in Schedule Part E):
- (a) are appropriately qualified, and of a fit and proper nature, to perform the services;
  - (b) are Australian citizens or, if not Australian citizens, are not **illegal workers**;
  - (c) deliver the services according to this agreement;
  - (d) promptly, through the contractor, notify DVA if they cannot meet any of their contributions to the contractor's obligations under this agreement or, if relevant, any personnel has its right to practice cancelled; and
  - (e) will access only such official information as is required for the personnel to perform their duties.
- 2.2 **[Replacement personnel]** The contractor agrees:
- (a) to inform DVA in writing of any change in specified personnel named in Schedule Part E, subject to acceptance by DVA;
  - (b) that DVA may require it to promptly remove personnel (including any specified under Schedule Part E) from any aspect of the services;
  - (c) if requested, to promptly nominate potential replacement personnel; and
  - (d) if it cannot provide personnel acceptable to the DVA Delegate or DVA Contract Manager, DVA may rely on clause 25.4 [Specified default].

- 2.3 **[Subcontracting]** The contractor may subcontract all or part of the services required under this agreement but remains liable for all obligations under this agreement.
- 2.4 **[Subcontractors]** The contractor agrees to:
- (a) notify DVA in the event of any subcontractor being used in performing services, and, if requested by DVA, provide the details listed in Schedule Part F in relation to any subcontractor engaged in the delivery of services;
  - (b) if relevant, notify DVA if a subcontractor providing services has its right to practice cancelled;
  - (c) ensure that subcontractors are Australian citizens or, if not Australian citizens, are not illegal workers;
  - (d) not enter into a subcontract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace as an employer currently not complying with the *Equal Employment Opportunity for Women in the Workplace Act 1999*;
  - (e) ensure that subcontractors will access only such **DVA material** as is required for them to deliver services;
  - (f) ensure the continuing suitability of subcontractors;
  - (g) ensure that no subcontract restricts DVA's legal rights;
  - (h) ensure that all contracts with subcontractors contain functionally equivalent provisions to this agreement to the extent that those provisions are capable of applying to the subcontract;
  - (i) inform subcontractors about obligations arising under this agreement, especially that their names and other details may be disclosed publicly under clause 15.2(g); and
  - (j) properly pay or reward subcontractors under any relevant subcontract.

### 3 Skills transfer

- 3.1 If appropriate, the contractor agrees to ensure that it, its personnel and subcontractors transfer skills to DVA staff as the opportunity arises.

## — STANDARDS —

### 4 Quality standards

- 4.1 **[Standards]** The contractor agrees to ensure that it, its personnel and subcontractors:
- (a) deliver the services at the, or at a higher, standard recognised as best practice in the relevant industry/profession and in a manner consistent with the purpose stated in Schedule Part A;
  - (b) meet the quality standards specified in Schedule Part K;
  - (c) provide services with due care, skill and diligence when dealing with any person or the property of any person;
  - (d) acknowledge that DVA operates under APS Values and the APS Code of Conduct that may be found on the websites <http://www.aspsc.gov.au/values/index.html> and <http://www.apsc.gov.au/conduct/index.html> or be provided on request;
  - (e) conduct activities under this agreement in a manner consistent with DVA's Service Charter which is available on the DVA website: [Tenders and templates](#) or be provided on request;
  - (f) in the delivery of the services, including while on DVA premises or using DVA equipment, comply with any law, and Commonwealth and DVA policy as notified by the **DVA Delegate** or **DVA Contract Manager**, relevant to the performance of this agreement, including the *Fair Work Act 2009*, anti-discrimination and occupational health and safety rules and procedures;
  - (g) if the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (Implementation Guidelines), August 2009, apply to this agreement, the contractor shall comply with the Code and Implementation Guidelines; and
  - (h) as far as practicable in the delivery of services, take measures that result in the reduction of waste/emissions and the better use of resources and, as necessary, consult with the DVA Contract Manager to agree on measures to achieve this aim.



## **5 Performance monitoring**

- 5.1 DVA shall monitor the performance of the contractor, its personnel and subcontractors under this agreement and determine whether such performance has been satisfactory. If requested, the contractor must participate in a performance review and provide data relevant to the review. Failure to participate in a review or provide data will constitute unsatisfactory performance.
- 5.2 If, acting reasonably, DVA decides that the performance is unsatisfactory, then the Commonwealth may terminate this agreement in accordance with clause 25.4 [Specified Default].

## **6 Security and IT interoperability standards**

- 6.1 **[Security]** If required in the performance of this agreement, the contractor consents, and, if necessary, to obtaining the consent of its personnel and subcontractors, to DVA, or the contractor where requested by DVA, obtaining security vets or police checks, in relation to the contractor, its personnel or subcontractors.
- 6.2 **[IT interoperability]** If relevant, the contractor warrants that it, its personnel and subcontractors have IT systems that enable full and non-disruptive connectivity to DVA's IT systems, eg, appropriate firewall and internet protocols.

# **— FINANCIAL MATTERS —**

## **7 Payment and assistance**

- 7.1 **[Costs, taxes, duties and government charges]** Unless otherwise provided in this agreement or separately in writing by DVA, all costs associated with implementation, disengagement and in the performance of this agreement including all taxes, duties and charges imposed or levied in Australia or overseas shall be borne by the contractor.

- 7.2 **[DVA's obligations]** DVA agrees to:

- (a) pay fees to and reimburse costs of the contractor in arrears unless otherwise specified in Schedule Part L or in an Official Order [clause 27.2]:
- as specified in Schedule Part L or an Official Order; and
  - within 30 calendar days after receipt of a correct tax/invoice provided that DVA accepts the services invoiced;

In addition to satisfying the conditions in clause 7.3, if relevant, a tax/invoice must contain:

- (i) sufficient detail to allow the **DVA Contract Manager** to clearly understand the relevant services or claim and timing to which the services/claim relates;
  - (ii) the address provided to DVA when the contractor registered as a supplier;
  - (iii) words [eg, Invoice No:] or letters and a unique number that identify the invoice;
  - (iv) words [eg, Order No:] and the Purchase Order Number provided by DVA at the time of purchase/order, or the name and business group of the DVA ordering official;
  - (v) for tax invoices - the GST payable and the GST inclusive value against each supply listed in the tax invoice; and
  - (vi) for tax invoices - the total GST amount and the total payable inclusive of GST.
- (b) provide reasonable assistance agreed in Schedule Part M;
- (c) if DVA requires the contractor, its **personnel** or subcontractor to attend an event, or otherwise incur costs, DVA may, at its discretion, pay or reimburse the contractor the costs directly associated with the activity, provided that:
- prior approval is obtained from the DVA Contract Manager for proposed expenditure including costs of transport, meals and accommodation; and
  - the costs are those not intended to be borne by the contractor under other terms of this agreement; and
  - all claims are supported by receipts or other appropriate supporting documentation; and
  - any air travel or hire car is arranged by DVA under a preferred travel provider contract or arranged under an alternative arrangement approved by a DVA officer who is authorised for this purpose.

- 7.3 **[Tax invoice]** The contractor agrees to submit a tax invoice or, where applicable, an adjustment note, complying with the *A New Tax System (Goods and Services Tax) Act 1999* in relation to goods or services that are taxable supplies.
- 7.4 **[Withholding tax]** The contractor acknowledges that, unless it provides DVA with its Australian Business Number, DVA may need to withhold tax from payments.
- 7.5 **[Electronic payments]** As required, the contractor will provide account details to allow electronic payments to be made to the contractor.
- 7.6 **[Tax change]** If a variation to a tax affects this agreement, either party may seek, by written notice, a review of fees, reimbursements or assistance. If the review will potentially increase payments, the contractor agrees to substantiate to the DVA's satisfaction that:
- any increases are attributable to the variation; and
  - the contractor took all measures to minimise the effect of the variation.
- 7.7 In clause 7.6 [Tax change]:
- 'tax' includes any tax, duty or charge from an Australian, State or Territory government; and
  - 'variation' includes the introduction of, an increase in, a decrease in, or the abolition of a tax.
- 7.8 **[Deferment]** DVA may defer any payment until the contractor has completed, to DVA's reasonable satisfaction, a relevant aspect of the services, or prepared an appropriate tax/invoice, relating to the payment.
- 7.9 **[Discrepancies]** The contractor agrees that DVA may:
- check and rectify discrepancies in any payments or assistance;
  - offset any overpayment against future payments; and
  - recover, as a debt, any money owing to DVA (plus reasonable interest), including any outstanding prepayment amount at a relevant end date.
- 7.10 **[Changes to ABN or GST]** The contractor agrees to notify DVA within 21 calendar days, or at the time of filing a tax/invoice, whichever is the earlier, of any change to its ABN, GST registration status or a cancellation of its ABN or GST registration.
- 7.11 **[Small Business]** Where the contractor is a **small business**, and the value of this Agreement is \$1m (GST inclusive) or less, if the Commonwealth fails to pay to the Service Contractor an amount payable by it under this Agreement for Services completed to the satisfaction of the Commonwealth within 30 days of receipt of a correctly rendered invoice, the Commonwealth agrees to pay simple interest on the unpaid amount in accordance with the following formula:
- $$SI = UA \times GIC \times D$$
- where:
- SI is the simple interest amount;
  - UA is the unpaid amount;
  - GIC is the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day; and
  - D is the number of days from the day after payment was due up to and including the Payment Day.
- Interest is payable by the Commonwealth only when the amount of interest calculated using the formula exceeds \$10 and the Service Contractor has issued a correctly rendered invoice in relation to the interest

## — CONTRACT MANAGEMENT —

### 8 Communication and support

8.1 **[Representatives]** The contractor agrees to, at its own cost:

- (a) nominate an individual authorised to receive notices and to represent it, including to communicate appropriately with the **DVA Delegate** or **DVA Contract Manager** on a regular basis or as agreed;
- (b) maintain good record keeping practices to assist with any contract management and accountability requirements generally; and
- (c) provide its **personnel** or its subcontractors appropriate training for the performance of this **agreement** with particular regard to issues arising under clauses 13 to 18 inclusive **[Transparency and Accountability]**.

8.2 **[Liaison]** The DVA Contract Manager is responsible for the management of this agreement and is authorised to help maintain communications. The DVA Contract Manager has no authority to vary this agreement.

### 9 Delivering notices

9.1 **[Format for notices]** Notices given by a party under this agreement must be in writing and (as applicable):

- (a) signed by the DVA Delegate and handed to the contractor or sent to the address in Schedule Part C or as the contractor notifies the DVA Delegate in writing; or
- (b) signed by the contractor and handed to the DVA Delegate, or sent to the address in Schedule Part G or as the DVA Delegate notifies the contractor in writing.

9.2 **[Timing for delivery]** Where a party has not acknowledged receipt of a notice, the notice may, in good faith, be treated as received:

- (a) on the date of delivery (if delivered to the appropriate place or **person**); or
- (b) according to the ordinary postal timing (if sent by prepaid post); or
- (c) on the next **business day** at the relevant location following dispatch (if transmitted electronically), provided that -
  - the sender's electronic system indicates that the transmission succeeded, and
  - the recipient does not promptly inform the sender that it was illegible.

### 10 Complaint handling

10.1 If a complaint is made that relates to this agreement:

- (a) the parties will determine and follow an agreed complaints handling procedure; and
- (b) the contractor agrees to promptly notify the DVA Contract Manager about the complaint's nature, in particular where the contractor receives a complaint alleging an interference with the privacy of an individual by the contractor or any of its personnel or subcontractors; and
- (c) the contractor agrees to allow DVA to intervene as it decides, including managing or settling the complaint.

### 11 Managing disputes

11.1 **[Internal processes]** The parties will act in good faith to speedily resolve potential disputes, including through involving appropriate senior personnel – although a party may at any time notify the other, in writing, that a formal dispute exists and its nature.

11.2 **[External processes]** If, after receipt of a notice under clause 11.1 **[Internal processes]**, the parties do not resolve a formal dispute within 10 business days (or another period agreed in writing), the parties agree to act in good faith to resolve the dispute using external informal dispute resolution techniques, such as mediation, expert evaluation or determination, but not arbitration.

11.3 In particular, the parties will act in good faith to agree within the 10 business days (or a period agreed between them in writing) about:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection of an independent person required for the agreed technique.

- 11.4 If the parties cannot agree as above, then they will refer the dispute to the Australian Commercial Disputes Centre (ACDC), or equivalent, with the object of having the dispute settled by mediation.
- 11.5 The parties agree to bear their own costs in resolving a dispute other than the costs of an independent person which will be shared equally.
- 11.6 Unless a matter is the subject of the dispute, the parties will continue to perform their obligations under this agreement in spite of the dispute.
- 11.7 **[Non-applicability]** Clauses 11.1 [Internal processes] and 11.2 [External processes] do not apply to:
- (a) a party seeking urgent, temporary court intervention (eg, interlocutory relief); or
  - (b) DVA relying (including purportedly) on clause 24 [Compensated reduction or cancellation] or clause 25.4 [Specified default].

## **12 Transmission of information and documents**

- 12.1 The following rules apply for the use of electronic communication:
- (a) transmission of 'personal information' within the meaning of the *Privacy Act 1988* shall be transmitted in encrypted or protected form as agreed between the parties;
  - (b) notices and documents required to be signed or produced under this agreement [eg, invoices and reports] may be served by way of facsimile or by e-mail in Portable Document Format (PDF) or similar format compatible with DVA systems; and
  - (c) other information may be transmitted between the parties by any other electronic system or means, eg, SMS or e-mail.

## **— TRANSPARENCY AND ACCOUNTABILITY —**

### **13 Government framework**

- 13.1 **[Definition: 'accountability personnel']** In this clause 13, 'accountability personnel' means an individual performing statutory or parliamentary functions, including as authorised by the Auditor-General, the Ombudsman, the National Archives of Australia, the Privacy Commissioner, Parliament, or a Parliamentary Committee, and the contractor acknowledges that any of these may name the contractor in a public report or comment lawfully on this **agreement**.
- 13.2 **[Access]** The **contractor** agrees to provide, or arrange, prompt reasonable access for **DVA** (including the **DVA Delegate** or **DVA Contract Manager**) and **Commonwealth** 'accountability personnel', to:
- (a) premises where the services are, or were, being undertaken or delivered, including by its **personnel** and subcontractors; and
  - (b) **DVA material**, wherever located, including any system connected with the performance of this agreement.
- 13.3 **[Informed consent]** Where the contractor, its personnel or subcontractors collect personal information, including medical or financial details, from an individual in the performance of this agreement, the contractor, personnel or subcontractor shall obtain the informed consent of the individual to the disclosure to, or access by, DVA or 'accountability personnel' to that information. This may be achieved by noting that the individual was made aware that information of that kind could be accessed by DVA or 'accountability personnel'.
- 13.4 **[DVA Contract Manager to be involved]** If 'accountability personnel' approach the contractor direct, then the contractor agrees to immediately seek directions from the DVA Contract Manager about appropriate steps to take. For example, DVA may need to raise issues such as privacy, confidentiality, security, immunity from disclosure or the need for appropriate warnings.

13.5 **[Administrative law]** The contractor agrees to cooperate with DVA in its obligations under administrative law. This includes cooperation in the handling of requests for access and applications for review of decisions under the *Freedom of Information Act 1982*. It also includes cooperating in relation to procedures regarding any administrative review tribunal or as if the contractor were a 'Commonwealth Institution' under the *Archives Act 1983*.

13.6 **[Access to documents]** This sub-clause 13.6 applies if this agreement is a 'Commonwealth contract' as defined in the *Freedom of Information Act 1982* [Cth]. In this sub-clause 13.6, 'document' has the same meaning as in the *Freedom of Information Act 1982* [Cth].

The contractor agrees that:

- (a) where DVA has received a request for access to a document created by, or in the possession of, the contractor or any subcontractor that relates to the performance of this agreement (and not to the entry into the agreement), DVA may at any time by written notice require the contractor to provide the document to DVA and the contractor must, at no additional cost to DVA, promptly comply with the notice.
- (b) the contractor must include in any subcontract relating to the performance of this agreement provisions that will enable the contractor to comply with its obligations under this sub-clause 13.6.

## **14 Privacy**

14.1 This clause applies when the contractor, its personnel or subcontractor collects or receives 'personal information' as defined in the *Privacy Act 1988* (the Privacy Act).

14.2 The contractor agrees to comply with section 95C of the Privacy Act relating to disclosure of certain provisions of Commonwealth contracts.

14.3 The contractor agrees not to engage, or permit or authorise its personnel or subcontractor to engage, in any act or practice that would breach whichever of the following provisions of the Privacy Act as are applicable:

- (a) the Information Privacy Principles under section 14;
- (b) the National Privacy Principles (NPPs), especially NPPs numbered 7 to 10 under section 16A and Schedule 3; or
- (c) an Approved Privacy Code, and
- (c) section 16F (direct marketing).

14.4 The contractor agrees to:

- (a) comply with policies of the Federal Privacy Commissioner, and DVA directions implementing the guidelines and recommendations of the Federal Privacy Commissioner, relating to the management of 'personal information';
- (b) cooperate with any reasonable demands or inquiries made by the Federal Privacy Commissioner; and
- (c) comply with DVA's prohibition against transborder flows of 'personal information' and refrain from exporting personal information without prior written approval of DVA.

14.5 The contractor agrees to indemnify DVA in respect of any loss, liability or expense suffered or incurred by DVA arising out of or in connection with a breach of the obligations under this clause by the contractor, its personnel or subcontractor or any misuse of 'personal information'.

## **15 Confidential information not to be disclosed**

15.1 Subject to clause 15.2, a party must not, without the prior written consent of the other party, disclose to a third party information about the terms or the performance of this agreement which is by its nature confidential.

- 15.2 The restrictions imposed by clause 15.1 shall not apply to the disclosure of any information:
- (a) which is now in or later comes into the public domain or which is obtainable with no more than reasonable diligence from sources other than the parties;
  - (b) which is required or authorised by law to be disclosed to any **person** who is authorised by law to receive the information;
  - (c) to a court, arbitrator, mediator or administrative tribunal in the course of proceedings before them to which the disclosing party is a party;
  - (d) is disclosed to the responsible Minister, or by the responsible Minister in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia; the Australian National Audit Office (ANAO); or, where the contractor is a state or territory, to the responsible Minister of the relevant state/territory parliament or to the state/territory audit office;
  - (e) is shared by DVA within its organisation, or with another agency, where this serves the legitimate interests of the Commonwealth;
  - (f) is disclosed by a party to its personnel or subcontractor in order to comply with obligations under this agreement; or
  - (g) that is required to be published under Commonwealth government and procurement requirements, eg, nature, value and parties to this agreement.
- 15.3 Where a party discloses information, the disclosing party must notify the receiving party that the information is confidential information and, where appropriate, obtain the receiving party's agreement that the information will be treated as confidential.
- 15.4 Nothing in this clause 15 derogates from any obligation which either party may have either under the *Privacy Act 1988*, or under this agreement, in relation to the protection of personal information.

## **16 Media management**

- 16.1 The contractor must obtain approval from DVA prior to the public release of any information or reference whatsoever relating to the services and deliverables outlined in Schedule Parts A and I of this agreement. The Contractor shall remain subject to clauses 14 and 15 in relation to all media releases..

## **17 Conflict of interest**

- 17.1 The contractor warrants that, after diligent inquiry, no potential conflict of interest arises from entering into this agreement, including anything:
- (a) restricting the fair conduct or delivery of the services; or
  - (b) affecting DVA adversely.
- 17.2 **[Future]** The contractor agrees not to engage in activities, or obtain interests, creating a potential conflict of interest of itself, its personnel or subcontractors in the performance of this agreement.
- 17.3 The contractor shall notify DVA Contract Manager immediately it becomes aware of any actual or potential conflict of interest.
- 17.4 DVA may consult the contractor in determining an approach to avoid or manage the conflict of interest but reserves the right to decide an approach without consultation with the contractor.

## **18 Protective security**

- 18.1 This agreement is subject to the Commonwealth Protective Security Policy Framework that is publicly available at [http://www.ag.gov.au/www/agd/agd.nsf/Page/ProtectiveSecurityPolicyFramework\\_ProtectiveSecurityPolicyFrameworkDownloads](http://www.ag.gov.au/www/agd/agd.nsf/Page/ProtectiveSecurityPolicyFramework_ProtectiveSecurityPolicyFrameworkDownloads) (baseline security).
- 18.2 The contractor, its personnel and subcontractors must comply with baseline security requirements as are applicable to the delivery of services under this agreement.

- 18.3 In this clause 18, 'security classified information' means information that has a security classification above baseline security that is determined in accordance with the Commonwealth Protective Security Policy Framework and notified by DVA to the contractor as applying to the performance of this agreement.
- 18.4 **[Protective security reporting and compliance]** If the contractor or its personnel or subcontractors will have access to security classified information, they agree to:
- (a) comply with security requirements including the storage, handling and processing of such information, in accordance with security requirements for the protection of that information, as notified by DVA under this agreement from time to time;
  - (b) ensure that DVA material, including security classified information, is not accessible by any means by unauthorised persons;
  - (c) participate, and provide full cooperation, in security reviews of the security procedures implemented, on an annual basis or as otherwise agreed;
  - (d) immediately report any security incidents (confirmed promptly in writing), including violations and breaches, and the steps taken by the contractor to address these; and
  - (e) if appropriate, recommend security improvements as soon as practicable.
- 18.5 **[Protective security access]** Without derogating from any other right of access, DVA may, after providing the contractor with reasonable notice, have reasonable access (for security reviews, security audit requirements and security performance monitoring, including in the presence of contractor personnel if required by DVA) to:
- (a) any premises or site of the contractor or subcontractor used in connection with this agreement; and
  - (b) any DVA material under the control or custody of the contractor.
- 18.6 **[Undertakings]** The contractor agrees to ensure its personnel and subcontractors understand this clause 18 and that they agree to give undertakings, or consent to personal checks, in a form DVA may require, to sustain this clause 18.
- 18.7 **[Security clearances]** All costs associated with obtaining security clearances or checks shall be borne by the party identified as follows:
- (a) where a security clearance or check is required, or notified in a procurement process, before entering into this agreement - the contractor;
  - (b) where DVA requires a security clearance or check after the commencement of this agreement - DVA.
- 18.8 **[Warranty]** The contractor agrees to provide DVA, at DVA's request, at any time, with a written warranty that no breach of this clause 18 has occurred.
- 18.9 **[Breach]** DVA may rely on clause 25.4 [Specified default] if it is satisfied that the contractor, its personnel or subcontractor is in breach of this clause 18.

## — OWNERSHIP AND LICENCES —

- 19 **Ownership and custody of material including intellectual property rights**
- 19.1 **[Ownership of material]** Ownership of contract material shall vest exclusively in the Commonwealth on creation.
- 19.2 **[Intellectual property rights]** Subject to clause 19.3 the contractor agrees to assign ownership of intellectual property rights in contract material to DVA on the creation of the contract material.
- 19.3 **[Ownership]** Ownership of intellectual property rights in:
- (a) any DVA material remains at all times vested in DVA;
  - (b) **existing material** remains unaffected by this clause 19.
- 19.4 **[Licence granted by contractor]** Unless otherwise specified in this agreement, to the extent that DVA needs to use any of the:
- (a) contractor's **existing material**; or

(b) any **third party material** used by the contractor for the purposes of this agreement, to receive the full benefit of the services and the contract material, the contractor must grant or obtain for DVA prior to delivery of the contract material, an irrevocable, perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, and exploit that **material**.

For the purpose of this clause 19.4, the Contractor will identify relevant **existing material**, including any **third party material**, on delivery of the **contract material** to DVA.

19.5 **[Licence granted by DVA]** Unless otherwise specified in this agreement, to the extent that the contractor needs to use any of the:

- (a) DVA material; or
- (b) contract material,

for the purpose of performing its obligations under this agreement, DVA grants to the contractor for the term of this agreement a royalty-free, non-exclusive, non-transferable licence to use, reproduce and adapt such material solely for the purpose of providing the services.

19.6 **[Warranty]** For the purpose of this clause 19 the contractor warrants that it is entitled, or will be entitled at relevant times, to assign or license relevant intellectual property rights.

19.7 **[Use and protection of DVA material]** The contractor agrees to ensure that it, its **personnel** and subcontractors:

- (a) use DVA material for the purposes of this agreement;
- (b) store and protect DVA material from damage or loss;
- (c) promptly notify the **DVA Contract Manager** about any potential loss of DVA material;
- (d) meet the reasonable requirements of the DVA Contract Manager regarding the need to repair or replace DVA material;
- (e) ensure that neither it, its personnel nor its subcontractors seek or obtain a lien or mortgage over any DVA material;
- (f) make no disposal, or transfer of custody or ownership, of any DVA material that equates to a 'Commonwealth record' under the *Archives Act 1983*, without written Commonwealth approval, including from the National Australian Archives; and
- (g) promptly deliver to the DVA Contract Manager DVA material which it holds or controls on any relevant end date.

For the purpose of this clause 19.7, **contract material** is deemed to be **DVA material**.

## 20 **Moral Rights**

20.1 The contractor genuinely consents and warrants that any individuals comprising its personnel genuinely consent, to the Commonwealth or its personnel doing any act or omission that would otherwise constitute an infringement of 'moral rights'. In interpreting this consent, it applies to:

- (a) moral rights including the right of attribution of authorship; the right of integrity of authorship; and the right not to have authorship falsely attributed;
- (b) any material, including literary, dramatic, musical or artistic works or cinematograph films, incorporated in any contract material;
- (c) any individual who is an author or a joint author of relevant material; and
- (d) the full extent possible in **law**, and outside Australia, including acts or omissions that may occur at any time, including as before the agreement start date.

20.2 For the purposes of this clause 20 and without limiting clause 19 or 20, the contractor must procure from each of its personnel and/or subcontractors performing any of the services in relation to this agreement, the assignment of intellectual property rights and consent in respect of moral rights for the benefit of the Commonwealth. The contractor must arrange for each assignment and/or consent to be given promptly and prior to the contractor's personnel and/or subcontractors commencing performance of any of the services consistent with this agreement.



## — RISK MANAGEMENT —

### 21 No employee, partner or agent status

- 21.1 **[Independent contractor]** The contractor acknowledges that it;
- (a) has entered into this agreement as an independent contractor;
  - (b) under this agreement, it gets paid to achieve specific outcomes;
  - (c) supplies its own **personnel**, subcontractors and equipment for delivery of the services;
  - (d) bears the risks, including liability for defective work;
  - (e) is not entitled (nor its personnel nor its subcontractors) to claim from DVA employment entitlements, including annual, sick or long service leave, workers' compensation, superannuation or pension benefits or to have DVA make contributions to a fund for the provision of superannuation or pension benefits to the contractor (nor its personnel nor its subcontractors) and acknowledges that the fees payable contain components to cover those benefits; and
  - (f) will not represent itself, and agrees to ensure that its personnel and subcontractors do not represent themselves, as:
    - (i) being an employee, agent or partner of DVA (or its personnel); or
    - (ii) able to bind or represent DVA (or its personnel) beyond any express authority given by DVA.

### 22 Insurance

- 22.1 **[Insurance]** The contractor must maintain full levels of insurance cover to properly protect its and DVA's interests and warrants that it has and will maintain:
- (a) public (and products) liability insurance for not less than \$10,000,000 per claim;
  - (b) professional indemnity type insurance for not less than \$5,000,000 per claim; and
  - (c) workers' compensation insurance as required by State/Territory law.
- 22.2 The contractor further warrants that any subcontractor used in the performance of the services has, and will maintain, appropriate insurance.
- 22.3 Professional indemnity cover by the contractor and any subcontractor must be maintained for a period of 6 years after the termination of this agreement or the expiry of services, whichever is the later.
- 22.4 The contractor agrees to provide copies of certificates of currency, schedules of cover, or insurance policies to the **DVA Contract Manager** upon request, including details of limits on cover.

### 23 Indemnity

- 23.1 The contractor indemnifies DVA, its personnel and subcontractors from any loss (including reasonable legal costs and expenses), or liability for any loss that is recognised at law, to the extent that such loss or liability was caused by any breach of a statutory obligation, negligent act or any omission (whether contractual or otherwise) of the contractor, its personnel or subcontractors in connection with this agreement.
- 23.2 **[Scope of liability]** The contractor's liability under clause 23.1:
- (a) will not exceed the full amount of the relevant loss; and
  - (b) is reduced proportionally to the extent that DVA was at fault in contributing to the loss; but
  - (c) does not exclude any other legal rights available to DVA.

### 24 Compensated reduction or cancellation

- 24.1 **[DVA may reduce or cancel services]** DVA reserves the right to reduce the scope of, or cancel this agreement, at any time where there is a significant change in **Commonwealth** policy, including the introduction of centralised procurement of goods and services, or where there is a change in control or ownership of the contractor, by written notice stating any end date(s).

- 24.2 **[What the contractor must do in response to notice]** Upon being given notice under clause 24.1 the contractor agrees to:
- (a) stop relevant aspects of the services from the revised end date;
  - (b) continue with aspects of the services not affected by the notice; and
  - (c) promptly prepare an invoice for payment to the relevant end date (bearing in mind the limitation on compensation stated in clause 24.3).
- 24.3 **[Limitation of liability]** DVA's liability to compensate under clauses 24.1 and 24.2 extends only to:
- (a) paying fees, reimbursing costs and providing assistance for services
    - rendered before the relevant end date; and
    - continuing, where reduced, after the relevant end date with payment reduced proportionately to match the remaining reduced services; and
  - (b) compensating the contractor for costs reasonably incurred and directly attributable to the reduction or cancellation
- up to a limit of the reasonable total payments that it otherwise would have paid, and not to cover prospective profits the contractor might have lost.
- 25 Default and termination procedures**
- 25.1 **[Cooperation]** Where a party has breached this agreement in any way (default), it should take active measures to rectify the default as soon as possible, including discussing appropriate options with the other party.
- 25.2 **[Rectification notice]** Where a party may reasonably rectify a default, the other party may give it a written notice requiring rectification within:
- (a) 10 business days; or
  - (b) any other period to which the parties agree in relation to the relevant form of default.
- 25.3 **[Termination for default]** If a party cannot reasonably rectify a default under clause 25.2 [Rectification notice], the other party may, by written notice stating any end date(s), terminate this agreement:
- (a) partially, regarding sufficiently severable aspects of this agreement; or
  - (b) fully.
- 25.4 **[Specified default]** DVA may terminate this agreement partially (regarding sufficiently severable aspects) or fully, by written notice stating any end date(s), if the contractor:
- (a) as an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
  - (b) as a body corporate, becomes subject to a form of external administration, including under the corporations law;
  - (c) has its right to practice cancelled, or if a personnel or subcontractor providing services under this agreement has its right to practice cancelled; or
  - (d) defaults in a manner that provides DVA with legal rights to terminate immediately, including regarding a matter noted under this agreement that provides rights to terminate under this clause 25.4, except in relation to clause 24.1.
- 25.5 **[Rights reserved]** A party may exercise its legal rights under this clause 25 without prejudicing any other legal rights that may accrue at any time.
- 25.6 The contractor agrees to meet the reasonable direct costs or expenses that DVA incurs in getting (but not the fees of) another supplier to deliver services because of the termination of this agreement under clause 25.4.

## — INTERPRETING THIS AGREEMENT —

### 26 Interpretation

26.1 In this **agreement**, unless the contrary intention appears:

- (a) citations of statutes are to statutes of the **Commonwealth**;
- (b) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (c) a reference to a **law** or publication includes a reference to that law or publication as amended or replaced;
- (d) a reference to a clause includes any subclause or paragraph within it;
- (e) words and phrases are to be interpreted by reference to clause 32;
- (f) where a word or phrase is given a defined meaning (appearing in bold in defined terms and when first occurring in a part or schedule to this agreement), any other part of speech or other grammatical form in respect to the defined term or phrase has a corresponding meaning;
- (g) a reference to a sum of money is in Australian currency;
- (h) words in the singular include the plural and vice versa;
- (i) a reference to a gender denotes any other genders;
- (j) a reference to the word 'include' or 'including' is to be construed without limitation;
- (k) if the day on which any act, matter or thing is to be done under this agreement is not a **business day**, the act, matter or thing must be done on the next business day; and
- (l) a clause will not be construed to the disadvantage of the party who proposed it.

### 27 Status of agreement

27.1 This agreement expresses the parties' intention to create legal relations.

27.2 Where services are required on an ad-hoc basis, this agreement forms a *standing offer* under which a specific contract for services (or supplies) may be accepted by **DVA**, on the following conditions and through the following process.

- (a) An 'ordering official' will order services in writing (Official Order) as the need for the services arises. Each order issued to the contractor shall constitute a discrete contract between the parties for the services. Each discrete contract shall be subject to and incorporate the terms and conditions of this agreement.
- (b) **DVA** shall not be liable for any work which the 'ordering official' has not requested in writing through the issue of an Official Order.
- (c) **DVA** does not bind itself to any exclusive arrangement, to order any specific quantities of the services or to engage any quantity at all, but reserves the right to engage such quantity of the services as may be required during the period of this agreement, according to the requirements of **DVA**.
- (d) Nothing in this agreement shall give rise to any right of the contractor to exclusively provide services required under this agreement.
- (e) For the purposes of this clause, an 'ordering official' shall be the **DVA Delegate** or the **DVA Contract Manager**.

### 28 Entire agreement and status

28.1 This agreement constitutes the entire understanding of the parties on the subject matter herein and everything else that occurred before the making of this agreement shall be disregarded.

28.2 Legal rights under this agreement are cumulative unless they have, specifically, been exercised or waived.

### 29 Applicable law

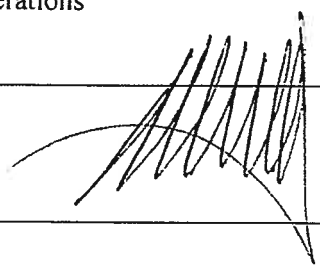

29.1 The applicable law is that stated at Schedule Part N.

<b>Intellectual Property</b>	Means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and technologies, together with any documentation relating to such rights and interests.
<b>Intellectual property rights</b>	Includes, regarding in any country in the world and including the ability to register these rights (where applicable), any intellectual property rights recognised at <b>law</b> and international law.
<b>Law</b>	Includes any relevant: (a) Legislation, whether primary, delegated or subordinate, of the <b>Commonwealth</b> or a, State, Territory or local government, or (b) Judicial ruling (including under the common law or the rules of equity).
<b>Material</b>	Means any object (including any goods, equipment, and deliverables), record (including as defined under the <i>Archives Act</i> 1983), document, software, information, or subject matter in which <b>intellectual property rights</b> subsist.
<b>Person</b>	Includes an individual, a body corporate (eg, an incorporated association, a statutory authority or a company, including a financial or trading corporation), a body politic (eg, a government), an office, commission, authority, committee, tribunal, board, institute, trust, partnership or any other organisation or unincorporated association.
<b>Personnel</b>	Includes any party's officer, partner, employee, agent, volunteer, bailee, executor, administrator, substitute, successor, licensee or assignee but - when applied to one party - does not include the other party or that other party's personnel.
<b>Small Business</b>	Means an enterprise that employs less than the full time equivalent of 20 persons on the day that the written contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

# THE SIGNATURES PAGE

THIS AGREEMENT IS EXECUTED AS A DEED.

Signed, sealed and delivered for and on behalf of: Providence Consulting Pty Ltd	
by:	Exempt s47F
Signature and date:	Exempt s47F 13 / 7 / 2011
Witnessed by:	Exempt s47F
Signature and date:	Exempt s47F 13 / 7 / 2011

Signed, sealed and delivered for and on behalf of the Commonwealth of Australia, the Repatriation Commission and the Military Rehabilitation and Compensation Commission.	
by: Allan (Tim) Evans National Manager Commemorations Operations	
Signature and date:	 15 / 7 / 2011
Witnessed by:	Melissa Gray
Signature and date:	 15 / 7 / 2011