

# **SERVICES AGREEMENT**

between the

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

and

**The University of Queensland through  
the Centre for Military & Veterans'  
Health (CMVH)**  
*(Australian Business Number 63 942 912 684)*

**for developing, using project management activities, a  
research protocol that will be used to investigate the  
intergenerational health outcomes of military service.**

Version date: May 2005 V1

## **DOCUMENT OVERVIEW – HOW IS IT STRUCTURED?**

**The nature of this document:** The Agreement contained in this document (once completed by the parties) records an agreement for services, including its purpose (see clause 1 and Schedule Part A [Purpose]).

**Schedule and Clauses:** The Agreement starts with the “Schedule”, which describes the specific purpose, parties, services, payment details and standards applying to the Agreement in respect of an individual deal.

The Schedule Parts precede the standard clauses (the “Clauses”) for providing services to, or for, the Department of Veterans’ Affairs (DVA).

The Schedule allows for the specific details to be entered that make the Clauses effective.

Some Parts of the Schedule describe essential issues (eg, the Services and Fees). Others enable the parties to cover optional issues (eg, financial incentives or IT connectivity). Some Schedule Parts relate to Clauses that spell out the Commonwealth's requirements (eg, ensuring access to records for auditors and protecting privacy).

**Signatures Page and Agreement Date:** The Signature Page is where the parties indicate assent to this Agreement, ie that they entered this Agreement from the “Agreement Date”.

Under Schedule Part D, the parties’ obligations may be expressed to occur before the specific “Agreement Date”.

**Cross-referencing names:** Cross-referencing from the provisions of the Schedule Parts and the Clauses of the Agreement include a short-hand description for ease of reference. This style of cross-referencing is encouraged for use in drafting Schedule Parts.

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# THE SCHEDULE

## — PURPOSE, PARTIES AND TASK —

### Part A. What is this Agreement's purpose and period?

#### A(a) What is the purpose or outcome expected from this Agreement?

Relates to clause 1.1 [Cooperation].

- (1) The purpose of this Agreement is to set out the arrangements under which the University of Queensland through the Centre for Military & Veterans' Health (CMVH) will develop, using project management activities, a research protocol that will be used to investigate the intergenerational health outcomes of military service.

#### A(b) What is the agreed duration - noting also any option(s) to extend?

Relates to clause 1.1 [Cooperation].

- (1) This Agreement shall commence on the signing of the contract and shall end on 30 June 2007 [the End Date] unless extended, varied or terminated in accordance with clauses 15 [Default] and 17 [Variation].
- (2) At the sole discretion of DVA, the Agreement may be extended from the End Date for any period agreed to by the parties but not exceeding twelve months. Notice of offer of extension must be made by the Delegate in writing and receipt by the Delegate of written acceptance by the Contractor of such an offer shall give effect to extension of the Agreement for the further period specified.
- (3) Except as provided for in clause 15 [Default], either party may terminate this Agreement by providing the other party with one month's notice in writing. The Agreement will terminate one month after receipt by the other party of such notice.
- (4) No compensation shall be payable by either party to the other where the Agreement is terminated in accordance with Part A(b)(3) above.

## Part B. Who is the Contractor?

### B(a) What is the Contractor's legal identity?

Relates to clause 1.2(a) [Parties].

Full legal name of Contractor	University of Queensland
Legal identity (eg, individual, company, partnership etc)	Other Incorporated Entity
Trading or business name	Faculty of Health Sciences
Australian Business Number (ABN)	63 942 912 684
Are you registered for GST?	Yes
Date from which GST registration was effective	1 July 2000
Registered office (physical/postal)	The Centre for Military & Veterans' Health Mayne Medical School Herston Road Herston QLD 4006
Telephone (General)	+61 7 3346 4862
Fax (General)	+61 7 3346 4878
E-mail (General)	<a href="mailto:cmvh.enquiries@uq.edu.au">cmvh.enquiries@uq.edu.au</a>

### B(b) Who represents the Contractor (if Contractor not an individual)?

Relates to clause 6.1 [Format for notices].

Contractor's representative (name)	Dr Niki Ellis
Position	Director
Postal/physical address(es)	The Centre for Military & Veterans' Health Room 427, Mayne Medical School Herston Road Herston QLD 4006
Business hours telephone	+61 7 3346 4873
Fax	+61 7 3346 4878
E-mail	<a href="mailto:N.Ellis@uq.edu.au">N.Ellis@uq.edu.au</a>

### B(c) Are specified Personnel required?

Relates to clause 2.1 [Managing specified personnel].

- (1) The Personnel listed below are specified Personnel for purposes of this Agreement:

Full legal name of person	Dr Sonya Bennett
Nature of work to be performed under this Agreement	Research Management
Organisation	Centre for Military and Veterans' Health University of Queensland
Telephone	+61 7 3346 4861 or 0412 158 171
E-mail	<a href="mailto:sonya.bennett@uq.edu.au">sonya.bennett@uq.edu.au</a>

Full legal name of person	Assoc. Professor Catherine D'Este
Nature of work to be performed under this Agreement	Research
Organisation	Centre for Military and Veterans' Health University of Queensland
Telephone	+61 7 33464904

Full legal name of person	Ms Alison Mackenzie
Nature of work to be performed under this Agreement	Senior Research Assistant
Organisation	Centre for Military and Veterans' Health University of Queensland
Telephone	+61 7 3346 4901
E-mail	<a href="mailto:alison.mackenzie@uq.edu.au">alison.mackenzie@uq.edu.au</a>

**B(d) Are any subcontractors to be used (if so, for what scope)?**

Relates to clause 2.3 [Subcontractors].

- (1) The Contractor may subcontract to an appropriate third party the development of the research protocol, with the approval of DVA.
- (2) Each subcontractor engaged under Part B(d)(1) shall hold relevant qualifications and expertise enabling them to comprise an expert team to develop the research protocol.
- (3) Where DVA has previously been notified of the intention to subcontract in accordance with clause 2.3(a) [Subcontractors], the Contractor will provide, at DVA's request, the following information regarding its subcontractors:
  - Full legal name of subcontractor;
  - Legal identity (eg, individual, company, partnership etc);
  - Trading or business name;
  - Any relevant qualifications, skills or licences;
  - Authorised role of subcontractor;
  - Australian Company Number (ACN) or other entity identifier(s);
  - Australian Business Number (ABN);
  - Registered office (physical/postal);
  - Relevant business place (if different);
  - Telephone;
  - Fax; and
  - E-mail.

## Part C. How is DVA represented?

### C(a) Services are required by which entities?

Relates to clauses 1.2(b) [Parties], 8.10 [Other government entities] and 18.1 [Definitions: "DVA"].

(1) The Services are required by the:

- *Repatriation Commission* - a Commonwealth body corporate continued in existence under the *Veterans' Entitlements Act 1986* (VEA);
- *Military Rehabilitation and Compensation Commission* - a Commonwealth body corporate established by the *Military Rehabilitation Compensation Act 2004* (MRCA); and
- *Commonwealth of Australia* as represented by the Department of Veterans' Affairs, which, among other matters, assists the Repatriation Commission, and the Military Rehabilitation and Compensation Commission with the administration of their respective Acts.

(2) These bodies have the Australian Business Number (ABN) of 23 964 290 824 and are described collectively as DVA.

### C(b) Who represents DVA as a delegate or for liaison?

Relates to clauses 5.2 [Liaison], 6.1 [Format for notices] and 18.1 [Definitions: "Delegate"].

Delegate (Name)	Adam Luckhurst
Position	Acting National Manager
Address	Rehabilitation, Research & Development Department of Veterans' Affairs PO Box 21 Woden ACT 2606
Telephone (business hours)	+61 2 6289 6634
Fax	+61 2 6289 6173
E-mail	Adam.Luckhurst@dva.gov.au

Liaison Person (Name)	Dr Eileen Wilson
Position	Director Strategic Research and Development
Address	Rehabilitation, Research & Development Department of Veterans' Affairs PO Box 21 Woden ACT 2606
Telephone (business hours)	+61 2 6289 1110
Fax	+61 2 6289 6173
E-mail	Eileen.Wilson@dva.gov.au



## **Part D. What is the Contractor required to do?**

### **D(a) What Services are needed – and when?**

Relates to clauses 1.3(a) [Contractor's primary tasks].

- (1) The Contractor will perform the following tasks:
  - a) Assign a suitably qualified person (Project Manager) to manage and coordinate the services required under this Agreement. Upon assignment, the Contractor will inform DVA of the Project Manager's relevant qualifications and contact details;
  - b) Identify, recruit and assemble a team of experts in fields relevant to investigating intergenerational health outcomes of military service;
  - c) Manage, in consultation with DVA, the development of a research protocol, by the team of experts, that can be used to investigate the intergenerational health outcomes of military service;
  - d) Provide DVA with a research protocol initially focusing on the sons and daughters of Vietnam veterans, but having the flexibility to be applied in studies into the wider military context;
  - e) Discuss the results of D(b)(1)(b) and D(b)(1)(c) through a written report consistent with D(b)(1)(c).

### **D(b) What deliverables are required?**

Relates to clauses 1.3(b) [Contractor's primary tasks] and 18.1 [Definitions: "Contract Material"].

- (1) The Contractor will, consistent with the timeframe in Part E(a), provide DVA with the following:
  - (a) **Phase 1**
    - Identify and assemble a team of research experts, acceptable to DVA and consistent with Part D(a)(1)(b)
    - Develop the research questions in consultation with DVA
  - (b) **Phase 2**
    - Produce a research protocol, acceptable to DVA and consistent with D(a)(1)(c) and D(a)(1)(d), that will include –
      - A comprehensive review of relevant literature;
      - Development of a study hypotheses, sampling strategy, contact and recruitment strategy and outline of data collection instruments.
  - (c) **Phase 3**
    - Develop and document the plan for data analysis and data linkage; and
    - Produce a draft final report, acceptable to DVA and consistent with D(a)(1)(e), to be provided to DVA four weeks prior to the end date, with a view to the final report, acceptable to DVA, being delivered no later than 30 June 2007. Notwithstanding, the final report will be available within 14 days of DVA indicating satisfaction with the draft or requirement for

amendments. The Contractor will provide the final report in a style and format acceptable to DVA. The report will include –

- The literature review used as a basis for the research protocol;
- Research hypotheses, sampling strategies and outline of data collection instruments;
- Documentation of the contact and recruitment strategy and the results of its pre-testing;
- A discrete research protocol; and
- Documentation of the data analysis and data linkage plans.

**D(c) How is performance monitored and communication maintained?**

Relates to clause 1.3(c) [Contractor's primary tasks].

- (1) **[Performance monitoring]** DVA shall monitor the performance of the Contractor under this Agreement (particularly in relation to the tasks described in Part D(a) [The services] and the deliverables required under Part D(b) [The deliverables] and determine in its absolute discretion whether such performance has been satisfactory. If DVA decides that the Contractor's performance is unsatisfactory, then DVA may terminate this Agreement in accordance with clause 15.4 [Specified Default].
- (2) **[Communication]** The parties will meet on a regular basis not less than once every fortnight to discuss the progress of the Agreement including ways to improve delivery of the Services. Meetings can be face-to-face, by telephone or by electronic means.
- (3) **[Media Management]**
  - (a) The Contractor must obtain approval from DVA prior to the public release of any information or reference whatsoever relating to the research outlined in this Agreement.
  - (b) The means and manner of the release of any information produced by activities conducted under this Agreement will be determined by DVA.
  - (c) DVA will consult and negotiate in good faith with the Contractor in relation to media management issues.

## — PRICING —

### **Part E. How are payments calculated?**

#### **E(a) What fees apply?**

Relates to clause 3.1(a) [DVA's obligations].

- (1) Subject to all other terms of this Agreement, the Contractor will be paid a total of **\$360,000 (GST exclusive)** in accordance with the following schedule:
  - \$50,000 on completion of Part D(b)(1)(a) [Phase 1], acceptable to DVA and consistent with Part D(a)(1)(b), and to be completed no later than 30 November 2006, unless otherwise agreed to by the parties.
  - \$240,000 on completion of Part D(b)(1)(b) [Phase 2], acceptable to DVA and consistent with Part D(a)(1)(c) and Part D(a)(1)(d), and to be completed no later than 30 April 2007, unless otherwise agreed to by the parties.
  - \$70,000 on completion of Part D(b)(1)(c) [Phase 3], acceptable to DVA and consistent with Part D(a)(1)(e), and to be completed no later than 30 June 2007, unless otherwise agreed to by the parties.

#### **E(b) What expenses can be reimbursed?**

Relates to clause 3.1(a) [DVA's obligations].

- (1) No costs or disbursements of the Contractor will be reimbursed.

#### **E(c) What tax/invoice issues arise?**

Relates to clause 3.2 [Invoice a pre-requisite].

- (1) The Contractor acknowledges that it is currently able to accept payment electronically and will provide appropriate and necessary account details supported by an electronic remittance advice.
- (2) The Contractor further acknowledges that it may become necessary, over the term of this Agreement, to provide invoices in electronic form only.
- (3) Subject to acceptance of the Services by DVA, invoices will be paid within 30 days after receipt of a tax/invoice that correctly specifies:
  - (a) a reference to the Contractor and this Agreement;
  - (b) sufficient detail to allow the Delegate to clearly understand the relevant Services, deliverables and timing to which the claim for fees and reimbursements relates; and
  - (c) where GST applies, anything required to ensure the invoice is also a tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999*.

**E(d) Do incentives, discounts or conditions apply?**

Relates to clause 4 [Incentives and discounts].

- (1) There are no incentives or discounts like those referred to in clause 4 [Incentives and discounts].

**Part F What assistance or facilities will DVA provide?**

Relates to clause 3.1(b) [DVA's obligations].

- (1) DVA agrees to provide the Contractor with the following assistance:
  - consultations as required;
  - convene regular electronic and face-to-face meetings to discuss the progress of the research.

— **STANDARDS** —

**Part G. How is better practice encouraged?**

**G(a) Do implementation and disengagement issues arise?**

Relates to clause 1.4(a) [Specific standards].

- (1) **[Implementation]** The parties agree that no implementation issues arise under this agreement.
- (2) **[Disengagement]** If the parties do not extend or re-negotiate this Agreement in accordance with Part A(b) [Duration of agreement], the Contractor agrees to do all things necessary to ensure a smooth and well ordered hand-over to any person who takes over the provision of the Services as described in Part D(a) [The services].

**G(b) What quality, safety, security and IT interoperability standards apply?**

Relates to clauses 1.4(b) [Specific standards] and 1.5(d) [General standards].

- (1) **[Quality Standards]** The Contractor will ensure that the specified personnel maintain at all times, where applicable, professional membership of their relevant professional associations for the duration of the Agreement.
- (2) The Contractor agrees to perform the Services at the standard recognised as best practice in this profession.
- (3) **[Safety]** The Contractor will comply with DVA policy and procedures regarding occupational health and safety.
- (4) **[Security]** If the Contractor or its Personnel will have access to Security Classified Information, the Contractor agrees to store, handle and process such information in accordance with the minimum security

standards set out in the specified sections of the DVA Protective Security Manual, which will be provided to the Contractor where required.

- (5) **[IT Interoperability]** The Contractor warrants that it has IT systems that enable full and non-disruptive connectivity to DVA's IT systems, eg, appropriate firewall and internet protocols.
- (6) **[Data Management]** The Contractor will collect, maintain and store all data whatsoever generated by the research in a manner that complies with clause 9.1[Privacy applies] and the national standards set, and altered from time to time, by the Australian Government, eg, National Health and Medical Research Council and the National Health Information Group.

**G(c) What agency, public sector or transparency issues arise?**

Relates to clauses 1.4(c) [Specific standards], 8.3 [Access], 8.11 [Other scrutiny] and 9 [Privacy and protective security].

- (1) **[DVA Service Charter]** The Contractor agrees to conduct all its activities under this Agreement in a manner consistent with DVA's Service Charter (as amended from time to time). This is available on DVA website at: <http://www.dva.gov.au/media/aboutus/charter/index.htm>.
- (2) **[APS Values]** The Contractor agrees to conduct all its activities under this Agreement in a manner consistent with the Australian Public Service (APS) Values (*Public Service Act 1999*, s. 10). These recognise that the APS, among other things:
  - is apolitical, performing its functions in an impartial and professional manner;
  - provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
  - has the highest ethical standards;
  - is responsive to the Australian Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
  - focuses on achieving results and managing performance; and
  - is openly accountable for its actions, within the framework of Ministerial responsibility to the Australian Government, the Parliament and the Australian public.
- (3) **[APS Code of Conduct]** The Contractor agrees to conduct all its activities under this Agreement in a manner consistent with the Australian Public Service (APS) Code of Conduct (*Public Service Act 1999*, s. 13). These recognise that the APS, among other things:
  - behaves honestly and with integrity;
  - acts with care and diligence;
  - treats everyone with respect and courtesy, and without harassment;
  - complies with all applicable Australian laws;
  - maintains appropriate confidentiality about dealings with any Minister or Minister's member of staff;
  - discloses, and take reasonable steps to avoid, any conflict of interest (real or apparent);
  - uses Commonwealth's resources in a proper manner;

- does not provide false or misleading information in response to a request for information that is made for official purposes;
- does not make improper use of inside information, in order to gain, or seek to gain, a benefit or advantage;
- behaves in a way that upholds the APS Values and the integrity and good reputation of the APS; and
- is at all times to behave in a way that upholds the good reputation of Australia.

**G(d) How will the parties manage/resolve disputes?**

Relates to clauses 7.2 [External processes] and 8.2 [Complaint handling].

- (1) If a dispute is not resolved under clause 7.1 [Internal processes] then, as stated in clause 7.2 [External processes], the parties agree to act in good faith to endeavour to resolve the dispute using external informal dispute resolution techniques, such as mediation, expert evaluation or determination including peer review, but not arbitration.
- (2) In particular, the parties will act in good faith to endeavour to agree within 10 days (or a period agreed between them in writing, depending on the issue in dispute) about:
  - the dispute resolution technique and procedures to be adopted;
  - the timetable for all steps in those procedures; and
  - the selection and payment of the independent person required for the agreed technique.
- (3) If the parties cannot agree as above, then they will refer the dispute to the Australian Commercial Disputes Centre (ACDC), with the object of having the dispute settled by mediation, in which case each party will bear its own costs.

**Part H. Do special property issues arise?**

**H(a) Does a party require particular access to Material?**

Relates to clauses 10.1 [DVA material] and 10.3 [Contract material].

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

**H(b) Does special apportionment of Intellectual Property Rights [IPRs] apply?**

Relates to clauses 11.2 [Ownership] and 18 [Definition] Pre-existing Material

- (1) In addition to clause 11 [Intellectual property rights], DVA may, on request in writing from the Contractor, grant to the Contractor a licence to use, including publish, any of the Contract Material and/or DVA material provided to the Contractor for the purpose of this Agreement.
- (2) Any licence granted by DVA:
  - (a) will be limited to use for academic purposes;
  - (b) will not include the right to adapt without written prior approval;
  - (c) will not include the right to commercially exploit the material in any way;
  - (d) will not include the right to sub-licence; and

- (e) will acknowledge Commonwealth ownership of copyright in an appropriate manner and by noting on the material to be used "© Commonwealth of Australia".
- (3) For the purposes of Part H(b)(1), the Contractor must have approval from DVA for a licence prior to publishing any Contract and/or DVA Material.
- (4) If the Contractor intends to publish any Contract Material or DVA Material in any academic journal, or other journal, then an appropriate copyright licence must be sought separately from DVA.
- (5) Any such licence shall be issued at DVA's discretion and on such terms and conditions as DVA may impose.
- (6) DVA agrees to negotiate all licences in good faith.
- (7) Without limiting the provisions of clause 18 [Definition] Pre-existing Material, 'DVA material' includes all material, including any data, provided to the Contractor for the purposes of fulfilling the Contractor's obligations under this Agreement.
- (8) DVA will, as DVA considers necessary on a case-by-case basis, provide assistance to the Contractor to publish the Contract Material in academic journals.

**H(c) What information has been agreed as confidential under this Agreement?**

Relates to clause 9 [Privacy, Confidentiality and Protective Security]

- (1) For the purpose of this Agreement, the parties agree that confidential information includes:
  - (a) any unpublished Contract Material and/or DVA material for which prior approval to disclose has not been granted by DVA; and
  - (b) any additional material specified and otherwise described in this Agreement.

**Part I. How is risk managed?**

**I(a) What insurance does the Contractor maintain?**

Relates to clause 13.3(a) [Insurance and risk management].

- (1) The Contractor must maintain full levels of insurance cover to properly protect its and DVA's interests for the Services. The Contractor will also be expected to comply with all relevant insurance requirements, including conducting and improving relevant risk management practices and incident notification processes.
- (2) Specifically, the Contractor warrants that in the performance of the services, it has, and will maintain:

- public risk/liability insurance for not less than \$10,000,000 per claim covering liability owed to another person who suffers loss or damage by reason of the Contractor's business activities;
- professional indemnity type insurance for not less than \$5,000,000 per claim covering acts or omissions of the Contractor in the exercise of its trade or profession that give rise to liability (eg, negligence); and
- workers' compensation insurance as required by State/Territory law, sufficient for any place that its relevant Personnel are involved with this Agreement **or**, if the Contractor is an individual, appropriate disability income insurance for illness and injury.

- (3) The Contractor further warrants that any subcontractor used in the performance of the services has, and will maintain appropriate insurance.
- (4) The Contractor agrees to provide copies of certificate/s of currency to the Delegate upon request, **including details of limits on cover.**

**I(b) What risks/issues require specific management?**

Relates to clauses 13.3(d) [Insurance and risk management], 15.2(b) [Rectification notice] and 15.4 [Specified default].

- (1) The parties agree that no matters in addition to those specified elsewhere in the Agreement need specific management.

**Part J. What is this Agreement's formal status?**

**J(a) Is this Agreement a contract, standing offer, deed, non-binding etc?**

Relates to clauses 12.2(b) [Agent status] and 16.1(a) [Entire agreement and status].

- (1) This Agreement expresses the parties' intention to create legal relations. It forms a *contract for services*, with the services set out in D(a) [What Services are needed - and when?].

**J(b) What is this Agreement's context and how are amendments managed?**

Relates to clause 16.1 [Entire agreement and status] and 17.1 [Variation]

- (1) The parties may from time to time by written agreement vary or amend this Agreement or enter into other written Agreements, for giving better effect to this Agreement.

**J(c) What jurisdiction governs interpretation?**

Relates to clause 16.2 [Applicable law].

- (1) The applicable law is that of the Queensland.



# THE CLAUSES

## — KEY PEOPLE AND SERVICES —

1. **Purpose, services, timing and standards**
  - 1.1 **[Cooperation]** The parties agree to the purpose and expected duration of this Agreement as stated in Part A [Agreement's purpose and period].
  - 1.2 **[Parties]** The parties to this Agreement are:
    - (a) the Contractor, as described in Part B(a) [Contractor's legal identity]; and
    - (b) DVA, acting through the Department described in Part C(a) [Government parties] and any entity described through clause 8.10 [Other government entities], in particular the Repatriation Commission and the Military Rehabilitation and Compensation Commission.
  - 1.3 **[Contractor's primary tasks]** The Contractor agrees to:
    - (a) perform the Services following the timing agreed in Part D(a) [Services and timing], taking into account this Agreement's purpose as stated in Part A(a) [Agreement's purpose];
    - (b) provide Contract Material and Intellectual Property Rights, appropriate for the Services, including deliverables agreed in Part D(b) [Deliverables]; and
    - (c) communicate with DVA and assist with performance-monitoring requirements, including as agreed in Part D(c) [Communication and monitoring].
  - 1.4 **[Specific standards]** The Contractor agrees to:
    - (a) conduct implementation, disengagement and skills transfer tasks, including as set out in Part G(a) [Implementation and disengagement] of this Agreement;
    - (b) meet or exceed relevant quality, security or safety standards, including as agreed in Part G(b) [Quality, security and safety]; and
    - (c) meet relevant government requirements, including as agreed in Part G(c) [Public sector issues].
  - 1.5 **[General standards]** The Contractor agrees to:
    - (a) ensure that the Services are performed properly and completely, including in a manner consistent with the purpose stated in Part A(a) [Purpose];
    - (b) conduct itself with due care, skill and diligence, including exercising decorum and courtesy when dealing with any person, or the property of any person;
    - (c) meet obligations arising under any Law, including Anti-Discrimination Laws; and
    - (d) comply with any Law (or Australian Government policy) applicable to the use of or conduct at any premises, including
      - occupational health and safety rules (eg, a smoke-free workplace), and
      - procedures referred to in Part G(b) [Quality and safety], or as notified by the Delegate.

- 1.6 **[Responsibility]** DVA relies on the Contractor performing to high standards and (unless the Delegate states otherwise in writing) the Contractor agrees that it bears ultimate responsibility for the provision of the Services, undiminished by other factors, including:
- (a) the appropriateness of the efforts of any of its Personnel;
  - (b) the existence of a dispute or dispute resolution process, including about the exercise of any DVA discretion and any conditions imposed; or
  - (c) activities occurring under clause 17.2 [Novation].
- 1.7 **[End dates]** At any relevant End Date, including arising under clause 14 [Compensated reduction], clause 15 [Default] or clause 17.2 [Novation] the Contractor agrees:
- (a) to continue to maintain and protect DVA Material and Contract Material, until dealt with under clause 10.4 [Appropriate use of material];
  - (b) to take all steps to minimise Loss; and
  - (c) to conduct transition tasks, as agreed under clause 1.4(a) [Specific standards].

## **2. Personnel and subcontractors**

- 2.1 **[Managing specified personnel]** The Contractor agrees to ensure that any Personnel (including any specified in Part B(c) [Specified personnel]):
- (a) are appropriately qualified, and of a fit and proper nature, to perform the services;
  - (b) are Australian citizens or if not Australian citizens are not Illegal Workers;
  - (c) consent to DVA, or the Contractor where so requested by DVA, conducting appropriate security or other police checks/clearances, and provide any undertakings sought under clause 9.12 [Undertakings];
  - (d) conduct the Services according to this Agreement;
  - (e) promptly, through the Contractor, notify DVA if they cannot meet any of their contributions to the Contractor's obligations under this Agreement; and
  - (f) will have access only to such official information as is required for the Personnel to perform their duties.
- 2.2 **[Replacement personnel]** The Contractor agrees:
- (a) that DVA may, if DVA considers it appropriate, notify the Contractor of any concerns regarding the Contractor's Personnel (including any specified under clause 2.1) and, if requested to do so by DVA, the Contractor will seek to address those concerns to DVA's satisfaction within a timeframe specified by DVA;
  - (b) notwithstanding clause 2.2(a), that DVA may require it to promptly remove Personnel (including any specified under clause 2.1) from any aspect of the Services;
  - (c) if requested, to promptly nominate potential replacement Personnel; and
  - (d) if it cannot provide Personnel acceptable to the Delegate, DVA may rely on clause 15.4 [Specified default].

2.3 **[Subcontractors]** The Contractor agrees to:

- (a) notify DVA in the event of any subcontractors being used, and to provide details of any subcontractor performing tasks in relation to this Agreement if so requested by DVA in accordance with Part B(d) [Subcontractors];
- (b) ensure the continuing suitability of subcontractors (including compliance with Law generally, Anti-Discrimination Laws, and relevant security requirements as set out in Part G(b) [Quality and safety];
- (c) ensure that no subcontract restricts DVA's Legal Rights;
- (d) ensure that all contracts with subcontractors contain functionally equivalent provisions to this Agreement to the extent that those provisions are capable of applying to the subcontract;
- (e) inform subcontractors about obligations arising under this Agreement; and
- (f) properly pay or reward subcontractors under any relevant subcontract, including accounting properly for all tax-related issues.

## — FINANCIAL MATTERS —

### 3. Payment and assistance

3.1 **[DVA's obligations]** DVA agrees to:

- (a) upon receiving an appropriate and correct invoice, pay fees to and reimburse costs of the Contractor as agreed in Part E(a) [Fees] and Part E(b) [Expenses]; and
- (b) provide reasonable assistance agreed in Part F [DVA assistance].

3.2 **[Invoice a pre-requisite]** To obtain payment, the Contractor agrees to submit an invoice, prepared carefully and according to Part E(c) [Invoice procedures].

3.3 **[Tax invoice]** The Contractor agrees to submit a tax invoice or, where applicable, authorise a Recipient Created Tax Invoice (RCTI), complying with the *A New Tax System (Goods and Services Tax) Act 1999*:

- (a) in relation to goods or services that are Taxable Supplies; and
- (b) where "Recipient Created Tax Invoice" and "Taxable Supplies" have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

3.4 **[Withholding tax]** The Contractor acknowledges that unless it provides DVA with its Australian Business Number, DVA may need to withhold tax from payments.

3.5 **[Tax change]** If a Variation to a Tax affects this Agreement, either party may seek, by written notice, a review of fees, reimbursements or assistance. If the review will potentially increase payments, the Contractor agrees to substantiate to the Delegate's satisfaction that:

- (a) any increases are attributable to the Variation; and
- (b) the Contractor took all measures to minimise the effect of the Variation.

3.6 In clause 3.5 [Tax change]:

- (a) "Tax" includes any tax, duty or charge from an Australian, State or Territory government; and

- (b) "**Variation**" includes the introduction of, an increase in, a decrease in, or the abolition of a Tax.
- 3.7 **[Deferment]** DVA may defer any payment until the Contractor has completed, to the Delegate's reasonable satisfaction, a relevant aspect of the Services, or prepared an appropriate tax/invoice, relating to the payment.
- 3.8 **[Discrepancies]** The Contractor agrees that DVA may:
- (a) check and rectify discrepancies in any payments or assistance;
  - (b) offset any overpayment against future payments; and
  - (c) recover, as a debt, any money owing to DVA (plus reasonable interest), including any outstanding prepayment amount at a relevant End Date.
- 3.9 **[Price Review]** The parties may agree to consult regarding any price review.
- 3.10 **[Prepayment]** The Contractor acknowledges that any prepayments will be subject to DVA's sole discretion.
- 3.11 **[Changes to ABN or GST]** The Contractor agrees to notify DVA within 21 days of any change to its ABN, GST registration status or a cancellation of its ABN or GST registration.

#### **4. Incentives and discounts**

- 4.1 **[Incentives and discounts]** The parties may agree in Part E(d) [Incentives and discounts] to pricing mechanisms that encourage better performance.
- 4.2 **[Liquidated damages]** The Contractor agrees that:
- (a) if it breaches this Agreement then DVA may suffer Loss that may be difficult or expensive to quantify accurately as a pre-estimate; and
  - (b) any method for calculating liquidated damages agreed in Part E(d) [Incentives and discounts] provides a genuine pre-estimate of DVA Loss, and does not include a component that has the character of a penalty.

### **— COMMUNICATION MANAGEMENT —**

#### **5. Communication and management support**

- 5.1 **[Representatives and resources]** The Contractor agrees to, at its own cost:
- (a) nominate an individual authorised to receive notices and to represent it, including to communicate appropriately with the Delegate as agreed in Part D(c) [Communication] or Part G(d) [Dispute management];
  - (b) maintain sufficient management resources to support the Services, good communication between the parties and government transparency requirements under clause 8 [Government framework];
  - (c) maintain good record keeping practices to assist with any contract management and accountability requirements generally, including all applicable Australian Accounting Standards; and
  - (d) provide appropriate training to its Personnel with particular regard to issues arising under clause 9 [Privacy, confidentiality and no conflict of interest].

- 5.2 **[Liaison]** The Delegate may authorise a Liaison Person to help maintain communications or conduct specific tasks. The Contractor acknowledges that a Liaison Person has no authority to vary this Agreement or authorise payments.

## 6. Delivering Notices

- 6.1 **[Format for notices]** Notices given by a party under this Agreement (as applicable) must be:

- (a) signed by the Delegate and handed to the Contractor or sent to the address in Part B(b) [Contractor's representative] or as the Contractor notifies the Delegate; and
- (b) handed to the Delegate, or sent to the address in Part C(b) [Government's representative] or as the Delegate notifies the Contractor in writing.

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

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

## 7. Managing disputes

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

- 7.2 **[External processes]** If, after a notice under clause 7.1 [Internal processes], the parties do not resolve a formal dispute within 10 working days (or another period agreed in writing, including under Part G(d) [Dispute management]), then a party may:

- (a) if the dispute is critical, start court proceedings; or
- (b) preferably, adopt alternative dispute resolution (eg, mediation) as agreed in Part G(d) [Dispute management].

- 7.3 **[Non-applicability]** Clauses 7.1 [Internal processes] and 7.2 [External processes] do not apply to:

- (a) a party seeking urgent, temporary court intervention (interlocutory relief); or
- (b) DVA relying (including purportedly) on clause 14.1 [Reduction or cancellation] or clause 15.4 [Specified default].

## — TRANSPARENCY AND ACCOUNTABILITY —

- 8. Governmental framework**
- 8.1 **[Public impact]** The Contractor agrees to preserve the integrity and good reputation of DVA, including when dealing with any person and the public.
- 8.2 **[Complaint handling]** If a person makes any complaint that may affect DVA's integrity or good reputation relating to this Agreement, the Contractor agrees to:
- (a) comply with any agreed complaints handling procedures, including any set out under Part G(d) [Dispute Resolution];
  - (b) promptly notify the Delegate about the nature of the complaint, in particular where the Contractor receives a complaint alleging an interference with the privacy of an individual by the Contractor or any of its Personnel; and
  - (c) allow DVA to intervene as it decides, including managing or settling the complaint.
- 8.3 **[Access]** The Contractor agrees to provide, or arrange, prompt reasonable access for DVA (including the Delegate) and Commonwealth "Accountability Personnel", to:
- (a) premises where the Services are or were being undertaken or delivered, including by its Personnel; and
  - (b) Material relating to this Agreement, wherever located, including any system of accounting in use connected with this Agreement.
- 8.4 **[Informed consent]** To ensure it can meet its obligations under clause 8.3(b), especially in relation to personal information such as medical records or financial details, the Contractor agrees to obtain the informed consent of all relevant persons including any veterans that may be receiving services from the Contractor under this Agreement. This may be achieved by noting that the person has been made aware that information of that kind is able to be accessed by DVA.
- 8.5 **[Delegate to be involved]** If "Accountability Personnel" approach the Contractor directly, then the Contractor agrees to immediately seek directions from the Delegate about appropriate steps to take. For example, DVA may need to raise issues such as privacy, confidentiality, security, immunity from disclosure or the need for appropriate warnings.
- 8.6 **[Definition: "Accountability Personnel"]** In clauses 8.3 [Access] and 8.5 [Delegate to be involved], "Accountability Personnel" means an individual performing statutory or Parliamentary functions, including as authorised by the Auditor-General, the Ombudsman, the National Archives of Australia, the Privacy Commissioner, Parliament, or a Parliamentary Committee, and the Contractor acknowledges that any of these may name the Contractor in a public report or comment lawfully on this Agreement.
- 8.7 **[Allocated Official, Outsider etc]** The Contractor acknowledges that it, or its Personnel, may become directly subject to Commonwealth Law. This includes

as an allocated "Official" under the *Financial Management and Accountability (FMA) Regulations* (being a person performing a financial task or procedure regarding "public money", including its commitment, expenditure, management or control).

- 8.8 **[Procurement reporting]** The Contractor acknowledges that certain details about the nature, price and parties to Commonwealth contracts must generally be gazetted by DVA and may also be described in its Annual Report.
- 8.9 **[Administrative law]** The Contractor agrees to cooperate with DVA in its obligations under administrative law. This includes cooperation in the handling of requests for access and applications for review of decisions under the *Freedom of Information Act 1982*. It also includes cooperating in relation to procedures regarding any administrative review tribunal or as if the Contractor were a "Commonwealth Institution" under the *Archives Act 1983*.
- 8.10 **[Other government entities]** A recipient of the Services under this Agreement may include a separate entity of the Australian government that is described in Part C(a) [Government parties]. Where more than one entity, agency or department is named then the inter-relation between them may also be explained in Part C(a) [Government parties] and references to DVA will then include that separate entity (and its Personnel).
- 8.11 **[Other scrutiny]** The parties may supplement this clause 8 as agreed in Part G(c) [Public sector].

## 9. Privacy, confidentiality and protective security

- 9.1 **[Privacy applies]** The Contractor agrees (with words in inverted commas in this clause adopting definitions from the *Privacy Act 1988*) to act as if it were a "record-keeper" regarding "personal information" and to comply with:
- (a) the "Information Privacy Principles" (regulating collection, solicitation, security, use and disclosure of personal information);
  - (b) policies of DVA or the "Privacy Commissioner" relating to managing "personal information", including cooperating with reasonable requests from the "Privacy Commissioner";
  - (c) the Delegate's directions about managing "personal information", in particular involving "Privacy Commissioner" recommendations about this Agreement;
  - (d) DVA's prohibition against trans-border flows of "personal information" without prior approval by DVA; and
  - (e) section 95C, and acknowledge section 95B, of the *Privacy Act 1988*, and in particular agrees not to use or disclose personal information or engage in any practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10), or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to the Contractor, unless:
    - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
    - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is

authorised under this Agreement is inconsistent with the NPP or APC.

- 9.2 **[Confidential information not to be disclosed]**
- (a) Subject to clause 9.3, a party must not, without the prior written consent of the other party, disclose confidential information of the other party to a third party.
  - (b) In giving written consent to the disclosure of confidential information, a party may impose such conditions as it thinks fit, and the other party in disclosing the confidential information agrees to comply with those conditions..
- 9.3 **[Definition: Confidentiality]** In clause 9.2 [Confidential information not to be disclosed], the phrase "confidential information" means:
- (a) the information, if any, described in Part H(c) of the Schedule; and
  - (b) information that is agreed between the parties
    - in writing in accordance with clause 9.3(d), and
    - after the Agreement Dateas constituting confidential information for the purposes of this Agreement.
  - (c) **[Exceptions to requirement of confidentiality]** The provisions of clauses 9.2 and 9.3 do not apply where the confidential information -
    - i. is required or authorised to be disclosed by law; or
    - ii. is or becomes public knowledge other than by breach of this clause 9; or
    - iii. is disclosed to or by the responsible Minister in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia, or relevant State or Territory Parliament, or the Australian National Audit Office (ANAO); or
    - iv. is disclosed by the party to its Personnel solely in order to comply with obligations, or to exercise Legal Rights, under this Agreement; or
    - v. is shared by DVA within DVA's organisation, or with another agency, where this serves the Commonwealth's legitimate interests.
  - (d) **[Additional confidential information]** The parties may agree in writing after the commencement of this Agreement that certain additional information is to constitute confidential information for the purposes of this Agreement.
  - (e) **[Period of confidentiality]** The obligations under this clause 9 continue, notwithstanding the expiry or termination of this Agreement:
    - i. in relation to an item of information described in Part H(c) of the Schedule for the period set out in the Schedule in respect of that item; and
    - ii. in relation to any information which the parties agree in writing after the commencement of this Agreement is to constitute confidential information for the purposes of this Agreement; or
    - iii. until such time as the confidential information becomes public knowledge or is no longer declared confidential by the party claiming the confidentiality.



- (f) **[No reduction in privacy obligations]** Nothing in this clause 9 derogates from any obligation which either party may have either under the *Privacy Act 1988* as amended from time to time, or under this Agreement, in relation to the protection of personal information.
- 9.4 **[Secrecy and computer crime]** The Contractor acknowledges that the *Crimes Act 1914* may apply to it, such as to prohibit disclosure of official secrets or misuse of Commonwealth computers.
- 9.5 **[No conflict of interests]** The Contractor warrants that, after diligent inquiry, no potential conflict of interest arises from entering this Agreement, including anything:
- (a) restricting the fair conduct or delivery of the Services; or
  - (b) affecting DVA adversely, including its integrity, good reputation or issues stated in Part G(c) [Public Sector].
- 9.6 **[Protective security reporting and compliance]** The Contractor agrees to:
- (a) participate, and provide full cooperation, in security reviews of the security procedures implemented, on an annual basis or as otherwise agreed;
  - (b) promptly report any security incidents, including violations and breaches, including steps taken by the Contractor to address these;
  - (c) immediately report any serious security incident (confirmed promptly in writing);
  - (d) recommend security improvements at soon as practicable; and
  - (e) comply with security requirements for the protection of information, as notified by DVA under this Agreement from time to time.
- 9.7 **[Protective security access]** Without derogating from any other right of access, DVA Personnel may at any time have access (for security reviews, security audit requirements and security performance monitoring — including in the presence of Contractor Personnel if required by DVA) to:
- (a) any premises or site of the Contractor or DVA used in connection with this Agreement; and
  - (b) any Contract Material or DVA Material under the control or custody of the Contractor.
- 9.8 **[Unauthorised access]** The Contractor agrees to ensure that DVA Material is not accessible by any means by unauthorised persons, and at DVA's request, at any time, the Contractor agrees to provide DVA with a written warranty that no breach of this clause 9.8 has occurred.
- 9.9 **[Legal Rights]** The Contractor:
- (a) warrants that, at the date of entering into the Agreement, no third party has any Legal Rights in connection with Security Classified Information that relates to this Agreement, in favour of a third party, that have not been disclosed in writing to DVA; and
  - (b) agrees that it will not at any time create, or arrange with a third party to create, any Legal Rights in favour of a third party, without prior approval from DVA (which, as noted generally under clause 16.5 [Interpretation], may be on any conditions).

- 9.10 **[Future]** The Contractor agrees not to engage in activities, or obtain interests, creating a potential conflict of interest.
- 9.11 **[Notice]** If a potential breach of this clause 9 arises, the Contractor agrees to:
- (a) promptly notify the Delegate, disclosing full details of the nature and extent of the issue, including in writing if requested by the Delegate; and
  - (b) take steps the Delegate reasonably requires.
- 9.12 **[Undertakings]** The Contractor agrees to ensure its Personnel understand this clause 9 and that they agree to give undertakings, or consent to personal checks, in a form DVA may require, to sustain this clause 9.
- 9.13 **[Breach]** DVA may rely on clause 15.4 [Specified default] if it is satisfied that the Contractor (or its Personnel) is in breach of this clause 9.

## — OWNERSHIP AND LICENCES —

### 10. Materials ownership, access and custody

- 10.1 **[DVA retains its material]** Ownership of DVA Material remains vested in DVA and any access, custody or control provided to the Contractor will be non-transferable and non-exclusive. Additional terms may be specified by the Delegate in Part H(a) [Access to DVA material].
- 10.2 **[DVA material kept safe]** The Contractor agrees to:
- (a) promptly notify the Delegate about any potential Loss of DVA Material;
  - (b) meet the reasonable requirements of the Delegate regarding the need to repair or replace DVA Material;
  - (c) ensure that neither it nor its Personnel seek or obtain a lien or mortgage over any DVA Material; and
  - (d) make no disposal, or transfer of custody or ownership, of any Material that equates to a "Commonwealth record" under the *Archives Act 1983*, without written Commonwealth approval, including from the National Australian Archives.
- 10.3 **[Contractor transfers material]** The Contractor agrees to transfer ownership of Contract Material to DVA:
- (a) upon the Agreement Date; and
  - (b) upon the creation of the Contract Material (if after the Agreement Date); or
  - (c) upon delivery to DVA (where the parties agree in Part H(a) [Access to contract material]).
- 10.4 **[Appropriate use of material]** The Contractor agrees to:
- (a) promptly ensure it is satisfied about the suitability of DVA Material;
  - (b) ensure that use, storage and disclosure of DVA Material and Contract Material occurs only according to this Agreement;
  - (c) use, maintain, protect and disclose DVA Material and Contract Material appropriately and following any conditions notified by the Delegate; and
  - (d) promptly deliver to the Delegate relevant DVA Material and Contract Material it holds or controls on any relevant End Date.

## 11. Intellectual property rights (IPRs)

- 11.1 **[Assignment]** The Contractor agrees to assign ownership of Intellectual Property Rights in Contract Material to DVA upon the Agreement Date or the creation of the Contract Material (if after the Agreement Date).
- 11.2 **[Ownership]** Ownership in:
- (a) any DVA Material remains at all times vested in DVA;
  - (b) any material in existence at the Agreement Date (called 'Pre-existing Material') remains unaffected by this Clause 11.
- 11.3 **[Licence granted]** The Contractor grants to DVA a licence to Pre-existing Material on the terms defined in Clause 11.4.
- 11.4 **[Definition of Licence]** The licence granted in Clause 11.3 [licence granted] means a permanent, irrevocable, worldwide, royalty-free, non-exclusive right to use, reproduce, adapt and exploit the Material, and includes anything in the nature of copyright under the Copyright Act 1968, which includes all rights for material as set out at Clause 18.1.
- 11.5 **[Moral Rights]**
- (a) The Contractor genuinely consents and warrants that any individuals comprising its Personnel genuinely consent, to the Commonwealth or its Personnel doing any act or omission that would otherwise constitute an infringement of "moral rights". In interpreting this consent, it applies to:
    - (i) moral rights including the right of attribution of authorship and the right of integrity of authorship;
    - (ii) any Material, including literary, dramatic, musical or artistic works or cinematograph films, incorporated in any Contract Material;
    - (iii) any individual who is an author or a joint author of relevant Material; and
    - (iv) the full extent possible in Law, and outside Australia, including acts or omissions that may occur at any time, such as before the Agreement Date.
  - (b) For the purposes of this Clause 11.5 and without limiting Clause 11, the Contractor must procure from each of its Personnel and/or subcontractors performing any of the Services in relation to this Agreement, the assignment of Intellectual Property rights and consent in respect of Moral Rights for the benefit of the Commonwealth. The Contractor must arrange for each assignment and/or consent to be given promptly and prior to the Contractor's Personnel and/or subcontractors commencing performance of any of the Services consistent with this Agreement.
  - (c) notwithstanding clause 11.5(a) and clause 11.5(b), the Contractor will ensure that all contributing authors will be correctly acknowledged in all deliverables provided to DVA.
- 11.6 **[Crown copyright]** The Contractor acknowledges that, as defined under the *Copyright Act 1968*, the Crown in right of the Commonwealth:
- (a) is the copyright owner of an original copyright 'work' first published in Australia by, or under the direction or control of, the Crown; but
  - (b) may agree with an author to vest copyright in the author (or any person).

- 11.7 **[Warranty]** The Contractor warrants that it is entitled, or will be entitled at relevant times, to assign or license relevant Intellectual Property Rights under this Clause 11.
- 11.8 **[Survival]** This clause shall survive the expiration or termination of this Agreement.

## — RISK MANAGEMENT —

### 12. No employee, partner or agent status

- 12.1 **[Independent contractor]** The Contractor acknowledges that it has entered into this Agreement as an independent contractor consistent with the purpose stated in Part A(a) [Agreement's purpose] and, under this Agreement, it gets paid to achieve specific outcomes, largely supplies its own Personnel and equipment for delivery of the Services and bears the risks, including liability for defective work. Accordingly, the Contractor agrees this Agreement does not:
- (a) entitle the Contractor (or its Personnel) to claim from DVA employment entitlements, including annual, sick or long service leave, workers' compensation, superannuation or pension benefits or to have DVA make contributions to a fund for the provision of superannuation or pension benefits to the Contractor; or
  - (b) make the Contractor (or its Personnel) an employee, partner or – subject to clause 12.2(b) [Agency] – an agent of DVA.
- 12.2 **[Not an agent without express authorisation]** The Contractor agrees to not represent itself, and agrees to ensure that its Personnel do not represent themselves, as:
- (a) being an employee or partner of DVA (or its Personnel); or
  - (b) able to bind or represent DVA (or its Personnel) beyond any express authority given in Part J(a) [Status].

### 13. Indemnity and insurance

- 13.1 **[Contractor's liability]** The Contractor agrees to indemnify DVA (and its Personnel) against any Loss reasonably incurred, at any time, in relation to this Agreement, from any Claim, regarding or incidental to any:
- (a) fault, including deficient or inaccurate information, negligence (whether involving acts or omissions) or wilful misconduct, of the Contractor or its Personnel;
  - (b) complaint or Claim under clause 8.2 [Complaint handling];
  - (c) breach of clause 9 [Privacy, confidentiality and no conflict of interests];
  - (d) breach of Intellectual Property Rights, whether involving any assignment, licence or warranty under clause 11 [IPRs]; and
  - (e) workers' compensation or other insurance payments or Claims, including for premiums or compensation paid in relation to the Contractor or its Personnel.

- 13.2 **[Scope of liability]** The Contractor's liability under clause 13.1 [Liability]:
- (a) will not exceed the full amount of the relevant Loss; and
  - (b) is reduced proportionally to the extent that DVA was at fault in contributing to the Loss; but
  - (c) does not exclude any other Legal Rights available to DVA.

- 13.3 **[Insurance and risk management]** The Contractor, in ensuring its own viability as well as to support its commitments under this Agreement, agrees to:

- (a) obtain and maintain appropriate insurance from a reputable insurer, including as agreed in Part I(a) [Contractor's insurance];
- (b) promptly prove, upon request, that its insurance is current;
- (c) enable DVA to communicate directly with its insurer; and
- (d) conduct any risk management activities as agreed in Part I(b) [Risk management].

## 14. Compensated reduction or cancellation

- 14.1 **[DVA may reduce or cancel services]** DVA reserves the right to reduce the scope of, or cancel this Agreement, at any time including where there is a significant change in Commonwealth policy or where there is a change in control or ownership of the Contractor, by written notice stating any End Date(s).

- 14.2 **[What the contractor must do in response to notice]** Upon being given notice under clause 14.1 [Reduction or cancellation], the Contractor agrees to:

- (a) stop relevant aspects of the Services from the revised End Date;
- (b) continue with aspects of the Services not affected by the notice; and
- (c) promptly prepare an invoice for payment relating to the relevant End Date (bearing in mind the limitation on compensation stated in clause 14.3 [Limits]).

- 14.3 **[Limitation of liability]** DVA's liability to compensate under clauses 14.1 [Reduction or cancellation] and 14.2 [Contractor response] extends only to:

- (a) paying fees, reimbursing costs and providing assistance for Services
  - rendered before the relevant End Date; and
  - continuing, where reduced, after the relevant End Date with payment reduced proportionately to match the remaining reduced Services;
- (b) compensating the Contractor for costs reasonably incurred and directly attributable to the reduction or cancellation including aspects anticipated under Part G(a) [Disengagement]; and
- (c) a limit of the reasonable total payments that it otherwise would have paid, and not to cover prospective profits the Contractor might have lost.

## 15. Default and termination procedures

- 15.1 **[Cooperation]** Where a party has breached this Agreement in any way (default) it should take active measures to rectify the default as soon as possible, including discussing appropriate options with the other parties.

- 15.2 **[Rectification notice]** Where a party may reasonably rectify a default under this Agreement, the other parties may give it a written notice requiring rectification within:
- (a) 10 working days; or
  - (b) any other period to which the parties agree, including as agreed under Part I(b) [Risk management] in relation to the relevant form of default.
- 15.3 **[Termination for default]** If a party cannot reasonably rectify a default under clause 15.2 [Rectification], the other party may, by written notice stating any End Date(s), terminate:
- (a) partially, regarding sufficiently severable aspects of this Agreement; or
  - (b) fully.
- 15.4 **[Specified default]** DVA may terminate this Agreement partially (regarding sufficiently severable aspects) or fully, by written notice stating any End Date(s), if the Contractor:
- (a) as an individual, becomes bankrupt or enters into a scheme of arrangements with creditors;
  - (b) as a body corporate, becomes subject to a form of external administration, including under the *Corporations Law*; or
  - (c) defaults in a manner that provides DVA with Legal Rights to terminate immediately, including regarding a matter noted under this Agreement (including Part I(b) [Risk management]) that provides rights to terminate under this clause 15.4.
- 15.5 **[Rights reserved]** A party may exercise its Legal Rights under this clause 15 without prejudicing any other Legal Rights that may accrue at any time. This includes either party's ability to recover any Loss, and specifically DVA's ability to recover costs of making other arrangements to obtain expected Services that the Contractor did not complete.

## — INTERPRETING THIS AGREEMENT —

### 16. Status, interpretation, priority and presumptions

- 16.1 **[Entire agreement and status]** This Agreement:
- (a) has the intended legal status agreed in Part J(a) [Legal status];
  - (b) exists within the context stated in Part J(b) [Context];
  - (c) constitutes the parties' entire understanding, superseding any oral or written communications, negotiations or arrangements about the Services; and
  - (d) creates no expectation to engage the Contractor for other services.
- 16.2 **[Applicable law]** The jurisdiction applicable to legal interpretation of this Agreement is the Australian State or Territory where DVA's signatory was located or the jurisdiction agreed by the parties in Part J(c) [Applicable Law].

- 16.3 **[Priority]** The following order of priority applies to resolving any inconsistency that may arise between aspects of this Agreement:
- (a) a clause prevails over;
  - (b) the Signatures Page, which prevails over;
  - (c) the Schedule, which prevails over;
  - (d) an Attachment.
- 16.4 **[Waiver and presumptions for interpreting this agreement]** In this Agreement, unless the contrary intention appears:
- (a) a party that does not enforce its Legal Rights does not signify waiver of those rights;
  - (b) a party that waives any specific default does not waive ongoing default;
  - (c) decisions of DVA are made at its absolute discretion;
  - (d) reference to legislation (whether primary or subordinate) means legislation of the Commonwealth, as amended over time;
  - (e) reference to a clause includes any subclause or paragraph within it;
  - (f) reference to a defined term applies to all grammatical forms of that term;
  - (g) reference to sums of money are in Australian currency;
  - (h) reference to a gender includes any other gender: ie, female (eg, 'she'), male (eg, 'he'), or neutral (eg, 'it'); and
  - (i) words in the singular include the plural and vice versa.
- 16.5 **[Rules for interpreting this agreement]** In this Agreement:
- (a) any Legal Rights relating to this Agreement are cumulative and do not exclude any other Legal Rights (plus any clause stating this expressly does not weaken the effect of this interpretive rule regarding any other aspect of this Agreement);
  - (b) the exercise by a party of Legal Rights does not derogate from those or other Legal Rights, including future exercise of those or other Legal Rights;
  - (c) any approvals provided by DVA may include additional conditions (including rights to review and clear relevant documentation);
  - (d) where "include" (in any form) is used in this Agreement, examples following it do not limit the scope of the relevant issue to a specific example or class of examples; and
  - (e) a term defined within a clause, used only within that clause, carries the same meaning when used in the Schedule.
- 16.6 **[Survival]** Clauses that survive relevant End Date(s) of this Agreement are:
- (a) part D(c)(3) [Media management];
  - (b) clauses 3.7 [Deferment] and 3.8 [Discrepancies];
  - (c) clause 7 [Managing issues and disputes];
  - (d) clause 8 [Governmental framework];
  - (e) clause 9 [Privacy and protective security];
  - (f) clause 11 [Intellectual Property Rights];
  - (g) clause 13 [Indemnity and insurance]; and
  - (h) this clause 16.

## **17. Variation, novation, assignment and severance**

- 17.1 **[Variation]** This Agreement can only be varied in writing, signed by the Delegate and by the Contractor's authorised representative(s). The parties may agree on

specific procedures for managing variations in Part J(b) [Amendments], including the format for describing any chronology of variations.

17.2 **[Novation]** If the Contractor considers transferring its Legal Rights and obligations under this Agreement to any other person (ie, novation), the Contractor agrees to:

- (a) promptly notify DVA of its intentions, explaining the issues;
- (b) provide any information required by DVA about persons involved in a potential novation; and
- (c) before attempting any novation, obtain written DVA approval, in which conditions may include acknowledgment by the Contractor that it has residual obligations after the relevant End Date.

17.3 **[Assignment]** The Contractor agrees to obtain written DVA approval before assigning any Legal Rights under this Agreement - including any right to payment.

17.4 **[Severance]** If any Law renders a provision of this Agreement invalid, void or unenforceable, then the parties will attempt to rectify the consequences by negotiations in good faith. If this Agreement becomes frustrated, uncertain or varied fundamentally, either party may elect to cancel it upon reasonable notice, while committing to negotiate fair restitution for either party, as applicable.

## 18 Definitions

18.1 In this Agreement, unless the contrary intention appears:

<b>Agreement</b>	Means this document (embracing the clauses, information in the Signatures Page and the Schedule) plus any express Attachment. This Agreement does not include the title page, table of contents, document overview, headings or words in square brackets ("[]"): however, these may help clarify any inconsistencies.
<b>Agreement Date</b>	Means the date upon which the parties initially form this Agreement (ie, the date of the last relevant signature on the Signatures Page)
<b>Anti-Discrimination Laws</b>	Includes the <i>Race Discrimination Act 1975</i> , <i>Sex Discrimination Act 1984</i> , <i>Disability Discrimination Act 1992</i> and the <i>Equal Opportunity for Women in the Workplace Act 1999</i> .
<b>Attachment</b>	Means a document referred to expressly by a clause or Part as describing a relevant aspect of this Agreement.
<b>Claim</b>	Includes potential claim, suit, demand, action or proceeding from any person.
<b>Commonwealth</b>	Means the Commonwealth of Australia.
<b>Contract Material</b>	Means all Material (including as described in Part D(b) [Deliverable material]): (a) brought into existence, for this Agreement's purpose under Part A(a) [Purpose], (b) incorporated in, supplied with or to be supplied with the Material described in paragraph (a), and (c) copied or derived from the Material in paragraphs (a) or (b).
<b>Contractor</b>	Includes its Personnel, and specific references to the Contractor's Personnel do not limit other references made to the Contractor only.






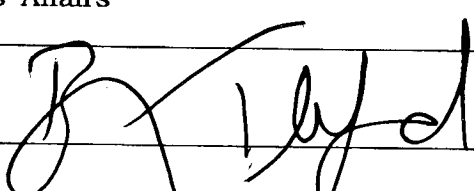
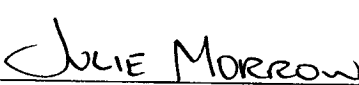

<b>Delegate</b>	Means the individual with the position described in Part C(b) [Commonwealth's representative] or as the Secretary nominates.
<b>Department</b>	Means the Department of Veterans' Affairs (or, if amended, the agency described Part C(a) [Government party]).
<b>DVA</b>	Means the Commonwealth (as represented by and acting through the Department, including its Personnel) as well as the Repatriation Commission and its Personnel and the Military Rehabilitation and Compensation Commission and its Personnel, named in this Agreement under clause 8.10 [Other government entities]. Specific references to DVA's Personnel do not limit other references made to DVA only.
<b>DVA Material</b>	Means Material that the Commonwealth, including DVA, provides under this Agreement or that the Contractor obtains from the Commonwealth, or Material copied or derived from the Material provided or obtained.
<b>End Date</b>	Means the date of a partial or full discharge of this Agreement, whether by cancellation, termination, frustration, Law or through the expiration of a relevant requirement for the Services.
<b>GST</b>	Means the Goods and Services Tax under <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
<b>Illegal Worker</b>	Means a person who (a) has unlawfully entered and remains in Australia, (b) has lawfully entered Australia but remains in Australia after his/her visa has expired or (c) is working in breach of his/her visa conditions.
<b>Individual</b>	Means a natural person (ie, not a corporation or a government body).
<b>Intellectual Property</b>	Means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and technologies, together with any documentation relating to such rights and interests.
<b>Intellectual Property Rights</b>	Includes, regarding in any country in the world and including the ability to register these rights (where applicable), any intellectual property rights recognised at law.
<b>Law</b>	Includes any relevant: (a) Legislation, whether primary or delegated, of the Commonwealth or a, State, Territory or local government, (b) Judicial ruling (including under the common law or the rules of equity), or (c) Determination made by an agency under a Commonwealth, State, Territory or local law.
<b>Legal Rights</b>	Means any rights, powers, remedies or benefits available at Law or under this Agreement.
<b>Liaison Person</b>	Means the individual with the position described in Part C(b) [Commonwealth's representative] or as the Delegate nominates.
<b>Loss</b>	Includes any damage, liability, loss, injury or death, including economic loss and legal costs or expenses arising on a solicitor/own client basis.

<b>Material</b>	Means any object (including any goods, equipment, and deliverables), record (including as defined under the <i>Archives Act 1983</i> ), document, software, information, or subject matter in which Intellectual Property Rights subsist.
<b>Military Rehabilitation and Compensation Commission</b>	Means the body corporate established by the <i>Military Rehabilitation Compensation Act 2004</i> (MRCA) or any other government agency that carries out functions equivalent to the Military Rehabilitation and Compensation Commission.
<b>Moral Rights</b>	Means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute that exists, or may come to exist, anywhere in the world.
<b>Notice</b>	Means a formal communication between the parties made in writing.
<b>Part</b>	Means a part of the Schedule that describes a relevant aspect of this Agreement, identifiable by its heading with letter(s) and referred to expressly in a clause.
<b>Party</b>	Means, as applicable, DVA, the Contractor and their respective Personnel.
<b>Person</b>	Includes an individual, a body corporate (eg, an incorporated association, a statutory authority or a company, including a financial or trading corporation), a body politic (eg, a government), an office, commission, authority, committee, tribunal, board, institute, trust, partnership or any other organisation or unincorporated association
<b>Personnel</b>	Includes any party's officer, partner, employee, agent, volunteer, bailee, contractor, subcontractor, executor, administrator, substitute, successor, licensee or assignee but - when applied to one party - does not include the other party or that other party's Personnel.
<b>Potential</b>	Includes potential, apparent or actual situations.
<b>Pre-existing Material</b>	Any Material in existence at the Agreement Date.
<b>Record</b>	Includes information stored or recorded by means of a computer.
<b>Repatriation Commission</b>	Means the body corporate continued in existence under the <i>Veterans' Entitlements Act 1986</i> or any other government agency that carries out functions equivalent to the Repatriation Commission.
<b>Secretary</b>	Means the individual performing the duties of Secretary of the Department or any individual the Secretary designates in writing in relation to this Agreement.
<b>Security Classified Information</b>	Means information that has a security classification as defined from time to time by DVA, having regard to advice from the Commonwealth Protective Security Coordination Centre. Generally such information will be that designated as 'Commercial-In-Confidence'.
<b>Services</b>	Means services (including deliverables), Material and Intellectual Property Rights required for the Contractor to fulfil this Agreement, including those described in clause 1 [Services] and Part D(a) [Services].
<b>Signature</b>	Includes the application of seal, on the Signatures Page or for amendments.

<b>Signatures Page</b>	Means the pages executed (by signatures or affixing a seal as appropriate) by each party to indicate intention to create legal relations under this Agreement or to establish such other status as defined through clause 16.1 [Agreement status].
<b>Writing/written</b>	Includes any reasonable mode of representing or reproducing words, figures, drawings or symbols in a visible form

# THE SIGNATURES PAGE

<b>Signed for and on behalf of:</b> University of Queensland	
<b>by:</b> Dr Niki Ellis Director The Centre for Military & Veterans' Health University of Queensland	
<b>Signature and date:</b> 	<b>Ian G. Harris</b> Director Office of Research & Postgraduate Studies The University of Queensland 21/9/06
Witnessed by: 	
Signature and date:  21/9/06	

<b>Signed for and on behalf of the Commonwealth of Australia's Department of Veterans' Affairs, the Repatriation Commission and the Military Rehabilitation and Compensation Commission</b>	
<b>by:</b> Mr Adam Luckhurst <del>National Manager Rehabilitation, Research and Development Group Department of Veterans' Affairs</del>	<b>Barry Telford</b> General Manager Policy & Development Division
<b>Signature and date:</b> 	3/10/06
Witnessed by: 	
Signature and date:  3/10/06	