



**Australian Government**  
**Department of Jobs and Small Business**

# **CONTRACT**

## **IN RELATION TO INDUSTRY ASSOCIATION DIGITAL ADVISORY SERVICES FOR THE SMALL BUSINESS DIGITAL CHAMPIONS PROJECT**

**Commonwealth of Australia** represented by the  
Department of Jobs and Small Business

ABN 54 201 218 474

National Retail Association

ABN 44 009 664 073

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## CONTRACT

### Date

This contract is made on ^2 April 2019^.

### Parties

This contract is made between and binds the following parties:

1. **Commonwealth of Australia** ('Commonwealth', 'Us', 'We' or 'Our') represented by and acting through the Department of Jobs and Small Business ABN 54 201 218 474 ('the Department')
2. **^National Retail Association^** ^ABN 44 009 664 073^  
^Level 3, 33 Park Road, Milton 4064^ ('You', or 'Your')

### Context

This contract is made in the following context:

- A. The Small Business Digital Champions Project is an Australian Government initiative that aims to encourage small businesses to improve their digital capabilities.
- B. We require an Industry Association to participate in the Small Business Digital Champions Project by providing digital advisory services to encourage small businesses to improve their digital capabilities.
- C. You are fully informed about the Services and have submitted a proposal to provide the Services, in which You have represented that You have (or will acquire) the requisite skills and experience to perform the Services.
- D. The parties have agreed that You will provide the Services on the terms and conditions set out in this contract.

## OPERATIVE PROVISIONS

### 1. Interpretation

#### 1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

**Australian Government Branding Guidelines** means the guidelines of that name available at [https://www.pmc.gov.au/sites/default/files/files/Australian\\_Government\\_Branding\\_Design\\_Guidelines.pdf](https://www.pmc.gov.au/sites/default/files/files/Australian_Government_Branding_Design_Guidelines.pdf), as may be amended or replaced from time to time;

**Australian Privacy Principle or APP** has the same meaning as it has in section 6 of the Privacy Act;

|                                  |   |
|----------------------------------|---|
| <b>Business Day</b>              | means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;   |
| <b>CC BY Licence</b>             | means a Creative Commons Attribution 4.0 International ( <a href="https://creativecommons.org/licenses/by/4.0/">https://creativecommons.org/licenses/by/4.0/</a> ) licence;   |
| <b>Commissioner</b>              | has the same meaning as it has in section 6 of the Privacy Act;   |
| <b>Commonwealth</b>              | means the Commonwealth of Australia and includes officers, delegates, employees and agents of the Commonwealth of Australia;  |
| <b>Commonwealth Coat of Arms</b> | means the Commonwealth Coat of Arms as set out at <i>It's an Honour – Commonwealth Coat of Arms</i> available at <a href="http://www.itsanhonour.gov.au/coat-arms/index.cfm">http://www.itsanhonour.gov.au/coat-arms/index.cfm</a> ;  |
| <b>Commonwealth Material</b>     | means any Material: <ul style="list-style-type: none"> <li>a. provided by Us to You for the purposes of this contract; or</li> <li>b. derived at any time from the Material referred to in paragraph a;</li> </ul>  |
| <b>Completion Date</b>           | means the date specified in item 3 of Schedule 1 or the day after You have done all that You are required to do under this contract to Our satisfaction, whichever is the later;  |
| <b>Conflict</b>                  | means any matter, circumstance, interest, or activity affecting You or Your Personnel which may, or may appear to, impair Your or Your Personnel's ability to provide the Services to Us diligently and independently under this contract;  |
| <b>Contract Material</b>         | means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of this contract;</li> <li>b. provided or required to be provided to Us as part of the Services; or</li> <li>c. derived at any time from the Material referred to in paragraphs a or b;</li> </ul> |
| <b>Date of this Contract</b>     | means the date written on page 1 of this contract, and if no date or more than one date is written there, then the date on which this contract is signed by the last party to do so;  |
| <b>Department</b>                | means the Department of Jobs and Small Business and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this contract;  |
| <b>Eligible Data Breach</b>      | has the same meaning as it has in section 6 of the Privacy Act;   |

|                              |   |
|------------------------------|---|
| <b>Existing Material</b>     | means any Material, except Commonwealth Material, which was in existence before the Date of this Contract or which is developed independently of this contract and which is incorporated in, supplied with or as part of, or required to be supplied with or as part of, the Contract Material and includes, but is not limited to, Material specified in item 11 of Schedule 1;  |
| <b>Fee</b>                   | means the fee payable under clause 4.1.1.a and specified in item 9 of Schedule 1 in relation to a specified part or the whole of the Services;  |
| <b>Industry Association</b>  | means an organisation representing a specific industry (or industries), which is funded by and represents members of that industry (or industries) and includes You;  |
| <b>Intellectual Property</b> | <p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to confidential information;</li> </ul> |
| <b>Interest</b>              | means simple interest calculated at the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth), on the day that payment is due, expressed as a decimal rate per day;   |
| <b>Material</b>              | means any thing in relation to which Intellectual Property rights arise;  |
| <b>Milestone</b>             | a key performance obligation as set out in item 3 of Schedule 1;  |
| <b>Moral Rights</b>          | <p>means the following non-proprietary rights of authors of copyright Material:</p> <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>   |

|                                     |   |
|-------------------------------------|---|
| <b>Our Confidential Information</b> | <p>means Our information that:</p> <ul style="list-style-type: none"> <li>a. is described in item 14 of Schedule 1;</li> <li>d. We identify, by notice in writing to You after the Date of this Contract as confidential information for the purposes of this contract; or</li> <li>e. You know or ought to know by its nature is confidential;</li> </ul>  |
| <b>Permitted Acts</b>               | <p>means any of the following classes or types of acts or omissions:</p> <ul style="list-style-type: none"> <li>a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;</li> <li>b. supplementing the Contract Material with any other Material;</li> <li>c. using the Contract Material in a different context to that originally envisaged; and</li> <li>d. the acts or omissions, specifically set out in item 12 of Schedule 1, but does not include false attribution of authorship;</li> </ul> |
| <b>Personal Information</b>         | has the same meaning as it has in section 6 of the Privacy Act;   |
| <b>Personnel</b>                    | <p>means:</p> <ul style="list-style-type: none"> <li>a. in relation to You - any natural person who is an officer, employee, agent or professional advisor of You or Your subcontractors; and</li> <li>b. in relation to Us - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of Us;</li> </ul>  |
| <b>Privacy Act</b>                  | means the <i>Privacy Act 1988</i> (Cth);  |
| <b>Project Officer</b>              | is the role described in clause 2.2.2 and is the person specified (by name or position) in item 5 of Schedule 1 or any substitute notified to You;  |
| <b>Records</b>                      | has the same meaning as it has in section 6 of the Privacy Act;   |
| <b>Sensitive Information</b>        | has the same meaning as it has in section 6 of the Privacy Act;   |
| <b>Services</b>                     | means the services described in item 1 of Schedule 1 and includes the provision to Us of the Contract Material specified in item 2 of Schedule 1;   |
| <b>Small Business</b>               | means a business with fewer than 20 full-time equivalent employees;   |



**Small Business Digital Champions Project** means the project of that name administered by Us;

**Specified Personnel** means the Personnel specified in item 8 of Schedule 1 as required to perform all or part of the work constituting the Services;

**Your Confidential Information** means Your information that:

- a. is described in item 14 of Schedule 1; and
- b. You identify, by notice in writing to Us after the Date of this Contract as confidential information for the purposes of this contract; and

**Your Representative** is the role described in clause 2.2.1 and is the person specified (by name or position) in item 6 of Schedule 1 or any substitute notified by You;

## **1.2. Interpretation**

**1.2.1.** In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and vice versa;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. a reference to a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution, re-enactment, or successor of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an item is a reference to an item in a schedule;
- i. a reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to this contract, including as amended or replaced from time to time by agreement in writing between the parties;
- j. the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

**1.2.2.** This contract consists of:

- a. this document;
- b. any schedules;
- c. any annexure or other attachments; and
- d. any document incorporated by reference.

1.2.3. In the event of any conflict or inconsistency between any part of:

- a. the terms and conditions contained in the clauses of this contract;
- b. the schedules;
- c. the annexure or other attachments, if any;
- d. documents incorporated by reference, if any,

then the material in any one of paragraphs (a) to (c) above has precedence over the material in a subsequent paragraph, to the extent of any conflict or inconsistency.

### **1.3. Construction of contract**

1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.

1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.

1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.

1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

### **1.4. Term of contract**

1.4.1. This contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.

## **2. Provision of Services**

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### **2.1. Your principal obligations**

2.1.1. You must provide the Services specified in item 1 of Schedule 1.

2.1.2. In performing the Services, You must:

- a. undertake, coordinate and deliver the Services, including all work necessary and incidental for proper and due completion of the Services (whether or not specified);
- b. provide, develop or deliver to Us the Material and other deliverables specified in item 2 of Schedule 1;
- c. meet all Milestones, and comply with the time frame or due dates, for the performance of the Services specified in item 3 of Schedule 1;
- d. comply with all other requirements specified in Schedule 1;

- e. exercise skill, care and diligence and perform the Services to a high professional standard and in accordance with relevant best practice, including any Commonwealth and industry standards;
  - f. ensure that Your Personnel (including Specified Personnel) exercise skill, care and diligence and perform the Services to a high professional standard and in accordance with relevant best practice, including any Commonwealth and industry standards;
  - g. retain all approvals and licences necessary to perform the Services in accordance with this contract;
  - h. as required by Us, work closely with Our Personnel and enable Our Personnel to observe any aspect of the work undertaken as part of performing the Services; and
  - i. submit invoices, and any required supporting documents, in the manner specified in clause 4.3.
- 2.1.3. You are responsible for the provision of all resources and equipment necessary for performance of the Services.
- 2.1.4. You acknowledge and agree that:
- a. You have the necessary expertise, experience, capacity and facilities required to perform Your obligations in accordance with this contract;
  - b. You have all qualifications, certifications and licences necessary to perform the Services;
  - c. the Services will be rendered with due care and skill and that any Materials supplied in connection with the Services will be reasonably fit for the purposes for which they are supplied;
  - d. in performing the Services, You will not:
    - i. breach an obligation owed to another person;
    - ii. infringe any Intellectual Property Rights or Moral Rights of another person; or
    - iii. act in a manner that may bring the Services, or Us, into disrepute.
- 2.1.5. All Services must be performed and delivered in accordance with the standards set out in this contract and to Our reasonable satisfaction.
- 2.1.6. We may:
- a. inspect all or any part of the Services, including any deliverables associated with the Services, on delivery; and
  - b. within 30 days after delivery (or such greater period nominated in Schedule 1) reject all or part of the Services on the grounds that they do not comply with the specifications, or otherwise conform to the requirements, of this contract.
- 2.1.7. If We reject all or part of the Services under clause 2.1.6, We will give notice to You setting out reasons for the rejection.

2.1.8. You must, within 14 days of receipt of the notice of rejection, either re-perform or rectify the Services so that they conform to the requirements of this contract, entirely at Your own cost. If, within the time specified (or such other time agreed in writing by Us), You fail to rectify or re-perform the Services, We may terminate this contract under clause 12.2.2.

2.1.9. Nothing in this clause affects or limits any other rights or remedies We have under this contract or at law.

## **2.2. Governance**

2.2.1. You must appoint a representative as the contact person for You in relation to all matters related to the operation of this contract (**Your Representative**). Your Representative may authorise another person to act on their behalf.

2.2.2. We will appoint a representative as the contact person for Us in relation to all matters related to the operation of this contract (**Project Officer**). The Project Officer may authorise another person to act on their behalf.

2.2.3. The day to day management of, and communication under, this contract is to be handled by Your Representative and the Project Officer or their delegates.

## **2.3. Liaison with Project Officer**

2.3.1. You must:

- a. liaise with the Project Officer as reasonably required;
- b. provide information to Us or any other person nominated by Us, as requested by the Project Officer; and
- c. within a timeframe specified by the Project Officer, comply with requests and directions of the Project Officer that are consistent with this contract.

## **2.4. Reporting**

2.4.1. You must provide to Us:

- a. reports in accordance with Schedule 1; and
- b. any other reports that may reasonably be required by Us, within reasonable timeframes requested by Us.

2.4.2. You must provide:

- a. all reports in a form acceptable to Us; and
- b. if, in Our opinion, either the form or the content of a report is not satisfactory, You must submit a revised report to Our satisfaction within 10 Business Days of notice to You from Us to do so.

## **2.5. Approval of documentation**

2.5.1. If a document or report is identified in Schedule 1 as being subject to Our approval, the following process applies:

- a. within 10 Business Days of being provided with the documentation by You, We will give You notice that:
  - i. the documentation meets the contract requirements; or
  - ii. the documentation does not meet the contract requirements and the reasons why it does not meet those requirements; and
- b. if We give You notice that the documentation does not meet the contract requirements under clause 2.5.1.a.ii, You must correct the documentation so that it meets or exceeds the contract requirements and resubmit a revised version to Us for Our review, in which case clause 2.5.1.a. applies.

2.5.2. All reviews, updates and resubmissions of documentation will be at Your cost.

## **2.6. Subcontractors**

- 2.6.1. With the exception of the subcontractors approved by Us as at the Date of this Contract and specified in item 7 of Schedule 1, You must not subcontract the performance of any part of the Services without Our prior written approval.
- 2.6.2. We may, by notice, impose any conditions We consider appropriate when giving Our approval under clause 2.6.1 and You must comply with those conditions as notified.
- 2.6.3. You must ensure that any arrangement You enter into with a subcontractor is in writing.
- 2.6.4. You must ensure that every subcontractor is aware of all terms and conditions of this contract relevant to the subcontractor's part in the provision of the Services.
- 2.6.5. You must make available to Us (if requested), details of all subcontractors engaged in the performance of the Services.
- 2.6.6. You acknowledge, and must inform all subcontractors that, We may publicly disclose the names of any subcontractors engaged in the performance of the Services.
- 2.6.7. We may revoke Our approval of a subcontractor for performance of Services under this contract (including any subcontractor identified in item 7 of Schedule 1) on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with Personnel or another subcontractor acceptable to Us.

## **2.7. Specified Personnel**

- 2.7.1. You must ensure that the Specified Personnel will perform work in relation to the Services in accordance with this contract and according to their roles specified in item 8 of Schedule 1.
- 2.7.2. If Specified Personnel are unable to perform the work as required under clause 2.7.1, You must notify Us immediately.
- 2.7.3. You must, at Our request acting in Our absolute discretion, remove Personnel (including Specified Personnel) from work in relation to the Services.

2.7.4. If clause 2.7.2 or clause 2.7.3 applies, You must provide replacement Personnel acceptable to Us at no additional cost and at the earliest opportunity. If You are unable to provide acceptable replacement personnel, We may terminate this contract under clause 12.2.2.

**2.8. Your responsibility**

2.8.1. Notwithstanding the involvement of any other person in the Services, You are fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:

- a. involvement by Us in the performance of the Services (as contemplated by this contract);
- b. inspection, review, acceptance or rejection of the Services (as contemplated by this contract);
- c. subcontracting of the Services (notwithstanding any approval or revocation given by Us); or
- d. payment made to You on account of the Services.

**2.9. Working with vulnerable persons**

2.9.1. If in the performance of the Services Your Personnel are required to work in close proximity with people who are elderly, disabled or otherwise vulnerable or children, You must (unless notified by Us otherwise), arrange and pay for all checks in relation to a Personnel's involvement in the Services as specified in any relevant legislation in effect in the jurisdiction(s) in which the Services are being performed.

2.9.2. You must not allow Personnel to be involved in the provision of the Services that involve working with in close proximity with people who are elderly, disabled or otherwise vulnerable or children:

- a. if any relevant legislation provides or means that the Personnel must not be allowed to be so involved; or
- b. if:
  - i. a relevant check shows that the Personnel has been convicted of a crime and a reasonable person would consider that the conviction means that the Personnel would pose a risk to other persons involved in the Services; or
  - ii. there is otherwise a reasonably foreseeable risk that the Personnel may cause loss or harm to other persons involved in the Services,

unless You have put in place reasonable measures to remove or substantially reduce that risk to the Department's satisfaction.

### **3. Publicity**

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#### **3.1. Acknowledgement and promotion**

3.1.1. You must market and promote the Services and deal with enquiries relating to Your provision of the Services, in accordance with the obligations set out in Schedule 1 and as otherwise required by Us during the course of the contract.

#### **3.2. Our right to publicise the Services**

3.2.1. We may, by any means, publicise and report on the Services and on the awarding of this contract to You, including Your name, the amounts of Fees paid, or expected to be paid to You, and a description of the Services.

### **4. Fees**

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#### **4.1. Our principal obligations**

4.1.1. We will:

- a. pay You the Fee specified in item 9 of Schedule 1; and
- b. make all payments as and when specified in clause 4.2.

#### **4.2. Payment**

4.2.1. We will only be liable to make payments under clause 4.1.1 subject to:

- a. the receipt of a correctly rendered invoice for an amount properly due under this contract; and
- b. completion, to Our reasonable satisfaction, of the relevant part of the Services to which the payment relates.

4.2.2. Subject to this contract, the date for payment is 30 calendar days after delivery of a correctly rendered invoice to Us. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

4.2.3. Payment will be effected by electronic funds transfer (EFT) to Your nominated bank account as specified in item 4 of Schedule 1 or as otherwise notified to Us.

4.2.4. Where:

- a. the value of this contract (including all contract options) is not more than \$1 million (GST inclusive); and
- b. the amount of the interest payable exceeds \$100,

then for any payment that has not been made by Us by the due date for payment (as determined under clause 4.2.2), We must pay the Interest on the unpaid amount calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day the amount is paid in full.

### **4.3. Invoices**

4.3.1. To be correctly rendered, an invoice issued by You must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Your name and Australian Business Number (ABN);
- c. Our name and address;
- d. the date of issue of the tax invoice;
- e. the title of this contract and the contract number or purchase order number (if any) or date of execution;
- f. details of fees properly payable under this contract including the items (ie. deliverables or Milestones) to which they relate;
- g. the total amount payable (including GST); and
- h. the GST amount shown separately.

4.3.2. All invoices must be addressed to the Project Officer (or as otherwise notified by Us).

### **4.4. Our rights to recover payments**

4.4.1. If, at any time:

- a. an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment); or
- b. a payment is made to You and You have not completed, to Our satisfaction, that part of the Services to which the payment relates,

(each a **Recoverable Payment**), We may (in addition and without prejudice to any other right We may have) recover from You the amount of the Recoverable Payment.

4.4.2. Any amount owed to Us under clause 4.4.1 must be repaid to Us within 20 Business Days of a written notice from Us, or dealt with as directed in writing by Us.

4.4.3. A Recoverable Payment may be recovered from You, including by offsetting the Recoverable Payment against any amount subsequently due to You under this contract or any other arrangement between the parties.

4.4.4. If a Recoverable Payment is not repaid to Us, Interest is payable on the unpaid amount calculated in respect of each day from the day after the expiry of the 20 Business Days' notice referred to in clause 4.4.1, up to and including the day the amount is paid in full.

4.4.5. An amount owed to Us under clause 4.4.1 and any Interest owed under clause 4.4.4 is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.

4.4.6. An adjustment note must be provided to Us if required by the GST Act including where You repay some or all of the Fee to Us.



**4.5. Our rights to defer or reduce payment**

- 4.5.1. We may (in addition and without prejudice to any other right We may have) defer a payment or reduce the amount of any payment if and for so long as You have not completed, to Our satisfaction, that part of the Services to which the payment relates.
- 4.5.2. If We exercise Our rights under clause 4.5.1, You must continue to perform any obligations under this contract, unless We agree otherwise in writing.

**4.6. Superannuation**

- 4.6.1. This contract is entered into on the understanding that We are not required to make any superannuation contributions in connection with this contract.

**5. Intellectual Property**

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**5.1. Use of Commonwealth Material**

- 5.1.1. We will provide Commonwealth Material to You as specified in item 10 of Schedule 1.
- 5.1.2. We grant (or will procure) a royalty-free, non-exclusive licence for You to use, reproduce and adapt the Commonwealth Material for the purposes of this contract.
- 5.1.3. You must:
- a. use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in item 10 of Schedule 1, and any direction notified by Us from time to time;
  - b. keep safely, and maintain, all Commonwealth Material provided to You for the purposes of this contract; and
  - c. return to Us all Commonwealth Material remaining in Your possession at the end of this contract, unless otherwise specified in item 10 of Schedule 1.
- 5.1.4. You must not use the Commonwealth Coat of Arms for the purposes of this contract.
- 5.1.5. You may only use Our program logo for the Small Business Digital Champions Project to promote your involvement in the Small Business Digital Champions Project in accordance with any usage guidelines or conditions advised by the Department.

**5.2. Intellectual Property in Contract Material**

- 5.2.1. This clause 5.2 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
  - b. any Existing Material.
- 5.2.2. Intellectual Property in all Contract Material vests or will vest in You.
- 5.2.3. You grant (or will procure for) Us a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Contract Material and any Existing Material, in conjunction with the Contract Material, for any purpose.

5.2.4. You agree that the licence granted under this clause 5.2 includes a right for Us to licence that Material to the public under a CC BY Licence [see <https://creativecommons.org/licenses/by/4.0/>]. You must, if requested by Us, provide Us with all author or licensor attribution details in order for Us to comply with the CC BY Licence conditions.

5.2.5. You must, on Our request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 5.2.

5.2.6. You warrant that:

- a. You are entitled; or
- b. You will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 5.2.

### **5.3. Moral Rights**

5.3.1. Where You are a natural person and the author of the Contract Material, You consent to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given).

5.3.2. Where clause 5.3.1 does not apply, You must obtain from each author of any Contract Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to Us.

5.3.3. This clause 5.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

## **6. Disclosure of information**

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### **6.1. Interpretation**

6.1.1. Subject to clause 6.1.5:

- a. You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- b. We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.

6.1.2. In giving written approval to disclosure, a party may impose such conditions as it thinks fit, and the other party agrees to comply with those conditions.

6.1.3. We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this contract (including Personnel and subcontractors) to give a written undertaking in a form acceptable to Us relating to the use and non-disclosure of Our Confidential Information.

- 6.1.4. If You receive a request under clause 6.1.3 You must promptly arrange for all undertakings to be given.
- 6.1.5. The obligations on the parties under this clause 6 will not be breached if information:
- a. is disclosed by Us to the responsible Minister;
  - b. is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the Parliament of the relevant State or Territory;
  - c. is disclosed by Us for the purposes connected with the administration, audit, review and management of this contract;
  - d. is shared by Us within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
  - e. is authorised or required by law to be disclosed;
  - f. is in the public domain otherwise than due to a breach of this clause 6;
  - g. is in possession of a party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - h. has been independently developed or acquired by the recipient.
- 6.1.6. Nothing in this clause 6 limits Your obligations under any other clause of this contract.

## **6.2. Period of confidentiality**

- 6.2.1. The obligations under this clause 6 continue, notwithstanding the expiry or termination of this contract:
- a. in relation to an item of information described in item 14 of Schedule 1 - for the period set out in that item;
  - b. in relation to any information identified in writing after the Date of this Contract as confidential information for the purposes of this contract - for the period agreed by the parties in writing; and
  - c. in relation to Our information that You know or ought to know by its nature is confidential - until the information is released into the public domain otherwise than by a breach of this contract.
- 6.2.2. You must promptly return to Us all Our Confidential Information remaining in Your possession at the end of this contract, unless otherwise specified in item 14 of Schedule 1.

## **7. Fraud**

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- 7.1.1. You must not engage in, and must ensure that Your Personnel, subcontractors and agents do not engage in, fraudulent activity in relation to this contract.
- 7.1.2. If, after investigation, We determine that You have been engaged in fraudulent activity, We may, without limitation to any other rights available to Us, terminate this contract under clause 12.2.2.

## **8. Privacy**

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### **8.1. Your obligations in relation to privacy**

#### **8.1.1. You agree, in providing the Services:**

- a. not to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of an APP or contrary to the Privacy Act; and
- b. to comply with any conditions, restrictions or guidelines referred to in, or relating to the matters set out in clause 8.1.2, to the extent that they are consistent with the APPs.

#### **8.1.2. In relation to Personal Information, including Sensitive Information, received, created or held by You for the purposes of this contract, You agree:**

- b. to use or disclose Personal Information obtained in the course of conducting the Services only for the purposes of this contract;
- c. except where this clause expressly requires You to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if You were an agency;
- d. to notify individuals whose Personal Information You hold, that:
  - i. complaints about Your acts or practices may be investigated by the Commissioner who has power to award compensation in appropriate circumstances; and
  - ii. their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing Services;
- e. unless expressly authorised or required under this contract, not to engage in any act or practice that would breach:
  - i. APP 7 (direct marketing);
  - ii. APP 9 (adoption, use or disclosure of government related identifiers); or
  - iii. any registered APP code that is applicable to You;
- f. to comply with any request under section 95C of the Privacy Act;
- g. not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Project Officer;
- h. to co-operate with reasonable demands or inquiries made by the Commissioner or the Project Officer in relation to the management of Personal Information;
- i. to ensure that any person who You allow to access Personal Information is made aware of, and undertakes in writing, to observe the APPs (or a registered APP code, where applicable);
- j. to comply with policy guidelines laid down by Us, or issued by the Commissioner, from time to time relating to the handling of Personal Information;

- k. if requested by Us, at the end of the term of this contract, to return all Records containing Personal Information to the Project Officer, or delete or destroy those Records in the presence of a person authorised by the Project Officer;
- l. to Your name being published in reports by the Commissioner; and
- m. to comply with any other requirements specified in item 13 of Schedule 1.

8.1.3. You must immediately notify the Project Officer if You become aware:

- a. of a breach or possible breach of any of Your obligations under this clause 8;
- b. that an Eligible Data Breach in relation to Personal Information received, created or held by You for the purposes of this contract has or may have occurred;
- c. that a disclosure of Personal Information may be required or authorised by law; or
- d. of an approach to You by the Commissioner or by an individual claiming that their privacy has been interfered with.

8.1.4. Where one party notifies the other party that an Eligible Data Breach in relation to Personal Information received, created or held by You for the purposes of this contract has or may have occurred, You must:

- a. carry out an assessment in accordance with the requirements of the Privacy Act;
- b. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
- c. take all other action necessary to comply with the requirements of the Privacy Act (including preparing a statement for the Commissioner and notifying affected individuals about the Eligible Data Breach where required); and
- d. take any other action as reasonably directed by Us.

Note: more information about the Privacy Act and the APPs is available at <http://www.oaic.gov.au/>.

## **9. Dealing with copies and access to documents**

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### **9.1. Actions at end of contract**

9.1.1. You will, on expiration or termination of this contract, deal with all documents, devices, articles or mediums in which Commonwealth Material, Commonwealth Data, Contract Material or Our Confidential Material is embodied as directed by Us, subject to any requirement of law binding on You regarding retention of archival or back-up copies.

### **9.2. Access to documents**

9.2.1. This clause 9.2 applies if this contract is a 'Commonwealth contract' as defined in the *Freedom of Information Act 1982* (Cth) and 'document' has the meaning given by that Act.

- 9.2.2. Where We have received a request for access to a document created by, or in the possession of, You or any of Your subcontractors that relates to the performance of this contract (and not to the entry into the contract), We may at any time by written notice require You to provide the document to Us and You must, at no additional cost to Us, promptly comply with the notice.
- 9.2.3. You must assist Us in respect of Our obligations under the *Freedom of Information Act 1982* (Cth).
- 9.2.4. You must include in any subcontract relating to the performance of this contract provisions that will enable You to comply with Your obligations under this clause 9.2.

## **10. Liability**

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### **10.1. Proportionate liability regimes excluded**

- 10.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against You under or in connection with this contract.

### **10.2. Indemnity**

- 10.2.1. You indemnify Us from and against any:

- a. cost or liability incurred by Us;
- b. loss or damage to Our property; and
- c. loss or expense incurred by Us in dealing with any claim against Us including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by Us,

arising from or in connection with:

- d. a breach by You of this contract;
- e. an act or omission involving fault on the part of You, Your Personnel or Your Subcontractors in connection with this contract;
- f. any claims by any person in respect of loss, damage, injury or death to the extent caused by any act or omission of You, Your Personnel or Your subcontractors;
- g. any claims by any person in respect of loss of, or damage to, any property to the extent caused by any act or omission of You, Your Personnel or Your subcontractors; or
- h. the use by Us of the Contract Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property or Moral Rights in Contract Material or Existing Material.

- 10.2.2. Your liability to indemnify Us under clause 10.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of Us or Our Personnel contributed to the relevant cost, liability, loss, damage or expense.

- 10.2.3. Our right to be indemnified under this clause 10.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 10.2.4. In this clause 10.2 "fault" means any negligent or unlawful act or omission or wilful misconduct, including fraud.

## **11. Dispute resolution**

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### **11.1. Procedure for dispute resolution**

- 11.1.1. A dispute arising under this contract will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
  - b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
  - c. the representatives will try to settle the dispute by direct negotiation between them;
  - d. failing settlement within a further 10 Business Days, or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 11.1.1.b), the parties may agree to refer the dispute to an independent third person that the parties agree may:
    - i. intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
    - ii. mediate and recommend some form of non-binding resolution;
  - e. the parties will co-operate fully with any process instigated under clause 11.1.1.d in order to achieve a speedy resolution; and
  - f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

### **11.2. Costs**

- 11.2.1. Each party must bear its own costs of complying with this clause 11, and the parties must bear equally the cost of any third person engaged under clause 11.1.1.d.

### **11.3. Continued performance**

- 11.3.1. Despite the existence of a dispute, You must (unless required in writing by Us not to do so) continue to perform the Services.

**11.4. Exemption**

**11.4.1. Clause 11.1 does not apply:**

- a. to action by Us under or purportedly under clauses 12.1 or 15.3;
- b. to action by either party under or purportedly under clause 12.2;
- c. where an agency or authority of the Commonwealth of Australia, a State or Territory is investigating a breach or suspected breach of the law by You; or
- d. to legal proceedings by either party seeking urgent interlocutory relief.

**12. Termination or reduction in scope of Services**

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**12.1. Termination or reduction with costs**

12.1.1. We may by notice, at any time and in Our absolute discretion, terminate this contract or reduce the scope of the Services immediately.

12.1.2. You must, on receipt of a notice of termination or reduction:

- a. stop or reduce work as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction; and
- c. continue work on any part of the Services not affected by the notice.

12.1.3. In the event of termination under clause 12.1.1, We will be liable only:

- a. to make any payment relating to Services completed before the effective date of termination; and
- b. to reimburse any expenses You unavoidably incur relating entirely to Services not covered under clause 12.1.3.a and directly attributable to the termination.

12.1.4. We will not be liable to pay amounts under clauses 12.1.3.a and 12.1.3.b which would, added to any fees already paid to You under this contract, together exceed the Fee set out in item 9 of Schedule 1.

12.1.5. In the event of a reduction in the scope of the Services under clause 12.1.1, Our liability to pay Fees will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

12.1.6. You will not be entitled to compensation for loss of prospective income or profits and redundancy costs.

**12.2. Termination for breach**

12.2.1. If You are in breach of any of Your obligations under this contract, and We consider that the breach is:

- a. not capable of remedy – We may, by notice, terminate this contract immediately;
- or



- b. capable of remedy – We may, by notice require that the breach be remedied within 10 Business Days of receiving the notice and, if the breach is not remedied within that time, may terminate this contract immediately by giving a second notice.

12.2.2. We may also, by notice, terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have):

- a. where expressly provided for in this contract; or
- b. if We are satisfied that, prior to entering into this contract, You engaged in misleading or deceptive conduct or omitted to provide information to Us in connection with the performance or awarding of this contract; or
- c. if, to the extent permitted by law, You:
  - i. being a corporation - come under any form of external administration, or receive a notice, or proceedings are commenced, to dissolve You or cancel Your incorporation or registration, or to place You under any form of external administration; or
  - ii. being an individual - become bankrupt or enter into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth); or
- d. if, You fail to maintain any insurance as required under this contract; or
- e. if, You cease to carry on a business relevant to the performance of the Services.

12.2.3. You must notify Us immediately upon becoming aware of any of the circumstances in clauses 12.2.2a-e arising.

### **13. Notices**

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#### **13.1. Format, addressing and delivery**

13.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by You to Us* – addressed to the Project Officer at the address specified in item 15 of Schedule 1 or as otherwise notified by Us; or
- b. *if given by Us to You* – given by the Project Officer (or any superior officer to the Project Officer) to Your Representative and addressed as specified in item 16 of Schedule 1 or as otherwise notified by You.

13.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

**13.2. When received**

13.2.1. A notice is taken to have been received:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by pre-paid post* – 5 Business Days after the date of posting to the relevant address; or
- c. *if transmitted electronically* – at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth.

13.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be received on the next Business Day in that place.

**14. Indigenous Procurement Policy**

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14.1.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (for further information, see Indigenous Procurement Policy, available at <https://www.pmc.gov.au/resource-centre/government/commonwealth-indigenous-procurement-policy>).

14.1.2. You must use reasonable endeavours to increase Your:

- a. purchasing from Indigenous enterprises; and
  - b. employment of Indigenous Australians,
- in the delivery of the Services.

14.1.3. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in Your supply chain.

14.1.4. In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating as a business.

**15. General provisions**

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**15.1. Work health and safety**

15.1.1. In this clause 15.1:

Approved Code of Practice

means a practical guide to achieving the standards of health, safety and welfare that is approved pursuant to section 274 of the WHS Act;

Inspector, Non-Disturbance Notice, Notifiable Incident, Provisional Improvement Notice, Prohibition

have the meaning given in the WHS Act;

Notice, Regulator, WHS Undertaking  
and Worker

|                       |   |
|-----------------------|---|
| Section 155 Notice    | means a notice issued under section 155 of the<br>WHS Act;  |
| Section 171 Direction | means a direction issued under section 171 of the<br>WHS Act;   |
| WHS Act               | means Work Health and Safety Act 2011 (Cth);<br>and   |
| WHS legislation       | means the WHS Act, any regulations made under<br>that Act and any 'corresponding WHS law' within<br>the meaning of section 4 of the WHS Act and<br>Regulation 6A of the <i>Work Health and Safety<br/>Regulations 2011</i> (Cth). |

- 15.1.2. In carrying out this contract You must ensure that the Services are performed in a safe manner, including by:
- a. complying with, and ensuring Your Workers comply with, all WHS legislation and Approved Codes of Practice relating to work health and safety;
  - b. when performing the Services on Your premises, complying with, and ensuring Your Workers comply with, all Your applicable instructions, directions, policies and procedures relating to work health and safety;
  - c. when performing the Services at Our Premises as directed by Us, You must:
    - i. inform Yourself, and ensure Your Workers inform themselves, of Our work health and safety policies and procedures that We provide to You and are relevant to the Services; and
    - ii. comply with, and ensure Your Workers comply with, the above health and safety policies and procedures;
  - d. not placing Us in breach of Our obligations under the WHS legislation and ensuring that Your Workers do not place Us in breach of Our obligations under WHS legislation;
  - e. where the health and safety of any person may be affected by the performance of the Services, consulting, cooperating and coordinating with Us and any other relevant duty holders and Workers in relation to health and safety issues;
  - f. notifying Us, as soon as practicable, of:
    - i. any concern You have regarding work health and safety in relation to Services performed by Workers;

- ii. any Notifiable Incident arising and providing Us with a copy of any written notice given to the Regulator, the results of any investigation into the cause and any recommendation You have for prevention in the future;
- iii. breach or suspected breach of the WHS legislation in relation to the Services performed under this contract;
- iv. cessation of work on the Services, or direction to cease work on the Services from any person having a right or power under the WHS legislation to do so, due to unsafe work;
- v. entry by an Inspector to any place where the Services are being performed or a Provisional Improvement Notice, Non-Disturbance Notice, Section 155 Notice, Section 171 Direction or Prohibition Notice is issued or WHS Undertaking provided to the Regulator; and
- vi. proceedings against, decision by the Regulator in relation to, or request from the Regulator to You or Your Workers under the WHS Act.

15.1.3. In the event of any inconsistency between:

- a. any of the policies and procedures referred to in this clause; or
- b. WHS legislation,

You will comply with the policies, procedures and/or legislation that comply with the WHS legislation and notify Us of any such inconsistency.

15.1.4. To the extent permitted by law, We are not liable to You for any loss in connection with work health and safety in relation to Workers performing Services.

## 15.2. Workplace Gender Equality

15.2.1. In this clause 15.2:

Letter of Compliance means a letter issued by the Workplace Gender Equality Agency which indicates compliance by a Relevant Employer with WGE Act;

Relevant Employer has the same meaning as it has in the WGE Act; and

the WGE Act means the Workplace Gender Equality Act 2012 (Cth).

15.2.2. Clauses 15.2.3 to 15.2.5 only apply to the extent that You are a Relevant Employer.

15.2.3. You must comply with Your obligations, if any, under the WGE Act.

15.2.4. If You become non-compliant with the WGE Act during the term of this contract, You must notify Us within 10 Business Days of becoming non-compliant.

15.2.5. If the term of this contract exceeds 18 months, You must provide a current Letter of Compliance within 18 months from the Date of this Contract and following this, annually, to Us.

- 15.2.6. You must not enter into a subcontract under this contract for the performance of any part of the Services with a subcontractor who is a Relevant Employer, unless that subcontractor has provided You with a current Letter of Compliance.
- 15.2.7. If You receive a Letter of Compliance, or notification of non-compliance with the WGE Act, from a subcontractor approved under this contract, then You must provide that Letter of Compliance or notification to Us within 10 Business Days of You receiving it.
- 15.2.8. Compliance with the WGE Act does not relieve You from Your responsibility to comply with Your other obligations under this contract.

### **15.3. Record keeping**

- 15.3.1. You must:
- a. keep and require Your subcontractors to create and maintain true, complete and accurate books and records relating to the Services, in accordance with accounting standards and in sufficient detail to enable the amounts payable by Us under this contract to be determined; and
  - b. retain and require Your subcontractors to retain for a period of 7 years after the expiry or termination of this contract all books and records relating to the Services.
- 15.3.2. Notwithstanding this clause 15.3, if We consider it appropriate, We may, at Our absolute discretion, impose special conditions in relation to records management, and You must comply with those special conditions as directed by Us.
- 15.3.3. When requested by Us, You must provide the records in relation to Your delivery of the Services to Us within the timeframe required by Us.
- 15.3.4. You must bear Your own costs of complying with this clause 15.3.
- 15.3.5. This clause 15.3 applies for the term of this contract and for a period of 7 years from the expiry or termination of this contract.

### **15.4. Audit and access**

- 15.4.1. You must at all reasonable times during the term of this contract and for 3 years after its expiry or termination give any person authorised in writing by Us:
- a. reasonable access to:
    - i. Your Personnel and equipment;
    - ii. premises occupied by You;
    - iii. Material; and
  - b. reasonable assistance to:
    - i. inspect the performance of the Services;
    - ii. locate and inspect Material;
    - iii. make copies of Material and remove those copies, relevant to the Services or this contract.

15.4.2. The rights referred to in clause 15.4.1 are subject to:

- a. the provision of reasonable prior notice to You; and
- b. Your reasonable security procedures.

15.4.3. If a matter is being investigated which, in Our opinion or in the opinion of any person authorised in writing by Us, may involve an actual or apprehended breach of the law, clause 15.4.2a will not apply.

15.4.4. The requirement for access specified in clause 15.4.1 does not in any way reduce Your responsibility to perform Your obligations under this contract.

15.4.5. Where You breach Your obligations under this clause 15.3, We may terminate this contract in accordance with clause 12.2.2.

NOTE: There are additional rights of access under the Ombudsman Act 1976, the Privacy Act, and the Auditor-General Act 1997.

## 15.5. Insurance

15.5.1. You must:

- a. effect and maintain the insurance specified in item 17 of Schedule 1; and
- b. on request, provide proof of insurance acceptable to Us.

15.5.2. This clause 15.5 continues in operation for so long as any obligations remain in connection with this contract.

## 15.6. Extension of provisions to subcontractors and Personnel

15.6.1. In this clause 15.6:

**Requirement** means an obligation, condition, restriction or prohibition binding on You under this contract.

15.6.2. You must ensure that:

- a. Your subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract (including any subcontract) entered into in connection with this contract imposes all relevant Requirements on the other party.

15.6.3. You must exercise any rights You may have against any of Your Personnel or third parties in connection with a Requirement in accordance with any direction by Us.

## 15.7. Conflict of interest

15.7.1. You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Contract no Conflict exists or is likely to arise in the performance of the Services.

15.7.2. If, during the period of this contract a Conflict arises, or appears likely to arise, You must:

- a. notify Us immediately;

- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps We reasonably require to resolve or otherwise deal with the Conflict.

15.7.3. If You fail to notify Us under this clause 15.7, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this contract under clause 12.2.2.

**15.8. Relationship of parties**

15.8.1. You and Your Personnel are not by virtue of this contract an officer, employee, partner or agent of Ours, nor do You or Your Personnel have any power or authority to bind or represent Us.

15.8.2. You must not and You must ensure that Your Personnel do not:

- a. misrepresent Your or their relationship with Us; or
- b. engage in any misleading or deceptive conduct in relation to the Services.

15.8.3. For the avoidance of doubt, except to the extent that You are restricted or prevented from disclosing Our Confidential Information or Personal Information, no right or obligation in this contract is to be read or understood as restricting or preventing Your rights to:

- a. comment on;
- b. advocate support for; or
- c. oppose change to;

any matter established by law, policy or practice of the Commonwealth.

**15.9. Waiver**

15.9.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.

15.9.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**15.10. Variation**

15.10.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

**15.11. Assignment and novation**

15.11.1. You cannot assign Your obligations, and must not assign Your rights, under this contract without Our prior written approval.

15.11.2. You must not negotiate with any other person to enter into an arrangement that will require novation of Your rights or obligations under this contract without first consulting Us.

**15.12. Survival**

15.12.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. privacy;
- d. dealing with copies;
- e. books and records;
- f. audit and access;
- g. an indemnity; or
- h. any other provision which expressly or by implication from its nature is intended to continue.

15.12.2. Your obligations under this contract are intended to operate in addition to, and not otherwise limit, any of Your other obligations at law.

**15.13. Compliance with laws and our policies**

15.13.1. You must, in carrying out Your obligations under this contract, comply with:

- a. any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority applicable to the Services; and
- b. any of Our policies, standards, protocols or codes of conduct notified by Us to You in writing during the term of this contract,

including those listed in item 18 of Schedule 1.

15.13.2. You acknowledge that:

- a. when dealing with Your employees, You must comply with the *Fair Work Act 2009* (Cth) and related legislation, and obligations under relevant work health and safety laws;
- b. Chapter 7 of the *Criminal Code Act 1995* (Cth) provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- c. giving false or misleading information is a serious offence under the *Criminal Code Act 1995* (Cth);



- d. the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this contract (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two years' imprisonment;
- e. in respect of data, including personal information, held in connection with this contract, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this contract is an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) which may attract a substantial penalty, including imprisonment;
- f. You are aware of the provisions of section 79 of the *Crimes Act 1914* (Cth) relating to official secrets; and
- g. You may be subject to the provisions of the *Competition and Consumer Act 2010* (Cth) and the *Archives Act 1983* (Cth).

**15.14. Applicable law**

- 15.14.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 15.14.2. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

**15.15. Counterparts**

- 15.15.1. This contract may be executed in counterparts, each of which will constitute one agreement between the parties.

## **SCHEDULE 1. CONTRACT DETAILS**

### **1. Services**

---

(see clause 2)

#### **1.1. Service availability**

You must provide digital advisory services as set out in this Schedule 1 to Your members who are Australian small businesses for 24 months from the Date of the Contract.

The Services must be accessible by all of Your Australian Small Business members, including members from diverse backgrounds.

#### **1.2. Industry specific**

The Services must be tailored to Your industry, and be up-to-date with digital and online best practice for Your industry.

#### **1.3. Digital and online only advice**

In providing the Services, You may provide advice to Your members on any or all of the following digital and online related topics:

- i. technology trends and technology adoption;
- ii. hardware;
- iii. software;
- iv. online content development;
- v. social media and digital marketing;
- vi. websites;
- vii. online security and data privacy;
- viii. digital playbooks or digital best practice guides for the business sector;
- ix. online digital planning;
- x. digital training; and
- xi. coaching and support for going online.

#### **1.4. Service delivery formats**

The Services may be delivered to Your members through a combination of channels and formats, including face to face and remote/online delivery methods. We expect that You will leverage Your established engagement platforms to provide ready access to the Services to Your members.

**1.5. Relating digital and online technology to business needs**

You must provide Services to Your members on how digital and online technology can improve small business outcomes in ways relevant to Your sector and/or Your members' needs.

**1.6. Services to be provided at no cost to Your members**

You must not charge Your members for the provision of Services.

**1.7. Promotion of the Small Business Digital Champions Project**

You must promote the Small Business Digital Champions Project through Your public channels at least once every three months during the 24 months from the Date of the Contract to ensure the Small Business Digital Champions Project receives wide public attention.

If We, at our discretion, provide you with promotional material about the Small Business Digital Champions Project, You must use such promotional material when promoting the Project.

**1.8. Collaboration and cross promotion with the Small Business Digital Champions Project**

If You identify an opportunity for collaboration on the delivery of Services between You and any of the 100 small businesses who are participating in the Small Business Digital Champions Project, You may liaise with the organisation identified by Us as the Digital Transformation Provider ('DTP'), who will be supporting the digital transformation of the 100 small businesses.

This will ensure that opportunities for collaborative service delivery and cross-promotion between Your members and the broader Small Business Digital Champions Project are leveraged, if possible. We will provide You with contact details of the DTP.

To support responsive and holistic program delivery, You must promptly respond to any requests for information from the DTP regarding the Services You are providing to Your members. We will broker any requests from the DTP to ensure that the requests are relevant to the Services being provided by You.

**1.9. Key Performance Indicators**

Your success in providing the Services will be measured by the quantity and quality of the Services in accordance with the below key performance indicators ('KPIs'):

- i. All of Your Small Business members receive communications regarding digital advice (for example, via website updates, emails or social media platforms) once per month during the 24 months from the Date of the Contract.
- ii. A minimum of 200 of Your Small Business members receive one-on-one interactive Services (via face to face meetings/direct email/phone/live webchat/webinar/face to face workshops) during each six month period from the Date of this Contract.

You must have the tools to measure Your performance against the KPIs and to record:

- i. the types of one-on-one Services provided e.g. website updates, emails or social media platforms;
- ii. how many of Your members received one-on-one Services;
- iii. how many of Your members obtained multiple Services;
- iv. the total number of Small Businesses accessing Services by State and Territory, [only include jurisdictions applicable to Your membership];
- v. the topics of Services provided;
- vi. the number of times You have promoted the Services to Your membership to ensure that they are aware of the Services You are providing and the Small Business Digital Champions Project;
- vii. the number of times You have promoted the Small Business Digital Champions Project publicly;
- viii. the postcode of Your members who received one-on-one Services; and
- ix. the number of communications regarding digital advice You have sent to at least 75% of Your members.

You must ensure that Your members who receive Services are made aware that information regarding the provision of the Services may be provided to Us for reporting purposes and to evaluate the Small Business Digital Champions Project.

#### **1.10. Survey**

We may also require that You send a survey at 22 months after the Date of the Contract to all of Your members for evaluation purposes. We will design the survey, in consultation with You. The survey will be anonymous, and the information provided by Your members will be used by Us for evaluation purposes only.

You must collect and report to Us the survey feedback.

## **2. Required Contract Material**

---

(see clause 2.1.2.b)

### *Reporting*

You must prepare and submit reports to Us from the Date of the Contract on Your delivery of the Services in accordance with item 3.2.

Each report must include the following information:

- i. the results of Your performance against the KPIs for the period of the report;
- ii. the types of one-on-one Services provided e.g. website updates, emails or social media platforms;
- iii. how many of Your members received one-on-one Services;

- iv. how many of Your members obtained multiple Services;
- v. the total number of Small Businesses accessing Services by State and Territory [only include jurisdictions applicable to Your membership];
- vi. the topics of Services provided;
- vii. the number of times You have promoted the Services to Your Small Business members to ensure that they are aware of the Services You are providing and the Small Business Digital Champions Project;
- viii. the number of times You have promoted the Small Business Digital Champions Project publicly;
- ix. the postcode of Your members who received one-on-one Services;
- x. the number of communications regarding digital advice You have sent to at least 75% of Your members;
- xi. detailed information about how Your Small Business members have benefited from receiving the Services; and
- xii. examples of the benefits to Your Small Business members of receiving the Services. Examples could include:
  - A. improved business processes;
  - B. expansion into new markets;
  - C. attraction of additional customers; and
  - D. achievement of a better work/life balance while growing their business.

You must provide to Us a one-off report three months from the Date of the Contract that includes the above information and an assessment of the digital needs of Your industry (or industries) and a summary of the establishment of the Services.

You must provide the reports to Us in electronic form and using any templates for reporting that We may provide to You from time to time.

### **3. Completion Date and Time-frame**

---

(see clause 2.1.2.c)

#### **3.1. Completion Date:**

The Completion Date is the day immediately following the date on which You have performed all of Your obligations under this Schedule 1.

**3.2. Time-frame:**

The Services must be provided in accordance with the following table:

| Milestone No. | Milestone description  | Date   |
|---------------|--|--|
| 1.            | One-off initial three month report that includes an assessment of the digital needs of Your industry (or industries) and a summary of the establishment of the Services. | Within 10 Business Days following three months from the Date of this Contract. |
| 2.            | Six month report on the delivery of Services.  | Within 10 Business Days following six months from the Date of this Contract.   |
| 3.            | Six month report on the delivery of Services.  | Within 10 Business Days following 12 months from the Date of this Contract.    |
| 4.            | Six month report on the delivery of Services.  | Within 10 Business Days following 18 months from the Date of this Contract.    |
| 5.            | Final six month report on the delivery of the Services.  | Within 10 Business Days following 24 months from the Date of this Contract.    |

**4. Invoicing and payment**

(see clauses 2.1.2.i, 4.1.1b & 4.3)

**4.1. Invoices:**

You are required to send invoices to the Department at the completion of each Milestone otherwise the Department may withhold payment.

**4.2. Payment:**

Payment will be effected by electronic funds transfer (EFT) to Your following bank account:

|                |                                     |
|----------------|-------------------------------------|
| Bank           | Commonwealth Bank of Australia      |
| Account name   | National Retail Association Limited |
| BSB            | 064 155                             |
| Account number | 1037 3717                           |

The Project Officer is the person for the time-being holding, occupying or performing the duties of Director, currently, s22 [redacted] available on telephone number s22 [redacted] [redacted] or via the address and facsimile number set out in item 15 of Schedule 1.

**6. Your Representative**

(see clause 2.2)

**Note to Industry Associations: Please advise the name, position and contact details for the person fulfilling the role of 'Your Representative'.**

Your Representative is the person for the time-being holding, occupying or performing [insert role and name], available on [insert contact details].

**7. Subcontractors**

(see clause 2.6)

You may subcontract the performance of parts of the Services as follows:

| Name     | Subcontracted services | Additional conditions |
|----------|------------------------|-----------------------|
| ^insert^ | ^insert^               | ^insert ^             |
|          |                        |                       |

**8. Specified Personnel**

**Note to Industry Associations: Please specify those individuals that will have managerial responsibility for the provision of the Services. The Department expects that this will include Your Representative.**

(see clause 2.7)

| Name     | Experience, qualifications and skills required | Details of role / Services to be performed |
|----------|--|--|
| [Insert] | [insert]                                       | Your Representative                        |
|          |  |  |

**9. Fees**

(see clause 4.1, 12.1.3a, 12.1.4, & 12.1.5)

The total Fee payable for the Services is \$100,000 exclusive of GST payable by the following instalments.

|  |   |  |
|--|---|--|
|  | Leadership, Working Together Leadership Program, Risk Management, Change Management, Strategic Planning, Tender Writing, Budgeting, OH&S, Simulation in Learning, Quality and Compliance. |  |
|  |   |  |

**9. Fees**

(see clause 4.1, 12.1.3a, 12.1.4, & 12.1.5)

The total Fee payable for the Services is \$100,000 exclusive of GST payable by the following instalments.

| Amount (GST exclusive) | Payable   |
|------------------------|---|
| \$30,000               | To be paid on Date of this Contract.  |
| \$15,000               | To be paid following Our approval of Milestone <del>1</del> , in accordance with clause 2.5.<br>2 |
| \$15,000               | To be paid following Our approval of Milestone <del>2</del> , in accordance with clause 2.5.<br>3 |
| \$20,000               | To be paid following Our approval of Milestone <del>3</del> , in accordance with clause 2.5.<br>4 |
| \$20,000               | To be paid following Our approval of Milestone <del>4</del> , in accordance with clause 2.5.<br>5 |

**10. Commonwealth Material**

(see clause 5.1)



| Description of Commonwealth Material          | Conditions on use           |
|---|-----------------------------|
| Small Business Digital Champions Project logo | As set out in clause 5.1.5. |

**11. Contract Material**

---

(see clauses 5.2.1)

**Existing Material**

***Note to Industry Associations: Please advise of any Existing Material you intend to use in providing the Services.***

<https://www.nra.net.au/technology-in-retail/#>

**Contract Material**

Not applicable.

**12. Moral Rights**

---

(see clause 5.3)

**Permitted Acts**

Paragraphs a, b and c in the definition of 'Permitted Acts' in clause 1.1 list the 'Permitted Acts'. Paragraph d in that definition allows additional 'Permitted Acts' to be specified in this item. Those additional 'Permitted Acts' are:

- i. use of the Contract Material for advertising, merchandising or promotional purposes of any kind; and
- ii. incorporating the Contract Material into a website or as part of a multi-media training programme.

**13. Privacy Requirements**

---

(see clause 8.1.1)

No additional obligations.

**14. Confidential Information**

---

(see clause 6.1.1)

**i) Your Confidential Information:**

- a. Information contained in contract:

| Item                    | Period of confidentiality |
|-------------------------|---------------------------|
| ^insert relevant items^ |                           |
|                         |                           |

b. Information obtained or generated in performing contract:

| Item                    | Period of confidentiality |
|-------------------------|---------------------------|
| ^insert relevant items^ |                           |
|                         |                           |

ii) **Our Confidential Information:**

a. Information contained in contract:

| Item            | Period of confidentiality |
|-----------------|---------------------------|
| Not applicable. |                           |

b. Information obtained or generated in performing contract:

| Item            | Period of confidentiality |
|-----------------|---------------------------|
| Not applicable. |                           |

**15. Our address for Notices**

(see clause 13.1.1a)

|                         |                                   |
|-------------------------|-----------------------------------|
| <b>Physical address</b> | 10-12 Mort St, Canberra ACT, 2601 |
| <b>Postal address</b>   | GPO Box 9880<br>Canberra ACT 2601 |
| <b>Email</b>            | digitalchampions@jobs.gov.au      |
| <b>Facsimile</b>        | (02) 6121 6867                    |

**16. Your address for Notices**

(see clause 13.1.1b)

|                         |                                    |
|-------------------------|------------------------------------|
| <b>Physical address</b> | Level 3, 33 Park Road, Milton 4064 |
|-------------------------|------------------------------------|

|                       |                            |
|-----------------------|----------------------------|
| <b>Postal address</b> | P.O. Box 1307, Milton 4064 |
| <b>Email</b>          | y.williams@nra.net.au      |
| <b>Facsimile</b>      |                            |

**17. Insurance**

---

(see clause 15.5)

You must maintain:

- (1) workers' compensation as required by law;
- (2) public liability insurance to a value of \$10 million (ten million dollars) or more per claim; and
- (3) professional indemnity insurance to a value of \$5 million (five million dollars) or more per claim.

**18. Compliance with Laws and policies**

---

(see clause 15.13.1)

**i) Compliance with Laws**

- (1) *Racial Discrimination Act 1975* (Cth);
- (2) *Sex Discrimination Act 1984* (Cth);
- (3) *Australian Human Rights Commission Act 1986* (Cth); and
- (4) *Disability Discrimination Act 1992* (Cth).

**ii) Statement of Values and Code of Conduct**

You must, when carrying out the Services behave with the highest ethical standards; fairly, effectively, impartially and courteously to the Australian public; and with sensitivity to the diversity of the Australian public.

**iii) Web Accessibility**

You must ensure that all content related to the Services to meet web accessibility requirements outlined in the Web Content Accessibility Guidelines (WCAG) 2.0. WCAG 2.0 is a technical standard developed under the Web Accessibility Initiative of the World Wide Web Consortium (W3C).

**i) Security requirements**

You must comply with any security requirements notified by the Department that are directly related to the carrying out of Your functions and tasks associated with the Small Business Digital Champions Project.

**Signatures**

---

SIGNED for and on behalf of the  
Commonwealth of Australia as  
represented by the Department of Jobs  
and Small Business by: )  
)  
)

s22 \_\_\_\_\_

^Name of signatory^

s22 \_\_\_\_\_

Signature

In the presence of:

s22 \_\_\_\_\_

^Name of witness^

s22 \_\_\_\_\_

Signature of witness

Where the Industry Association is a **company** use the following:

SIGNED for and on behalf of (National  
Retail Association) (44 009 664 073) in  
accordance with the requirements of  
section 127 of the *Corporations Act 2001*  
by:

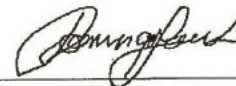
MARK BRODIE  
\_\_\_\_\_  
Name of Director



\_\_\_\_\_  
Signature

And by

DOMINIQUE LAMB  
\_\_\_\_\_  
Name of Director/Company Secretary



\_\_\_\_\_  
Signature

Where the Industry Association is a **partnership** use the following:

SIGNED by:

\_\_\_\_\_  
Name of partner

\_\_\_\_\_  
*Signature*

who by signing warrants that they have authority to bind (^insert name of each co-partner(s) of partnership)

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*

Where the Industry Association is an **incorporated association** use the following:

SIGNED for and on behalf of (^insert Association name) (^insert ABN) by:

\_\_\_\_\_  
Name of Committee member

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*




**Australian Government**  
**Department of Jobs and Small Business**

**MINUTE**

**To:** Peter Cully, Group Manager, Small Business and Economic Strategy Group  
**From:** Rose Verspaandonk, Branch Manager, Deregulation and Small Business Branch  
**For decision by:** 29 March 2019, to ensure timely completion of Small Business Industry Association procurement.

**Progressing Contract Negotiations with Small Business Industry Associations**

|  |                                |
|--|--------------------------------|
| <p><b>Recommendation(s):</b><br/>That you:</p>   |                                |
| <p>1. Approve the Department progressing contract negotiations with 13 small business industry associations as part of the Small Business Digital Champions project.</p> | <p>Approved / Not approved</p> |
| <p>2. Approve the Department requesting clarification from the s22 [redacted] organization, to improve the project's industry reach and value for money</p>              | <p>Approved / Not approved</p> |
| <p><br/>Peter Cully</p>   | <p>Date: 29/3/19</p>           |

**Purpose**

To obtain your approval for the Department progressing contract negotiations with 13 shortlisted small business industry associations as part of the Small Business Digital Champions project, and to approve the Department requesting clarification and additional information from two small business industry associations to improve the project's industry reach and value for money (REF: EMP19/891).

**Key Points:**

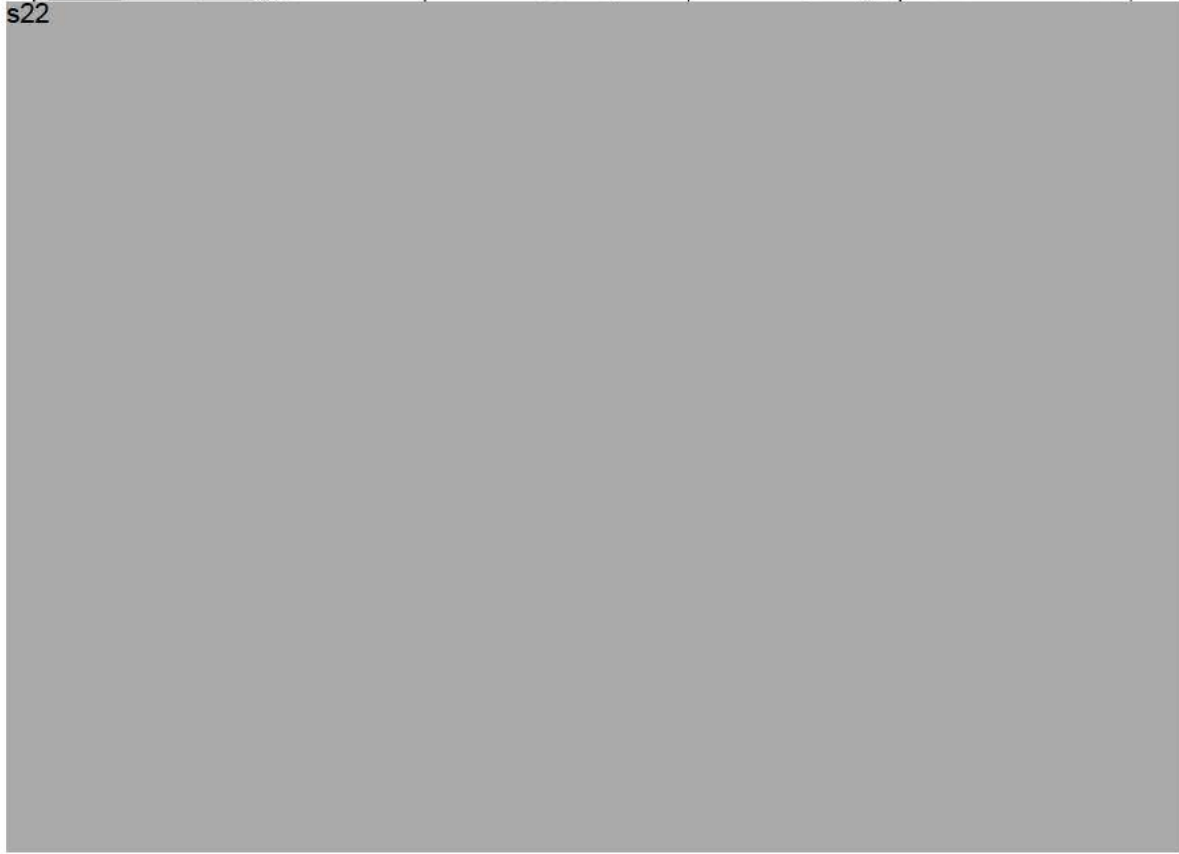
- The Small Business Digital Champions Project will provide 15 small business industry associations with \$100,000 over two years to establish a 'Trusted Digital Advisor' role in their organisation. Industry associations will use their expertise to design digital advisory services to assist their members and their industry. Organizations were invited to respond to an Expression of Interest (EOI) on the Department's website on 11 December 2018.
- The EOI received 87 responses. On 28<sup>th</sup> February 2019, the Department issued a Request for Additional Information (RAI) to the 87 EOI respondents. The purpose of

the RAI was to obtain additional information from respondents that would enable the Department to decide which respondents would receive offers to provide services.

- 34 responses to the RAI were received. The RAI evaluation team has evaluated the responses against the evaluation criteria and determined that 13 respondents represented value for money to a satisfactory or better level:

| <b>Industry association name</b> | <b>Industry</b> | <b>Number of members</b> | <b>Location of members</b> |
|----------------------------------|-----------------|--------------------------|----------------------------|
| 1. National Retail Association   | Retail trade    | 10,000-30,000            | All states and territories |

s22



- To ensure that the project is value for money, 10 respondents with a national membership base have been selected as preferred respondents. Two preferred respondents cover all states and territories except one. Two respondents are from South Australia, one is from Queensland. The decision to include two organizations from South Australia and one from Queensland was made on the basis that these organizations had competitive responses and could achieve the best value for money.
- The Department is satisfied that the thirteen associations listed represent value for money. Of the remaining 21 organizations, the Department has shortlisted s22 ( ) as potentially representing better value for money than the other 22 associations whose applications have been evaluated as low value for money. However there are questions around both applications that require clarification before the Department can recommend progressing contract negotiations.
- The remaining 20 respondents to the RAI have not been given further consideration because they were either sub-standard responses, did not represent value for money, or the respondents were not industry associations.

- Tender prices were not requested in the RAI because the project has a set funding envelope, and were not taken into consideration in the evaluation process.
- All unsuccessful respondents will be given a debrief if requested.

### **Risks/sensitivities**

- There is a risk that some organizations could choose to not proceed with contract negotiations. This presents a risk that the Department will not be able to contract 15 organizations to deliver services within the project milestones.
- The Department has commenced due diligence checks on the associations and will complete the checks prior to signing contracts with the organizations.

### **Stakeholder consultation**

- Procurement and Grants Policy and Support have been consulted.

### **Next steps**

- Preferred associations will be sent draft contracts in the week of 25 March 2019.
- Depending on the complexity of negotiations, contracts with successful associations could be executed by 1 April 2019. Others could be delayed until mid-April or later, if there are delays in completing negotiations.

|                     |                   |
|---------------------|-------------------|
| Contact Officer:    | Rose Verspaandonk |
| Phone extension no: | 49262             |





[CU FINAL DRAFT - 27 MARCH 2019]

# **CONTRACT**

## **IN RELATION TO INDUSTRY ASSOCIATION DIGITAL ADVISORY SERVICES FOR THE SMALL BUSINESS DIGITAL CHAMPIONS PROJECT**

**Commonwealth of Australia** represented by the  
Department of Jobs and Small Business

ABN 54 201 218 474

^Party 2 Name^

^Party 2 ABN/ACN/ARBN if applicable^

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## CONTRACT

### Date

This contract is made on ^day (numeric) month (name) year (numeric) in full^.

### Parties

This contract is made between and binds the following parties:

1. **Commonwealth of Australia** ('Commonwealth', 'Us', 'We' or 'Our') represented by and acting through the Department of Jobs and Small Business ABN 54 201 218 474 ('the Department')
2. **^Insert Supplier Name^** ^Insert Supplier ABN/ACN/ARBN if applicable^  
^Insert Supplier Address^ ('You', or 'Your')

### Context

This contract is made in the following context:

- A. The Small Business Digital Champions Project is an Australian Government initiative that aims to encourage small businesses to improve their digital capabilities.
- B. We require an Industry Association to participate in the Small Business Digital Champions Project by providing digital advisory services to encourage small businesses to improve their digital capabilities.

You are fully informed about the Services and have submitted a proposal to provide the Services, in which You have represented that You have (or will acquire) the requisite skills and experience to perform the Services.

- D. The parties have agreed that You will provide the Services on the terms and conditions set out in this contract.

## OPERATIVE PROVISIONS

### 1. Interpretation

#### 1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

**Australian Government Branding Guidelines** means the guidelines of that name available at [https://www.pmc.gov.au/sites/default/files/files/Australian\\_Government\\_Branding\\_Design\\_Guidelines.pdf](https://www.pmc.gov.au/sites/default/files/files/Australian_Government_Branding_Design_Guidelines.pdf), as may be amended or replaced from time to time;

**Australian Privacy Principle or APP** has the same meaning as it has in section 6 of the Privacy Act;

|                                  |   |
|----------------------------------|---|
| <b>Business Day</b>              | means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;   |
| <b>CC BY Licence</b>             | means a Creative Commons Attribution 4.0 International ( <a href="https://creativecommons.org/licenses/by/4.0/">https://creativecommons.org/licenses/by/4.0/</a> ) licence;   |
| <b>Commissioner</b>              | has the same meaning as it has in section 6 of the Privacy Act;   |
| <b>Commonwealth</b>              | means the Commonwealth of Australia and includes officers, delegates, employees and agents of the Commonwealth of Australia;  |
| <b>Commonwealth Coat of Arms</b> | means the Commonwealth Coat of Arms as set out at <i>It's an Honour – Commonwealth Coat of Arms</i> available at <a href="http://www.itsanhonour.gov.au/coat-arms/index.cfm">http://www.itsanhonour.gov.au/coat-arms/index.cfm</a> ;  |
| <b>Commonwealth Material</b>     | means any Material: <ul style="list-style-type: none"> <li>a. provided by Us to You for the purposes of this contract; or</li> <li>b. derived at any time from the Material referred to in paragraph a;</li> </ul>  |
| <b>Completion Date</b>           | means the date specified in item 3 of Schedule 1 or the day after You have done all that You are required to do under this contract to Our satisfaction, whichever is the later;  |
| <b>Conflict</b>                  | means any matter, circumstance, interest, or activity affecting You or Your Personnel which may, or may appear to, impair Your or Your Personnel's ability to provide the Services to Us diligently and independently under this contract;  |
| <b>Contract Material</b>         | means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of this contract;</li> <li>b. provided or required to be provided to Us as part of the Services; or</li> <li>c. derived at any time from the Material referred to in paragraphs a or b;</li> </ul> |
| <b>Date of this Contract</b>     | means the date written on page 1 of this contract, and if no date or more than one date is written there, then the date on which this contract is signed by the last party to do so;  |
| <b>Department</b>                | means the Department of Jobs and Small Business and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this contract;  |
| <b>Eligible Data Breach</b>      | has the same meaning as it has in section 6 of the Privacy Act;   |

|                              |   |
|------------------------------|---|
| <b>Existing Material</b>     | means any Material, except Commonwealth Material, which was in existence before the Date of this Contract or which is developed independently of this contract and which is incorporated in, supplied with or as part of, or required to be supplied with or as part of, the Contract Material and includes, but is not limited to, Material specified in item 11 of Schedule 1;  |
| <b>Fee</b>                   | means the fee payable under clause 4.1.1.a and specified in item 9 of Schedule 1 in relation to a specified part or the whole of the Services;  |
| <b>Industry Association</b>  | means an organisation representing a specific industry (or industries), which is funded by and represents members of that industry (or industries) and includes You;  |
| <b>Intellectual Property</b> | <p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to confidential information;</li> </ul> |
| <b>Interest</b>              | means simple interest calculated at the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth), on the day that payment is due, expressed as a decimal rate per day;   |
| <b>Material</b>              | means any thing in relation to which Intellectual Property rights arise;  |
| <b>Milestone</b>             | a key performance obligation as set out in item 3 of Schedule 1;  |
| <b>Moral Rights</b>          | <p>means the following non-proprietary rights of authors of copyright Material:</p> <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>   |

|                                     |  |
|-------------------------------------|--|
| <b>Our Confidential Information</b> | means Our information that: <ul style="list-style-type: none"> <li>a. is described in item 14 of Schedule 1;</li> <li>d. We identify, by notice in writing to You after the Date of this Contract as confidential information for the purposes of this contract; or</li> <li>e. You know or ought to know by its nature is confidential;</li> </ul>  |
| <b>Permitted Acts</b>               | means any of the following classes or types of acts or omissions: <ul style="list-style-type: none"> <li>a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship;</li> <li>b. supplementing the Contract Material with any other Material;</li> <li>c. using the Contract Material in a different context to that originally envisaged; and</li> <li>d. the acts or omissions, specifically set out in item 12 of Schedule 1, but does not include false attribution of authorship;</li> </ul> |
| <b>Personal Information</b>         | has the same meaning as it has in section 6 of the Privacy Act;  |
| <b>Personnel</b>                    | means: <ul style="list-style-type: none"> <li>a. in relation to You - any natural person who is an officer, employee, agent or professional advisor of You or Your subcontractors; and</li> <li>b. in relation to Us - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of Us;</li> </ul>  |
| <b>Privacy Act</b>                  | means the <i>Privacy Act 1988</i> (Cth);   |
| <b>Project Officer</b>              | is the role described in clause 2.2.2 and is the person specified (by name or position) in item 5 of Schedule 1 or any substitute notified to You;   |
| <b>Records</b>                      | has the same meaning as it has in section 6 of the Privacy Act;  |
| <b>Sensitive Information</b>        | has the same meaning as it has in section 6 of the Privacy Act;  |
| <b>Services</b>                     | means the services described in item 1 of Schedule 1 and includes the provision to Us of the Contract Material specified in item 2 of Schedule 1;  |
| <b>Small Business</b>               | means a business with fewer than 20 full-time equivalent employees;  |



**Small Business Digital Champions Project** means the project of that name administered by Us;

**Specified Personnel** means the Personnel specified in item 8 of Schedule 1 as required to perform all or part of the work constituting the Services;

**Your Confidential Information** means Your information that:

- a. is described in item 14 of Schedule 1; and
- b. You identify, by notice in writing to Us after the Date of this Contract as confidential information for the purposes of this contract; and

**Your Representative** is the role described in clause 2.2.1 and is the person specified (by name or position) in item 6 of Schedule 1 or any substitute notified by You;

## **1.2. Interpretation**

1.2.1. In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and vice versa;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. a reference to a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution, re-enactment, or successor of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an item is a reference to an item in a schedule;
- i. a reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to this contract, including as amended or replaced from time to time by agreement in writing between the parties;
- j. the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.2.2. This contract consists of:

- a. this document;
- b. any schedules;
- c. any annexure or other attachments; and
- d. any document incorporated by reference.

1.2.3. In the event of any conflict or inconsistency between any part of:

- a. the terms and conditions contained in the clauses of this contract;
- b. the schedules;
- c. the annexure or other attachments, if any;
- d. documents incorporated by reference, if any,

then the material in any one of paragraphs (a) to (c) above has precedence over the material in a subsequent paragraph, to the extent of any conflict or inconsistency.

### **1.3. Construction of contract**

1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.

1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.

1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.

1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

### **1.4. Term of contract**

1.4.1. This contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.

## **2. Provision of Services**

---

### **2.1. Your principal obligations**

2.1.1. You must provide the Services specified in item 1 of Schedule 1.

2.1.2. In performing the Services, You must:

- a. undertake, coordinate and deliver the Services, including all work necessary and incidental for proper and due completion of the Services (whether or not specified);
- b. provide, develop or deliver to Us the Material and other deliverables specified in item 2 of Schedule 1;
- c. meet all Milestones, and comply with the time frame or due dates, for the performance of the Services specified in item 3 of Schedule 1;

- d. comply with all other requirements specified in Schedule 1;
  - e. exercise skill, care and diligence and perform the Services to a high professional standard and in accordance with relevant best practice, including any Commonwealth and industry standards;
  - f. ensure that Your Personnel (including Specified Personnel) exercise skill, care and diligence and perform the Services to a high professional standard and in accordance with relevant best practice, including any Commonwealth and industry standards;
  - g. retain all approvals and licences necessary to perform the Services in accordance with this contract;
  - h. as required by Us, work closely with Our Personnel and enable Our Personnel to observe any aspect of the work undertaken as part of performing the Services; and
  - i. submit invoices, and any required supporting documents, in the manner specified in clause 4.3.
- 2.1.3. You are responsible for the provision of all resources and equipment necessary for performance of the Services.
- 2.1.4. You acknowledge and agree that:
- a. You have the necessary expertise, experience, capacity and facilities required to perform Your obligations in accordance with this contract;
  - b. You have all qualifications, certifications and licences necessary to perform the Services;
  - c. the Services will be rendered with due care and skill and that any Materials supplied in connection with the Services will be reasonably fit for the purposes for which they are supplied;
  - d. in performing the Services, You will not:
    - i. breach an obligation owed to another person;
    - ii. infringe any Intellectual Property Rights or Moral Rights of another person; or
    - iii. act in a manner that may bring the Services, or Us, into disrepute.
- 2.1.5. All Services must be performed and delivered in accordance with the standards set out in this contract and to Our reasonable satisfaction.
- 2.1.6. We may:
- a. inspect all or any part of the Services, including any deliverables associated with the Services, on delivery; and
  - b. within 30 days after delivery (or such greater period nominated in Schedule 1) reject all or part of the Services on the grounds that they do not comply with the specifications, or otherwise conform to the requirements, of this contract.

- 2.1.7. If We reject all or part of the Services under clause 2.1.6, We will give notice to You setting out reasons for the rejection.
- 2.1.8. You must, within 14 days of receipt of the notice of rejection, either re-perform or rectify the Services so that they conform to the requirements of this contract, entirely at Your own cost. If, within the time specified (or such other time agreed in writing by Us), You fail to rectify or re-perform the Services, We may terminate this contract under clause 12.2.2.
- 2.1.9. Nothing in this clause affects or limits any other rights or remedies We have under this contract or at law.

## **2.2. Governance**

- 2.2.1. You must appoint a representative as the contact person for You in relation to all matters related to the operation of this contract (**Your Representative**). Your Representative may authorise another person to act on their behalf.
- 2.2.2. We will appoint a representative as the contact person for Us in relation to all matters related to the operation of this contract (**Project Officer**). The Project Officer may authorise another person to act on their behalf.
- 2.2.3. The day to day management of, and communication under, this contract is to be handled by Your Representative and the Project Officer or their delegates.

## **2.3. Liaison with Project Officer**

- 2.3.1. You must:
- a. liaise with the Project Officer as reasonably required;
  - b. provide information to Us or any other person nominated by Us, as requested by the Project Officer; and
  - c. within a timeframe specified by the Project Officer, comply with requests and directions of the Project Officer that are consistent with this contract.

## **2.4. Reporting**

- 2.4.1. You must provide to Us:
- a. reports in accordance with Schedule 1; and
  - b. any other reports that may reasonably be required by Us, within reasonable timeframes requested by Us.
- 2.4.2. You must provide:
- a. all reports in a form acceptable to Us; and
  - b. if, in Our opinion, either the form or the content of a report is not satisfactory, You must submit a revised report to Our satisfaction within 10 Business Days of notice to You from Us to do so.

## **2.5. Approval of documentation**

- 2.5.1. If a document or report is identified in Schedule 1 as being subject to Our approval, the following process applies:
- a. within 10 Business Days of being provided with the documentation by You, We will give You notice that:
    - i. the documentation meets the contract requirements; or
    - ii. the documentation does not meet the contract requirements and the reasons why it does not meet those requirements; and
  - b. if We give You notice that the documentation does not meet the contract requirements under clause 2.5.1.a.ii, You must correct the documentation so that it meets or exceeds the contract requirements and resubmit a revised version to Us for Our review, in which case clause 2.5.1.a. applies.
- 2.5.2. All reviews, updates and resubmissions of documentation will be at Your cost.

## **2.6. Subcontractors**

- 2.6.1. With the exception of the subcontractors approved by Us as at the Date of this Contract and specified in item 7 of Schedule 1, You must not subcontract the performance of any part of the Services without Our prior written approval.
- 2.6.2. We may, by notice, impose any conditions We consider appropriate when giving Our approval under clause 2.6.1 and You must comply with those conditions as notified.
- 2.6.3. You must ensure that any arrangement You enter into with a subcontractor is in writing.
- 2.6.4. You must ensure that every subcontractor is aware of all terms and conditions of this contract relevant to the subcontractor's part in the provision of the Services.
- 2.6.5. You must make available to Us (if requested), details of all subcontractors engaged in the performance of the Services.
- 2.6.6. You acknowledge, and must inform all subcontractors that, We may publicly disclose the names of any subcontractors engaged in the performance of the Services.
- 2.6.7. We may revoke Our approval of a subcontractor for performance of Services under this contract (including any subcontractor identified in item 7 of Schedule 1) on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with Personnel or another subcontractor acceptable to Us.

## **2.7. Specified Personnel**

- 2.7.1. You must ensure that the Specified Personnel will perform work in relation to the Services in accordance with this contract and according to their roles specified in item 8 of Schedule 1.
- 2.7.2. If Specified Personnel are unable to perform the work as required under clause 2.7.1, You must notify Us immediately.

2.7.3. You must, at Our request acting in Our absolute discretion, remove Personnel (including Specified Personnel) from work in relation to the Services.

2.7.4. If clause 2.7.2 or clause 2.7.3 applies, You must provide replacement Personnel acceptable to Us at no additional cost and at the earliest opportunity. If You are unable to provide acceptable replacement personnel, We may terminate this contract under clause 12.2.2.

## **2.8. Your responsibility**

2.8.1. Notwithstanding the involvement of any other person in the Services, You are fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:

- a. involvement by Us in the performance of the Services (as contemplated by this contract);
- b. inspection, review, acceptance or rejection of the Services (as contemplated by this contract);
- c. subcontracting of the Services (notwithstanding any approval or revocation given by Us); or
- d. payment made to You on account of the Services.

## **2.9. Working with vulnerable persons**

2.9.1. If in the performance of the Services Your Personnel are required to work in close proximity with people who are elderly, disabled or otherwise vulnerable or children, You must (unless notified by Us otherwise), arrange and pay for all checks in relation to a Personnel's involvement in the Services as specified in any relevant legislation in effect in the jurisdiction(s) in which the Services are being performed.

2.9.2. You must not allow Personnel to be involved in the provision of the Services that involve working with in close proximity with people who are elderly, disabled or otherwise vulnerable or children:

- a. if any relevant legislation provides or means that the Personnel must not be allowed to be so involved; or
- b. if:
  - i. a relevant check shows that the Personnel has been convicted of a crime and a reasonable person would consider that the conviction means that the Personnel would pose a risk to other persons involved in the Services; or
  - ii. there is otherwise a reasonably foreseeable risk that the Personnel may cause loss or harm to other persons involved in the Services,

unless You have put in place reasonable measures to remove or substantially reduce that risk to the Department's satisfaction.

### **3. Publicity**

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#### **3.1. Acknowledgement and promotion**

3.1.1. You must market and promote the Services and deal with enquiries relating to Your provision of the Services, in accordance with the obligations set out in Schedule 1 and as otherwise required by Us during the course of the contract.

#### **3.2. Our right to publicise the Services**

3.2.1. We may, by any means, publicise and report on the Services and on the awarding of this contract to You, including Your name, the amounts of Fees paid, or expected to be paid to You, and a description of the Services.

### **4. Fees**

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#### **4.1. Our principal obligations**

4.1.1. We will:

- a. pay You the Fee specified in item 9 of Schedule 1; and
- b. make all payments as and when specified in clause 4.2.

#### **4.2. Payment**

4.2.1. We will only be liable to make payments under clause 4.1.1 subject to:

- a. the receipt of a correctly rendered invoice for an amount properly due under this contract; and
- b. completion, to Our reasonable satisfaction, of the relevant part of the Services to which the payment relates.

4.2.2. Subject to this contract, the date for payment is 30 calendar days after delivery of a correctly rendered invoice to Us. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

4.2.3. Payment will be effected by electronic funds transfer (EFT) to Your nominated bank account as specified in item 4 of Schedule 1 or as otherwise notified to Us.

4.2.4. Where:

- a. the value of this contract (including all contract options) is not more than \$1 million (GST inclusive); and
- b. the amount of the interest payable exceeds \$100,

then for any payment that has not made by Us by the due date for payment (as determined under clause 4.2.2), We must pay the Interest on the unpaid amount calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day the amount is paid in full.

### **4.3. Invoices**

4.3.1. To be correctly rendered, an invoice issued by You must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Your name and Australian Business Number (ABN);
- c. Our name and address;
- d. the date of issue of the tax invoice;
- e. the title of this contract and the contract number or purchase order number (if any) or date of execution;
- f. details of fees properly payable under this contract including the items (ie. deliverables or Milestones) to which they relate;
- g. the total amount payable (including GST); and
- h. the GST amount shown separately.

4.3.2. All invoices must be addressed to the Project Officer (or as otherwise notified by Us).

### **4.4. Our rights to recover payments**

4.4.1. If, at any time:

- a. an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment); or
- b. a payment is made to You and You have not completed, to Our satisfaction, that part of the Services to which the payment relates,

(each a **Recoverable Payment**), We may (in addition and without prejudice to any other right We may have) recover from You the amount of the Recoverable Payment.

4.4.2. Any amount owed to Us under clause 4.4.1 must be repaid to Us within 20 Business Days of a written notice from Us, or dealt with as directed in writing by Us.

4.4.3. A Recoverable Payment may be recovered from You, including by offsetting the Recoverable Payment against any amount subsequently due to You under this contract or any other arrangement between the parties.

4.4.4. If a Recoverable Payment is not repaid to Us, Interest is payable on the unpaid amount calculated in respect of each day from the day after the expiry of the 20 Business Days' notice referred to in clause 4.4.1, up to and including the day the amount is paid in full.

4.4.5. An amount owed to Us under clause 4.4.1 and any Interest owed under clause 4.4.4 is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.

4.4.6. An adjustment note must be provided to Us if required by the GST Act including where You repay some or all of the Fee to Us.



#### **4.5. Our rights to defer or reduce payment**

- 4.5.1. We may (in addition and without prejudice to any other right We may have) defer a payment or reduce the amount of any payment if and for so long as You have not completed, to Our satisfaction, that part of the Services to which the payment relates.
- 4.5.2. If We exercise Our rights under clause 4.5.1, You must continue to perform any obligations under this contract, unless We agree otherwise in writing.

#### **4.6. Superannuation**

- 4.6.1. This contract is entered into on the understanding that We are not required to make any superannuation contributions in connection with this contract.

### **5. Intellectual Property**

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#### **5.1. Use of Commonwealth Material**

- 5.1.1. We will provide Commonwealth Material to You as specified in item 10 of Schedule 1.
- 5.1.2. We grant (or will procure) a royalty-free, non-exclusive licence for You to use, reproduce and adapt the Commonwealth Material for the purposes of this contract.
- 5.1.3. You must:
- a. use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in item 10 of Schedule 1, and any direction notified by Us from time to time;
  - b. keep safely, and maintain, all Commonwealth Material provided to You for the purposes of this contract; and
  - c. return to Us all Commonwealth Material remaining in Your possession at the end of this contract, unless otherwise specified in item 10 of Schedule 1.
- 5.1.4. You must not use the Commonwealth Coat of Arms for the purposes of this contract.
- 5.1.5. You may only use Our program logo for the Small Business Digital Champions Project to promote your involvement in the Small Business Digital Champions Project in accordance with any usage guidelines or conditions advised by the Department.

#### **5.2. Intellectual Property in Contract Material**

- 5.2.1. This clause 5.2 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
  - b. any Existing Material.
- 5.2.2. Intellectual Property in all Contract Material vests or will vest in You.
- 5.2.3. You grant (or will procure for) Us a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Contract Material and any Existing Material, in conjunction with the Contract Material, for any purpose.

- 5.2.4. You agree that the licence granted under this clause 5.2 includes a right for Us to licence that Material to the public under a CC BY Licence [see <https://creativecommons.org/licenses/by/4.0/>]. You must, if requested by Us, provide Us with all author or licensor attribution details in order for Us to comply with the CC BY Licence conditions.
- 5.2.5. You must, on Our request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 5.2.
- 5.2.6. You warrant that:
- a. You are entitled; or
  - b. You will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 5.2.

### **5.3. Moral Rights**

- 5.3.1. Where You are a natural person and the author of the Contract Material, You consent to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given).
- 5.3.2. Where clause 5.3.1 does not apply, You must obtain from each author of any Contract Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to Us.
- 5.3.3. This clause 5.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

## **6. Disclosure of information**

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### **6.1. Interpretation**

- 6.1.1. Subject to clause 6.1.5:
- a. You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
  - b. We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party.
- 6.1.2. In giving written approval to disclosure, a party may impose such conditions as it thinks fit, and the other party agrees to comply with those conditions.
- 6.1.3. We may at any time require You to arrange for any person engaged in, or in relation to, the performance or management of this contract (including Personnel and subcontractors) to give a written undertaking in a form acceptable to Us relating to the use and non-disclosure of Our Confidential Information.

- 6.1.4. If You receive a request under clause 6.1.3 You must promptly arrange for all undertakings to be given.
- 6.1.5. The obligations on the parties under this clause 6 will not be breached if information:
- a. is disclosed by Us to the responsible Minister;
  - b. is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the Parliament of the relevant State or Territory;
  - c. is disclosed by Us for the purposes connected with the administration, audit, review and management of this contract;
  - d. is shared by Us within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
  - e. is authorised or required by law to be disclosed;
  - f. is in the public domain otherwise than due to a breach of this clause 6;
  - g. is in possession of a party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - h. has been independently developed or acquired by the recipient.
- 6.1.6. Nothing in this clause 6 limits Your obligations under any other clause of this contract.

**6.2. Period of confidentiality**

- 6.2.1. The obligations under this clause 6 continue, notwithstanding the expiry or termination of this contract:
- a. in relation to an item of information described in item 14 of Schedule 1 - for the period set out in that item;
  - b. in relation to any information identified in writing after the Date of this Contract as confidential information for the purposes of this contract - for the period agreed by the parties in writing; and
  - c. in relation to Our information that You know or ought to know by its nature is confidential - until the information is released into the public domain otherwise than by a breach of this contract.
- 6.2.2. You must promptly return to Us all Our Confidential Information remaining in Your possession at the end of this contract, unless otherwise specified in item 14 of Schedule 1.

**7. Fraud**

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- 7.1.1. You must not engage in, and must ensure that Your Personnel, subcontractors and agents do not engage in, fraudulent activity in relation to this contract.
- 7.1.2. If, after investigation, We determine that You have been engaged in fraudulent activity, We may, without limitation to any other rights available to Us, terminate this contract under clause 12.2.2.

## **8. Privacy**

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### **8.1. Your obligations in relation to privacy**

8.1.1. You agree, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of an APP or contrary to the Privacy Act; and
- b. to comply with any conditions, restrictions or guidelines referred to in, or relating to the matters set out in clause 8.1.2, to the extent that they are consistent with the APPs.

8.1.2. In relation to Personal Information, including Sensitive Information, received, created or held by You for the purposes of this contract, You agree:

- b. to use or disclose Personal Information obtained in the course of conducting the Services only for the purposes of this contract;
- c. except where this clause expressly requires You to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if You were an agency;
- d. to notify individuals whose Personal Information You hold, that:
  - i. complaints about Your acts or practices may be investigated by the Commissioner who has power to award compensation in appropriate circumstances; and
  - ii. their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing Services;
- e. unless expressly authorised or required under this contract, not to engage in any act or practice that would breach:
  - i. APP 7 (direct marketing);
  - ii. APP 9 (adoption, use or disclosure of government related identifiers); or
  - iii. any registered APP code that is applicable to You;
- f. to comply with any request under section 95C of the Privacy Act;
- g. not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Project Officer;
- h. to co-operate with reasonable demands or inquiries made by the Commissioner or the Project Officer in relation to the management of Personal Information;
- i. to ensure that any person who You allow to access Personal Information is made aware of, and undertakes in writing, to observe the APPs (or a registered APP code, where applicable);
- j. to comply with policy guidelines laid down by Us, or issued by the Commissioner, from time to time relating to the handling of Personal Information;

- k. if requested by Us, at the end of the term of this contract, to return all Records containing Personal Information to the Project Officer, or delete or destroy those Records in the presence of a person authorised by the Project Officer;
- l. to Your name being published in reports by the Commissioner; and
- m. to comply with any other requirements specified in item 13 of Schedule 1.

8.1.3. You must immediately notify the Project Officer if You become aware:

- a. of a breach or possible breach of any of Your obligations under this clause 8;
- b. that an Eligible Data Breach in relation to Personal Information received, created or held by You for the purposes of this contract has or may have occurred;
- c. that a disclosure of Personal Information may be required or authorised by law; or
- d. of an approach to You by the Commissioner or by an individual claiming that their privacy has been interfered with.

8.1.4. Where one party notifies the other party that an Eligible Data Breach in relation to Personal Information received, created or held by You for the purposes of this contract has or may have occurred, You must:

- a. carry out an assessment in accordance with the requirements of the Privacy Act;
- b. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
- c. take all other action necessary to comply with the requirements of the Privacy Act (including preparing a statement for the Commissioner and notifying affected individuals about the Eligible Data Breach where required); and
- d. take any other action as reasonably directed by Us.

Note: more information about the Privacy Act and the APPs is available at <http://www.oaic.gov.au/>.

## **9. Dealing with copies and access to documents**

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### **9.1. Actions at end of contract**

9.1.1. You will, on expiration or termination of this contract, deal with all documents, devices, articles or mediums in which Commonwealth Material, Commonwealth Data, Contract Material or Our Confidential Material is embodied as directed by Us, subject to any requirement of law binding on You regarding retention of archival or back-up copies.

### **9.2. Access to documents**

9.2.1. This clause 9.2 applies if this contract is a 'Commonwealth contract' as defined in the *Freedom of Information Act 1982* (Cth) and 'document' has the meaning given by that Act.

- 9.2.2. Where We have received a request for access to a document created by, or in the possession of, You or any of Your subcontractors that relates to the performance of this contract (and not to the entry into the contract), We may at any time by written notice require You to provide the document to Us and You must, at no additional cost to Us, promptly comply with the notice.
- 9.2.3. You must assist Us in respect of Our obligations under the *Freedom of Information Act 1982* (Cth).
- 9.2.4. You must include in any subcontract relating to the performance of this contract provisions that will enable You to comply with Your obligations under this clause 9.2.

## **10. Liability**

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### **10.1. Proportionate liability regimes excluded**

- 10.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against You under or in connection with this contract.

### **10.2. Indemnity**

- 10.2.1. You indemnify Us from and against any:

- a. cost or liability incurred by Us;
- b. loss or damage to Our property; and
- c. loss or expense incurred by Us in dealing with any claim against Us including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by Us,

arising from or in connection with:

- d. a breach by You of this contract;
- e. an act or omission involving fault on the part of You, Your Personnel or Your Subcontractors in connection with this contract;
- f. any claims by any person in respect of loss, damage, injury or death to the extent caused by any act or omission of You, Your Personnel or Your subcontractors;
- g. any claims by any person in respect of loss of, or damage to, any property to the extent caused by any act or omission of You, Your Personnel or Your subcontractors; or
- h. the use by Us of the Contract Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property or Moral Rights in Contract Material or Existing Material.

- 10.2.2. Your liability to indemnify Us under clause 10.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of Us or Our Personnel contributed to the relevant cost, liability, loss, damage or expense.

- 10.2.3. Our right to be indemnified under this clause 10.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 10.2.4. In this clause 10.2 “fault” means any negligent or unlawful act or omission or wilful misconduct, including fraud.

## **11. Dispute resolution**

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### **11.1. Procedure for dispute resolution**

- 11.1.1. A dispute arising under this contract will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
  - b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
  - c. the representatives will try to settle the dispute by direct negotiation between them;
  - d. failing settlement within a further 10 Business Days, or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 11.1.1.b), the parties may agree to refer the dispute to an independent third person that the parties agree may:
    - i. intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
    - ii. mediate and recommend some form of non-binding resolution;
  - e. the parties will co-operate fully with any process instigated under clause 11.1.1.d in order to achieve a speedy resolution; and
  - f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

### **11.2. Costs**

- 11.2.1. Each party must bear its own costs of complying with this clause 11, and the parties must bear equally the cost of any third person engaged under clause 11.1.1.d.

### **11.3. Continued performance**

- 11.3.1. Despite the existence of a dispute, You must (unless required in writing by Us not to do so) continue to perform the Services.

#### **11.4. Exemption**

11.4.1. Clause 11.1 does not apply:

- a. to action by Us under or purportedly under clauses 12.1 or 15.3;
- b. to action by either party under or purportedly under clause 12.2;
- c. where an agency or authority of the Commonwealth of Australia, a State or Territory is investigating a breach or suspected breach of the law by You; or
- d. to legal proceedings by either party seeking urgent interlocutory relief.

#### **12. Termination or reduction in scope of Services**

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##### **12.1. Termination or reduction with costs**

12.1.1. We may by notice, at any time and in Our absolute discretion, terminate this contract or reduce the scope of the Services immediately.

12.1.2. You must, on receipt of a notice of termination or reduction:

- a. stop or reduce work as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction; and
- c. continue work on any part of the Services not affected by the notice.

12.1.3. In the event of termination under clause 12.1.1, We will be liable only:

- a. to make any payment relating to Services completed before the effective date of termination; and
- b. to reimburse any expenses You unavoidably incur relating entirely to Services not covered under clause 12.1.3.a and directly attributable to the termination.

12.1.4. We will not be liable to pay amounts under clauses 12.1.3.a and 12.1.3.b which would, added to any fees already paid to You under this contract, together exceed the Fee set out in item 9 of Schedule 1.

12.1.5. In the event of a reduction in the scope of the Services under clause 12.1.1, Our liability to pay Fees will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

12.1.6. You will not be entitled to compensation for loss of prospective income or profits and redundancy costs.

##### **12.2. Termination for breach**

12.2.1. If You are in breach of any of Your obligations under this contract, and We consider that the breach is:

- a. not capable of remedy – We may, by notice, terminate this contract immediately;
- or



- b. capable of remedy – We may, by notice require that the breach be remedied within 10 Business Days of receiving the notice and, if the breach is not remedied within that time, may terminate this contract immediately by giving a second notice.
- 12.2.2. We may also, by notice, terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have):
- a. where expressly provided for in this contract; or
  - b. if We are satisfied that, prior to entering into this contract, You engaged in misleading or deceptive conduct or omitted to provide information to Us in connection with the performance or awarding of this contract; or
  - c. if, to the extent permitted by law, You:
    - i. being a corporation - come under any form of external administration, or receive a notice, or proceedings are commenced, to dissolve You or cancel Your incorporation or registration, or to place You under any form of external administration; or
    - ii. being an individual - become bankrupt or enter into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth); or
  - d. if, You fail to maintain any insurance as required under this contract; or
  - e. if, You cease to carry on a business relevant to the performance of the Services.
- 12.2.3. You must notify Us immediately upon becoming aware of any of the circumstances in clauses 12.2.2a-e arising.

### **13. Notices**

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#### **13.1. Format, addressing and delivery**

- 13.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:
- a. *if given by You to Us* – addressed to the Project Officer at the address specified in item 15 of Schedule 1 or as otherwise notified by Us; or
  - b. *if given by Us to You* – given by the Project Officer (or any superior officer to the Project Officer) to Your Representative and addressed as specified in item 16 of Schedule 1 or as otherwise notified by You.
- 13.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
  - b. signed by the person giving the notice and sent by pre-paid post; or
  - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

**13.2. When received**

13.2.1. A notice is taken to have been received:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by pre-paid post* – 5 Business Days after the date of posting to the relevant address; or
- c. *if transmitted electronically* – at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if a notice was being given under a law of the Commonwealth.

13.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be received on the next Business Day in that place.

**14. Reserved**

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**14.1. Indigenous Procurement Policy**

14.1.1. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (for further information, see Indigenous Procurement Policy, available at <https://www.pmc.gov.au/resource-centre/government/commonwealth-indigenous-procurement-policy>).

14.1.2. You must use reasonable endeavours to increase Your:

- a. purchasing from Indigenous enterprises; and
- b. employment of Indigenous Australians,

in the delivery of the Services.

14.1.3. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in Your supply chain.

14.1.4. In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating as a business.

**15. General provisions**

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**15.1. Work health and safety**

15.1.1. In this clause 15.1:

Approved Code of Practice

means a practical guide to achieving the standards of health, safety and welfare that is approved pursuant to section 274 of the WHS Act;

|   |  |
|---|--|
| Inspector, Non-Disturbance Notice, Notifiable Incident, Provisional Improvement Notice, Prohibition Notice, Regulator, WHS Undertaking and Worker | have the meaning given in the WHS Act;   |
| Section 155 Notice  | means a notice issued under section 155 of the WHS Act;  |
| Section 171 Direction   | means a direction issued under section 171 of the WHS Act;   |
| WHS Act   | means <i>Work Health and Safety Act 2011</i> (Cth); and  |
| WHS legislation   | means the WHS Act, any regulations made under that Act and any 'corresponding WHS law' within the meaning of section 4 of the WHS Act and Regulation 6A of the <i>Work Health and Safety Regulations 2011</i> (Cth). |

- 15.1.2. In carrying out this contract You must ensure that the Services are performed in a safe manner, including by:
- a. complying with, and ensuring Your Workers comply with, all WHS legislation and Approved Codes of Practice relating to work health and safety;
  - b. when performing the Services on Your premises, complying with, and ensuring Your Workers comply with, all Your applicable instructions, directions, policies and procedures relating to work health and safety;
  - c. when performing the Services at Our Premises as directed by Us, You must:
    - i. inform Yourself, and ensure Your Workers inform themselves, of Our work health and safety policies and procedures that We provide to You and are relevant to the Services; and
    - ii. comply with, and ensure Your Workers comply with, the above health and safety policies and procedures;
  - d. not placing Us in breach of Our obligations under the WHS legislation and ensuring that Your Workers do not place Us in breach of Our obligations under WHS legislation;
  - e. where the health and safety of any person may be affected by the performance of the Services, consulting, cooperating and coordinating with Us and any other relevant duty holders and Workers in relation to health and safety issues;
  - f. notifying Us, as soon as practicable, of:

- i. any concern You have regarding work health and safety in relation to Services performed by Workers;
- ii. any Notifiable Incident arising and providing Us with a copy of any written notice given to the Regulator, the results of any investigation into the cause and any recommendation You have for prevention in the future;
- iii. breach or suspected breach of the WHS legislation in relation to the Services performed under this contract;
- iv. cessation of work on the Services, or direction to cease work on the Services from any person having a right or power under the WHS legislation to do so, due to unsafe work;
- v. entry by an Inspector to any place where the Services are being performed or a Provisional Improvement Notice, Non-Disturbance Notice, Section 155 Notice, Section 171 Direction or Prohibition Notice is issued or WHS Undertaking provided to the Regulator; and
- vi. proceedings against, decision by the Regulator in relation to, or request from the Regulator to You or Your Workers under the WHS Act.

15.1.3. In the event of any inconsistency between:

- a. any of the policies and procedures referred to in this clause; or
- b. WHS legislation,

You will comply with the policies, procedures and/or legislation that comply with the WHS legislation and notify Us of any such inconsistency.

15.1.4. To the extent permitted by law, We are not liable to You for any loss in connection with work health and safety in relation to Workers performing Services.

## **15.2. Workplace Gender Equality**

15.2.1. In this clause 15.2:

Letter of Compliance means a letter issued by the Workplace Gender Equality Agency which indicates compliance by a Relevant Employer with WGE Act;

Relevant Employer has the same meaning as it has in the WGE Act; and

the WGE Act means the *Workplace Gender Equality Act 2012* (Cth).

15.2.2. Clauses 15.2.3 to 15.2.5 only apply to the extent that You are a Relevant Employer.

15.2.3. You must comply with Your obligations, if any, under the WGE Act.

15.2.4. If You become non-compliant with the WGE Act during the term of this contract, You must notify Us within 10 Business Days of becoming non-compliant.

- 15.2.5. If the term of this contract exceeds 18 months, You must provide a current Letter of Compliance within 18 months from the Date of this Contract and following this, annually, to Us.
- 15.2.6. You must not enter into a subcontract under this contract for the performance of any part of the Services with a subcontractor who is a Relevant Employer, unless that subcontractor has provided You with a current Letter of Compliance.
- 15.2.7. If You receive a Letter of Compliance, or notification of non-compliance with the WGE Act, from a subcontractor approved under this contract, then You must provide that Letter of Compliance or notification to Us within 10 Business Days of You receiving it.
- 15.2.8. Compliance with the WGE Act does not relieve You from Your responsibility to comply with Your other obligations under this contract.

**15.3. Record keeping**

- 15.3.1. You must:
  - a. keep and require Your subcontractors to create and maintain true, complete and accurate books and records relating to the Services, in accordance with accounting standards and in sufficient detail to enable the amounts payable by Us under this contract to be determined; and
  - b. retain and require Your subcontractors to retain for a period of 7 years after the expiry or termination of this contract all books and records relating to the Services.
- 15.3.2. Notwithstanding this clause 15.3, if We consider it appropriate, We may, at Our absolute discretion, impose special conditions in relation to records management, and You must comply with those special conditions as directed by Us.
- 15.3.3. When requested by Us, You must provide the records in relation to Your delivery of the Services to Us within the timeframe required by Us.
- 15.3.4. You must bear Your own costs of complying with this clause 15.3.
- 15.3.5. This clause 15.3 applies for the term of this contract and for a period of 7 years from the expiry or termination of this contract.

**15.4. Audit and access**

- 15.4.1. You must at all reasonable times during the term of this contract and for 3 years after its expiry or termination give any person authorised in writing by Us:
  - a. reasonable access to:
    - i. Your Personnel and equipment;
    - ii. premises occupied by You;
    - iii. Material; and
  - b. reasonable assistance to:
    - i. inspect the performance of the Services;

- ii. locate and inspect Material;
- iii. make copies of Material and remove those copies, relevant to the Services or this contract.

15.4.2. The rights referred to in clause 15.4.1 are subject to:

- a. the provision of reasonable prior notice to You; and
- b. Your reasonable security procedures.

15.4.3. If a matter is being investigated which, in Our opinion or in the opinion of any person authorised in writing by Us, may involve an actual or apprehended breach of the law, clause 15.4.2a will not apply.

15.4.4. The requirement for access specified in clause 15.4.1 does not in any way reduce Your responsibility to perform Your obligations under this contract.

15.4.5. Where You breach Your obligations under this clause 15.3, We may terminate this contract in accordance with clause 12.2.2.

NOTE: There are additional rights of access under the Ombudsman Act 1976, the Privacy Act, and the Auditor-General Act 1997.

## **15.5. Insurance**

15.5.1. You must:

- a. effect and maintain the insurance specified in item 17 of Schedule 1; and
- b. on request, provide proof of insurance acceptable to Us.

15.5.2. This clause 15.5 continues in operation for so long as any obligations remain in connection with this contract.

## **15.6. Extension of provisions to subcontractors and Personnel**

15.6.1. In this clause 15.6:

**Requirement** means an obligation, condition, restriction or prohibition binding on You under this contract.

15.6.2. You must ensure that:

- a. Your subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract (including any subcontract) entered into in connection with this contract imposes all relevant Requirements on the other party.

15.6.3. You must exercise any rights You may have against any of Your Personnel or third parties in connection with a Requirement in accordance with any direction by Us.

**15.7. Conflict of interest**

15.7.1. You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Contract no Conflict exists or is likely to arise in the performance of the Services.

15.7.2. If, during the period of this contract a Conflict arises, or appears likely to arise, You must:

- a. notify Us immediately;
- b. make full disclosure of all relevant information relating to the Conflict; and
- c. take any steps We reasonably require to resolve or otherwise deal with the Conflict.

15.7.3. If You fail to notify Us under this clause 15.7, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this contract under clause 12.2.2.

**15.8. Relationship of parties**

15.8.1. You and Your Personnel are not by virtue of this contract an officer, employee, partner or agent of Ours, nor do You or Your Personnel have any power or authority to bind or represent Us.

15.8.2. You must not and You must ensure that Your Personnel do not:

- a. misrepresent Your or their relationship with Us; or
- b. engage in any misleading or deceptive conduct in relation to the Services.

15.8.3. For the avoidance of doubt, except to the extent that You are restricted or prevented from disclosing Our Confidential Information or Personal Information, no right or obligation in this contract is to be read or understood as restricting or preventing Your rights to:

- a. comment on;
- b. advocate support for; or
- c. oppose change to;

any matter established by law, policy or practice of the Commonwealth.

**15.9. Waiver**

15.9.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.

15.9.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**15.10. Variation**

15.10.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

**15.11. Assignment and novation**

- 15.11.1. You cannot assign Your obligations, and must not assign Your rights, under this contract without Our prior written approval.
- 15.11.2. You must not negotiate with any other person to enter into an arrangement that will require novation of Your rights or obligations under this contract without first consulting Us.

**15.12. Survival**

- 15.12.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:
- a. licensing of Intellectual Property;
  - b. confidentiality;
  - c. privacy;
  - d. dealing with copies;
  - e. books and records;
  - f. audit and access;
  - g. an indemnity; or
  - h. any other provision which expressly or by implication from its nature is intended to continue.
- 15.12.2. Your obligations under this contract are intended to operate in addition to, and not otherwise limit, any of Your other obligations at law.

**15.13. Compliance with laws and our policies**

- 15.13.1. You must, in carrying out Your obligations under this contract, comply with:
- a. any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority applicable to the Services; and
  - b. any of Our policies, standards, protocols or codes of conduct notified by Us to You in writing during the term of this contract,
- including those listed in item 18 of Schedule 1.
- 15.13.2. You acknowledge that:
- a. when dealing with Your employees, You must comply with the *Fair Work Act 2009* (Cth) and related legislation, and obligations under relevant work health and safety laws;
  - b. Chapter 7 of the *Criminal Code Act 1995* (Cth) provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;



- c. giving false or misleading information is a serious offence under the *Criminal Code Act 1995* (Cth);
- d. the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this contract (other than a person to whom You are authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two years' imprisonment;
- e. in respect of data, including personal information, held in connection with this contract, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this contract is an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) which may attract a substantial penalty, including imprisonment;
- f. You are aware of the provisions of section 79 of the *Crimes Act 1914* (Cth) relating to official secrets; and
- g. You may be subject to the provisions of the *Competition and Consumer Act 2010* (Cth) and the *Archives Act 1983* (Cth).

**15.14. Applicable law**

- 15.14.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 15.14.2. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Just members?  
Agreeing to stop the  
separately  
charging?

## SCHEDULE 1. CONTRACT DETAILS

### 1. Services

---

(see clause 2)

#### 1.1. Service availability

You must provide digital advisory services as set out in this Schedule 1 to Your members who are Australian small businesses for 24 months from the Date of the Contract.

The Services must be accessible by all of Your Australian Small Business members, including members from diverse backgrounds.

#### 1.2. Industry specific

The Services must be tailored to Your industry, and be up-to-date with digital and online best practice for Your industry.

#### 1.3. Digital and online only advice

In providing the Services, You may provide advice to Your members on any or all of the following digital and online related topics:

- i. technology trends and technology adoption;
- ii. hardware;
- iii. software;
- iv. online content development;
- v. social media and digital marketing;
- vi. websites;
- vii. online security and data privacy;
- viii. digital playbooks or digital best practice guides for the business sector;
- ix. online digital planning;
- x. digital training; and
- xi. coaching and support for going online.

#### 1.4. Service delivery formats

The Services may be delivered to Your members through a combination of channels and formats, including face to face and remote/online delivery methods. We expect that You will leverage Your established engagement platforms to provide ready access to the Services to Your members.

**1.5. Relating digital and online technology to business needs**

You must provide Services to Your members on how digital and online technology can improve small business outcomes in ways relevant to Your sector and/or Your members' needs.

**1.6. Promotion of the Small Business Digital Champions Project**

You must promote the Small Business Digital Champions Project through Your public channels at least once every three months during the 24 months from the Date of the Contract to ensure the Small Business Digital Champions Project receives wide public attention.

If We, at our discretion, provide you with promotional material about the Small Business Digital Champions Project, You must use such promotional material when promoting the Project.

**1.7. Collaboration and cross promotion with the Small Business Digital Champions Project**

If You identify an opportunity for collaboration on the delivery of Services between You and any of the 100 small businesses who are participating in the Small Business Digital Champions Project, You may liaise with the organisation identified by Us as the Digital Transformation Provider ('DTP'), who will be supporting the digital transformation of the 100 small businesses.

This will ensure that opportunities for collaborative service delivery and cross-promotion between Your members and the broader Small Business Digital Champions Project are leveraged, if possible. We will provide You with contact details of the DTP.

To support responsive and holistic program delivery, You must promptly respond to any requests for information from the DTP regarding the Services You are providing to Your members. We will broker any requests from the DTP to ensure that the requests are relevant to the Services being provided by You.

**1.8. Key Performance Indicators**

Your success in providing the Services will be measured by the quantity and quality of the Services in accordance with the below key performance indicators ('KPIs'):

- i. All of Your small business members receive communications regarding digital advice (for example, via website updates, emails or social media platforms) once per month during the 24 months from the Date of the Contract.
- ii. A minimum of 200 of Your small business members receive one-on-one interactive Services (via face to face meetings/direct email/phone/live webchat/webinar/face to face workshops) during each six month period from the Date of this Contract.

You must have the tools to measure Your performance against the KPIs and to record:

- iii. the types of one-on-one Services provided e.g. website updates, emails or social media platforms;
- iv. how many of Your members received one-on-one Services;

- v. how many of Your members obtained multiple Services;
- vi. the total number of Small Businesses accessing Services by State and Territory, [only include jurisdictions applicable to Your membership];
- vii. the topics of Services provided;
- viii. the number of times You have promoted the Services to Your membership to ensure that they are aware of the Services You are providing and the Small Business Digital Champions Project;
- ix. the number of times You have promoted the Small Business Digital Champions Project publicly;
- x. the postcode of Your members who received one-on-one Services; and
- xi. the number of communications regarding digital advice You have sent to at least 75% of Your members.

You must ensure that Your members who receive Services are made aware that information regarding the provision of the Services may be provided to Us for reporting purposes and to evaluate the Small Business Digital Champions Project.

#### **1.9. Survey**

We may also require that You send a survey at 22 months after the Date of the Contract to all of Your members for evaluation purposes. We will design the survey, in consultation with You. The survey will be anonymous, and the information provided by Your members will be used by Us for evaluation purposes only.

You must collect and report to Us the survey feedback.

## **2. Required Contract Material**

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(see clause 2.1.2.b)

### *Reporting*

You must prepare and submit reports to Us from the Date of the Contract on Your delivery of the Services in accordance with item 3.2.

Each report must include the following information:

- i. the results of Your performance against the KPIs for the period of the report;
- ii. the types of one-on-one Services provided e.g. website updates, emails or social media platforms;
- iii. how many of Your members received one-on-one Services;
- iv. how many of Your members obtained multiple Services;
- v. the total number of Small Businesses accessing Services by State and Territory [only include jurisdictions applicable to Your membership];
- vi. the topics of Services provided;

- vii. the number of times You have promoted the Services to Your small business members to ensure that they are aware of the Services You are providing and the Small Business Digital Champions Project;
- viii. the number of times You have promoted the Small Business Digital Champions Project publicly;
- ix. the postcode of Your members who received one-on-one Services;
- x. the number of communications regarding digital advice You have sent to at least 75% of Your members;
- xi. detailed information about how Your small business members have benefited from receiving the Services; and
- xii. examples of the benefits to Your small business members of receiving the Services. Examples could include:
  - A. improved business processes;
  - B. expansion into new markets;
  - C. attraction of additional customers; and
  - D. achievement of a better work/life balance while growing their business.

A one-off report is required three months from the date of the contract that includes the above information and an additional requirement of an assessment of your industries digital needs.

You must provide the reports to Us in electronic form and using any templates for reporting that We may provide to You from time to time.

### **3. Completion Date and Time-frame**

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(see clause 2.1.2.c)

#### **3.1. Completion Date:**

The Completion Date is the day immediately following the date on which You have performed all of Your obligations under this Schedule 1.

#### **3.2. Time-frame:**

The Services must be provided in accordance with the following table:

| <b>Milestone No.</b> | <b>Milestone description</b>   | <b>Date</b>  |
|----------------------|--|--|
| 1                    | One-off initial three monthly report that includes an assessment of your industry needs. | Within 10 Business Days following three months from the Date of this Contract. |
| 1.                   | Six month report on the delivery of Services.  | Within 10 Business Days following six months from the Date of this Contract.   |
| 2.                   | Six month report on the delivery of Services.  | Within 10 Business Days following 12 months from the Date of this Contract.    |
| 3.                   | Six month report on the delivery of Services.  | Within 10 Business Days following 18 months from the Date of this Contract.    |
| 4.                   | Final six month report on the delivery of the Services.                                  | Within 10 Business Days following 24 months from the Date of this Contract.    |

#### **4. Invoicing and payment**

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(see clauses 2.1.2.i, 4.1.1b & 4.3)

##### **4.1. Invoices:**

You are required to send invoices to the Department at the completion of each Milestone otherwise the Department may withhold payment.

##### **4.2. Payment:**

Payment will be effected by electronic funds transfer (EFT) to Your following bank account:

Bank ^insert^

Account name ^insert^

BSB ^insert^

Account number ^insert^

#### **5. Project Officer**

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(see clause 2.2)

The Project Officer is the person for the time-being holding, occupying or performing the duties of Director, currently, s22 [redacted] available on telephone number s22 [redacted] [redacted] or via the address and facsimile number set out in item 15 of Schedule 1.

**6. Your Representative**

(see clause 2.2)

**Note to Industry Associations: Please advise the name, position and contact details for the person fulfilling the role of 'Your Representative'.**

Your Representative is the person for the time-being holding, occupying or performing [insert role and name], available on [insert contact details].

**7. Subcontractors**

(see clause 2.6)

You may subcontract the performance of parts of the Services as follows:

| Name     | Subcontracted services | Additional conditions |
|----------|------------------------|-----------------------|
| ^insert^ | ^insert^               | ^insert ^             |
|          |                        |                       |

**8. Specified Personnel**

**Note to Industry Associations: Please specify those individuals that will have managerial responsibility for the provision of the Services. The Department expects that this will include Your Representative.**

(see clause 2.7)

| Name     | Experience, qualifications and skills required | Details of role / Services to be performed |
|----------|--|--|
| [Insert] | [insert]                                       | Your Representative                        |
|          |  |  |

**9. Fees**

(see clause 4.1, 12.1.3a, 12.1.4, & 12.1.5)

The total Fee payable for the Services is \$100,000 exclusive of GST payable by the following instalments.

| Amount (GST exclusive) | Payable  |
|------------------------|--|
| \$30,000               | To be paid on Date of this Contract.   |
| \$15,000               | To be paid following Our approval of Milestone 1, in accordance with clause 2.5. |
| \$15,000               | To be paid following Our approval of Milestone 2, in accordance with clause 2.5. |
| \$20,000               | To be paid following Our approval of Milestone 3, in accordance with clause 2.5. |
| \$20,000               | To be paid following Our approval of Milestone 4, in accordance with clause 2.5. |

**10. Commonwealth Material**

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(see clause 5.1)

| Description of Commonwealth Material          | Conditions on use           |
|---|-----------------------------|
| Small Business Digital Champions Project logo | As set out in clause 5.1.5. |

**11. Contract Material**

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(see clauses 5.2.1)

Existing Material

***Note to Industry Associations: Please advise of any Existing Material you intend to use in providing the Services.***

^insert description of any Existing Material You will use in providing the Services^.

Contract Material

Not applicable.

**12. Moral Rights**

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(see clause 5.3)

Permitted Acts



Paragraphs a, b and c in the definition of 'Permitted Acts' in clause 1.1 list the 'Permitted Acts'. Paragraph d in that definition allows additional 'Permitted Acts' to be specified in this item. Those additional 'Permitted Acts' are:

- i. use of the Contract Material for advertising, merchandising or promotional purposes of any kind; and
- ii. incorporating the Contract Material into a website or as part of a multi-media training programme.

**13. Privacy Requirements**

---

(see clause 8.1.1)

No additional obligations.

**14. Confidential Information**

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(see clause 6.1.1)

**i) Your Confidential Information:**

a. Information contained in contract:

| Item                    | Period of confidentiality |
|-------------------------|---------------------------|
| ^insert relevant items^ |                           |
|                         |                           |

b. Information obtained or generated in performing contract:

| Item                    | Period of confidentiality |
|-------------------------|---------------------------|
| ^insert relevant items^ |                           |
|                         |                           |

**ii) Our Confidential Information:**

a. Information contained in contract:

| Item            | Period of confidentiality |
|-----------------|---------------------------|
| Not applicable. |                           |

b. Information obtained or generated in performing contract:

| Item            | Period of confidentiality |
|-----------------|---------------------------|
| Not applicable. |                           |

**15. Our address for Notices**

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(see clause 13.1.1a)

|                         |                                   |
|-------------------------|-----------------------------------|
| <b>Physical address</b> | 10-12 Mort St, Canberra ACT, 2601 |
| <b>Postal address</b>   | GPO Box 9880<br>Canberra ACT 2601 |
| <b>Email</b>            | digitalchampions@jobs.gov.au      |
| <b>Facsimile</b>        | (02) 6121 6867                    |

**16. Your address for Notices**

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(see clause 13.1.1b)

|                         |                  |
|-------------------------|------------------|
| <b>Physical address</b> | [to be inserted] |
| <b>Postal address</b>   | [to be inserted] |
| <b>Email</b>            | [to be inserted] |
| <b>Facsimile</b>        | [to be inserted] |

**17. Insurance**

---

(see clause 15.5)

You must maintain:

- (1) workers' compensation as required by law;
- (2) public liability insurance to a value of \$10 million (ten million dollars) or more per claim; and
- (3) professional indemnity insurance to a value of \$5 million (five million dollars) or more per claim.

**18. Compliance with Laws and policies**

---

(see clause 15.13.1)

**i) Compliance with Laws**

- (1) *Racial Discrimination Act 1975* (Cth);
- (2) *Sex Discrimination Act 1984* (Cth);
- (3) *Australian Human Rights Commission Act 1986* (Cth); and
- (4) *Disability Discrimination Act 1992* (Cth).

**ii) Statement of Values and Code of Conduct**

You must, when carrying out the Services behave with the highest ethical standards; fairly, effectively, impartially and courteously to the Australian public; and with sensitivity to the diversity of the Australian public.

**iii) Web Accessibility**

You must ensure that all content related to the Services to meet web accessibility requirements outlined in the Web Content Accessibility Guidelines (WCAG) 2.0. WCAG 2.0 is a technical standard developed under the Web Accessibility Initiative of the World Wide Web Consortium (W3C).

**i) Security requirements**

You must comply with any security requirements notified by the Department that are directly related to the carrying out of Your functions and tasks associated with the Small Business Digital Champions Project.

**Signatures**

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SIGNED for and on behalf of the )  
Commonwealth of Australia as )  
represented by the Department of Jobs )  
and Small Business by: )

---

^Name of signatory^

---

*Signature*

In the presence of:

---

^Name of witness^

---

*Signature of witness*

Where the Industry Association is a **company** use the following:

SIGNED for and on behalf of (^insert  
company name) (^insert company ACN  
or ABN) in accordance with the  
requirements of section 127 of the  
*Corporations Act 2001* by:

---

Name of Director

---

*Signature*

And by

---

Name of Director/Company Secretary

---

*Signature*

Where the Industry Association is a **partnership** use the following:

SIGNED by:

\_\_\_\_\_  
Name of partner

\_\_\_\_\_  
*Signature*

who by signing warrants that they have authority to bind (^insert name of each co-partner(s) of partnership)

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*

Where the Industry Association is an **incorporated association** use the following:

SIGNED for and on behalf of (^insert Association name) (^insert ABN) by:

\_\_\_\_\_  
Name of Committee member

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*