

User Notes

Department of Industry, Innovation and
Science

Contract for the Provision of Services

User Notes

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General

Introduction

1. Using these notes

These User Notes contain an explanation of the purpose and operation of the clauses contained in Parts 1 and 2 and the Schedules of the standard Department of Industry, Innovation and Science contract for the provision of services (**the Contract**).

The explanations in these User Notes appear in the same order in which the clauses appear in the Contract. References to the relevant clause numbers in the Contract are inserted in each heading of these User Notes. Capitalised words have the same meaning as in the definitions clause in the Contract.

Advice should be sought from your legal, insurance and other advisers on issues relevant to your organisation.

2. Using the Contract

The Contract is intended for the provision of services where the value of the services is over \$80,000 or Department of Industry, Innovation and Science otherwise considers appropriate.

The Contract is made up of the following sections:

- (a) the Contract Information: This sets out basic information about the Contract.
- (b) the Agreed Terms: These set out the conditions applying to the provision of the Services. In general, Department of Industry, Innovation and Science will not agree to modify the Agreed Terms other than in exceptional circumstances. However, where appropriate, provision is made in Schedule 1 (Contract Details) for variables to be inserted and in some cases, limited departure from the Agreed Terms can be accommodated.
- (c) the Schedules: These set out the specific requirements for the individual procurement, i.e. the Schedules will be completed differently each time the Contract is used.

Note that the Contract assumes contracting between Department of Industry, Innovation and Science and one contractor, in contrast to multiple contractors. The terms and suitability of the Contract may need to be changed if arrangements are to involve more than one contractor.

Guidance on Part 1 - Services

3. Contract Information

3.1 Date

Purpose

Insertion of the date provides a record for the parties and users of the Contract of the date the Contract was signed.

Operation

The actual date of signing of the Contract is to be inserted where indicated. The date the Contract is to commence should not be inserted in this section of the Contract. There is provision in the Contract Details for the date of commencement of the Contract to be inserted.

Where the parties sign on different days, the date the last party signs the Contract should be inserted. Generally, Department of Industry, Innovation and Science will sign the Contract last and insert the date.

3.2 Parties

Purpose

The purpose of this section is to correctly identify the parties entering into the Contract. Only the name of the Contractor needs to be inserted. Items 1 and 2 of the Contract Details are the proper places for the parties' Australian Business Numbers and street addresses.

Operation

The following table includes information that should be included and examples of some of the most common types of entities. It is important to be accurate when inserting the names of the parties.

Entity type	Information to be included	Example
A Non-Corporate Commonwealth Entity under the <i>Public Governance, Performance and Accountability Act 2013</i>	The name of the agency representing the Commonwealth and reference to the Commonwealth	<i>The Commonwealth of Australia as represented by the Department of Education</i>
A Corporate Commonwealth Entity under the <i>Public Governance, Performance and Accountability Act 2013</i>	Insert the name of the Corporate Commonwealth Entity	<i>Commonwealth Scientific and Industrial Research Organisation</i>
Company incorporated under the <i>Corporations Act 2001</i> (Cth)	The name of the company as it appears on the Company Register (see www.asic.gov.au for more information on company searches)	<i>XYZ Pty Limited</i>

Entity type	Information to be included	Example
An incorporated association (i.e. an association incorporated under the relevant legislation of a State or Territory)	The name of the incorporated association including the words 'incorporated'	<i>XYZ Incorporated</i>
A partnership	The name of the partnership and, where practicable, the full names of each of the partners	<i>XYZ Partners comprising Fred Smith, Margaret Jones and Sarah Johnson</i>
An individual person	The name of the individual person	<i>Mary Smith</i>

3.3 Overview

Purpose

This section of the Contract provides a general explanation of the background leading up to the formation of the Contract. This section has been developed in the most general sense, to avoid any unnecessary repetition of the detail set out in the Schedules.

Operation

The overview provided will not be amended in most cases. However, if there are unique or complicated circumstances leading up to the signing of the Contract, Department of Industry, Innovation and Science may decide to include a brief description of those circumstances in this section of the Contract.

4. Definitions and interpretation (clause 1)

4.1 Definitions (clause 1.1)

Purpose

This clause defines terms that are used consistently throughout the Contract.

Operation

Many of the definitions cross refer to information set out in detail in the Schedules.

Some of the definitions (for example Business Hours) provide a default definition but specifically allow for that definition to be varied in the Contract Details.

4.2 Interpretation (clause 1.2)

Purpose

This clause details general rules of interpretation that apply to the Contract and which assist with its legal interpretation.

4.3 Completion of Schedules (clause 1.3)

Purpose

This clause makes it clear that if an item or section of a Schedule is not completed, it will be deemed not applicable.

Operation

Refer to sections 35 to 40 of these User Notes for further information on completion of the Schedules.

5. Priority of Contract documents (clause 2)

Purpose

This clause resolves any inconsistency between parts of the Contract (including documents incorporated by reference) by specifying an order of priority.

Operation

Where there is inconsistency between parts of the Contract, those parts higher in the list prevail over those lower in the list to the extent of the inconsistency. For example, a clause in Schedule 2 seeking to exclude the warranty in the Agreed Terms that the 'Services will be complete and accurate' would be ineffective because the Agreed Terms are higher in the list and prevail over the Schedules.

6. Duration of Contract (clause 3)

Purpose

This clause governs how long the Contract is in effect. The Contract begins on the Commencement Date (the date specified in the relevant item of the Contract Details) and continues for the Contract Period (the period specified in the relevant item of the Contract Details plus any extension in accordance with the Contract).

Operation

Department of Industry, Innovation and Science may extend the term of the Contract for the Option Period(s) specified in the relevant item of the Contract Details. To extend the term of the Contract, Department of Industry, Innovation and Science must give 30 days written notice (or other period specified in the Contract Details) to the Contractor prior to the expiry of the then current term. Clause 29 specifies the requirement for notices and determines when a notice is taken to be received (further information on clause 29 is provided below at section 33 of these User Notes).

An Option Period takes effect from the end of the then current Contract Period. The terms and conditions in effect during the then current Contract Period apply to the Option Period.

7. Services to other Agencies (clause 4)

Purpose

This clause allows a Commonwealth 'Nominated Agency' to obtain services (substantially the same as those Services provided to Department of Industry, Innovation and Science) on the same terms and conditions as those set out in the Contract.

This clause caters for the situation where Department of Industry, Innovation and Science has:

- (a) as part of its procurement planning process, identified other Commonwealth Agencies which may require services similar to those Services to be provided under the Contract; and
- (b) in its Request for Tender, or similar request documentation (where such request documentation is required), alerted potential suppliers that other 'Nominated Agencies' may be able to 'piggyback' onto the Contract.

This 'piggybacking' mechanism facilitates the reduction of costs and duplication of procurement processes between Commonwealth Agencies through careful procurement planning. For further information refer to the [Cooperative Agency Procurement](#) produced by the Department of Finance.

This clause is **not** intended to allow Agencies to act in a manner contrary to the [Commonwealth Procurement Rules](#).

Operation

All Nominated Agencies will be listed in the appropriate item of the Contract Details. As discussed above, this list will be consistent with the list of Agencies identified in the Request for Tender (or similar request documentation) as being able to 'piggyback' on Department of Industry, Innovation and Science's Contract with the Contractor.

To make use of this clause a Nominated Agency must complete the Agency Order Form specified by Department of Industry, Innovation and Science (see Attachment A to these User Notes) and provide a copy of that form to the Contractor. Once the Contractor and Nominated Agency have agreed on the terms of the Agency Order Form and executed that document, it creates a separate contract between the Contractor and the Nominated Agency.

Attachment A to these User Notes contains the Agency Order Form to be used.

Potential Contractors will need to take account of any possible 'piggybacking' arrangement when preparing their response (particularly their pricing) to any Request for Tender (or similar request documentation).

8. General obligations of the Contractor (clause 5)

Purpose

This clause places a general obligation on the Contractor to conduct itself in a reasonable manner and diligently perform its obligations under the Contract.

9. Provision of Services (clause 6)

9.1 Service obligations (clause 6.1)

Purpose

This clause sets out a range of key obligations of the Contractor with respect to the nature, standards and timing of performance of the Services.

Operation

Some of the aspects of this clause (including clause 6.1(d) and (f) in relation to Performance Criteria and Specified Personnel) are dealt with in more detail in other clauses of the Contract (see sections 12 and 13 of these User Notes).

The parties should be aware, in particular, of the following features of this clause:

- (a) clause 6.1(e) makes provision for any specifically identifiable standards, best practice measures or guidelines which will apply to the Services to be set out in the relevant item of the Contract Details;
- (b) clause 6.1(i) requires the Contractor to perform the Services so as to meet the Milestone Dates. All significant Milestone Dates will be specified in Schedule 2; and

9.2 Contractor warranties (clause 6.2)

Purpose

This clause sets out important representations and warranties given by the Contractor including in relation to its ability and competency to provide the Services as well as the quality and fitness for purpose of the Services. This was added for compliance with the revised *Commonwealth Procurement Rules* (effective from 1 July 2012).

9.3 Access to Commonwealth's premises (clause 6.3)

Purpose

The purpose of this clause is to facilitate the provision of the Services by the Contractor. It requires Department of Industry, Innovation and Science to provide access to its premises as reasonably necessary for the Contractor to deliver the Services. This clause will not apply if the Contractor will not require access to Department of Industry, Innovation and Science's premises.

9.4 Conduct at Commonwealth's premises (clause 6.4)

Purpose

This clause outlines the Contractor's general obligations with respect to use or access to (where relevant) Department of Industry, Innovation and Science's premises or facilities. The Contractor is required to comply with Department of Industry, Innovation and Science's reasonable directions and procedures relating to work health and safety and security in operation at the premises or facilities.

Operation

This clause will not apply if the Contractor will not require access to Department of Industry, Innovation and Science's premises.

Department of Industry, Innovation and Science may draw significant work health and safety, security and other relevant procedures specifically to the attention of the Contractor. For example, Department of Industry, Innovation and Science has an anti-smoking policy.

The Contractor is also required to comply with procedures which might reasonably be inferred from the circumstances.

9.5 Subcontracting (clause 6.6)

Purpose

This clause imposes general obligations on the Contractor in relation to subcontracting any part of the Services under the Contract.

The clause prohibits the Contractor from subcontracting any part of the Services without Department of Industry, Innovation and Science's prior written approval, although such consent will not be unreasonably withheld.

In addition, it requires the Contractor to ensure that any approved subcontractor complies with certain conditions contained in the Contract. These conditions are some of the key Commonwealth standard terms and conditions.

The clause also requires the Contractor to:

- (a) include a provision in a subcontract requiring a subcontractor to comply with all applicable laws; and
- (b) agree to the Commonwealth publicly disclosing details about a subcontractor and ensure that the subcontract contains an equivalent provision.

These provisions were added for compliance with the revised *Commonwealth Procurement Rules* (effective from 1 July 2012).

Operation

Where Department of Industry, Innovation and Science has pre-approved the use of any subcontractor in performance of the Services, that entity will be specified in the relevant item of the Contract Details. Pre-approved subcontractors must still comply with the other requirements of the Contract.

10. Co-operation with Personnel and contractors (clause 7)

Purpose

Under this clause the Contractor, in providing the Services, is required to cooperate with Department of Industry, Innovation and Science's Personnel (including Department of Industry, Innovation and Science's employees and agents) and any other contractors and generally conduct itself in a manner that supports and facilitates the completion of work being performed for, Department of Industry, Innovation and Science by another person.

Work Health and Safety legislation provides that persons conducting a business or undertaking (PCBU) have a duty to ensure (among other things), as far as is reasonably practicable, the health and safety of workers that have been engaged by that PCBU or are caused to be engaged by the PCBU. Therefore, there will be circumstances where care for work health and safety, overlaps and several PCBUs (albeit to varying degrees) have a primary duty. For example, the Commonwealth contracts with a contractor to provide services that involve employees of the contractor working in Department of Industry, Innovation and Science premises. In this circumstance Department of Industry, Innovation and Science, to the extent that it is reasonably practicable in the circumstances of that situation, also has a primary responsibility for the health and safety of those particular persons (contractor employees). Therefore, Department of Industry, Innovation and Science and the contractor are required to consult, cooperate and coordinate activities to ensure the health and safety of those persons. The level of consultation will depend on the particular circumstances and requirements the contract including matters such as an assessment of the degree of risk/danger. For example, Department of Industry, Innovation and Science may require the contractor and staff to comply and be aware of certain policies/procedures. Alternatively, a particular circumstance may pose a higher risk to health and safety. Therefore, consultation may focus on assessing risk, clarifying responsibilities and identifying action to be taken. The requirement to consult, cooperate and coordinate activities continues for the term of the contract and each particular situation must be assessed in light of changing circumstances and the environment at a particular time.

11. Monitoring progress (clause 8)

Purpose

This clause governs how the parties will monitor the progress of Service delivery under the Contract. It provides for progress meetings to be conducted between the parties to discuss any issues in relation to provision of the Services and for the Contractor to provide reports to Department of Industry, Innovation and Science.

Operation

Details regarding when the progress meetings (if any) will be held and the nature and timing of any reports to be provided by the Contractor will be set out in Schedule 2. Progress meetings

could, for example, be held weekly during the initial and implementation phases, and then quarterly or six monthly, depending on the nature and complexity of the Services being provided and the operational significance of the Deliverables being provided.

12. Performance assessment (clause 9)

Purpose

This clause provides that each element of the Services is subject to assessment against Performance Criteria.

Where Department of Industry, Innovation and Science considers that the Services do not meet the Performance Criteria, Department of Industry, Innovation and Science will provide notice to the Contractor of that fact. Reasons for the Services not meeting the Performance Criteria will be included in the notice.

If all or part of the Services fail to meet the Performance Criteria, the Contractor will be required to take action to correct the Services and allow Department of Industry, Innovation and Science to repeat the assessment within five Business Days (or another time period agreed by the parties).

If the Services fail the Performance Criteria two or more times, Department of Industry, Innovation and Science has the right to terminate the Contract immediately.

Department of Industry, Innovation and Science is not required to pay the Contractor if the Services do not meet the Performance Criteria (see clause 14).

Operation

Standards may be specified in section 4 of Schedule 2 (for further information refer to section 36 of these User Notes). If no standards are specified, the Performance Criteria are that the Services are performed:

- (a) to a high standard and in accordance with the professional standards of conduct applying to the relevant Industry (clause 6.1(c)); and
- (b) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 11 of the Contract Details (clause 6.1(e)).

13. Personnel (clause 10)

Purpose

This clause requires the Contractor to use certain Specified Personnel (if any) in providing the Services and provides a mechanism for dealing with circumstances where:

- (a) the Specified Personnel are unavailable; or
- (b) the Specified Personnel or other Contractor Personnel or subcontractors are no longer acceptable to Department of Industry, Innovation and Science.

In these circumstances the Contractor is required, on request from Department of Industry, Innovation and Science, to provide replacement personnel acceptable to Department of Industry, Innovation and Science.

Operation

If Specified Personnel are required in performance of the Services they will be listed in the relevant item of the Contract Details. Specified Personnel are generally named where Department of Industry, Innovation and Science is relying on those individuals because of their particular expertise or skill set.

Department of Industry, Innovation and Science recognises that it can often be difficult for Contractors (particularly those in small organisations) to quickly provide a replacement and to redeploy personnel no longer required by Department of Industry, Innovation and Science. However, there may be circumstances where Department of Industry, Innovation and Science needs to exercise its right under clause 10.3 to require replacement of Specified Personnel, other Contractor Personnel or subcontractors.

14. Commonwealth Material (clause 11)

Purpose

This clause caters for the situation where Department of Industry, Innovation and Science will provide certain Materials to the Contractor in order to enable it to perform the Services.

It imposes an obligation on Department of Industry, Innovation and Science to provide specified Material to the Contractor, and requires the Contractor to comply with any specific requirements of Department of Industry, Innovation and Science in relation to the use of that Material.

Operation

Where Department of Industry, Innovation and Science is required to provide specific Material to the Contractor this will be set out in the relevant item of the Contract Details. Conditions on the Contractor's use of that Material (or any other such Material it provides to the Contractor) may also be set out in the relevant item of the Contract Details.

15. Intellectual Property Rights (clause 12)

Purpose

This clause addresses a range of issues in relation to the Intellectual Property Rights of the parties. Intellectual property can be broadly described as the rights granted by law in relation to the fruits of human creative activity, including copyright, patents, trademarks and designs. Refer to clause 1.1 of the Contract for the definition of Intellectual Property Rights.

The Attorney-General's Department, IP Australia, the Department of Communications and the Department of Finance have worked together to develop the Statement of Intellectual Property Principles for Australian Government agencies, which is a whole of government approach to the management of intellectual property by government agencies. Further information on the Statement of Intellectual Property Principles can be found at the [Attorney General's Department website](#).

15.1 Pre-existing Material and Third Party Material (clause 12.1)

Purpose

Clause 12 does not transfer the ownership of any Intellectual Property Rights which existed prior to execution of the Contract or which belong to third parties. This means that ownership rights of Pre-existing Material or Third Party Material that a party contributes to the performance of the Services remain unchanged.

Operation

The Contract allows the parties to list Pre-existing Material which can be identified prior to execution of the Contract in Schedule 6. Specifically identifying significant Pre-existing Material is beneficial to both parties as it helps to avoid potential future argument between the parties regarding what is and is not Pre-existing Material and associated disputes regarding ownership of the Material.

15.2 Third Party Material (clause 12.2)

Purpose

This clause is intended to ensure that the Intellectual Property Rights of a third party will not be infringed in the course of performance of the Contract.

This clause caters for the situation where the Contractor will make Material owned by a third party available for the purpose of the Contract. The Contractor is required to obtain the permission of the relevant third party before making such use of the Third Party Material.

15.3 Selecting an ownership model for Intellectual Property Rights in Contract Material (clause 12.3)

Purpose

This clause (together with clauses 12.4 and 12.5) addresses the issue of ownership of the Intellectual Property Rights in the Contract Material (that is the Material which is created by the Contractor on or following the Commencement Date for the purpose of or as a result of performing its obligations under the Contract).

Clauses 12.4 and 12.5 represent two alternative ownership models – First model: Commonwealth ownership of Intellectual Property Rights in Contract Material (clause 12.4) and Second model: Contractor ownership of Intellectual Property Rights in Contract Material (clause 12.5). Clause 12.3 provides the contractual mechanism for selection of an ownership model.

Operation

The ownership model selected by Department of Industry, Innovation and Science for the particular procurement will be identified in the relevant item of the Contract Details.

Under clause 12.3(c), if no model is selected, the first model (clause 12.4) will apply and the second model (clause 12.5) will not apply to the Contract.

15.4 First model: Commonwealth ownership of Intellectual Property Rights in Contract Material (clause 12.4)

Purpose

As stated above, under this clause, Department of Industry, Innovation and Science will own the Intellectual Property Rights in Contract Material. This clause applies where Department of Industry, Innovation and Science has selected it through the Contract Details and also where no selection has been made through the Contract Details.

This clause also operates to grant licences to each party in relation to Intellectual Property Rights in certain Materials. Department of Industry, Innovation and Science is granted a licence in relation to the Contractor's Pre-existing Material and Third Party Material as necessary to enable Department of Industry, Innovation and Science to receive the full benefit of the Services.

The Contractor is granted a licence in relation to the Commonwealth Material and Contract Material as necessary to enable the Contractor to perform its obligations under the Contract and subject to any conditions or restrictions specified in the relevant item of the Contract Details and any direction by Department of Industry, Innovation and Science.

Clause 12.4(c) clarifies that the licence granted to Department of Industry, Innovation and Science does not include a right to exploit the Pre-existing Material or Third Party Material for Department of Industry, Innovation and Science's commercial purposes.

Operation

The period of Department of Industry, Innovation and Science licence for use of the Pre-existing Material and Third Party Material provided by the Contractor will be inserted in the relevant item of the Contract Details. For example the licence may be perpetual, or for some other nominated period.

Variations to the terms of the licence provisions may be inserted in the relevant item of the Contract Details. Such amendments may be necessary where Department of Industry, Innovation and Science decides it requires a different scope of licence rights and/or the parties negotiate amendments to the terms. For example, if the scope of the licence were to be limited to a certain number of copies or for a particular purpose, the Contract Details will be completed to reflect the parties' agreement.

15.5 Second model: Contractor ownership of Intellectual Property Rights in Contract Material (clause 12.5)

Purpose

Under this clause, Intellectual Property Rights in the Contract Material vest in the Contractor. This clause will apply only where Department of Industry, Innovation and Science has expressly selected it in the Contract Details.

This clause also operates to grant each party a licence in relation to Intellectual Property Rights in certain Materials. Department of Industry, Innovation and Science is granted a licence in relation to the Contractor's Pre-existing Material, the Third Party Material and the Contract Material as necessary to enable Department of Industry, Innovation and Science to receive the full benefit of the Services.

The Contractor is granted a licence in relation to the Commonwealth Material as necessary to enable the Contractor to perform its obligations under the Contract and subject to any conditions or restrictions specified in the relevant item of the Contract Details and any direction by Department of Industry, Innovation and Science.

Clause 12.5(c) clarifies that the licence granted to Department of Industry, Innovation and Science does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for Department of Industry, Innovation and Science's commercial purposes.

Operation

The period of Department of Industry, Innovation and Science's licence for use of the Pre-existing Material and Third Party Material provided by the Contractor and Contract Material will be inserted in the relevant item of the Contract Details. For example the licence may be perpetual, continue for the Contract Period or for some other nominated period.

Variations to the terms of the licence provisions may be inserted in the relevant item of the Contract Details. Such amendments may be necessary where Department of Industry, Innovation and Science decides it requires a different scope of licence rights and/or the parties negotiate amendments to the terms. For example, if the scope of the licence were to be limited to a certain number of copies or for a particular purpose, the Contract Details will need to be completed to reflect the parties' agreement.

15.6 Warranty and remedy for breach (clauses 12.6 – 12.7)

Purpose

These clauses further address the issue of potential infringement of third party Intellectual Property Rights.

The Contractor is required to warrant that the materials provided to Department of Industry, Innovation and Science under the Contract and Department of Industry, Innovation and Science's use of those materials will not infringe the Intellectual Property Rights of a third person, and that the Intellectual Property Rights can be vested in and licensed to Department of Industry, Innovation and Science as required under the Contract.

If a third party claims, or is likely to claim that their Intellectual Property Rights have been infringed in relation to the performance of the Contract, the Contractor is required to take certain steps to ensure that Department of Industry, Innovation and Science can continue to receive the benefit of the Services.

The Contractor is also required to give an indemnity in relation to the infringement of third party Intellectual Property Rights (see clause 16.1).

16. Moral Rights (clause 13)

Purpose

Introduction to moral rights

This clause seeks to ensure that Department of Industry, Innovation and Science is able to make full use of the Contract Material provided by the Contractor, as permitted under the Contract, without infringing an individual's moral rights.

Moral rights are essentially personal rights of individuals who create copyright works (including literary, dramatic, musical and artistic works and cinematograph films). They relate to an individual author's reputation and creativity and are separate from the 'economic rights' conferred by copyright.

There are currently three moral rights conferred under the *Copyright Act 1968* (Cth):

- (a) the right of attribution (the author's right to be identified as the author of a work);
- (b) the right not to have authorship of a work falsely attributed (the author's right not to have the work falsely attributed to someone other than the author); and
- (c) the right of integrity of authorship of a work (the author's right not to have the work subjected to derogatory treatment, such as mutilation, material distortion or anything else that is prejudicial to the author's honour or reputation).

Moral rights consents

Moral rights are personal in nature, so they cannot be licensed or transferred to another party. Individuals can, however, give consent to the doing of acts which would otherwise be an infringement of their moral rights. In general, where consent is obtained it will mean that an otherwise infringing act will not be an infringement of an author's moral rights.

Under this clause the Contractor is required to:

- (a) give written consent, where it is an individual;
- (b) use its best endeavours to obtain consents in writing from its Personnel (including its employees, officers and agents) involved in the creation of the Contract Material; and

- (c) use its best endeavours to obtain consents in writing from holders of Moral Rights in Third Party Material incorporated in the Contract Material,

in relation to Department of Industry, Innovation and Science doing any of the Specified Acts set out in clause 13.2 of the Contract.

Operation

The consents obtained by the Contractor pursuant to this clause must be in writing and given without duress or as the result of a false or misleading statement.

The detail of such consents will vary depending on the nature of the Material and the position of the person giving the consent. Broadly though, such consents should:

- (a) specify the Material to which the consent relates; and
- (b) specify the acts or omissions covered by the consent.

Generally speaking, in the case of employees, a general consent can be given with respect to all acts or omissions in relation to works created during the course of employment.

The Contract enables Department of Industry, Innovation and Science to, through the Contract Details, change or add to the Specified Acts in clause 13.2. In the majority of circumstances this will not be necessary. However, in situations where the Contract Material includes multimedia content (such as film, interviews with people or art works), or if a particular individual's reputation is closely and/or publicly aligned with the Contract Material, Department of Industry, Innovation and Science may require a more specific consent from the author(s) of the works.

Guidance on Part 2 - General requirements

17. Payment (clause 14)

Purpose

This clause sets out Department of Industry, Innovation and Science's payment obligations under the Contract. Department of Industry, Innovation and Science is only obliged to pay Service Charges in respect of Services that have met the requirements of the Contract including the Performance Criteria.

The Contractor must provide Department of Industry, Innovation and Science with a correctly rendered invoice that meets the requirements set out in Schedule 3 (refer to section 37 of these User Notes). Unless otherwise specified in Schedule 3, Department of Industry, Innovation and Science must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

The clause also outlines the payment procedures regarding incorrect invoices, under/over payment and expenses.

Specific payment and invoicing requirements will be detailed in Schedule 3.

18. GST (clause 15)

Purpose

This clause allows any party to the Contract to charge GST in addition to the agreed charges. All payments will be agreed and stated in the Contract on a 'GST exclusive' basis. Schedule 3 may also set out the GST component and GST inclusive total.

18.1 Interpretation (clause 15.1)

Purpose

The purpose of this clause is to ensure that the GST terminology used in the clause is consistent with its meaning in the GST legislation.

18.2 GST gross up (clause 15.2)

Purpose

This is the key provision in the GST clause. It gives either party the right to charge an additional amount for GST on any taxable supplies made under the Contract.

18.3 Reimbursements (clause 15.3)

Purpose

This clause applies where one party reimburses another for any third party costs. The clause requires reimbursement amounts to be reduced by the amount of any input tax credits to which the payee is entitled to prevent 'double charging' of GST.

18.4 Exclusion of GST from calculations (clause 15.4)

Purpose

This clause applies where payments under the Contract are calculated by reference to a formula or percentage (e.g. amounts calculated by reference to hourly rates). It requires the payments to exclude the GST component of the base figures used in the calculations. Similar to the reimbursements clause described at section 18.3 above, the objective is to prevent 'double charging' of GST.

18.5 Adjustments (clause 15.5)

Purpose

This clause applies where the amount of GST charged by the supplier to the recipient differs from the GST amount payable to the Australian Taxation Office on the supply. This may occur because:

- (a) the supplier made an error and charged the wrong amount of GST; or
- (b) an 'adjustment event' arises for GST purposes. An 'adjustment event' is any event which has the effect of:
 - (i) cancelling a supply or acquisition;
 - (ii) changing the consideration for a supply or acquisition; or
 - (iii) causing a supply or acquisition to become, or stop being, a taxable supply or creditable acquisition.

This clause requires a payment to be made between the parties to reflect the adjustment and requires the supplier to issue appropriate documentation (i.e. adjustment notes).

18.6 Tax invoice (clause 15.6)

Purpose

This clause makes payment to a supplier conditional on receipt of a valid tax invoice. This is because under the GST law, a recipient can only claim an input tax credit if it holds a valid tax invoice by the time it lodges its GST return. The purpose of this clause is to ensure that the recipient can claim its input tax credits on a timely basis.

19. Indemnity (clause 16)

Purpose

The purpose of this clause is to outline a pre-agreed contractual risk regime under which the Contractor (the indemnifier) agrees to compensate Department of Industry, Innovation and Science and its officers and employees (the indemnified) against specified losses which arise in specified circumstances.

Operation

Indemnification is important to the management of Department of Industry, Innovation and Science's risk under a Contract. It is also important to the Contractor including, particularly, from a liability and risk perspective. The range of indemnities provided has been considered as part of Department of Industry, Innovation and Science's procurement risk management process. Australian Government policy is that it should generally not accept risks which another party is better placed to manage - the general principle is that risks should be borne by those best placed to manage them.

However, where Department of Industry, Innovation and Science is best-placed to manage a particular risk, it should not seek to inappropriately transfer that risk to a contractor.

The *Commonwealth Procurement Rules* (effective from 1 July 2012) ("new CPGs") clarify that agencies must undertake a risk assessment as an initial exercise to determine whether it would be appropriate to limit a contractor's liability through a liability cap or indemnity, and if so, what limits may be appropriate.

For more information on the considerations that need to be taken into account, refer to paragraphs 6.6-6.7 of the new CPGs.

20. Insurance (clause 17)

Purpose

This clause sets out the insurance policies the Contractor must maintain for the Contract Period. The Contractor is required to maintain and provide confirmation of valid and enforceable insurance policies as set out in the table below:

Contract	Insurance required
Contract for the Provision of Services	Public liability Either professional indemnity or errors or omissions Workers' compensation Any additional type specified in the Contract Details (for example - Product liability)

The Contractor must maintain either professional indemnity or errors and omissions insurance for a period of seven years following expiry or termination of the Contract. This is to ensure that the Contractor has professional indemnity or errors and omissions insurance cover for the period during which a claim may be made against it (i.e. up until the expiration of the statutory limitation period).

A Contractor that is named under an insurance policy held and maintained by its parent entity or another associated entity as a person to whom the insurance cover extends may (depending on the terms of the applicable insurance policy) comply with the above requirements even if the Contractor is not a party to the insurance contract directly. Contractors should seek their own advice on this issue.

The amounts of the insurances will be specified in the Contract Details or the Request for Tender.

21. Confidentiality and privacy (clause 18)

Purpose

This clause outlines the confidentiality obligations of the parties. For further information on the approach in this clause, refer to Department of Finance [Buying for the Australian Government](#) web-based guidance.

Operation

The definition of Confidential Information includes information which is by its nature confidential and is described in Schedule 5 or a party knows or ought to know is confidential.

Where a Contractor requests certain information be treated as confidential, Government policy requires a Non-Corporate Entity to consider whether that information should be subject to a contractual confidentiality obligation and to apply specified tests. Refer to DoF [Buying for the Australian Government](#) web-based guidance.

Refer to the section 38 of these User Notes for guidance on the privacy and confidentiality undertaking included in Schedule 4 of the Contract.

22. Protection of personal information (clause 19)

Purpose

This clause assists Commonwealth Agencies in discharging their responsibilities under section 95B of the *Privacy Act 1988* (Cth), by requiring that a Contractor, or a subcontractor engaged by the Contractor for the purpose of fulfilling the Contractor's obligations under the Contract, does not do an act, or engage in a practice, that would breach an Australian Privacy Principle.

Operation

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

23. Work Health and Safety (clause 20)

Purpose

This clause requires the Contractor to comply with relevant work health and safety laws. It assists the Commonwealth, as a 'person conducting a business or undertaking' under the *Work Health and Safety Act 2011* (Cth) ('WHS Act'), with fulfilling its duty to ensure, so far as is reasonably practicable, the health and safety of Contractors who are workers engaged or caused to be engaged by the Commonwealth, while they are at work in the business or undertaking.

Operation

All Contractors must comply with the general safety obligations specified under clause 20.1.

Clauses 20.2 – 20.10 only apply where the Contractor is a worker under section 7 of the WHS Act. Clauses 20.6 – 20.8 should be included only where it is likely that the Personnel would be workers and where the Services involve a greater work health and safety risk.

For general guidance on ensuring the health and safety of Contractors in the workplace, as required under the WHS Act, refer to Comcare's [The WHS Act and Contractors in the Commonwealth](#).

24. Conflict of interest (clause 21)

Purpose

This clause is aimed at ensuring that the Contractor does not have a conflict of interest in performing its obligations under the Contract. In general terms, a conflict of interest is a relationship or interest that might prejudice, or be seen to prejudice, the Contractor's impartiality or performance of the Contract. For example, if a Contractor recommends Department of Industry, Innovation and Science purchase an item from a third party supplier, and the Contractor is a director of that third party supplier but has not advised Department of Industry, Innovation and Science of this relationship, this could be or be perceived to be a conflict of interest.

During the term of the Contract, if a conflict arises or appears likely to arise, the Contractor must notify Department of Industry, Innovation and Science and take such steps as Department of Industry, Innovation and Science reasonably requires to resolve or deal with the conflict.

Operation

General guidance on conflicts of interest as part of the procurement process can be found in DoF [Buying for the Australian Government](#) web-based guidance.

25. Security (clause 22)

25.1 Australian Government Protective Security Policy Framework (clause 21.1)

Purpose

This clause requires the Contractor to comply with the security requirements detailed in the Australian Government Protective Security Policy Framework (PSPF) to the extent applicable to the Services and any additional requirements advised by Department of Industry, Innovation and Science to the Contractor.

Operation

The PSPF supersedes the Protective Security Manual 2005 (PSM). The PSPF can be found on the website of the Attorney-General's Department (www.agd.gov.au).

25.2 Security clearances (clause 22.2)

Purpose

This clause addresses the issue of security clearances for the Contractor's Personnel (including its employees, officers agents and subcontractors) performing the Services. It allows Department of Industry, Innovation and Science to notify the level of security and access clearance which the Contractor needs to obtain and with which its Personnel must comply.

Operation

Department of Industry, Innovation and Science will notify the Contractor of the security clearances it requires. If Department of Industry, Innovation and Science notifies the Contractor during the Contract Period that an additional security clearance is required, the Contractor will be allowed an adequate amount of time, in the circumstances, to comply.

The Contractor will bear the costs in relation to the required security clearances.

25.3 Security checks (clause 22.3)

Purpose

This clause allows Department of Industry, Innovation and Science to undertake any security checks it considers appropriate of the Contractor, its employees, agents and subcontractors.

25.4 Security breaches (clause 22.4)

Purpose

This clause allows Department of Industry, Innovation and Science to require the replacement of personnel who lose their security clearance or cause a security incident, or terminate the Contract for breach in these circumstances. The Contractor is required to notify Department of Industry, Innovation and Science immediately on becoming aware of any security incident or security breach and the Contractor must comply with all directions of Department of Industry, Innovation and Science in order to address the incident or breach, and ensure it does not occur again.

26. Books and records (clause 23)

Purpose

This clause requires the Contractor and its subcontractors to keep adequate books and records relating to amounts payable by Department of Industry, Innovation and Science, and to retain those books and records for a period of seven years following the termination or expiration of the Contract.

27. Audit and access (clause 24)

Purpose

This clause sets out the types of audits which may be conducted in connection with the Contractor's performance of the Contract, and the Contractor's obligations to provide Department of Industry, Innovation and Science and the Auditor-General with access to its premises and records and is based on the standard access clauses jointly developed by the Department of Finance and the Australian National Audit Office. Users may find it useful to refer to the [Procurement Guidance: Standard Contract Clauses to Provide ANAO Access to Contractors' Information](#).

28. Access to documents (clause 24)

Purpose

This clause gives effect to section 6C of the *Freedom of Information Act 1982* (Cth) (**the FOI Act**) for access to documents held by contractors (and subcontractors).

Operation

Clause 24 *only* applies if the Contract would be considered a Commonwealth contract (as defined in subsection 4(1) of the FOI Act). A Commonwealth contract is a contract where the contractor provides services (on behalf of the Department) to the community. *Therefore, the obligations in clause 24 will not apply where the Contractor is providing services directly to the Department.*

If clause 24 applies, then where the Commonwealth has received a request for access to a document that has been created by, or in the possession of, the Contractor (or any subcontractor) that relates to the performance of the Contract, the Commonwealth may request that the Contractor provide the document to the Commonwealth. Clause 24 does not apply to documents relating to negotiations for the Contract.

29. Unforeseen events (clause 25)

Purpose

This clause provides a mechanism for either party (**Affected Party**) to be excused from its obligations under the Contract where circumstances beyond its reasonable control prevent it from performing those obligations. For example, a Contractor that is unable to meet a Milestone Date because its office has been damaged by a cyclone may be excused from its obligation to meet that Milestone Date. An unforeseen event does not include a lack of funds or any labour dispute in respect of the Contractor's organisation only.

The clause provides a right of termination if the Affected Party's non-performance or diminished performance of its obligations continues for a period of more than 30 consecutive days (or such other period specified in the Contract Details). On termination, each party will bear its own costs and neither party will incur further liability to the other (although any existing claims not stemming from the unforeseen event will remain unaffected).

Operation

The Affected Party must give notice to the other party when the circumstances described in this clause arise or when the Affected Party reasonably perceives that they may arise. When giving notice, the Affected Party should bear in mind the Notices and other communications clause (clause 31), which specifies the requirements for notices. Failure to give notice and minimise the effects of the unforeseen event may affect any entitlement to be excused from contractual obligations.

30. Dispute resolution (clause 27)

Purpose

This clause sets out the process the parties must follow if a dispute arises under the Contract. The clause facilitates settling disputes at management level, without litigation. The parties must comply with the clause before commencing arbitration or any court proceedings, other than proceedings for urgent interlocutory relief, such as an injunction. If a party breaches the clause, the other party is not required to comply with the clause.

The parties must bear their own costs of complying with the dispute resolution process and bear equally the costs of a mediator. All information disclosed under the dispute resolution process must be kept confidential and used only for the purpose of resolving the dispute.

Operation

Users should be aware of the notice requirements and time frames set out in this clause. In providing notice, reference should be made to the Notices and other communications clause (clause 29), which specifies the requirements for notice.

31. Termination (clause 29)

31.1 Termination and reduction for convenience (clause 29.1)

Purpose

The purpose of this clause is to provide Department of Industry, Innovation and Science with rights to terminate the Contract, either for default or convenience.

Department of Industry, Innovation and Science may terminate the Contract for convenience or reduce the scope of Services provided under the Contract at any time by giving notice to the Contractor. For example, if there is a machinery of government change such as the relevant part of Department of Industry, Innovation and Science moving to another Commonwealth department.

If the Contract is terminated for convenience Department of Industry, Innovation and Science will be liable only for:

- (a) the Service Charges and expenses (but only where charging for expenses is permitted under clause 14) for Services rendered in accordance with the Contract incurred prior to the effective date of termination; and
- (b) the reasonable costs actually incurred by the Contractor and directly attributable to the termination.

Department of Industry, Innovation and Science will not be liable for costs which, when combined with any amounts paid or due under the Contract, exceed the total amount of Service Charges payable under the Contract. The Contractor is not entitled to compensation for loss of prospective profits.

31.2 Termination for default (clause 29.2)

Purpose

This clause sets out the grounds on which Department of Industry, Innovation and Science may terminate the Contract for Contractor default. The clause also imposes obligations on the Contractor to notify Department of Industry, Innovation and Science of certain situations that impact on the ability of the Contractor to fulfil its obligations under the Contract.

31.3 After termination (clause 29.3)

Purpose

This clause sets out the obligations on the Contractor after termination of the Contract with respect to the Services, Contract Material, Commonwealth Material and Department of Industry, Innovation and Science's Confidential Information.

31.4 Termination does not affect accrued rights (clause 27.4)

Purpose

Termination does not affect any accrued rights or remedies of a party. This means that any right a party has before termination, for example, a Contractor's right to be paid for Services already delivered that meet the Performance Criteria and other contractual requirements, is not affected by the subsequent expiry or termination of the Contract.

32. Survival (clause 30)

Purpose

This clause lists the clauses of the Contract that survive the expiry or termination of the Contract. The obligations under these clauses continue irrespective of the expiry or termination of the Contract.

33. Notices and other communications (clause 31)

Purpose

This clause sets out the requirements for giving notice under the Contract. It is important that these requirements are followed, as failure to do so may mean that notice has **not** properly been given, which may invalidate the notice or cause delays. The clause sets out the form the notice must take and specifies when a notice will take effect.

Operation

A notice must be delivered to the recipient's address for notice specified in the Contract Details. This address may be varied by notice.

When providing notice under the Contract, the parties should take into consideration the time frames for when a notice will be deemed to have been received.

34. Miscellaneous (clause 32)

34.1 Ownership of Contract (clause 32.1)

Purpose

This clause specifies that Department of Industry, Innovation and Science owns all copyright and other Intellectual Property Rights in the Contract. This means that the Contractor cannot use or copy the Contract for purposes not related to the provision of the Services.

34.2 Variation (clause 32.2)

Purpose

The purpose of this clause is to specify how the Contract can be varied. The clause provides that the Contract can only be varied in writing signed by each party.

It is possible for parties to vary a Contract through oral agreement and subsequent conduct. This can introduce difficulties for management of a Contract, as the agreement of the parties may be subject to dispute. There is a risk, should there be a later dispute, of a party being unable to substantiate the oral agreement reached between the parties.

Parties should strictly observe this clause in varying the Contract and avoid variation by oral agreement or conduct.

34.3 Approvals and consents (clause 32.3)

Purpose

This clause is to clarify that unless expressly stated otherwise, a party has discretion to withhold its approval or consent or give it conditionally or unconditionally.

34.4 Assignment and novation (clause 32.4)

Purpose

As a result of this clause, neither party may assign its rights or novate its rights and obligations without the consent of the other party.

Assignment is an arrangement in which a party to a contract assigns his or her benefits in the contract to a third party. Novation is a means of releasing a party from its future obligations under a contract and replacing that party with a new party from a specified date or event.

Novation is usually achieved by a deed between the original parties to the contract and replacing party. Obligations cannot be transferred without the consent of the other party.

Operation

Parties should seek legal advice before deciding whether to allow a party to assign its rights or transfer its obligations under the Contract to a third party. In determining whether to give consent to the assignment or novation of the Contract, the party should consider whether the third party has the capacity to fulfil the obligations under the Contract.

34.5 Costs (clause 32.5)

Purpose

This clause provides that each party must pay its own costs of negotiating, preparing and executing the Contract.

34.6 Counterparts (clause 32.6)

Purpose

This clause provides that the Contract can be signed in counterparts. This means that the parties do not need to sign the same copy of the Contract but can each sign an identical copy of the Contract and provide that signed copy to the other party. The signed copies (counterparts) will together constitute the one document.

Operation

When signing the Contract in counterparts, caution must be taken to ensure that each counterpart of the Contract is identical.

34.7 No merger (clause 32.7)

Purpose

The purpose of this clause is to ensure that the parties' rights and obligations under the Contract continue despite completion of any transaction under the Contract. This means, for example, that the Contractor's obligations in respect of Confidential Information continue despite the completion of the Contractor's obligations for delivery of items under the Contract.

34.8 Entire agreement (clause 32.8)

Purpose

This clause provides that the Contract is the entire agreement between the parties and overrides all previous agreements or understandings between the parties on the subject matter.

Some rights and obligations may exist between the parties so that the Contract does not, in fact, represent the entire agreement between the parties. For example, terms or representations may be statutorily implied into contracts even though the parties may not have specifically or consciously included them. Some such implied terms or representations cannot be overridden by this clause or otherwise.

34.9 Further action (clause 32.9)

Purpose

This clause imposes an obligation on the parties to do all things necessary, at their own cost, to give effect to the Contract and any transaction contemplated by it. For example, the signing of confidentiality and privacy undertakings or the assignment of Intellectual Property Rights.

34.10 Severability (clause 32.10)

Purpose

The purpose of this clause is to ensure that if any term, or part of a term, of the Contract is illegal or unenforceable it may be severed from the Contract, and the remaining terms, or parts of the terms, of the Contract continue to operate. This is to prevent the entire Contract from being found illegal or unenforceable if a term, or part of a term, is found to be illegal or unenforceable.

34.11 Waiver (clause 30.11)

Purpose

This clause provides that a party may only waive (i.e. relinquish) a right or rights that it has under the Contract by doing so expressly and in writing. This means that a party cannot be taken to have waived a right simply because it has not exercised that right.

Operation

Before relying on a waiver by the other party, steps should be taken to ensure that the waiver is in the form required by this clause.

34.12 Relationship (clause 32.12)

Purpose

The purpose of this clause is to make it clear that the Contract does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being able to bind or represent the other party.

34.13 Announcements (clause 32.13)

Purpose

The purpose of this clause is to outline when and how the Contractor may make public announcements in connection with the Contract or any transaction contemplated by it.

Operation

The Contractor must obtain the written consent of Department of Industry, Innovation and Science to any public announcement it wishes to make unless it is required by law to make the announcement, in which case it must consult with Department of Industry, Innovation and Science and take into account Department of Industry, Innovation and Science 's reasonable requirements.

In preparing and reviewing public announcements, parties should ensure they are comfortable with the release of the information contained in the announcement. In particular, careful consideration should be had as to whether any personal information or Confidential Information is being disclosed.

34.14 Governing law and jurisdiction (clause 32.14)

Purpose

The Contract is governed by the law of the Australian Capital Territory. This means that the law of that jurisdiction will be used for any interpretation of the Contract and if a dispute arises in connection with the Contract, the parties agree that it will be dealt with in the courts of that jurisdiction.

Guidance on the Schedules

35. Schedule 1 – Contract Details

Purpose

This Schedule sets out the variables for the Contract, including where relevant any variation from the default position set out in the Agreed Terms. Each item in the Contract Details refers to a specific clause in the Contract, and should be read in the context of that clause.

36. Schedule 2 – Services

Purpose

The purpose of this Schedule is to include the details of all Services and Deliverables to be provided by the Contractor under the Contract. It is important that all Services and Deliverables are clearly set out in this Schedule, along with the relevant Milestone Dates and Performance Criteria to help to ensure parties have a shared understanding of the Contractor's obligations under the Contract. The purpose of the Services is included. Under clause 6.2, the Contractor warrants that the Services will be fit for such purpose.

Operation

This Schedule is divided into sections for ease of use and general guidance. Additional pages may be attached to the Schedule.

If payments are to be linked to the achievement of milestones, the Milestone Dates specified for Services or Deliverables in this Schedule will be the same as those specified in Schedule 3 – Payment.

The Contractor is required to meet certain standards when supplying the Services or Deliverables. In addition to the general standards set out in Contract, Department of Industry, Innovation and Science may determine additional Performance Criteria which will apply to the Services and/or Deliverables. These Performance Criteria will be set out in section 4 of this Schedule, including relevant details.

Example:

	Service/Deliverable	Performance Criteria
1.	Review XYZ, including conducting a survey using the methodology and covering the topics set out in clause 2 of Schedule 2	<ul style="list-style-type: none">• At least 50 Commonwealth personnel respond to survey• Survey conducted in accordance with ... Guidelines• Survey questions relevant, appropriate and in plain English
2.	Report	<ul style="list-style-type: none">• Report is in plain English• Report sets out clear recommendations, including reasons• Report is approved by Commonwealth
3.	Presentation on findings and proposals to senior executives not to exceed 1	<ul style="list-style-type: none">• Presentation accurately and concisely summarises Report

	Service/Deliverable	Performance Criteria
	hour	

37. Schedule 3 – Payment

Purpose

This Schedule is linked to clause 14 (Payment) and clause 15 (GST) and sets out the:

- (a) Service Charges, including any:
 - (i) fixed fee components;
 - (ii) hourly and daily rates which may be payable during the Contract Period;
 - (iii) milestone payments due on Milestone Dates;
- (b) invoicing requirements; and
- (c) the basis on which expenses will be paid.

Operation

Each of the sections of this Schedule will be either completed with the appropriate information or marked as 'Not Applicable'.

Items to note include:

(a) **GST**

All Service Charges and rates will be expressed to be GST exclusive. However, the Schedule may include tables that set out the GST component and the total GST inclusive price. Refer to section 18 of these User Notes for further information on GST.

(b) **Fixed charges**

The table in section 1 will be used if the parties have agreed a fixed charge for the Services. A fixed charge for particular Services will not change unless the scope of the Services changes. This type of charge arrangement may be appropriate where Services or components of Services are clearly definable.

A fixed charge arrangement has the advantage of enabling both parties to understand the level of charges payable under the Contract. If a fixed charge arrangement is agreed, both parties are responsible for managing the scope of the Services and any dependencies. Any variation to the Services (and to the fixed charge) should be agreed in accordance with clause 30.2 of the Contract.

Fixed charges may be broken down into milestone payments and set out in section 4 of this Schedule.

(c) **Hourly and daily rates**

Time and materials arrangements may be appropriate where the scope of the Services or components of Services required are not readily definable at the time of signing the Contract. A Contract may contain both fixed fee and time and materials components.

If the parties have agreed that the Services will be provided on a time and materials basis, relevant hourly and/or daily rates for each personnel category (or for all Specified Personnel) will be included in the tables in sections 2 and 3, as appropriate.

Where time and materials is agreed as the payment basis, it is in the interests of both parties that expectations as to costs are managed. This is achieved in part by including in both tables a maximum work effort for each personnel category or Specified Personnel member.

Example:

Personnel	Daily Rate (exclusive of GST)	GST Component	Maximum Work Effort (Days)	Charges (exclusive of GST)	GST Component
K Smith	500	50	100	50,000	5,000
L Jones	300	30	50	15,000	1,500
Subtotal				65,000	6,500
Add GST				6,500	
TOTAL				71,500	

Any changes to the estimated work effort should be managed by varying the Contract as set out in clause 30.2.

(d) **Milestone payments**

Payment of Service Charges against milestones is a common way to help ensure that the Contractor delivers the Services and/or Deliverables consistent with the requirements of the Contract. It also has the advantage for the Contractor of knowing precisely what it has to achieve in order to receive payment. If milestone payments are linked to the delivery of particular Services or Deliverables, the Milestone Dates set out in section 4 of this Schedule will be consistent with those set out in Schedule 2.

Example:

Milestone date	Milestone/Deliverable	Milestone payment (exclusive of GST)
1 February 200-	Review XYZ...	20,000
15 March 200-	Approval of Draft Report	25,000
18 March 200-	Presentation	20,000
Subtotal		65,000
Add GST		6,500
TOTAL		71,500

(e) **Invoicing**

This section is linked to clauses 14.2 and 14.4 of the Contract. Department of Industry, Innovation and Science will include in this section any specific requirements it has for invoices.

For example:

- (i) *The Contractor must provide a single invoice for each month that sets out the Service Charges, and any other amounts payable by or the Commonwealth under this Contract for that month. Each invoice must be in a format that:*
 - (A) *is a tax invoice;*
 - (B) *enables the Commonwealth to identify and allocate the amounts invoiced including payments for Services and milestone payments.*
- (ii) *Where the invoice is for variable charges based on daily or hourly rates, include detail of the:*
 - (A) *Contractor Personnel who have provided the Services;*
 - (B) *the applicable hourly or daily rates; and*
 - (C) *the Services performed by those personnel during the invoice period.*
- (iii) *Invoices must be addressed and sent to the Commonwealth Representative at the address set out in the Contract Details.*

(f) **Expenses**

This section is linked to clause 14.5 of the Contract and any variation from the default position will be specified in this Schedule.

Note that this section may refer to 'non-SES rates'. These are set out in a Tax Determination by the ATO. The current rates are set out in Table 1 of [Tax Determination 2011/17 \(Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2011-12 income year\)](#).

(g) **Payment of Interest**

This section is linked to clause 14.7 of the Contract and provides the Government's Procurement On-Time Payment Policy. This policy requires that where procurements of a value up to \$1 million (GST inclusive) are made from a small business, if full payment is not made by the agency within 30 days of receipt of a correctly rendered invoice, simple interest on the unpaid amount will be payable by the agency.

Note this policy does not apply to:

- procurement of real property including leases and licences;
- procurement from administered items; or
- where the nature of the goods and services or the structure of the procurement would make it impractical for the policy to be applied. This might be the case, for example, where the procurement occurs under standard terms and conditions put forward by the contractor rather than the Department.

The complete policy is available at <http://www.finance.gov.au/resource-management/spending/pay-on-time-policy/>.

38. Schedule 4 – Confidentiality and privacy undertaking

Purpose

This Schedule is linked to the confidentiality and privacy clause in the Contract (clause 18, refer to section 21 of these User Notes). Under this clause, Department of Industry, Innovation and Science may require the Contractor to arrange for its Advisers, Personnel and other employees and subcontractors or any other third parties to give a written undertaking substantially in the form of this Schedule.

The purpose of the Schedule is to ensure that Contractor Personnel who have access to confidential and personal information are bound to treat such information in accordance with the requirements set in this undertaking.

It is not intended that the Contractor itself sign this undertaking as it is already bound to similar conditions under the terms of the Contract.

Operation

The Schedule should be completed in duplicate, with an original being given to both Department of Industry, Innovation and Science and the person signing the undertaking.

39. Schedule 5 – Designated Confidential Information

Purpose

This Schedule is linked to the confidentiality and privacy clause in the Contract (clause 18, refer to section 21 of these User Notes) and the definition of Confidential Information in clause 1.1.

Operation

The parties should set out in this Schedule any information which they require to be designated as 'confidential' and the period of confidentiality applicable to each item. This could include any particular clauses of the Contract or Schedules or any Contract related Material, for example, information relating to Personnel. Where a Contractor requests that certain information be designated as confidential, Australian Government policy requires a Non-Corporate Entity to consider whether that information should be subject to a contractual confidentiality obligation and to apply specified tests. Reference should be made to DoF Government web-based guidance.

While the definition of Confidential Information is not exclusively limited to the information set out in this Schedule, the parties should include all information that they specifically require to be treated as confidential in this Schedule to avoid any later uncertainty as to the confidential nature of the information.

40. Schedule 6 – Pre-existing Material

Purpose

This Schedule is linked to the Intellectual Property Rights clause in the Contract (clause 12, refer to section 15 of these User Notes) and the definition of Pre-existing Material in clause 1.1 of the Contract. The purpose of the Schedule is to enable parties to specify particular Pre-existing Material, which may be relevant to performance of the Services, prior to the commencement of the Contract.

Operation

Pre-existing Material is defined as being Material owned by a party before execution of the Contract and includes Material set out in the Schedule. It is an inclusive definition and does not

of itself exclude other Material owned by a party before execution. To help avoid future disputes as to ownership of Intellectual Property Rights, this Schedule should set out all of the significant Pre-existing Material that the parties contribute to the performance of the Services. This could include data, software, methodologies, templates, and other documentation.

Signing page

Purpose

This page contains the signing blocks for Department of Industry, Innovation and Science and Contractor.

For the Contractor, a choice should be made between one of the two displayed signing blocks:

- (a) **Option 1:** This option is appropriate where the Contractor is a company registered under the *Corporations Act 2001* (Cth).

This signing block should be signed by two directors, a director and the company secretary, or the person who is the sole director and sole company secretary. When the Contract is signed in this manner, it is signed in accordance with section 127 of the *Corporations Act 2001* (Cth), and entitles Department of Industry, Innovation and Science to assume that the Contract has been properly executed by the company.

- (b) **Option 2:** If the Contractor is not a company registered under the *Corporations Act 2001*, the second signing block listed for the Contractor should be used.

After the Contractor has signed the Contract, the signed Contract must be sent to Department of Industry, Innovation and Science for its signature.

Attachment A – Example Agency Order Form

The Contractor has offered under clause 4 of the Contract specified at item 1 below to provide the Services to Nominated Agencies. The Nominated Agency specified in item 3 below accepts this offer on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

1.	Contract No. and description	
2.	Names of Parties to the Contract	
3.	Commonwealth	<p><i>[insert Nominated Agency name]</i></p> <p>A reference to <i>[insert name of the contracting Agency]</i> or the Commonwealth in the Contract will be taken as a reference to <i>[the Nominated Agency]</i></p>
4.	Commencement Date	
5.	Commonwealth Representative	<p>Title:</p> <p>Name:</p> <p>Postal Address:</p> <p>Fax number:</p> <p>Email:</p>
6.	Commonwealth's details for Notices	<p>Postal address:</p> <p>Physical address:</p> <p>Facsimile number:</p>
7.	Contractor Specified Personnel	<i>[insert names]</i>
8.	Services required (including any changes to the Statement of Requirements)	<i>[attach additional pages if required]</i>

[insert execution clauses]