

# Department of Industry, Innovation and Science

## Deed of Variation

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Commonwealth of Australia (**Commonwealth**)

tMinus Accelerator (**Contractor**)

## Details

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Date

26 / 3 / 2019  
 day month year

## Parties

**Name** The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science

**ABN** 74 599 608 295

**Short form name** Commonwealth

**Address details**  
**Postal Address**  
 GPO Box 2013  
 Canberra ACT 2601

**Physical Address**  
 Industry House  
 10 Binara Street  
 Canberra ACT 2600

**Name** tMinus Accelerator

**ABN** 34 622 646 940

**Short form name** Contractor

**Address details** tMinus Accelerator Pty Ltd

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## Background

- A On 4 April 2018, the Commonwealth and the Contractor entered into a contract for the provision of Regional Incubator Facilitator services to the Entrepreneurs' Programme.
- B The Commonwealth and the Contractor have agreed to vary the terms of the Contract in accordance with this Deed.

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# Agreed terms

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed, unless the contrary intention appears:

- (a) a word or expression defined or referred to in the Contract has the meaning given to it in the Contract;
- (b) **Contract** means the contract described in paragraph A of the Background;
- (c) **Deed** means this deed, including all annexures and schedules to it; and
- (d) **Effective Date** means 1 April 2019.

## 2. Variation to Contract

On and with effect from the Effective Date, the Contract is varied as set out in Schedule 1 to this Deed.

## 3. Affirmation of Contract

- (a) The parties affirm in all other respects the covenants and conditions in the Contract as varied by this Deed.
- (b) The Contract, as varied by this Deed, comprises the entire agreement between the parties.
- (c) The parties acknowledge and agree that the Contract as varied by this Deed is and continues to be in full force and effect.

## 4. Costs and GST

- (a) Each party must meet or pay its own costs and expenses in respect of the preparation, negotiation, execution and completion of this Deed.
- (b) If GST is payable on any supply made under or in connection with this Deed, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier has given the recipient a tax invoice for the supply.
- (c) The Contractor must pay any stamp duties and registration or other fees (including fines, penalties and interest relating to such duties and fees) which are payable or are assessed by a relevant government body or other person to be payable in relation to this document or any transaction contemplated by it.

## 5. Miscellaneous

### 5.1 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

### 5.2 Governing law and jurisdiction

This Deed is governed by the law of the Australian Capital Territory and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

# Signing page

**EXECUTED** as a deed.

Signed for and on behalf of the  
Commonwealth of Australia as  
represented by the Department of  
Industry, Innovation and Science by its  
duly authorised delegate in the presence of

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← \_\_\_\_\_ ←  
Signature of delegate  
STEVE SPARKLING  
Name of delegate (print)  
GM-ENTREPRENEURS' PROGRAMME  
Position of delegate (print) A/S (Industry)

Executed by tMinus Accelerator in  
accordance with Section 127 of the  
Corporations Act 2001 in the presence of

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← \_\_\_\_\_ ←  
Signature of director (witness)

\_\_\_\_\_  
Name of director (print)

← \_\_\_\_\_ ←  
Daniel Lee Smith.  
Name of director/company secretary/sole director and  
sole company secretary (print)

# Schedule 1 – Variation to Contract

## 1.1 Clause 1.1 Definitions

Clause 1.1 is varied by deleting the definitions of Contract Period and Initial Contract Period and inserting the following definitions:

<b>'Contract Period</b>	the period between the Commencement Date and End Date
<b>End Date</b>	the date specified in Item 7 of Schedule 1'.

## 1.2 Schedule 1, Item 7 Initial Contract Period is varied

Item 7 of Schedule 1 is varied by deleting the current Item 7 and replacing with the new Item 7:

7	End Date	1.1	31 January 2020
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## 1.3 Schedule 1, Item 8 Option Period is varied

Item 8 of Schedule 1 is varied by deleting '2 periods up to 12 months each' and replacing with '1 period up to six months'.

## 1.4 Schedule 3, item 1 (Fixed Charges) is varied

Item 1 of Schedule 3 (Fixed Charges) is varied by replacing with the table below:

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## 1.5 Schedule 3, Clause 4 (Expenses) is varied:

Clause 4 of Schedule 3 is replaced with the following:

- (a) Subject to (b) below, the Commonwealth will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by the Commonwealth.
- (b) The Contractor will be reimbursed for the travel and related to a maximum of \$41,666 excluding GST at non-SES rates where they are pre-approved in writing by the Commonwealth. The Contractor must submit an invoice for those expenses and the Commonwealth will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.

## Department of Industry, Innovation and Science

Contract for the Provision of Services number 014711

Commonwealth of Australia (**Commonwealth**)

tMinus Accelerator Pty Ltd (**Contractor**)

### Note to the Contractor:

This Contract outlines the rights and obligations of you and the Commonwealth (represented by the Department of Industry, Innovation and Science) (**the Department**) in relation to the performance of the Services.

If this Contract has been issued following a tender process, the terms and conditions contained in clauses 1 to 36 should be the same as those in the draft contract provided as an attachment to the Request for Tender document, other than any amendments agreed between you and the Commonwealth during contract negotiations. Please read any amended provisions (such as the descriptions of the Services and the Milestone Dates and Performance Criteria (if any)) carefully to ensure that they are correct.

The Government's Supplier Pay On-Time or Pay Interest Policy may apply to this Contract. Full details of the policy can be found in Resource Management Guide No. 417 on the [Finance website](#).

The effect and purpose of the clauses in this Contract are explained in the User Notes available on the Department's website at [User Notes](#). Where relevant, the User Notes contain a description of the purpose and operation of specific clauses.

The Commonwealth Representative specified in this Contract is prepared to discuss any aspect of this Contract with you, but if you are still unsure about any aspect of this Contract you should seek independent legal advice before signing.

This Contract has been sent to you in duplicate. If the Contract is acceptable, please complete the signing page at the end of the Contract and return both signed copies to the Department. The Commonwealth will then sign and date the copies and return one original copy to you. This process must be completed before work may commence.

# Contract Information

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## Date

4 / April / 2018  
day month year

## Parties

Name	The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science,
Short form name	<b>Commonwealth</b> ABN 74 599 608 295
Name	tMinus Accelerator Pty Ltd
Short form name	<b>Contractor</b> ABN 34 622 646 940

## Overview

- A The Commonwealth requires the provision of the Services specified in Schedule 2 and the Contractor is required to meet the Milestone Dates and provide the Deliverables specified.
- B The Contractor has agreed to provide the Services on the terms and conditions contained in this Contract.
- C The Commonwealth has agreed to pay the Contractor the Service Charges in accordance with Schedule 3.
- D The Commonwealth has agreed to engage the Contractor to provide the Services on the terms and conditions contained in this Contract.



# Contract for the Provision of Services

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# Agreed Terms

## Part 1 – Services

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

<b>Accounting Standards</b>	means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Activity Reports</b>	means a report designed to record the activities undertaken by Regional Incubator Facilitators.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agreed Terms</b>	clauses 1 to 36 of this Contract, which set out terms and conditions agreed by the parties.
<b>Applicant</b>	Has the same meaning as in the Programme Guidelines.
<b>Australian Government Protective Security Policy Framework</b>	the <i>Australian Government Protective Security Policy Framework</i> , as amended or replaced from time to time.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
<b>Business Hours</b>	from 9.00am to 5.00pm on a Business Day, unless specified otherwise in item 5 of the Contract Details.
<b>Commencement Date</b>	the date on which this Contract commences, as specified in item 6 of the Contract Details.
<b>Commonwealth</b>	the Commonwealth as specified in item 1 of the Contract Details.
<b>Commonwealth Material</b>	any Material provided to the Contractor by the Commonwealth, including the Material (if any) specified in item 15 of the Contract Details.
<b>Commonwealth Representative</b>	the person identified in item 3 of the Contract Details.

<b>Confidential Contract Provisions</b>	the provisions identified in Schedule 5.
<b>Confidential Information</b>	<p>information that is by its nature confidential and:</p> <ul style="list-style-type: none"> <li>(a) is designated by a party as confidential and is described in Schedule 5 of this Contract; or</li> <li>(c) a party knows or ought to know is confidential, but does not include:</li> <li>(d) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.</li> </ul>
<b>Conflict</b>	<p>refers to a conflict of interests, duties, or interest and duty, or risk of a conflict of any of these kinds, or an apparent conflict of any of these kinds:</p> <ul style="list-style-type: none"> <li>(a) arising as a result of the Contractor or any of its employees, agents or contractors engaging in any activity, having any interest or holding any office; and/or</li> <li>(b) which affects or is likely to affect the Contractor's ability to provide the Services in accordance with this Contract, fairly and independently.</li> </ul>
<b>Contract</b>	this agreement between the Commonwealth and the Contractor, as amended from time to time in accordance with clause 36.2, and includes its schedules and any attachments.
<b>Contract Details</b>	the details set out in Schedule 1.
<b>Contract Material</b>	any Material created by the Contractor 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 under clause 12.7(b).
<b>Contractor</b>	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
<b>Contractor Representative</b>	the person identified in item 4 of the Contract Details.
<b>Contract Period</b>	the Initial Contract Period plus any extension in accordance with clause 3.2.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Deliverable</b>	any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract.
<b>Department</b>	the Department of Industry, Innovation and Science.
<b>Entity</b>	<ul style="list-style-type: none"> <li>(a) a body corporate or an unincorporated body established or constituted for a public purpose by</li> </ul>

	Commonwealth legislation, or an instrument made under that legislation (including a local authority);
	(e) a body established by the Governor-General or by a Minister of the Commonwealth including departments; or
	(f) an incorporated company over which the Commonwealth exercises control.
<b>Incubator Support Initiative</b>	the element of the Entrepreneurs' Programme described in the Incubator Support Initiative Programme Guidelines.
<b>Initial Contract Period</b>	the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including:</p> <p>(a) copyright, patents, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential;</p> <p>(g) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(h) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</p> <p>whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>LEADR</b>	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
<b>Material</b>	includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Milestone Date</b>	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in Schedule 2.
<b>Moral Rights</b>	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).

<b>Nominated Entity</b>	an entity, listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Contract.
<b>Order Form</b>	the form specified by the Commonwealth.
<b>Participant</b>	has the same meaning as in the Programme Guidelines.
<b>Performance Criteria</b>	the requirements set out in item 4 of Schedule 2 for each Service and Deliverable and if none are set out (or it states not applicable or anything to the same effect) the requirements in clauses 6.1(b), 6.1(c) and 6.1(e).
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of the Contractor, of any subcontractor.
<b>Potential Applicant</b>	a person or entity who has made enquiries about, submitted an expression of interest or a draft application for the Incubator Support Initiative and may or may not proceed to submit an application for funding or other assistance under the Incubator Support Initiative.
<b>Pre-existing Material</b>	Material owned by a party before execution of this Contract, including the Material specified in Schedule 6.
<b>Privacy Act</b>	the <i>Privacy Act 1988</i> (Cth).
<b>Private Assistance</b>	means: <ul style="list-style-type: none"> <li>(a) the provision of any assistance, goods or services by the Contractor to an Applicant, Potential Applicant or Participant, outside the Incubator Support Initiative; or</li> <li>(b) suggesting to an Applicant, Potential Applicant or Participant that it seek assistance, goods or services from a person with whom the Contractor is Associated.</li> </ul>
<b>Programme</b>	the Entrepreneurs' Programme.
<b>Programme Delegate</b>	has the same meaning as in the Programme Guidelines.
<b>Programme Guidelines</b>	the guidelines for the Programme as amended from time to time and available at <a href="http://www.business.gov.au">www.business.gov.au</a> .
<b>Recipient Created Tax Invoice</b>	a tax invoice generated by the Commonwealth rather than the Contractor.
<b>Related Body Corporate</b>	has the same meaning as in section 50 of the Corporations Act.
<b>Schedules</b>	the schedules to this Contract.
<b>Service Charges</b>	the charges payable to the Contractor in accordance with Schedule 3.

<b>Services</b>	the services to be provided by the Contractor, as specified in Schedule 2 and includes the provision of the Deliverables.
<b>Specified Personnel</b>	the Contractor's subcontractors and Personnel specified in item 14 of the Contract Details.
<b>Third Party Material</b>	Material owned by a third party that is: <ul style="list-style-type: none"> <li>(a) included, embodied in or attached to the Contract Material; or</li> <li>(b) used as part of the performance of the Services.</li> </ul>
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act.
<b>WHS Laws</b>	the WHS Act, regulations made under the WHS Act and any Code of Practice approved for the purpose of the WHS Act.
<b>WHS Worker</b>	Personnel of the Contractor who are <i>workers</i> (as defined in the WHS Act): <ul style="list-style-type: none"> <li>(a) engaged, or caused to be engaged by the Commonwealth; or</li> <li>(b) whose activities in carrying out work are influenced or directed by the Commonwealth while at work (wherever occurring) in the Commonwealth's business or undertaking.</li> </ul>

## 1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Contract, and a reference to this Contract includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) 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;



- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) 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 it;
- (o) 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; and
- (p) headings are for ease of reference only and do not affect interpretation.

### 1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Contract.

## 2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Contract.

## 3. Duration of Contract

### 3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Contract Period unless terminated in accordance with clause 28.3 or clause 32.

### 3.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Commonwealth for further period(s), specified in Item 8 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least:
  - (i) 30 days; or
  - (ii) such other period specified in Item 9 of the Contract Details (**Option Notice Period**),



before the end of the current Contract Period.

- (b) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

#### **4. Services to other Agencies – Not Used**

#### **5. General obligations of the Contractor**

The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Contract; and
- (b) diligently perform its obligations under this Contract.

#### **6. Provision of Services**

##### **6.1 Service obligations**

The Contractor must supply the Services:

- (a) to the reasonable satisfaction of the Commonwealth Representative;
- (b) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (c) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- (d) in accordance with the Performance Criteria;
- (e) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details;
- (f) using the Specified Personnel (if any);
- (g) in accordance with all applicable Laws;
- (h) in accordance with any directions in relation to the Services given by the Commonwealth from time to time;
- (i) so as to meet the Milestone Dates and other project plan requirements, and where no Milestone Dates or project plan requirements are specified, promptly and without delay;
- (j) in accordance with the same standards and obligations that are imposed on Commonwealth Personnel under the WHS Act and any specific legislative requirements set out at item 11 of Schedule 1;
- (k) so as to keep accurate and auditable records relating to the performance of the Services; and
- (l) otherwise in accordance with the provisions of this Contract.

##### **6.2 Contractor warranties**

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;

- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Services, and are fit and proper people;
- (d) the Services will be fit for the purpose as set out in Schedule 2;
- (e) the Services will be complete and accurate;
- (f) any materials that the Contractor incorporated in the Services are free from defects in design, performance and workmanship;
- (g) all work performed under this Contract will be carried out and completed in a proper and workmanlike manner and in the most cost-effective manner and using materials suitable for the purpose;
- (h) all insurance policies required to be held by the Contractor under this Contract:
  - (i) will remain in effect as provided for in this Contract; and
  - (ii) will not be varied by the Contractor without the Commonwealth's written consent;
- (i) if the Contractor is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract; and
- (j) it will comply with the *Workplace Gender Equality Act 2012 (Cth) (WGE Act)* and:
  - (i) if it becomes non-compliant with the WGE Act during the Term of the Contract, the Contractor will notify the Commonwealth as soon as practicable.
  - (ii) if the term of this Contract exceeds 18 months, the Contractor must provide a current letter of compliance under the WGE Act within 18 months from the Contract Commencement Date and, following this, annually to the Commonwealth; and
  - (iii) compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

### **6.3 Access to Commonwealth's premises**

The Commonwealth must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.

### **6.4 Conduct at Commonwealth's premises**

Without limiting clauses 20 and 21.1, the Contractor must, if using or accessing the Commonwealth's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

### **6.5 Cultural Diversity**

The Contractor should be aware of the Charter of Public Service in a Culturally Diverse Society. The Contractor must be sensitive to cultural diversity and, where the Services

involve the provision of services to the public, must have regard to the principles set out in that charter.

## **6.6 Subcontracting**

- (a) The Contractor must:
  - (i) not subcontract any aspect of the provision of the Services.

## **7. Co-operation with Personnel and contractors**

The Contractor must in the performance of the Services under this Contract:

- (a) fully co-operate with the Commonwealth's Personnel and other contractors;
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in the Commonwealth's best interests, the timely and efficient completion of all work and other activities to be performed for the Commonwealth by any person; and
- (c) consult, co-operate and co-ordinate activities with Commonwealth Personnel and other contractors to address overlapping work health and safety duties and ensure, so far as is reasonable practicable, the health and safety of workers and workplaces.

## **8. Monitoring progress**

### **8.1 Progress meetings**

The parties will meet at the times and manner set out in Schedule 2 (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative, and the Commonwealth must ensure the Commonwealth Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

### **8.2 Reporting**

The Contractor must provide the Commonwealth with reports in accordance with Schedule 2.

## **9. Performance assessment**

### **9.1 Assessment of Services**

- (a) The Commonwealth will annually:
  - (i) assess the Contractor's performance of Services against the Performance Criteria so as to achieve the Service Levels ('Performance Assessment'); and
  - (ii) arrange a meeting with the Contractor to discuss the Contractor performance ('the Performance Assessment meeting').
- (b) The Commonwealth will issue the Contractor with a notice specifying the time, date and venue for the Performance Assessment meeting.
- (c) The Contractor must participate in the Performance Assessment meeting.
- (d) In addition, the Commonwealth may from time to time provide feedback to the Contractor about the Contractor's performance of the Services.

### **9.2 Notice of non-compliant Services**

If at any time during the Contract Period or following a Performance Assessment, the Commonwealth considers that all or part of the Services do not meet the Performance Criteria, the Commonwealth must provide the Contractor with written notice of that fact, including the reasons for the Services not meeting the Performance Criteria and what actions the Contractor is required to take to rectify the non-compliant Services.

### **9.3 Rectification of non-compliant Services**

If the Commonwealth notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Services are promptly corrected;
- (b) give Notice to the Commonwealth when the Services have been corrected; and
- (c) allow the Commonwealth to repeat the assessment of all or part of the Services against the Performance Criteria,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

### **9.4 Right to terminate**

If any part of the Services does not meet the Performance Criteria on two or more occasions, the Commonwealth may terminate this Contract immediately under clause 32.2 by giving the Contractor written notice.

### **9.5 Other Rights**

Clauses 9, 9.3 and 9.4 do not limit in any way any other right, remedy or recourse of the Commonwealth.

## **10. Personnel**

### **10.1 Use of Specified Personnel**

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

### **10.2 If the Specified Personnel are not available**

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must immediately notify the Programme Delegate in writing.

### **10.3 Commonwealth may request replacement of Personnel**

The Commonwealth may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or any of the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement where requested by the Commonwealth.

### **10.4 Notification of absence**

- (a) The Contractor must notify the Programme Delegate where:
  - (i) any Specified Personnel proposes to take a leave of absence; or

- (ii) the Contractor is unable to provide the Services,

for a period of one Business Days or longer (excluding, in the case of part-time Specified Personnel, any days which they would not ordinarily work).

- (b) The Contractor must include in its monthly Activity Report details of all absences (planned and unplanned) of Specified Personnel during the reporting period and of any days where the Contractor was unable to provide the Services.

#### **10.5 Programme Delegate's consent**

The Contractor must seek the Programme Delegate's prior written consent where for a period of five consecutive Business Days or longer (excluding, in the case of part-time Specified Personnel, any days which they would not ordinarily work):

- (a) any Specified Personnel proposes to take a leave of absence; or
- (b) the Contractor is unable to provide the Services.

#### **10.6 Leave of absence greater than 20 Business Days**

- (a) Subject to this clause 11.5, the Contractor must obtain the Programme Delegate's consent before permitting any Specified Personnel to take any leave of absence which would, in aggregate, exceed 20 Business Days in the 12 month period commencing on the Commencement Date, and if this Contract is extended, for each 12 month period thereafter.
- (b) For each period of this Contract which is less than a 12 month period, such as where this Contract is extended for less than a 12 month period or this Contract is terminated early, then the 20 Business Day period specified in clause 11.5(a) is reduced proportionately.
- (c) The Programme Delegate's consent may be given or withheld in the Programme Delegate's absolute discretion, and may be subject to conditions, including a reduction in the amount of the fees payable by the Commonwealth to the Contractor proportionate to the number of days absence the relevant Specified Personnel proposes to take in excess of 20 Business Days.
- (d) The 20 Business Day period specified in clause 11.5(a) is applicable to Specified Personnel who undertake the Services on a full-time basis (nominally 38 hours per week). Where the relevant Specified Personnel works part-time, the 20 Business Day period will be reduced on a pro-rata basis to the hours worked by that Personnel to the nearest half-day.
- (e) Any leave of absence for any reason (whether planned or not and notified or not) by Specified Personnel which is in excess of 20 Business Days, or any day which the Contractor is unable to provide the Services, will generally result in a reduction of the Services Charges otherwise payable by the Commonwealth unless the Programme Delegate determines otherwise in the Programme Delegate's absolute discretion.

### **11. Commonwealth Material**

The Commonwealth will provide to the Contractor the Commonwealth Material and the Contractor must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 15 of the Contract Details and any direction by the Commonwealth.

## 12. Intellectual Property Rights

### 12.1 Pre-existing Material and Third Party Material

This clause 12 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

### 12.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before including any Third Party Material in the Contract Material or using Third Party Material as part of the Services.

### 12.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

- (a) This Contract sets out a framework for the parties to select between the following ownership models for Intellectual Property Rights in Contract Material:
  - (i) **first model:** Intellectual Property Rights in Contract Material vest in the Commonwealth, who provides a licence to the Contractor as set out in clause 12.4;
  - (ii) **second model:** Intellectual Property Rights in Contract Material vest in the Contractor, who provides a licence to the Commonwealth as set out in clause 12.5.
- (b) The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 16 of the Contract Details.
- (c) If no ownership model is, or both ownership models are, selected in item 16 of the Contract Details, clause 12.4 applies and clause 12.5, in its entirety, does not apply to this Contract.
- (d) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

### 12.4 First model: Commonwealth ownership of Intellectual Property Rights in Contract Material

- (a) All Intellectual Property Rights in the Contract Material vest in the Commonwealth on creation.
- (b) Unless otherwise specified in item 17 of the Contract Details, to the extent that:
  - (i) the Commonwealth needs to use any of the Pre-existing Material or Third Party Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Commonwealth for the period specified in item 17 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Pre-existing Material or Third Party Material;
  - (ii) the Contractor needs to use any of the:
    - (A) Commonwealth Material; or
    - (B) Contract Material,
 for the purpose of performing its obligations under this Contract, the Commonwealth grants to the Contractor, subject to any conditions or restrictions specified in item 15 of the Contract Details and any direction by



the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.

- (c) The licence granted to the Commonwealth under clause 12.4(b)(i) does not include a right to exploit the Pre-existing Material or Third Party Material for the Commonwealth's commercial purposes.

## **12.5 Second model: Contractor ownership of Intellectual Property Rights in Contract Material**

- (a) If specified in item 16 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Contractor on creation.
- (b) Unless otherwise specified in item 18 of the Contract Details, to the extent that:

- (i) the Commonwealth needs to use any of the:

- (A) Pre-existing Material or Third Party Material provided by the Contractor; or
- (B) Contract Material,

to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Commonwealth for the period specified in item 18 of the Contract Details a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or

- (ii) the Contractor needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Contract, the Commonwealth grants to the Contractor, subject to any conditions or restrictions specified in item 15 of the Contract Details and any direction by the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

- (c) The licence granted to the Commonwealth under clause 12.5(b)(i) does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for the Commonwealth's commercial purposes.

## **12.6 Warranty**

The Contractor warrants that:

- (a) the Pre-existing Material, Third Party Material, the Deliverables and the Contract Material (**Warranted Materials**) and the Commonwealth's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person;
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 12; and
- (c) where specified at item 11 of the Contract Details, the Warranted Materials are compliant with the Web Content Accessibility Guidelines (WCAG) 2.0 to a double A rating.

## **12.7 Remedy for breach of warranty**

If someone claims, or the Commonwealth reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 15.6 and to any other rights that the Commonwealth may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Commonwealth to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

## **12.8 Delivery of Contract Material**

On the expiry or termination of this Contract or on such earlier date as may be specified by the Commonwealth, the Contractor must deliver to the Commonwealth Representative all Contract Material.

## **13. Moral Rights**

### **13.1 Obtaining consents**

To the extent permitted by applicable Laws and for the benefit of the Commonwealth, the Contractor must:

- (a) give, where the Contractor is an individual, in a form acceptable to the Commonwealth;
- (b) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Contract Material gives, in a form acceptable to the Commonwealth; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Contract Material gives,

genuine consent in writing to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights.

### **13.2 Specified Acts**

- (a) In this clause 13, unless otherwise specified in item 19 of the Contract Details, **Specified Acts** means:
  - (i) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
  - (ii) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
  - (iv) adding any additional content or information to the Contract Material.



- (b) For the purposes of clause 13.2(a), **Contract Material** includes any Pre-existing Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Contract Material.

## Part 2 – General requirements

### 14. Payment

#### 14.1 Obligation to pay charges

Subject to this clause 14 and the Services meeting the requirements of this Contract including the Performance Criteria, the Commonwealth must pay to the Contractor the Service Charges as set out in Schedule 3.

#### 14.2 Deferral of payment

The Commonwealth shall be entitled, without derogating from any other right it may have, to defer payment of a monthly instalment for Services performed until the Contractor has completed, to the satisfaction of the Commonwealth, that part of the Services to which that instalment relates.

#### 14.3 Contractor to provide claim for payment

The Contractor must provide a correctly rendered Claim for Payment to the Commonwealth for the Services Charges, within 15 business days of the commencement of each new month, for Services provided in the preceding month, in accordance with the requirements specified in Schedule 3.

A Claim for Payment will be considered correctly rendered where it meets the requirements of this clause 14.4.

#### 14.4 Incorrect claim for payments, under/over payment

If a claim for payment is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Commonwealth to the Contractor under this Contract.

#### 14.5 Expenses

Unless specified otherwise in Schedule 3, the Contractor must not charge the Commonwealth for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Commonwealth is under no obligation to pay any amount in excess of the Service Charges.

#### 14.6 Taxes

The Contractor must pay all:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Contract and the undertaking of the Services; and
- (b) subject to clause 15, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

#### 14.7 Interest

Interest is payable by the Commonwealth to the Contractor in the circumstances set out in Schedule 3.

### 15. GST

#### 15.1 Interpretation

In this clause 15, 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.

## **15.2 GST gross up**

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**).

## **15.3 Reimbursements**

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 15.2.

## **15.4 Exclusion of GST from calculations**

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.

## **15.5 Adjustments**

- (a) 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 15.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained 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.
- (b) Any payment, credit or refund under this clause 15.5 is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

## **15.6 Recipient Created Tax Invoice**

If GST is imposed on any supply made by the Contractor to the Commonwealth under this contract, the Commonwealth may issue a Recipient Created Tax Invoice to the Contractor for the supply in question (and an adjustment note for any adjustment event in respect of that supply) and the Contractor must not issue an RCTI (or adjustment note) for that supply. Each party acknowledges that it is registered for GST and agrees to promptly notify the other party if it ceases to be registered for GST.

## 16. Indemnity

### 16.1 Indemnity

- (a) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees (referred to in this clause 16.1 as those indemnified) from and against any loss or liability, including:
- (i) loss of, or damage to, property of the Commonwealth;
  - (ii) claims by any person in respect of personal injury or death;
  - (iii) claims by any person in respect of loss of, or damage to, any property; and
  - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 16.1(a)(ii) or clause 16.1(a)(iii),
- arising out of or as a consequence of:
- (v) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Services;
  - (vi) any actual, likely or threatened breach of the Contractor's or subcontractor's obligations relating to Confidential Information or personal information; or
  - (vii) without limiting the preceding paragraphs, any breach of this Contract by the Contractor, or negligence on the part of the Contractor, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Contractor, its Personnel or subcontractors.
- (b) The Contractor's liability to indemnify those indemnified under clause 16.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
- (c) The Contractor will at all times indemnify, hold harmless and defend the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Contract Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Contract Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

## 17. Insurance

### 17.1 Obligation to maintain Insurance

In connection with the provision of the Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
- (i) public liability;
  - (ii) either professional indemnity or errors or omissions (as required by the Commonwealth having regard to the nature of the Services);

- (iii) workers' compensation as required by Law; and
  - (iv) any additional types specified in item 20 of the Contract Details; and
  - (b) for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for either professional indemnity or errors or omissions, unless otherwise specified in item 20 of the Contract Details,
- in the amounts specified in item 20 of the Contract Details.

## **17.2 Certificates of currency**

The Contractor must, on request by the Commonwealth, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 17.1.

## **18. Confidentiality**

### **18.1 Prohibition on disclosure**

- (a) Subject to clause 18.4, the Contractor must not, without the prior written consent of the Commonwealth disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 18.4, the Commonwealth must not, without the prior written consent of the Contractor disclose any Contractor Confidential Information to a third party.

### **18.2 Conditions of approval**

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 18.2.

### **18.3 Advisers and third parties**

The Commonwealth may at any time require the Contractor to arrange for:

- (a) its Advisers;
- (b) its Personnel and other employees and subcontractors engaged in the performance of the Services; or
- (c) any other third party, to whom Commonwealth Confidential Information may be disclosed pursuant to clause 18.4(a) or clause 18.4(b),

to give a written undertaking relating to the use and non-disclosure of the Commonwealth's Confidential Information substantially in the form set out in Schedule 4.

### **18.4 Exceptions to obligations**

The obligations on each party under clause 18.1 or 18.10 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Contract;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (e) is shared by the Commonwealth within the Department, or with another entity, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor General, the Australian Information Commissioner or Commonwealth Ombudsman;
- (g) is required by Law, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Contract.

#### **18.5 Obligation on disclosure**

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 18.4(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect substantially in the form set out in Schedule 4; or
- (b) pursuant to clauses 18.4(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

#### **18.6 Additional confidential information**

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

#### **18.7 Period of confidentiality**

The obligations under this clause 18 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 5, for the period set out in that schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

#### **18.8 No reduction in privacy obligations**

Nothing in this Contract derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

## **18.9 Return of information**

At the Commonwealth's request or on the expiry or termination this Contract, the Contractor must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Contractor must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

## **18.10 Confidential Contract Provisions**

Notwithstanding any other provision of this Contract, the Commonwealth may disclose the provisions of this Contract except the Confidential Contract Provisions.

# **19. Protection of personal information**

## **19.1 Definitions**

In this clause 19, the terms 'entity', 'Australian Privacy Principle' (**APPs**), 'APP privacy policy', 'Australian Privacy Principle Code' (**APP code**) and 'contracted service provider' have the same meaning as they have in section 6 of the Privacy Act, and 'personal information', which also has the meaning it has in section 6 of the Privacy Act, means:

'information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not'.

## **19.2 Application of this clause**

This clause 19 applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract.

## **19.3 Obligations**

The Contractor acknowledges that it is a 'contracted service provider' and agrees in respect of the provision of Services under this Contract to take all necessary measures to ensure that personal information in its possession or control in connection with this Contract is protected against loss and unauthorised access, use, disclosure or modification.

- (a) The Contractor must, on request from the Commonwealth, provide to the Commonwealth:
  - (i) a copy of the Contractor's and any subcontractor's APP privacy policy which is compliant with APP 1;
  - (ii) copies of the Contractor's and any subcontractor's security and data protection policies upon request by the Commonwealth; or
  - (iii) details of the Contractor's and any subcontractor's processes and procedures implemented to ensure compliance with the Privacy Act.
- (b) The Contractor agrees in respect of the provision of Services under this Contract:
  - (i) not to collect personal information unless the information is necessary, directly or indirectly, to discharge an obligation of this Contract;
  - (ii) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;



- (iii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an entity, would be a breach of that APP;
- (iv) to carry out and discharge the obligations contained in the APPs as if it were an entity under the Privacy Act;
- (v) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (vi) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Contractor, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract;
- (vii) to follow any reasonable directions given by the Commonwealth to ensure compliance with the Privacy Act;
- (viii) must not transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 19.3(b)(viii);
- (ix) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Contract;
- (x) to immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 19, whether by the Contractor or any subcontractor (including any complaints made about acts or practices of the Contractor in connection with personal information);
- (xi) to notify the Commonwealth of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Commonwealth under this clause 19.3(b)(xi);
- (xii) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Contractor by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 19; and
- (xiii) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 19.



## **19.4 Indemnity**

The Contractor agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 19.

## **20. Work health and safety**

### **20.1 General safety obligations**

- (a) The Contractor must ensure the Services are performed in a safe manner.
- (b) The Contractor must not, and must ensure its Personnel do not, by act or omission place the Commonwealth in breach of its obligations under the WHS Laws.
- (c) The Contractor must, and must ensure its Personnel, if using or accessing the Commonwealth's premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or might reasonably be inferred from the circumstances.

### **20.2 Definitions**

In this clause 20 the words, Inspector, Notifiable Incident, Regulator and WHS Entry Permit Holder have the meanings given in the WHS Act.

### **20.3 Specific safety obligations**

- (a) The Contractor must inform itself, and ensure its Personnel inform themselves, of the Commonwealth's work health and safety policies and procedures relevant to the Services.
- (b) The Contractor must, and must ensure its Personnel:
  - (i) comply with the WHS law in relation to the Services performed by WHS Workers;
  - (ii) in relation to Services performed by WHS Workers, comply with all relevant work health and safety policies and procedures of the Commonwealth; and
  - (iii) immediately comply with any direction in relation to Services performed by WHS Workers from any person having authority under the WHS Laws to give directions.

### **20.4 Notifying the Commonwealth**

- (a) The Contractor must notify the Commonwealth as soon as practicable of any concern the Contractor has regarding work health and safety in relation to Services performed by WHS Workers.
- (b) The Contractor must immediately notify the Commonwealth of any:
  - (i) breach or suspected breach of WHS Laws in relation to Services performed by WHS Workers;
  - (ii) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;

- (iii) entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed by WHS Workers; or
  - (iv) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Contractor or its Personnel under the WHS Laws.
- (c) The Contractor must provide to the Commonwealth a copy of any notice issued to the Contractor under the WHS Laws in relation to Services performed by WHS Workers as soon as possible and in any event within 24 hours of receipt.
- (d) If the Contractor is required by the WHS Laws to report a Notifiable Incident to the Regulator in relation to Services performed by WHS Workers, the Contractor must:
- (i) as soon as practicable in the circumstances, notify the Commonwealth of the Notifiable Incident and, if requested by the Commonwealth, provide a copy of any written notice given to the Regulator; and
  - (ii) if requested by the Commonwealth, provide within the timeframe specified by the Commonwealth a report on the Notifiable Incident, the results of any investigations into its cause, and any recommendations for prevention in the future.

## **20.5 Investigations**

The requirement for, and cooperation with, investigations does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

## **20.6 Documentation**

If the Contractor is required by the WHS Laws to:

- (a) prepare, submit, supply, obtain or review any document (including any management plan, risk assessment, safe work method statement, emergency plan, safety data sheet, notice to the Regulator or register); or
- (b) obtain or sight any licence, permit or authorisation (Licence),

in relation to Services performed by WHS Workers, the Contractor must, before commencing or continuing work:

- (c) prepare, submit, supply, obtain or review the document or obtain or sight the Licence as required; and
- (d) provide a copy of the document or Licence to the Commonwealth, allowing sufficient time for the Commonwealth to review the document or Licence and consult as it considers appropriate.

## **20.7 Sign and barriers**

If the Contractor is required by the WHS Laws to display any sign or install any barrier in relation to the Services performed by WHS Workers, the Contractor must do so before commencing or continuing work.

## **20.8 Suspension**

- (a) Without limiting any other right or remedy of the Commonwealth, if the Commonwealth is not satisfied that the Contractor is performing the Services in compliance with its work health and safety obligations under this Contract or relevant legislation, the Commonwealth may direct the Contractor to suspend work on part or all of the Services.

- (b) If the Commonwealth directs the Contractor under clause 20.8(a), the Contractor must suspend work on the Services as directed until the Contractor satisfies the Commonwealth that the Services will be performed in compliance with its work health and safety obligations.

## **20.9 Relationship to other obligations**

- (a) Where there is any inconsistency between this clause 20 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (b) The Contractor acknowledges that it is responsible for:
  - (i) complying with its obligations under WHS Laws; and
  - (ii) providing the Services in accordance with this Contract,
 and will not be relieved of that responsibility because of:
  - (iii) anything in this clause 20 or in any policy or procedure referred to in this clause 20;
  - (iv) any instruction or direction or failure to give an instruction or direction under this clause 20;
  - (v) any exercise of, or failure to exercise, the Commonwealth's rights under this clause 20; or
  - (vi) any notice or other document or communication from the Contractor under this clause 20.
- (c) To the extent permitted by Law, the Commonwealth is not liable to the Contractor for any Loss in connection with work health and safety in relation to WHS Workers performing Services.

## **21. Conflict of interest**

### **21.1 Conflict of interest**

- (a) The Contractor warrants that, at the date of this Contract, no Conflict exists or is likely to arise in the performance of its obligations under this Contract.
- (b) The Contractor must provide to the Commonwealth a statutory declaration in the form prescribed by the *Statutory Declarations Regulations 1993* (Cth), specifying any interests it has, or that it has no interests, which would be a Conflict or may give rise to a Conflict, within 30 days of the Commencement Date, and thereafter:
  - (i) on each anniversary of the Commencement Date;
  - (ii) within 10 Business Days of a request by the Commonwealth; and
  - (iii) otherwise, when the Contractor's circumstances materially change (such as a change of shareholding, change of offices, change of investments or activities).
- (c) Without limiting the operation of this clause 21, the Contractor must, during the Contract Period, ensure that no Conflict arises through the Contractor's, or any Specified Personnel's, involvement with any other parties, projects or programmes.

- (d) If, during the Contract Period, the Contractor becomes aware that a Conflict has arisen, or is likely to arise, the Contractor must immediately notify the Programme Delegate of that Conflict.
- (e) If the Contractor notifies the Commonwealth of a Conflict under clause 21.1(d) or the Commonwealth independently believes a Conflict may have arisen and notifies the Contractor of such, the Contractor must provide the Programme Delegate with all relevant information relating to the Conflict, including any information requested by the Programme Delegate.
- (f) The Programme Delegate will determine, in its absolute discretion, whether the Conflict is material or not.
- (g) If the Programme Delegate determines that the Conflict is material, the Contractor must take such steps as the Programme Delegate may require to resolve or otherwise deal with the Conflict (including ceasing the relevant dealings).
- (h) If the Contractor:
  - (i) fails to notify the Programme Delegate in accordance with clause 21.1(d);
  - (ii) fails to provide the information required by the Programme Delegate in accordance with clause 21.1(e); or
  - (iii) is unable (in the Programme Delegate's opinion) or unwilling to resolve or deal with any Conflict as required under clause 21.1(g),

the Commonwealth may terminate this Contract in accordance with clause 32.2.

## **21.2 Bias**

Without limiting the operation of clause 21.1, the Contractor must not, in undertaking the Services:

- (a) act in a manner which is biased or which displays or tends to display any perception of bias; or
- (b) take into account an irrelevant consideration or not take into account a relevant consideration,

including when providing guidance or preparing a due diligence report in relation to an application under the Incubator Support Initiative.

## **21.3 No benefit to Contractor**

Without limiting the operation of clause 21.1, during the Contract Period and for three (3) months after the expiry or termination of the Contract, the Contractor must not accept a benefit, whether financial or otherwise, from any person other than the Commonwealth which arises from or in any way relates to:

- (a) undertaking the Services; or
- (b) the allocation of funding under the Incubator Support Initiative.

## **21.4 No interest in provision of services**

Without limiting the operation of clause 21.1, the Contractor warrants that it has no legal or beneficial interest in, and is not an Associate of, any provider of services to Participants to whom the Contractor provides the Services.

## **21.5 Dealings with Applicants and Potential Applicants**

- (a) Subject to clause 21.5(c), the Contractor must ensure that the Specified Personnel does not provide Private Assistance to an Applicant or Potential Applicant, regardless of whether or not the Applicant or Potential Applicant is eligible or approved for funding under the Incubator Support Initiative.
- (b) The Contractor must ensure that the Specified Personnel does not share information regarding an Applicant or Potential Applicant for the purposes of the enabling the Contractor to provide Private Assistance.
- (c) Upon the request of the Contractor, the Programme Delegate may provide consent for the Specified Personnel to provide Private Assistance to an Applicant or Potential Applicant. If consent is provided, the Contractor must inform the Applicant or Potential Applicant that the Private Assistance is not provided under the Incubator Support Initiative, or otherwise funded or endorsed by the Commonwealth.

## **21.6 Dealings with Former Participants and Participants**

- (a) During the term of this contract, the Contractor must ensure that the Specified Personnel does not provide Private Assistance to a Former Participant or Participant at all after the Former Participant or Participant exits the Incubator Support Initiative.
- (b) During the term of this contract, the Contractor must not, without the prior consent of the Commonwealth, acquire any form of equity in a Former Participant or Participant (or otherwise become Associated with a Former Participant or Participant) at all after the Former Participant or Participant exits the Incubator Support Initiative.

## **21.7 Meaning of "exit"**

In this clause 21, a Participant is taken to have exited the Incubator Support Initiative when it is no longer entitled to receive assistance from the Contractor under the Participant's funding agreement with the Commonwealth.

## **22. Goods or Services to Associates**

### **22.1 No goods or services**

The Contractor must not provide any goods or services, for consideration (including cash or in-kind payments) or otherwise, to an Associate in relation to the Incubator Support Initiative, unless it has the Commonwealth's approval to do so under clause 22.5.

### **22.2 Associates**

Subject to clause 22.3, an Associate means:

- (a) a subcontractor, shareholder, director, secretary, other officer, employee or agent of the Contractor, or any shareholder, director, secretary, other officer, employee or agent of any subcontractor of the Contractor;
- (b) a Related Body Corporate of the Contractor;
- (c) a Relative of a person mentioned in clause 22.2(a);
- (d) a person who has an agreement, arrangement, understanding or undertaking with the Contractor, whether formal or informal, expressed or implied and whether or not legally enforceable;

- (i) by reason of which either that person or the Contractor may have the power to exercise directly or indirectly, control the exercise of, or substantially influence the exercise of, any recommendations for, the Incubator Support Initiative ;
  - (ii) with a view to controlling or influencing a decision in respect of the rating and ranking of Applicants for funding under the Incubator Support Initiative ; or
  - (iii) under which either that person or the Contractor may acquire funds from the Incubator Support Initiative in accordance with the directions of the other of them;
- (e) a person with whom the Contractor is, or proposes to become, associated, whether formally or informally, with a view to controlling or influencing the Programme Delegate or the composition of the board of directors of an Applicant or a Participant under the Incubator Support Initiative in relation to obtaining funding under the Incubator Support Initiative;
  - (f) if the Contractor has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act, matter or thing, with a view to becoming associated with a person otherwise specified in this clause 22.2, that other person; or
  - (g) a person in accordance with whose directions or instructions the directors of a person otherwise specified in this clause 22.2 are accustomed to act.

### **22.3 Not Associates**

A person shall not be taken to be an Associate of the Contractor under this clause 22 by reason only that:

- (a) the Contractor provides advice to that person solely in undertaking the Services; or
- (b) the Contractor recommends or proposes to recommend to the other person funding under Incubator Support Initiative.

### **22.4 Relatives**

For the purposes of this clause 22 a Relative means a mother, father, wife, husband, de facto spouse, guardian, child, sibling, grandparent, grandchild, cousin, uncle, aunt, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

### **22.5 Approval to provide services to an Associate**

- (a) If the Contractor proposes to provide goods or services to an Associate in a particular circumstance, it must apply to the Commonwealth for approval to do so before providing those goods or services to an Associate.
- (b) The Contractor must apply to the Commonwealth for additional approval in subsequent circumstances where the Contractor proposes to provide goods or services to an Associate.
- (c) The Contractor's application to the Commonwealth for approval under clauses 22.5(a) and 22.5(b) must include details of the specific arrangement, including:
  - (i) the relationship between the Contractor and the Associate;
  - (ii) the goods or services to be provided;



- (iii) the duration of the provision of goods or services;
  - (iv) whether the Contractor will be paid for the goods or services; and
  - (v) any other information the Commonwealth requests.
- (d) The Commonwealth will determine, in its absolute discretion, and on a case by case basis, whether or not to give approval for the Contractor to provide goods and services to an Associate in a particular circumstance.

## 23. Security

### 23.1 Australian Government Protective Security Policy Framework

The Contractor must comply with the security requirements detailed in the Australian Government Protective Security Policy Framework as minimum standards (to the extent applicable to the Services), any security requirements specified in item 21 of the Contract Details and any additional requirements advised by the Commonwealth from time to time.

### 23.2 Security clearances

- (a) If required by the Commonwealth, each of the Personnel engaged by or on behalf of the Contractor must hold an Australian Government security clearance to the level required by the Commonwealth.
- (b) The Commonwealth will facilitate the obtaining of security clearances.
- (c) The cost of security clearances will be borne by the Contractor.

### 23.3 Security checks

The Commonwealth may undertake any security checks it considers appropriate of the Contractor, its employees, agents and subcontractors.

### 23.4 Security breaches

- (a) The Contractor acknowledges that if any Personnel lose their security clearance or causes a security breach, the Commonwealth may:
  - (i) after consultation with the Contractor, require the replacement of that person; or
  - (ii) immediately terminate this Contract for breach.
- (b) The Contractor must notify the Commonwealth immediately on becoming aware of any security incident or security breach. The Contractor agrees that if a security incident or a security breach occurs, the Contractor will immediately comply with all directions of the Commonwealth in order to address the incident or breach, and ensure it does not occur again.

## 24. Cyber security

24.1 The purpose of clause 24 is to set out the Contractor's obligations in respect of information and materials of the Commonwealth, Applicants, Potential Applicants and Participants:

- (a) in respect of which the Contractor has custody or control for purposes connected with this Contract; or
- (b) which are accessed, transmitted or stored using or on the Contractor's information systems or equipment under this Contract (**Customer Data**).

**24.2 The Contractor must:**

- (a) do all things that a reasonable and prudent entity would do to ensure that all Customer Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (b) provide protective measures for the Customer Data 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;
- (c) without limiting clauses 24.2(a) or 24.2(b), comply with all security regulations or procedures or directions as are specified in the Contract or given by the Department from time to time regarding any aspect of security of, or access to, the Department's information, material or premises.

**24.3 If the Contractor becomes aware of any actual or suspected:**

- (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Customer Data residing on that system (Cyber Incident); or
- (b) any other unauthorised access or use by a third party or misuse, damage or destruction by any person (Other Incident), the Contractor must:
- (c) Notify the Department in writing immediately (and no longer than 12 hours after becoming aware of the Cyber Incident or Other Incident); and
- (d) comply with any directions issued by the Department in connection with the Cyber Incident or Other Incident, including in relation to:
  - (i) notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Department;
  - (ii) obtaining evidence about how, when and by whom the Department's information system and/or the Customer Data has or may have been compromised, providing it to the Department on request, and preserving and protecting that evidence for a period of up to 12 months;
  - (i) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
  - (ii) preserving and protecting Customer Data (including as necessary reverting to any backup or alternative site or taking other action to recover Customer Data).

**24.4 The Contractor must, if specified in Item 20 of Schedule 1, take out and maintain insurance to protect against the risks of a Cyber Incident.**

**24.5 The Contractor must ensure that:**

- (a) all subcontracts and other supply chain arrangements, which may allow or cause access to Customer Data, contain no provisions that are inconsistent with clauses 24.1, 24.2, 24.3 or 24.4 or 24.5; and



- (b) all Personnel and any subcontractors who have access to Customer Data comply with clauses 24.2 and 24.3.

## **25. Books and records**

### **25.1 Contractor to keep books and records**

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Commonwealth under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Contract all books and records relating to the Services.

### **25.2 Costs**

The Contractor must bear its own costs of complying with this clause 25.

### **25.3 Survival**

This clause 25 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

## **26. Audit and access**

### **26.1 Right to conduct audits**

The Commonwealth or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy and security obligations under this Contract;
- (d) Material (including books and records) in the possession of the Contractor relevant to the Services or this Contract; and
- (e) any other matters determined by the Commonwealth to be relevant to the Services or this Contract.

### **26.2 Access by the Commonwealth**

- (a) The Commonwealth may, at reasonable times and on giving reasonable notice to the Contractor:
  - (i) access the premises of the Contractor to the extent relevant to the performance of this Contract;
  - (ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Commonwealth for use of the Commonwealth's existing computer hardware and software;

- (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament of the Commonwealth of Australia or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 26, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

### **26.3 Conduct of audit and access**

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 26.1; and
  - (b) the exercise of the general rights granted by clause 26.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Contract or its business.

### **26.4 Costs**

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

### **26.5 Auditor-General and Australian Information Commissioner**

The rights of the Commonwealth under clause 26.2(a)(i) to 26.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or Australian Information Commissioner's statutory functions or powers.

### **26.6 Contractor to comply with Auditor-General's requirements**

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 26.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

**26.7 No reduction in responsibility**

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

**26.8 Subcontractor requirements**

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 26.

**26.9 No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner. The rights of the Commonwealth under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner.

Note: the effect of clause 34(j) of this Contract is that this clause 26 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

**27. Access to documents****27.1 Definitions**

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

**27.2 Application of this clause**

This clause 27 only applies where the Contract is a Commonwealth contract.

**27.3 Obligations**

The Contractor agrees that where the Commonwealth has received a request for access to a document created by, or in the possession of, the Contractor (or any subcontractor) that relates to the performance of this Contract (and not to the entry into the Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth, and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.

**27.4 Subcontractor requirements**

The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under clause 26.

**28. Unforeseen events****28.1 Occurrence of unforeseen event**

Subject to clause 28.2, a party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation.

**28.2 Notice of unforeseen event**

When the circumstances described in clause 28.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

**28.3 Termination**

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 28.1 continues for a period of more than 30 consecutive days or other period as specified in item 22 of the Contract Details, the other party may terminate this Contract immediately by giving the Affected Party written notice.

**28.4 Consequences of termination**

If this Contract is terminated under clause 28.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services rendered in accordance with this Contract prior to the date of intervention of the circumstances described in clause 28.1.

**29. Dispute resolution****29.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Contract (Dispute), a party must comply with this clause 29 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 29.

**29.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

**29.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 29.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

**29.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 29.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

**29.5 Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 29.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

**29.6 Confidentiality**

Any information or documents disclosed by a party under this clause 29:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

**29.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 29. The parties to the Dispute must equally pay the costs of any mediator.

**29.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 29.1 to 29.5. Clauses 29.6 and 29.7 survive termination of the dispute resolution process.

**29.9 Breach of this clause**

If a party to a Dispute breaches clauses 29.1 to 29.8, the other party does not have to comply with those clauses in relation to the Dispute.

**30. False or misleading information****30.1 Criminal Code acknowledgement**

The Contractor acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule of the *Criminal Code Act 1995* (Cth).

Note: Under section 137 of the Criminal Code giving false or misleading information to a Commonwealth entity is an offence, but only if the Commonwealth entity took reasonable steps to inform the person of the offence.

**31. Increase or reduction in scope of Services****31.1 Increase or reduction in scope of Services**

The Commonwealth may at any time by written Notice to the Contractor without giving any reason increase or reduce the scope of the Services.

**31.2 Obligations of the Contractor upon receipt of Notice**

Upon receipt of a Notice pursuant to clause 31.1, the Contractor must immediately:

- (a) stop work to the extent, if any, that the Notice has reduced the scope of the Services;
- (b) commence additional work to the extent, if any, that the Notice has increased the scope of the Services;
- (c) continue work on any part of the Services not affected by the Notice; and
- (d) where there is a reduction in the scope of the Services, comply with the obligations of the Contractor set out in clause 31.1.

**31.3 Commonwealth's liability upon reduction in scope of Services**

- (a) If the Commonwealth reduces the scope of the Services under clause 31.3 the Commonwealth will only be liable for:

- 1) payments for Services rendered before the date of reduction specified in the Notice; and
  - 2) subject to subclauses 31.3(b), (c) and (d), and the Contractor's compliance with clause 6.6, any reasonable costs incurred by the Contractor which are unavoidable and directly attributable to the reduction in scope of the Services up to an amount equal to three months' of the fees (inclusive of GST) payable by the Commonwealth to the Contractor under this Contract. The Contractor must substantiate those costs to the satisfaction of the Commonwealth.
- (b) Following a reduction in scope of the Services the Commonwealth shall have no liability to pay fees under this Contract in respect of that part of the Services that has been reduced pursuant to clause 31.1, as specified in the Commonwealth's Notice provided to the Contractor.
  - (c) The Commonwealth shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the Service Charges.
  - (d) The Contractor shall not be entitled to compensation for loss of prospective profits or revenue.
  - (e) Subject to clause 31.3(a), the Contractor will be responsible for any cost, liability or expense arising out of, or in connection with, a reduction in the scope of the Services (including costs associated with terminating relevant subcontracts and employee contracts).

#### **31.4 Contractor's rights upon increase in scope of Services**

If the Commonwealth increases the scope of the Services under clause 31.1:

- (a) the Commonwealth must pay to the Contractor a reasonable fee for the additional work, as agreed by the parties; and
- (b) the terms and conditions of this Contract shall apply to the provision of the additional work.

## **32. Termination**

### **32.1 Termination and reduction for convenience**

- (a) The Commonwealth may, at any time, by notice, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.
- (b) On receipt of a notice of termination or reduction the Contractor must:
  - (i) stop work as specified in the notice;
  - (ii) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
  - (iii) continue work on any part of the Services not affected by the notice.
- (c) If this Contract is terminated under this clause 32.1, the Commonwealth is liable only for:
  - (i) payments under clause 14 for Services rendered in accordance with this Contract before the effective date of termination; and

- (ii) reasonable costs actually incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Services is reduced, the Commonwealth's liability to pay the Service Charges or to provide Commonwealth Material abates in accordance with the reduction in the Services.
- (e) The Commonwealth is not liable to pay compensation under clause 32.1(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

## **32.2 Termination for default**

- (a) Without limiting any other rights or remedies the Commonwealth may have against the Contractor arising out of or in connection with this Contract, the Commonwealth may terminate this Contract effective immediately by giving notice to the Contractor if:
  - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
  - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
  - (iii) an event specified in clause 32.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 32.2(a), each of the following constitutes a breach of a material provision:
  - (i) breach of warranty under clause 6.2 (Contractor warranties);
  - (ii) a failure to comply with Performance Criteria to the extent required under clause 9.4 (Right to terminate);
  - (iii) a failure to comply with clause 10 (Personnel);
  - (iv) a failure to comply with clause 12 (Intellectual Property Rights);
  - (v) a failure to comply with clause 17 (Insurance);
  - (vi) a failure to comply with clause 18 (Confidentiality);
  - (vii) a failure to comply with clause 19 (Protection of personal information);
  - (viii) a failure to notify the Commonwealth of a conflict of interest under clause 21 (Conflict of interest);
  - (ix) A failure to comply with clause 26 (Audit and Access); and
- (c) The Contractor must notify the Commonwealth immediately if:
  - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
  - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Contractor ceases to carry on business;



- (iv) the Contractor ceases to be able to pay its debts as they become due;
- (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause 32.2, **controller, managing controller and administrator** have the same meanings as in the Corporations Act.

### **32.3 Termination at any time by the Contractor**

- (a) The Contractor may, at any time, on one month's written Notice to the Commonwealth, terminate this Contract.
- (b) If this Contract is terminated under clause 32.3 (a), the Commonwealth will only be liable for payments for Services performed up to the date of termination and any bonus or part bonus payable (determined by the Commonwealth in its sole discretion).
- (c) If the Contractor gives notice under clause 32.3 (a), it must provide reasonable assistance to the Commonwealth to effectively and efficiently handover Participants (and any Applicants and Potential Applicants) to whom it provides Services, to another Contractor within the 1 month notice period.

### **32.4 Termination does not affect accrued rights**

Termination of this Contract does not affect any accrued rights or remedies of a party.

## **33. Consequences of expiration or termination**

### **33.1 Obligations of the Contractor**

Without limitation to any other obligation, upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Contractor must immediately:

- (a) stop work on the Services;
- (b) take all steps to minimise loss resulting from the expiration, termination or reduction in the scope of the Services, including the protection of Commonwealth Material, Contract Material and Confidential Information;
- (c) deal with Contract Material in accordance with clause 12.8;
- (d) If notified by the Commonwealth to the Contractor, transfer all Intellectual Property (or the Intellectual Property specified in the Notice) in the Contract Material to the Commonwealth;
- (e) return all Commonwealth Material to the Programme Delegate;
- (f) return to the Programme Delegate all Confidential Information disclosed to the Contractor by the Commonwealth;
- (g) co-operate to the utmost with the Programme Delegate, and all other contractors and those Participants for whom the Contractor is responsible under the Incubator Support Initiative, to ensure the uninterrupted professional and effective delivery of services under the Incubator Support Initiative;

- (h) comply with all reasonable directions of the Programme Delegate; and
- (i) prepare any reports as specified in Schedule 2 and provide these reports to the Commonwealth within 28 days of the expiry or termination of this Contract (as applicable).

### **33.2 Restrictions on activities of Contractor**

The Contractor acknowledges and agrees that:

- (a) while undertaking the Services, the Contractor (including, for the avoidance of doubt, its employees, agents and contractors) may acquire Confidential Information, trade secrets, Know-how and other knowledge and information, and particular skills in the affairs, practices, customer requirements and network connections of the Incubator Support Initiative;
- (b) disclosure or use by the Contractor of any of the matters specified in clause 33.2(a) following expiration or termination of this Contract could materially harm the Commonwealth; and
- (c) following expiration or termination of this Contract, the Contractor will not disclose, use or take advantage of these matters for the advantage of the Contractor or other persons to the detriment of the Commonwealth, any Participant or the Incubator Support Initiative.

## **34. Survival**

The following clauses survive the expiry or termination of this Contract:

- (a) Clause 12 (Intellectual Property Rights);
- (b) Clause 13 (Moral Rights);
- (c) Clause 15 (GST);
- (d) Clause 15.6 (Indemnity);
- (e) Clause 17 (Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (f) Clause 18 (Confidentiality and privacy);
- (g) Clause 19 (Protection of personal information);
- (h) Clause 23 (Security);
- (i) Clause 25 (Books and records);
- (j) Clause 26 (Audit and access) for a period of seven years from the expiry or termination of this Contract; and
- (k) Clause 30 (False or misleading information).

## **35. Notices and other communications**

### **35.1 Service of notices**

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and

- (b) hand delivered or sent by prepaid post or other electronic means (facsimile and/or email as specified) to the recipient's address for Notices specified in item 23 of the Contract Details, as varied by any Notice given by the recipient to the sender.

### **35.2 Effective on receipt**

A Notice given in accordance with clause 35.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, as provided under sections 14 and 14A of the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **36. Miscellaneous**

### **36.1 Ownership of Contract**

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Commonwealth.

### **36.2 Variation**

No agreement or understanding varying or extending this Contract is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

### **36.3 Approvals and consents**

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.

### **36.4 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

### **36.5 Costs**

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

### **36.6 Counterparts**

This Contract may be executed in counterparts. All executed counterparts constitute one document.

### **36.7 No merger**

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

### **36.8 Entire agreement**

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.

### **36.9 Further action**

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 it.

### **36.10 Severability**

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 this Contract continue in force.

### **36.11 Waiver**

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### **36.12 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

### **36.13 Announcements**

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Commonwealth's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by Law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Commonwealth.

### **36.14 Governing law and jurisdiction**

This Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	<b>Commonwealth</b>	<b>1.1</b>	Commonwealth of Australia as represented by the Department of Industry, Innovation and Science  <b>Physical Address</b> Industry House 10 Binara Street Canberra ACT 2601  <b>Postal Address</b> GPO Box 2013, Canberra ACT 2601  ABN 74 599 608 295
2.	<b>Contractor</b>	<b>1.1</b>	Daniel Smith tMinus Accelerator Pty Ltd  s22
3.	<b>Commonwealth Representative</b>	<b>1.1</b>	Assistant Manager, AC & ISI Programme Management AusIndustry – Innovation Programmes
4.	<b>Contractor Representative</b>	<b>1.1</b>	Daniel Smith
5.	<b>Business Hours</b>	<b>1.1</b>	5 days per week
6.	<b>Commencement Date</b>	<b>1.1 and 3.1</b>	1 April 2018
7.	<b>Initial Contract Period</b>	<b>1.1 and 3.1</b>	12 months
8.	<b>Option Period</b>	<b>3.2</b>	2 periods up to 12 months each
9.	<b>Option Notice Period</b>	<b>3.2</b>	30 days
10.	<b>Nominated Entity</b>	<b>1.1 and 4</b>	Not applicable
11.	<b>Relevant Industry Standards</b>	<b>6.1(e) and 12.6(c)</b>	No additional standards, practice or guidelines apply.
12.	<b>Specific legislative requirements</b>	<b>6.2(j)</b>	No additional standards, practice or guidelines apply.
13.	<b>Subcontractors</b>	<b>6.6</b>	Not applicable

Item number	Description	Clause Reference	Details
14.	<b>Specified Personnel</b>	<b>1.1 and 10</b>	Daniel Smith
15.	<b>Commonwealth Material</b>	<b>1.1 and 11</b>	Not applicable
16.	<b>Intellectual Property Rights – ownership of Contract Material</b>	<b>12.3(b)</b>	Clause 12.4 (First model: Commonwealth ownership of Intellectual Property Rights in Contract Material) is to apply
17.	<b>Intellectual Property Rights – licences</b>	<b>12.4(b)</b>	Where clause 12.4 (First model: Commonwealth ownership of Intellectual Property Rights in Contract Material) is to apply:  1. Period of Commonwealth's licence is: Perpetual
18.	<b>Intellectual Property Rights – licences</b>	<b>12.5(b)</b>	Not applicable
19.	<b>Moral Rights – Specified Acts</b>	<b>13.2</b>	Not applicable
20.	<b>Insurance</b>	<b>17.1</b>	Public liability insurance for an insured amount of \$10 million per claim  Professional indemnity insurance for an insured amount of \$5 million per claim  Workers compensation insurance as required by law
21.	<b>Security</b>	<b>21.13</b>	Regional Incubator Facilitators will be required to hold a security clearance at the PROTECTED level. The Department will bear the cost of this process.
22.	<b>Unforeseen events termination period</b>	<b>28.3</b>	14 days



Item number	Description	Clause Reference	Details
23.	Address for Notices	35.1	<p><b>Commonwealth:</b>  Assistant Manager  Accelerating Commercialisation Strategy  AusIndustry – Innovation Programmes  PO Box 2013  Canberra ACT 2601</p> <p>Industry House  10 Binara Street  Canberra ACT 2601</p> <p>ISIFacilitator@industry.gov.au</p> <p><b>Contractor:</b>  Daniel Smith</p> <p>tMinus Accelerator Pty Ltd</p> <p>s22</p>



## Schedule 2 – Services

### 1. Purpose (clause 6.2)

- (a) The provision of Regional Incubator Facilitator services.

### 2. Services (clauses 1.1 and 6)

	Description of Services	Milestone Date
1.	<p>Contractor to report on activities undertaken to demonstrate how they have assisted applicants and potential applicants by:</p> <ul style="list-style-type: none"> <li>• encouraging joint applications</li> <li>• providing advice, mentoring and specialist expertise</li> <li>• assisting them to develop their professional networks and improve their national and international connections</li> <li>• disseminating and sharing knowledge between regional and metropolitan incubators, to prepare applications and develop new activities.</li> <li>• providing feedback to applicants on weaknesses with their applications</li> </ul>	Monthly during the Contract Period.
2.	<p>Contractor to report on activities undertaken to demonstrate how they have encouraged innovation and links between business, industry, universities and research institutions and all levels of government by:</p> <ul style="list-style-type: none"> <li>• seeking to identify best practice techniques for regional economic development, and adapting and implementing these techniques in regional areas</li> <li>• supporting the development and implementation of the Australian Government's Regional Economic Development priorities</li> <li>• understanding and drawing on knowledge from the Industry Growth Centres</li> <li>• providing feedback to the department on issues facing incubators, particularly in regional areas</li> </ul>	Monthly during the Contract Period.
3.	<p>Contractor to report on activities undertaken to demonstrate how they have supported the delivery of the Entrepreneurs' Programme by:</p> <ul style="list-style-type: none"> <li>• promoting and marketing the Incubator Support initiative</li> <li>• facilitating referrals through engaging with advisers and facilitators from other elements of the Entrepreneurs' Programme</li> <li>• undertaking other activities as determined by the Programme Delegate</li> </ul>	Monthly during the Contract Period.

## 3. Deliverables (clause 1.1)

	Deliverables	Milestone Date
1.	Delivery of Regional Incubator Facilitator Services	Duration of Contract Period
2.	Activity Reports	<p>Within 15 Business Days after the last day of each month during the Contract Period.</p> <p>Upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Activity Report must be provided within 28 days of the date of expiry or termination.</p>

#### 4. Performance Criteria (clauses 1.1 and 9)

The Contractor must perform the Services strictly in accordance with the following principles:

- 1 **satisfaction** – the Contractor must provide the Services to the satisfaction of the Programme Delegate;
- 2 **direction** – the Contractor must comply fully with all directions of the Programme Delegate and with all requirements and procedures of the Incubator Support initiative as amended by the Commonwealth from time to time;
- 3 **timeliness** – the Contractor must adhere to timeframes for Incubator Support initiative processes, as determined by the Commonwealth from time to time;
- 4 **participation as a member of the Incubator Support Initiative network** – the Contractor must work cooperatively with other members of the Incubator Support initiative, in particular the Programme Delegate, to ensure the professional and effective delivery of the Incubator Support Initiative;
- 5 **guidance** – the Contractor must assist Participants with identifying how they will achieve their project goals. The Contractor must also ensure that they provide appropriate levels of guidance, support and advice to assist Participants in achieving their project objectives;
- 6 **liaison and cooperation with Programme Delegate** – the Contractor must work in close and regular liaison and cooperation with the Programme Delegate at all times, and give due recognition to the overseeing role of the Programme Delegate;
- 7 **marketing/promotion** – the Contractor must participate in promotional activities for the Incubator Support Initiative at the direction of the Programme Delegate, including liaising with Departmental marketing staff;
- 8 **appropriateness of guidance** – the Contractor must ensure that appropriate guidance and feedback is provided to Participants about their project; and
- 9 **highest ethical standards** – the Contractor must operate, and must be seen to operate, in a fair and equitable manner at all times. The Contractor must also at all times:
  - behave honestly and with integrity in a highly professional manner;
  - act with care and diligence;
  - treat all Potential Applicants, Applicants, Participants and other members of the delivery network, including the Programme Delegate, with respect and courtesy, and without harassment;
  - use Commonwealth resources in a proper manner;
  - not provide false or misleading information in response to a request for information; and
  - not make improper use of inside information in order to gain or seek to gain, a benefit or advantage for themselves or any other person.
- 10 **customer focus and customer service** - the Department is driven by the values of customer service. The Customer Service Charter defines those values, and

requires relevant Personnel in the Incubator Support Initiative to observe the customer service principles identified within the Customer Service Charter.

The Contractor must in all dealings with customers comply with the Customer Service Charter, while still ensuring effective delivery of the Services.

## **5. Reporting (clause 8.2)**

- (a) The Contractor must provide the following reports to the Commonwealth as directed by the Programme Delegate:

  - monthly Activity Reports; and
  - any other report required by the Programme Delegate from time to time, in a format prescribed by the Programme Delegate.
- (b) The Contractor must ensure that all reports are in a form which will enable the Programme Delegate to:

  - ensure that the objectives of the Incubator Support Initiative are being met; and
  - monitor the activities of the Contractor.
- (c) Activity Reports must be submitted on a monthly basis, within 15 Business Days after the last day of each month during the Contract Period. Activity Reports must be substantially in the form of the pro-forma template provided by the Department to the Contractor from time to time.
- (d) Upon the expiration or earlier termination of this Contract or a reduction in the scope of the Services, the Contractor must provide a timely, detailed written Activity Report, and all other reports required by the Commonwealth, to the Commonwealth within 28 days of the date of expiry or termination, or the date on which the Commonwealth notifies the Contractor that the scope of the Services has been reduced (as applicable).

## Schedule 3 – Payment

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### 1. Fixed charges (clause 14)

s47G

### 2. Claim for Payment (clause 14.5)

The Claim for Payment must be in a form approved by the Commonwealth which sets out:

- (a) the details of the amount of time spent by each of the person including Specified Personnel on the Services for the period to which the Claim for Payment relates;
- (b) the contract or project number;
- (c) the amount of any allowances and costs to be paid by the Commonwealth together with any substantiating material required;
- (d) the name of the Commonwealth Representative; and
- (e) such other information as the Commonwealth requires.

Claim for Payments must be submitted to:

Project Officer  
AC & ISI Programme Management  
Department of Industry, Innovation and Science  
**Postal Address**

PO Box 2013  
Canberra ACT 2601 Australia

**Physical Address**

Industry House  
10 Binara Street  
CANBERRA ACT 2601

**Email Address**

ISIFacilitator@Industry.gov.au

### 3. Payment period (clause 14.3)

Clause 14.3 applies.

#### 4. Expenses (clause 14.5)

- (a) Subject to (b) below, the Commonwealth will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by the Commonwealth.
- (b) ~~The Contractor will be reimbursed for the travel and related accommodation to a maximum of \$50,000 excluding GST at non-SES rates where they are pre-approved in writing by the Commonwealth. The Contractor must submit an invoice for those expenses and the Commonwealth will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.~~

#### 5. Payment of Interest

##### (a) Payment Terms

The Department will pay the Contractor within 30 days after receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.

##### (b) Interest

This Item 5 only applies where:

- (i) the value of this Contract is not more than A\$1 million (GST inclusive); and
- (ii) the amount of the interest payable exceeds A\$100.

The Commonwealth will pay interest on late payments to the Contractor for payments made by the Commonwealth more than 30 days after the amount became due and payable, the Commonwealth will make a self-generated interest payment to the Contractor.

Interest payable under this Item 6 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Commonwealth effects payment as represented by the following formula:

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

Where:

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

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

##### (c) Correct rendering of invoices

For the purposes of this Item 8, an invoice is correctly rendered if it:

- (i) meets the requirements specified in Item 5 of this Schedule 3 for a correctly rendered invoice; and

- (ii) is due for payment in accordance with clause 14 (Payment) of this Contract.



# Schedule 4 – Confidentiality and privacy undertaking

---

Date 4 / April / 2018  
day month year

## Parties

Name The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science ABN 74 599 608 295  
Short form name **Commonwealth**  
Notice details **Postal Address**  
PO Box 2013  
Canberra ACT 2601 Australia  
  
**Physical Address**  
Industry House  
10 Binara Street  
CANBERRA ACT 2601  
  
ABN 74 599 608 295

Name Daniel Smith ABN: 34 622 646 940  
Short form name **Confidant, I, me and my**  
Notice details **tMinus Accelerator Pty Ltd**

## Background

- A. The Commonwealth requires the provision of certain services.
- B. tMinus Accelerator Pty Ltd (**Contractor**) has agreed to provide services to the Commonwealth under a contract dated 4 April 2018 (**Contract**).
- C. 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.

## Agreed terms

### 1. Definitions

**Confidential Information** means information that is by its nature confidential and:

- (a) is designated by the Commonwealth as confidential and is described in Schedule 5 of the Contract; or
- (b) the Confidant knows or ought to know is confidential,

but does not include information that:

- (c) is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation.

**Personal Information** has the meaning it has in section 6 of the *Privacy Act 1988* (Cth).

## 2. Access

I understand that in the course of performing duties under the Contract, I may have access to Personal Information and Confidential Information.

## 3. Non-disclosure

- (a) I will treat as secret and confidential all Personal Information and Confidential Information to which I have access or which is disclosed to me.
- (b) If the Commonwealth grants its consent for me to disclose Personal Information or Confidential Information, it may impose conditions on that consent. In particular, the Commonwealth may require that I obtain the execution of a deed in these terms by the person to whom I propose to disclose the Personal Information or Confidential Information.
- (c) My obligations under this deed will not be taken to have been breached where I am required by law to disclose the Personal Information or Confidential Information.

## 4. Restriction on use

- (a) I will use the Personal Information or Confidential Information only for the purpose of my dealings with the Commonwealth (whether directly or indirectly).
- (b) I will not copy or reproduce the Personal Information or Confidential Information without the approval of the Commonwealth, will not allow any other person outside the Commonwealth access to the Personal Information or Confidential Information and will take all necessary precautions to prevent unauthorised access to or copying of the Personal Information or Confidential Information in my control.

## 5. Powers of the Commonwealth

- (a) Immediately on request by the Commonwealth, I must deliver to the Commonwealth all documents in my possession or control containing Personal Information or Confidential Information.
- (b) If at the time of such a request I am aware that documents containing Personal Information or Confidential Information are beyond my possession or control, then I must provide full details of where the documents containing the Personal Information or Confidential Information are, and the identity of the person who has control of them.

## 6. Privacy Act obligations

I agree to abide by the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, in respect of both Personal Information and

Confidential Information, whether or not I am legally bound to comply with that Act and as if the definition of personal information in that Act includes Confidential Information.

## 7. Survival

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

## 8. Applicable law

This deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and I agree to submit to the applicable jurisdiction of the Courts of that Territory in respect of all matters arising under, or in relation to, this deed.

**EXECUTED** as a deed.

Signed sealed and delivered for and behalf  
of the Commonwealth of Australia as  
represented by the Department of  
Industry, Innovation and Science by its  
duly authorised delegate in the presence of

s22

s22

Claire Forsyth

Name of delegate (print)

A/g General Manager AC&IC

Position of delegate (print)

s22

Signed sealed and delivered by Daniel  
Smith in the presence of

s22

s22

Name of witness (print)

s22

A Commissioner for taking affidavits  
in the Supreme Court of South Australia

## Schedule 5 – Designated Confidential Information

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### 1. Confidential information of the Commonwealth (clause 1.1 and 18)

#### 1.1 Contract provisions / Schedules

Item	Period of Confidentiality
Not applicable	

#### 1.2 Contract-related Material

Item	Period of Confidentiality
Not applicable	

### 2. Confidential information of the Contractor (clause 1.1 and 18)

#### 2.1 Contract provisions / Schedules

Item	Period of Confidentiality
Not applicable	

#### 2.2 Contract-related Material

Item	Period of Confidentiality
Not applicable	

## Schedule 6 – Pre-existing Material

### 1. Commonwealth's Pre-existing Material (clause 12)

Item number	Item	Description	Date created
		Not applicable	

### 2. Contractor's Pre-existing Material (clause 12)

Item number	Item	Description	Date created
		Not applicable	

# Signing page

**EXECUTED** as an agreement.

Signed for and on behalf of the  
Commonwealth of Australia as  
represented by the Department of  
Industry, Innovation and Science by its  
duly authorised delegate in the presence of  
s22

s22

Name of witness (print)

Claire Forsyth

Name of delegate (print)

A/g General Manager A/C k IC

Position of delegate (print)

Executed by tMinus Accelerator Pty Ltd in  
accordance with Section 127 of the  
Corporations Act 2001 in the presence of

s22

Signature of director

Name of director (print)

Daniel Lee Smith

Name of director/company secretary/sole director and  
sole company secretary (print)

**Are you a Small Business?**

(ie. if you employ less than the full time equivalent of 20 persons) ☒ Y ☐ N

# Department of Industry, Innovation and Science

## Deed of Variation

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Commonwealth of Australia (**Commonwealth**)

tMinus Accelerator (**Contractor**)



# Details

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Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 day month year

## Parties

**Name** The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science

**ABN** 74 599 608 295

**Short form name** **Commonwealth**

**Address details** **Postal Address**  
 GPO Box 2013  
 Canberra ACT 2601

**Physical Address**  
 Industry House  
 10 Binara Street  
 Canberra ACT 2600

**Name** tMinus Accelerator

**ABN** 34 622 646 940

**Short form name** **Contractor**

**Address details** tMinus Accelerator Pty Ltd

s22

## Background

- A On 4 April 2018, the Commonwealth and the Contractor entered into a contract for the provision of Regional Incubator Facilitator services to the Entrepreneurs' Programme.
- B The Contract was varied on 26 March 2019 with the End Date extended to 31 January 2020.
- C The Commonwealth and the Contractor wish to extend the Contract for another five months and extend the End Date to 30 June 2020.
- D The Commonwealth and the Contractor have agreed to vary the terms of the Contract in accordance with this Deed.

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# Agreed terms

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed, unless the contrary intention appears:

- (a) a word or expression defined or referred to in the Contract has the meaning given to it in the Contract;
- (b) **Contract** means the contract described in paragraph A of the Background;
- (c) **Deed** means this deed, including all annexures and schedules to it; and
- (d) **Effective Date** means the date this Deed is executed by both parties.

## 2. Variation to Contract

On and with effect from the Effective Date, the Contract is varied as set out in Schedule 1 to this Deed.

## 3. Affirmation of Contract

- (a) The parties affirm in all other respects the covenants and conditions in the Contract as varied by this Deed.
- (b) The Contract, as varied by this Deed, comprises the entire agreement between the parties.
- (c) The parties acknowledge and agree that the Contract as varied by this Deed is and continues to be in full force and effect.

## 4. Costs and GST

- (a) Each party must meet or pay its own costs and expenses in respect of the preparation, negotiation, execution and completion of this Deed.
- (b) If GST is payable on any supply made under or in connection with this Deed, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply provided that the supplier has given the recipient a tax invoice for the supply.
- (c) The Contractor must pay any stamp duties and registration or other fees (including fines, penalties and interest relating to such duties and fees) which are payable or are assessed by a relevant government body or other person to be payable in relation to this document or any transaction contemplated by it.

## 5. Miscellaneous

### 5.1 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

### 5.2 Governing law and jurisdiction

This Deed is governed by the law of the Australian Capital Territory and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

# Signing page

**EXECUTED** as a deed.

Signed for and on behalf of the  
Commonwealth of Australia as  
represented by the Department of  
Industry, Innovation and Science by its  
authorised delegate in the presence of  
s22

s22

Name of witness (print)

Signature of delegate

EMMA GREENWOOD

Name of delegate (print)

General Manager - EP Branch

Position of delegate (print)

Executed by tMinus Accelerator in  
accordance with Section 127 of the  
Corporations Act 2001 in the presence of

s22

Signature of director (witness)

Name of director (print)

Daniel Lee Smith

Name of director/company secretary/sole director and  
sole company secretary (print)

# Schedule 1 – Variation to Contract

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## 1.1 Clause 1.1 Definitions

Schedule 1, item 7 (End Date) is varied by deleting “31 January 2020” and replacing with “30 June 2020”.

## 1.2 Schedule 1, Item 8 (Option Period)

Item 8 of Schedule 1 is deleted.

## 1.3 Schedule 3, Item 1 (Fixed Charges)

Schedule 3, Item 1.1 (Fixed charges) is varied by deleting the table and inserting the below table:  
s47G

## 1.4 Schedule 3, Clause 4 (Expenses) is varied:

Clause 4 of Schedule 3 is replaced with the following:

- (a) Subject to (b) below, the Commonwealth will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by the Commonwealth.
- (b) The Contractor will be reimbursed for the travel and related accommodation undertaken during the period 1 April 2019 to 30 June 2020 to a maximum of s47G excluding GST at non-SES rates where they are pre-approved in writing by the Commonwealth. The Contractor must submit an invoice for those expenses and the Commonwealth will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.