



**NATIONAL FILM
AND SOUND ARCHIVE
OF AUSTRALIA**

AGREEMENT BETWEEN

NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA

ABN 41 251 017 588

and

[Service Provider's Name]

ABN XX XXX XXX XXX

FOR

[Contract Title]

CONTRACT NO. 2324/PXXX

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CONTRACT NO. 2324/PXXX – PROCUREMENT TITLE**DATE**

This Contract takes effect from the date that both parties sign and execute the document.

PARTIES

This Contract is made between and binds the following parties:

NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA, ABN 41 251 017 588, of McCoy Circuit, Acton in the Australian Capital Territory, 2601, a body corporate established pursuant to the *National Film and Sound Archive of Australia Act 2008* (Cth) (**NFSA**)

AND

[Service Provider Name], ABN [XX XXX XXX XXX], of [Service Provider Physical Address] (the **Service Provider**)

CONTEXT

This Contract is made in the following context:

- A. The NFSA requires a suitably qualified and experienced firm to provide [XX]. A copy of the NFSA's Request For Quotation is attached as *Attachment A – NFSA RFQ X – Procurement Title*.
- B. The Service Provider has fully informed itself on all aspects of the work required to be performed and has submitted a proposal, a copy of which is attached as *Attachment B – Service Provider's Proposal (Submission Date)*.
- C. The NFSA has agreed to accept the Service Provider's offer to provide the **Products/Services** upon the terms and conditions contained in this Contract.

OPERATIVE PROVISIONS**1. Interpretation**

1.1. Definitions

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

Acceptance	has the meaning given to that term in clause 2.9.2;
Applicable Standards	means in respect of a Product or the Services, or any other item or matter relevant to this Contract: <ol style="list-style-type: none"> (a) all applicable standards in force in Australia by Law; and (b) to the extent they provide a higher standard, the highest standard set by the latest version of either: <ol style="list-style-type: none"> (i) any applicable standard published or endorsed by Standards Australia;

	(ii) any applicable international standard published or recognised by the International Organization for Standardization (ISO);
	(iii) any relevant standard or Code of Conduct to which the Service Provider or relevant Manufacturer ascribes;
	(iv) any relevant standard or Code of Conduct published by a relevant industry or professional association in Australia; or
	(v) any applicable standard in force by Law in the place of manufacture (where relevant);
Australian Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Business Day	in relation to the doing of any action in a place, means a weekday other than a public holiday in that place;
Code of Conduct	means any relevant code of conduct including the Commonwealth Supplier Code of Conduct, those that operate by force of Law, or are endorsed by any relevant industry association or professional body or to which a relevant party has formally or informally ascribed;
Commencement Date	means the date specified as the Commencement Date in Item D [Commencement, Term and time-frame];
Commonwealth Record	means a "Commonwealth record" as defined in the <i>Archives Act 1983</i> (Cth);
Confidential Information (of the Service Provider)	means any Service Provider information that is by its nature confidential and: <ul style="list-style-type: none"> (a) is listed as "Service Provider's Confidential Information" in Item O [Service Provider's Confidential Information]; or (b) is otherwise specifically agreed in writing by NFSA in respect of this Contract to be the Service Provider's confidential information;
Contract	means this contract including the Schedule(s) and any Annexures and any documents incorporated by reference;
Contract Material	means all material: <ul style="list-style-type: none"> (a) created for the purposes of this Contract; (b) provided or required to be provided to the NFSA as part of the Products or Services; and (c) derived at any time from the material referred to in paragraphs (a) or (b), other than NFSA Material;

Eligible Data Breach	has the meaning given in Division 2 of Part IIIC of the Privacy Act;
Fees	means the amount or amounts payable to the Service Provider under this Contract, as set out in Item E [Fees].
GST Law	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Instalment	means an instalment of Fees payable under clause 3 in relation to part of the Products or Services;
Intellectual Property	means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information;
Law	means any applicable law, without limitation, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them);
Manufacturer	includes where the context permits any relevant developer, manufacturer, assembler, “OEM”, distributor, primary provider, importer, or “value added” reseller of any kind including the Service Provider;
Minimum Performance Requirement	means in respect of a Product or Service or other obligation of the Service Provider pursuant to this Contract, the minimum standard of performance specified as such in Item C [Specific standards and best practice] or otherwise agreed in writing between the parties;
Moral Rights	includes the following rights of an author of copyright material: <ul style="list-style-type: none"> (a) the right of attribution of authorship; (b) the rights of integrity of authorship; and (c) the rights not to have authorship falsely attributed;
NFSA	means the National Film and Sound Archive of Australia or any other Commonwealth agency that is from time to time responsible for administering this Contract;
NFSA Material	means any material provided by the NFSA to the Service Provider for the purposes of this Contract including, but not limited to, documents, equipment, information and data stored by any means, and includes material derived from that material;

Official Information	means any information developed, received or collected by or on behalf of the Commonwealth, including the NFSA, to which the Service Provider gains access under or in connection with this Contract and includes the NFSA Material and the Contract Material;
Official Resources	includes: <ul style="list-style-type: none"> (a) Official Information; (b) people who work for or with the NFSA; and (c) assets belonging to (even if in the possession of contracted providers) or in the possession of the NFSA;
Performance Objective	means in respect of the Service Provider's obligations pursuant to this Contract, the expected standard of performance specified as such in Item C [Specific standards and best practice] or otherwise agreed in writing between the parties;
Personal Information	has the meaning given in section 6 of the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to the Service Provider - any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors who is engaged in the performance or management of this Contract, and includes the Specified Personnel; and (b) in relation to the NFSA - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the NFSA;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Product	means anything that is: <ul style="list-style-type: none"> (a) specified as a product in Item B [Services and Products]; or (b) a product which may be implied or reasonably incidental to the Services; or (c) otherwise agreed in writing between the parties to be a Product, <p>and includes all components or items normally provided by the Manufacturer as part of that product including documentation unless specifically agreed to the contrary by NFSA in writing;</p>
Project Officer	means the person specified (by name or position) in Item K [Project Officer] or any substitute notified to the Service Provider;
Security Classified Information	means Official Information that has been classified by the Commonwealth (including by the NFSA), as security classified information, in accordance with the Protective Security Policy Framework;

- Security Incident** means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources;
- Services** means the services described in Item B [Services and Products];
- Significant Event** means:
- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Service Provider or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (b) any other significant matters, including the commence of legal, regulatory or disciplinary action involving the Service Provider or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation;

Specifications

includes in respect of any Product, Service or other relevant item, or any relevant component of any of them, as the context requires:

- (a) any relevant functional, operational, performance or other requirement or specification (whether mandatory or optional) specified in:
 - (i) Item C [Specific standards and best practice];
 - (ii) the Manufacturer's published specifications for the Product or other item together with its features, functions, method of operation, characteristics and other information as described in any manual published by the Manufacturer in respect of the Product or other item, as at the date of this Contract (and, to the extent that they provide for a higher or additional standard, in any subsequent specification or manual published by the manufacturer at the date of supply of the Product or other item or during any period in which the Service Provider is required to supply, maintain or repair or reinstate the Product or other item in accordance with this Contract);
- (b) any Applicable Standard;
- (c) any relevant functional, operational, performance or other requirement or specification (whether mandatory or optional) detailed in the Consultant's Brief;
- (d) any functional, operational, performance or other requirement or specification relating to the Product, Service or other item specifically included in this Contract; and
- (e) to the extent of any inconsistency within or between any of the specifications mentioned in (a) to (d) above, whichever NFSA, in its absolute discretion, nominates;

Specified Personnel

means the Service Provider Personnel specified in Item I [Specified Personnel] who are required to perform all or part of the Contract;

Subcontractor

means a Subcontractor specified in Item J [Subcontractors] who has been engaged by the Service Provider to perform all or part of the Contract;

Term

means the term of this Contract, as set out in clause 1.3.

1.2. Interpretation

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

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;

- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person includes a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in Schedule 1;
- i. the Schedule and any attachments form part of this Contract;
- j. if any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of the Schedule (and attachments if any), the terms and conditions of the clauses of this Contract prevail;
- k. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails;
- l. a reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Contract, including as amended or replaced from time to time by agreement in writing between the parties; and
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Term

- 1.3.1. The Term of this Contract is specified in Item D [Commencement, Term and time-frame].

2. General obligations in respect of Services and Products

2.1. Provision of Services

- 2.1.1. The Service Provider must provide and manage the provision of all Services specified in Item B [Services and Products] including to provide to NFSA the Contract Material in a timely, skilled and professional manner and otherwise strictly in accordance with the requirements of this Contract.
- 2.1.2. In particular, the Service Provider agrees to:
 - a. adopt relevant best practice, and ensure the Services conform to their Specifications;
 - b. adopt any NFSA, Commonwealth or industry standards and guidelines specified in Item C [Specific standards and best practice];
 - c. meet or exceed all Minimum Performance Requirements (if any) specified in Item C [Specific standards and best practice] and use its best efforts to meet or exceed all Performance Objectives (if any) specified in Item C [Specific standards and best practice] in respect of each Service; and
 - d. comply with the time frame for the performance of the Services specified in Item D [Commencement, Term and time-frame].
- 2.1.3. The Service Provider acknowledges that the NFSA has engaged it to provide the Services in reliance on the Service Provider's representation that it has the skill, experience and ability to provide the Services within the time specified and in accordance with this Contract.

2.2. Specified Personnel and Personnel

- 2.2.1. The Service Provider agrees that the Specified Personnel specified in Item I will perform work in relation to the Services in accordance with this Contract.
- 2.2.2. If Specified Personnel are unable to perform the work as required under clause 2.2.1, the Service Provider agrees to notify the NFSA immediately.
- 2.2.3. The NFSA may, at its absolute discretion, request the Service Provider to remove Personnel (including Specified Personnel) from work in relation to the Services.
- 2.2.4. If clause 2.2.2 or clause 2.2.3 applies, the Service Provider will provide replacement Personnel acceptable to the NFSA at no additional cost and at the earliest opportunity.

2.3. Liaison

- 2.3.1. The Service Provider agrees to liaise with and comply with directions of the Project Officer as reasonably required from time to time.
- 2.3.2. The Service Provider may nominate from time to time a person who has authority to receive and sign notices and written communications for it under this Contract and accept any request or direction in relation to the Services.

2.4. Conduct at NFSA premises

- 2.4.1. When using the NFSA's premises or facilities, the Service Provider will comply with all directions of NFSA and all current procedures that apply to those premises or facilities.

2.5. Responsibility of Service Provider

- 2.5.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- a. involvement by the NFSA in the performance of the Services;
 - b. review of, or comment on, the Services or any part;
 - c. payment made to the Service Provider on account of the Services;
 - d. acceptance of the Services or any part;
 - e. subcontracting of the Services; or
 - f. acceptance or refusal by the NFSA of replacement Personnel.

2.6. Illegal Workers

- 2.6.1. In this clause 2.6:

Illegal Worker means a person who has unlawfully entered Australia or remains in Australia after their visa has expired, or is working in breach of their visa conditions.

- 2.6.2. The Service Provider must ensure that its Personnel do not include any Illegal Workers and must notify the NFSA immediately if it becomes aware of any of its Personnel being an Illegal Worker.

2.7. Provision of Services and Products

- 2.7.1. The Service Provider must provide all Services and Products and other relevant items as specified in Item B [Services and Products] (or as otherwise agreed between the parties) in accordance with this Contract.
- 2.7.2. Each Product must:
- a. be newly manufactured;
 - b. be free from defects in workmanship and materials; and
 - c. conform with its Specifications.

2.8. Delivery and installation

- 2.8.1. The Service Provider must deliver the Services and Products in accordance with the terms of this Contract.
- 2.8.2. Except as specifically provided in Item B [Services and Products] or otherwise agreed in writing by the NFSA, the Service Provider shall install each Product and, where relevant, install and/or connect each Service.
- 2.8.3. Except as otherwise agreed in writing by the NFSA, the Service Provider must:
- a. connect, configure and install all Products and their components;
 - b. run relevant diagnostics and commissioning tests to ensure that the items are properly operating and configured in accordance with their respective Specifications and NFSA's requirements in accordance with this Contract; and
 - c. confirm in writing to the NFSA that all such work has been duly and properly completed by any relevant agreed date, or if no such date has been agreed, within a reasonable time.

2.9. Acceptance of Services and Products

- 2.9.1. The NFSA reserves the right to perform any acceptance tests it desires to conduct to verify that any Product or Service (or part) has been provided in accordance with the Service Provider's obligations under this Contract.
- 2.9.2. The NFSA will notify the Service Provider in writing when it is satisfied that any Product or Service (or part) has been provided in accordance with the Service Provider's obligations under this Contract (**Acceptance**).

2.10. Third party Product warranties

- 2.10.1. Without limiting in any way any support, maintenance or other obligation of the Service Provider pursuant to this Contract, the Service Provider must (except as specifically agreed to the contrary by the NFSA in writing):
- a. ensure the NFSA receives all standard Manufacturer and other relevant third party warranties in respect of each Product or other item provided pursuant to this Contract; and
 - b. ensure the NFSA receives a copy and is otherwise fully advised of and approves all such warranties prior to any order or commitment being made in respect of a Product.

2.11. Transfer of Product title and risk

- 2.11.1. The Service Provider transfers title in each Product to the NFSA on the date of delivery.

2.11.2. The NFSA accepts risk of loss or damage to each Product on the date it receives title.

2.12. Work health and safety

2.12.1. The Service Provider agrees, in carrying out this Contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation;
- b. all applicable policies and procedures relating to work health and safety, including those that apply to the NFSA's premises (such as the NFSA's smoke-free workplace policy) when using those premises; and
- c. any additional work health and safety requirements specified in Item R [Work health and safety].

2.12.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 2.12.1, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

3. Fees, Allowances and Assistance

3.1. Fees, allowances and assistance

3.1.1. Subject to the due and proper provision of the Products, Services and Contract Material in accordance with the Contract and the submission of a valid invoice and supporting material in the manner specified in Item H [Invoicing and payment], the NFSA agrees to:

- a. pay the Fees in the Instalments (if any) specified in Item E [Fees];
- b. pay the allowances and meet the costs specified in Item F [Allowances and costs];
- c. make all payments in the manner specified in Item H [Invoicing and payment]; and
- d. provide the facilities and assistance (if any) specified in Item G [Facilities and assistance].

3.1.2. Payment of an amount by the NFSA is not:

- a. evidence of or an admission that any Product or Service has been accepted by the NFSA or provided by the Service Provider in accordance with this Contract;
- b. evidence of the value of any Product or Service;
- c. an admission of liability; nor
- d. acceptance or approval by the NFSA of the Service Provider's performance;

but is to be taken only as a payment on account.

3.2. NFSA's right to defer payment

3.2.1. The NFSA will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Service Provider has not completed, to the satisfaction of the NFSA, that part of the Contract to which the Instalment relates.

3.3. Taxes, duties and government charges

3.3.1. Except as provided by this clause 3.3, the Service Provider must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

- 3.3.2. The following terms have the meanings respectively given to them in the GST Law: consideration; GST; input tax credit; supply; taxable supply; and tax invoice.
- 3.3.3. Unless otherwise indicated, the Fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 3.3.4. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.
- 3.3.5. No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.

3.4. Superannuation

- 3.4.1. The Contract is entered into on the understanding that the NFSA is not required to make any superannuation contributions in connection with the Contract.
- 3.4.2. If, despite clause 3.4.1, the NFSA is legally required to make superannuation contributions in relation to the Service Provider's officers, employees, agents or subcontractors, then:
- a. the Service Provider must within 14 days after the execution of the Contract, inform the NFSA of the fund into which the Service Provider is to pay the superannuation entitlements. This fund must be a fund which meets the requirements of the relevant legislation; and
 - b. these superannuation contributions will be deducted from the total Fee payable to the Service Provider under the Contract.
- 3.4.3. The NFSA may also deduct from the Fees payable to the Service Provider any amounts which it is legally required to withhold under the *Taxation Administration Act 1953* (Cth), the *Income Tax Assessment Act 1936* (Cth) or any other tax law.

4. Intellectual Property

4.1. NFSA Material

- 4.1.1. The Contract does not affect title to or ownership of any Intellectual Property in the NFSA Material.
- 4.1.2. Subject to clauses 4.1.3 and 4.1.4, the NFSA agrees to make the NFSA Material (as specified in Item S [Required NFSA Material]) available to the Service Provider.
- 4.1.3. The NFSA grants (or will procure) a royalty-free, non-exclusive, non-transferable licence to the Service Provider for the term of the Contract to use, reproduce and adapt the NFSA Material for the purposes of performing the Service Provider's obligations under this Contract only.
- 4.1.4. The Service Provider agrees to ensure that the NFSA Material is used strictly in accordance with this clause 4, clause 6, any conditions or restrictions set out in Item S [Required NFSA Material], and any other direction from the NFSA.

4.2. Intellectual Property in Contract Material

- 4.2.1. The Intellectual Property in Contract Material vests or will vest in the NFSA on creation.

- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any NFSA Material incorporated into Contract Material; or
 - b. any material in existence at the date of this Contract and specified as ‘Existing Material’ in Item T [Existing Material].
- 4.2.3. The Service Provider grants to (or will procure for) the NFSA a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any existing material referred to in clause 4.2.2.b, in conjunction with the Contract Material.
- 4.2.4. The Service Provider agrees, on request by the NFSA, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2.
- 4.2.5. The Service Provider represents and warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.3. Moral Rights

- 4.3.1. In this clause 4.3:

Permitted Acts means any of the following classes or types of acts or omissions:

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other material;
- (c) using the Contract Material in a different context to that originally envisaged; and
- (d) the acts or omissions specifically set out in Item U [Moral Rights],

but does not include false attribution of authorship.

- 4.3.2. Where the Service Provider is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the NFSA or any person claiming under or through the NFSA.
- 4.3.3. If clause 4.3.2 does not apply, the Service Provider agrees:
- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the NFSA or any person claiming under or through the NFSA (whether occurring before or after the consent is given); and
 - b. on request – to provide the executed original of any such consent to the NFSA.
- 4.3.4. The Service Provider acknowledges that its attention has been drawn to the NFSA’s general policies or practices regarding Moral Rights as described in Item U [Moral Rights].
- 4.3.5. This clause 4.3 does not apply to any NFSA Material incorporated in the Contract Material.

4.4. Dealing with Copies

4.4.1. In this clause 4.4:

Copy means any document, device, article or medium in which Official Information is embodied.

4.4.2. Property in each Copy vests or will vest in the NFSA.

5. Confidential Information

5.1. Confidential Information not to be disclosed

5.1.1. Subject to clause 5.2, the NFSA will not, without the prior written consent of the Service Provider, disclose the Service Provider's Confidential Information to a third party.

5.2. Exceptions to obligations

5.2.1. The obligations on the NFSA under this clause 5 will not be taken to have been breached to the extent that the Service Provider's Confidential Information:

- a. is disclosed by the NFSA to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
- b. is disclosed by the NFSA to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
- c. is disclosed by the NFSA to an appointed representative, solely to enable effective management or auditing of Contract-related activities pursuant to clause 12.4.1;
- d. is disclosed by the NFSA to the responsible Minister;
- e. is disclosed by the NFSA, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- f. is shared by the NFSA within the NFSA, or with another agency, where this serves the Commonwealth's legitimate interests;
- g. is authorised or required by law to be disclosed;
- h. is required in connection with legal proceedings; or
- i. is in the public domain otherwise than due to a breach of this clause 5.

5.2.2. Where the NFSA discloses the Service Provider's Confidential Information to another person pursuant to clauses 5.2.1.a - 5.2.1.f, it must notify the receiving person that the information is confidential.

5.2.3. In the circumstances referred to in clauses 5.2.1.a, 5.2.1.b and 5.2.1.f, the NFSA agrees not to provide the information unless the receiving person agrees to keep the information confidential.

5.3. Period of confidentiality

5.3.1. The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Contract, for the period set out in Item O [Service Provider's Confidential Information] in respect of that item.

6. Security

6.1. General security obligations

6.1.1. The Service Provider agrees to ensure that its Personnel comply with:

- a. all relevant security requirements specified in the Protective Security Policy Framework (PSPF);
- b. the security requirements specified in Item Q [Security requirements]; and
- c. any variations or additions to these security requirements that the NFSA (in its absolute discretion) notifies the Service Provider in writing, from the date specified in the notice (or 7 days after it receives the notice if no date is specified).

6.1.2. If the Service Provider can substantiate that changes to the security requirements pursuant to clause 6.1.1.c have cost implications for it, the Service Provider may apply to the NFSA for a variation in the Fees payable as specified in Item E [Fees].

6.1.3. The Service Provider acknowledges that in performing the Contract, it may become subject to certain statutory provisions relating to security and security issues, and agrees to ensure that its Personnel are aware of, and comply, with those statutory provisions.

6.2. Personnel security

6.2.1. The Service Provider agrees to obtain prior written authorisation from the NFSA for any Service Provider's Personnel who may be required to:

- a. enter secure areas in the NFSA's building or places;
- b. work with the NFSA's Personnel for extended periods;
- c. have access to Security Classified Information, or valuable assets; or
- d. hold a particular kind of security clearance that the NFSA notifies to the Service Provider.

6.2.2. The Service Provider agrees to ensure that all of its Personnel proposed:

- a. are of good fame and character;
- b. are properly qualified for the tasks they are to perform; and
- c. will act in all circumstances in a fit and proper manner while they are carrying out work under the Contract.

6.2.3. The Service Provider agrees to provide any information the NFSA reasonably requests to enable the NFSA to investigate whether particular Service Provider's Personnel should be authorised.

6.2.4. The NFSA may require that particular Service Provider's Personnel hold a particular level of Commonwealth security clearance.

6.2.5. The NFSA agrees that it will not unreasonably withhold authorisation.

6.2.6. The NFSA agrees to notify the Service Provider of:

- a. the Service Provider's Personnel who have been granted authorisation ('Authorised Persons');
- b. the type and level of Commonwealth security clearance (if any) given to each Authorised Person;
- c. the period during which the authorisation is effective; and
- d. the Service Provider's Personnel who have been refused authorisation.

6.2.7. The Service Provider agrees to acknowledge receipt of any notice provided under clause 6.2.6 by signing and returning a copy of the notice to the NFSA.

- 6.2.8. The Service Provider must promptly notify the NFSA of any change in an Authorised Person's circumstances that, in the Service Provider's reasonable opinion, is likely to affect the NFSA's authorisation of that person.
- 6.2.9. The NFSA may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation of a particular person, and in such event must notify the Service Provider accordingly.
- 6.2.10. In the event referred to in clause 6.2.9, the Service Provider agrees, upon request, to propose and make available another person for authorisation by the NFSA under this clause 6 within a reasonable time and without inconvenience or cost to the NFSA.

6.3. Information security

- 6.3.1. Except as permitted by this clause 6.3, the Service Provider must not without the NFSA's prior written agreement, disclose any Official Information to any person.
- 6.3.2. The NFSA may impose any conditions it considers appropriate when agreeing to a disclosure under clause 6.3.1 and the Service Provider must comply with those conditions.
- 6.3.3. The Service Provider agrees, on request by the NFSA at any time, to arrange for the Service Provider's Personnel or any other party to whom it discloses Official Information to give a written undertaking in the form at Schedule 2 to the NFSA relating to the use and non-disclosure of the Official Information.
- 6.3.4. The Service Provider agrees to establish and maintain procedures to secure all Official Information against loss and unauthorised access, use, modification or disclosure.
- 6.3.5. The Service Provider agrees, on expiration or termination of this Contract, to ensure that all Official Information is delivered to the NFSA or otherwise dealt with as directed by the NFSA, subject to any law requiring the Service Provider to retain a Copy of the Official Information.
- 6.3.6. The Service Provider may disclose Official Information:
- a. subject to clause 6.3.7, to its Personnel who require that information solely to perform this Contract and its advisers solely to obtain advice on its rights or obligations under this Contract;
 - b. to the extent required by Law or as required by any government or governmental body, authority or agency having authority over the Service Provider; or
 - c. if required in connection with legal proceedings,
- but in each case, where permitted by Law, the Service Provider must give the NFSA sufficient notice of any proposed disclosure so as to enable the NFSA to seek (as permitted) a protective order or other remedy to prevent the disclosure.
- 6.3.7. The Service Provider agrees not to permit any of its Personnel to have any access to Security Classified Information unless:
- a. the relevant person has been cleared to the appropriate security level;
 - b. the NFSA has given written authority under this clause 6; and
 - c. the relevant person has undergone the training (if any) specified in Item Q [Security requirements] relating to access and use of Security Classified Information.
- 6.3.8. The Service Provider agrees to inform the NFSA immediately if it becomes aware that any unauthorised person has had access to Security Classified Information.

6.3.9. Unless specified in Item Q [Security requirements], the Service Provider agrees not to perform the Services outside Australia, or transfer Security Classified Information outside Australia, without the NFSA's prior written approval.

6.4. Physical security

6.4.1. The Service Provider may only access the NFSA's premises if it:

- a. has the NFSA's written authorisation; and
- b. complies with the NFSA's requirements set out in this Contract or otherwise notified by the NFSA.

6.4.2. The Service Provider must ensure that its Personnel safeguard any keys or passes or other material detailing access arrangements that are provided to the Service Provider for the purposes of this Contract.

6.4.3. The Service Provider agrees to protect any Official Resources it possesses or controls to the same extent as if it were the NFSA, including ensuring that unauthorised persons cannot, and do not, access any Official Information.

6.5. Security reports

6.5.1. The Service Provider agrees to notify the NFSA immediately if it becomes aware that a Security Incident has occurred.

6.5.2. The Service Provider agrees to supply written security reports to the NFSA in a form and at the times specified in Item Q [Security requirements], including the following information:

- a. all Security Incidents, including steps taken by the Service Provider to address these;
- b. perceived security problems;
- c. where appropriate, recommendations for security improvements;
- d. proposed and actual changes of Personnel; and
- e. any other information which the NFSA reasonably requires.

6.6. Training

6.6.1. The Service Provider must ensure that its Personnel undertake the training (if any) specified by the NFSA in Item Q [Security requirements].

7. Obligations of the Service Provider in relation to privacy

7.1.1. Without limiting any obligations of the Service Provider under the Privacy Act or under the Contract, the Service Provider acknowledges that it is a contracted service provider under the Privacy Act and must, with respect to all Personal Information that it has access to or collects in or in relation to the performance of the Contract (**Contractual Personal Information**):

- a. not to do any act or engage in any practice which, if done or engaged in by the NFSA, would be a breach of an Australian Privacy Principle under the Privacy Act;
- b. not access, use, disclose, publish, communicate or retain, or otherwise deal with the Contractual Personal Information in any way, except for the purpose of:
 - i. performing the Contract; or
 - ii. complying with the Privacy Act;

- c. implement all reasonable measures to meet the requirements of this clause 7.1.1 and clause 7.1.2 and assist the NFSA in meeting the NFSA's obligations under the Privacy Act;
- d. cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or the NFSA, including the investigation of any complaints;
- e. immediately notify the NFSA if it becomes aware that a disclosure of Contractual Personal Information may be required by law;
- f. subject to clause 7.1.3, ensure that any person who obtains access from the Service Provider or the Specified Personnel to any Contractual Personal Information signs a deed in the form set out in Schedule 2 prior to the access;
- g. take all reasonable measures to ensure that Contractual Personal Information is protected against:
 - i. misuse, interference and loss;
 - ii. unauthorised access, modification, or disclosure; and
 - iii. any other misuse,
 and that only authorised Specified Personnel have access to it;
- h. not use Contractual Personal Information for, or in any way relating to, any direct marketing purpose;
- i. immediately notify the NFSA of any loss or unauthorised use, modification or disclosure of Contractual Personal Information or when the Service Provider becomes aware of a breach of any obligation concerning such information;
- j. notify the NFSA of, and cooperate with the NFSA in the resolution of, any complaint alleging an interference with privacy;
- k. upon written notice from the NFSA, destroy or permanently de-identify any Contractual Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected; and
- l. indemnify the NFSA in respect of any costs, losses, expenses or damages suffered or incurred by the NFSA arising out of or in connection with:
 - i. a breach of the obligations of the Service Provider under this clause 7.1.1 or clause 7.1.2;
 - ii. any misuse of Contractual Personal Information or disclosure in breach of an obligation under the Privacy Act or otherwise; or
 - iii. Contractual Personal Information being stored outside Australia, disclosed to recipients outside Australia or accessed from outside Australia (regardless of whether or not the NFSA has given its permission to such storage, disclosure or access),
 except to the extent that the costs, losses, expenses or damages:
 - iv. are directly caused by a negligent or unlawful act or omission of the NFSA or any of its officers or employees; or
 - v. arise from the Service Provider obeying a specific direction by an authorised representative of the NFSA.

7.1.2. The Service Provider must not:

- a. disclose Contractual Personal Information to anyone located outside Australia;
- b. store Contractual Personal Information outside Australia; or

- c. allow Contractual Personal Information to be accessed from outside Australia, unless this is:
- d. authorised in Item P [Privacy directions]; or
- e. the NFSA otherwise gives its prior written approval (noting that the NFSA is not under any obligation to give approval). The Service Provider must comply with any directions given by the NFSA when providing any such approval.

7.1.3. The Service Provider must ensure that all Service Provider Personnel are aware of the need to comply with:

- a. clauses 7.1.1 and 7.1.2 in the course of performing the Services;
- b. any requirements set out in Item P [Privacy directions]; and
- c. directions given by the NFSA for the purposes of clause 7.1.1.d or clause 7.1.2.

7.1.4. Without derogating from any other obligations of the Service Provider under statute or otherwise, the Service Provider must assist the NFSA, if requested to do so, to enable any person, on request, to ascertain in respect of Contractual Personal Information:

- a. whether the Service Provider has possession or control of any records that contain such information;
- b. the nature of the information;
- c. the main purposes for which the information is used by the Service Provider; and
- d. the steps the person should take if the person wishes to obtain access to the information.

7.1.5. Without derogating from any other obligations of the Service Provider under statute or otherwise, the Service Provider must if requested by the NFSA to do so, correct or attach a note to any Contractual Personal Information held by the Service Provider.

7.1.6. The Service Provider's obligations in the Contract (including this clause 7) are in addition to the Service Provider's obligations under the Privacy Act. Without limiting the foregoing, in performing the Services the Service Provider must not by act or omission breach the Service Provider's obligations under the Australian Privacy Principles.

7.1.7. Without limiting clause 7.1.6, where the Service Provider collects Personal Information about an individual from:

- a. the NFSA; or
- b. a person other than the individual or the NFSA, at the specific direction of the NFSA,

for the purposes of performing the Contract, the Service Provider is not required to take steps to ensure that the individual is or has been made aware of the matters listed in Australian Privacy Principle 5.2 in the Privacy Act, except as required by the Contract or a specific direction of the NFSA.

7.1.8. The Service Provider agrees to ensure that any subcontract entered into by the Service Provider for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations that the Service Provider has under this clause 7 (including this requirement in relation to subcontracts).

7.2. **Notifiable Data Breaches**

7.2.1. If the Service Provider suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Service Provider as a result of the Contract, the Service Provider must:

- a. immediately report it to the NFSA and provide a written report within three (3) Business Days; and
- b. carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

7.2.2. Where the Service Provider is aware that there has been an Eligible Data Breach in relation to the Contract, the Service Provider must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates;
- b. take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
- c. take any other action as reasonably directed by the NFSA.

8. Liability

8.1. Proportionate liability regime excluded

8.1.1. To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Contract.

8.2. Indemnity

8.2.1. The Service Provider indemnifies the NFSA from and against any:

- a. cost or liability incurred by the NFSA;
- b. injury to any person or loss of or damage to property of the NFSA; or
- c. loss or expense incurred by the NFSA in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the NFSA, arising from either:
 - i. a breach by the Service Provider of this Contract; or
 - ii. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this Contract.

8.2.2. The Service Provider's liability to indemnify the NFSA under clause 8.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the NFSA or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

8.2.3. The right of the NFSA to be indemnified under this clause 8 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the NFSA is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

9. Information management and access

9.1. Books and records

9.1.1. The Service Provider must at its own cost:

- a. keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the NFSA under this Contract to be determined; and
- b. retain all books and records relating to the performance of this Contract.

9.2. Access to documents

9.2.1. In this clause, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

9.2.2. Where:

- a. the NFSA has received a request for access to a document; and
- b. the document:
 - i. is created by, or in the possession of, the Service Provider or any subcontractor; and
 - ii. relates to the performance under this Contract of services to the public on the NFSA's behalf (and not to the entry into the contract),

the NFSA may at any time by written notice require the Service Provider to provide the document to the NFSA.

9.2.3. Where the Service Provider receives a notice under clause 9.2.2, it must promptly comply with it.

9.2.4. The Service Provider must bear its own costs of complying with this clause 9.

9.3. Archives Act 1983

9.3.1. The Service Provider must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the NFSA and the National Archives of Australia.

9.3.2. Where the NFSA and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Service Provider, the Service Provider must comply in every respect with the requirements of the Archives Act 1983 (Cth) or guidelines issued by the National Archives of Australia.

9.3.3. The Service Provider must comply with any direction given by the NFSA for the purpose of transferring Commonwealth Records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

10. Dispute resolution

10.1. Procedure for dispute resolution

10.1.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 7 Business Days each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 14 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;

- e. the parties will cooperate fully with any process instigated under clause 10.1.1.d in order to achieve a speedy resolution; and
- f. if a resolution is not reached within a further 28 Business Days, either party may commence legal proceedings.

10.2. Costs

- 10.2.1. Each party will bear its own costs of complying with this clause 10, and the parties must bear equally the cost of any third person engaged under clause 10.1.1.d.

10.3. Continued performance

- 10.3.1. Despite the existence of a dispute, the Service Provider must (unless requested in writing by the NFSA not to do so) continue to perform the Services.

10.4. Exemption

- 10.4.1. This clause 10 does not apply to:
- a. action by the NFSA under or purportedly under clause 11.1;
 - b. action by either party under or purportedly under clause 11.2; or
 - c. legal proceedings by either party seeking urgent interlocutory relief.

11. Termination

11.1. Termination or reduction in scope for convenience

- 11.1.1. The NFSA may, at any time by notice, terminate or reduce the scope of this Contract immediately.
- 11.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:
- a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of the Contract not affected by the notice.
- 11.1.3. In the event of termination under clause 11.1.1, the NFSA will be liable only:
- a. to pay any Instalment relating to the Services and Products completed before the effective date of termination;
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services and Products not covered under clause 11.1.3.a;
 - c. to pay any allowance and meet any costs unavoidably incurred under Item F [Allowances and costs] before the effective date of termination; and
 - d. to provide the facilities and assistance necessarily required under Item G [Facilities and assistance] before the effective date of termination.
- 11.1.4. The NFSA will not be liable to pay compensation under clause 11.1.3.a and 11.1.3.b in an amount which would, added to any Fees already paid to the Service Provider under this Contract, together exceed the amount of the Fees set out in Item E [Fees].
- 11.1.5. In the event of a reduction in the scope of the Contract under clause 11.1.1, the NFSA's liability to pay Fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

11.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

11.2. Termination for fault

11.2.1. If a party fails to satisfy any of its obligations under this Contract, then the other party – if it considers, that the failure is:

- a. not capable of remedy – may, by notice, terminate this Contract immediately;
- b. capable of remedy – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.

11.2.2. The NFSA may also by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:

- a. being a corporation – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration; or
- b. being an individual – becomes bankrupt or enters into a scheme of arrangement with creditors.

12. General Provisions

12.1. Compliance with other Laws

12.1.1. The Service Provider agrees, in carrying out this Contract, to comply with all relevant legislation of the Commonwealth or of any State, Territory or local authority, and in particular:

- a. the *Crimes Act 1914* (Cth);
- b. the *Racial Discrimination Act 1975* (Cth);
- c. the *Sex Discrimination Act 1984* (Cth);
- d. the *Disability Discrimination Act 1992* (Cth);
- e. the *Workplace Gender Equality Act 2012* (Cth); and
- f. the *Work Health Safety Act 2011* (Cth).

12.2. Unpaid judgments

12.2.1. The Service Provider warrants that, as at the Commencement Date, it and its subcontractors, do not have any judicial decision against them (not including decisions under appeal) relating to employee entitlements in respect of which they have not paid the claim.

12.3. Conflict of interest

12.3.1. In this clause 12.3:

Conflict means any matter, circumstance, interest, or activity affecting the Service Provider (including its Personnel) which may or may appear to impair the ability of the Service Provider to perform this Contract diligently and independently.

- 12.3.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of this Contract.
- 12.3.3. If, during the period of this Contract a Conflict arises, or appears likely to arise, the Service Provider agrees:
- a. to notify the NFSA immediately;
 - b. to make full disclosure of all relevant information relating to the Conflict; and
 - c. to take any steps the NFSA reasonably requires to resolve or otherwise deal with the Conflict.

12.4. Audit and access

Right to conduct audits

- 12.4.1. The NFSA or its representative may conduct audits relevant to the performance of the Service Provider's obligations under this Contract. Audits may be conducted of:
- a. the Service Provider's operational practices and procedures as they relate to this Contract, including security procedures, protocols and guidelines;
 - b. the accuracy of the Service Provider's invoices and reports in relation to the provision of the Services under this Contract;
 - c. the Service Provider's compliance with its confidentiality, privacy and security requirements and obligations under this Contract;
 - d. material (including books and records) in the possession of the Service Provider relevant to the Services or Contract; and
 - e. any other matters determined by the NFSA to be relevant to the Services or Contract.

Access by the NFSA

- 12.4.2. The NFSA may, at reasonable times and on giving reasonable notice to the Service Provider:
- a. access the premises of the Service Provider to the extent relevant to the performance of this Contract, including for the purposes of clause 12.4.1;
 - b. require the provision by the Service Provider, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the NFSA by use of the NFSA's existing computer hardware and software;
 - c. inspect and copy documentation, books and records, however stored, in the custody or under the control of the Service Provider, its employees, agents or subcontractors; and
 - d. require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the NFSA), any request for information directed to the NFSA, and any inquiry conducted by Parliament or any Parliamentary committee.

- 12.4.3. The Service Provider must provide access to its computer hardware and software and equipment to the extent necessary for the NFSA to exercise its rights under this clause, and provide the NFSA with any reasonable assistance requested by the NFSA to use that hardware and software.

Conduct of audit and access

- 12.4.4. The NFSA must use reasonable endeavours to ensure that:
- a. audits are performed pursuant to clause 12.4.1; and
 - b. the exercise of the general rights granted by clause 12.4.2 by the NFSA, do not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under the Contract.

Costs

- 12.4.5. Except as set out in clause 12.4.6, each party must bear its own costs of any reviews and/or audits.
- 12.4.6. If the Service Provider is able to substantiate that it has incurred direct expenses in the NFSA's exercise of the rights granted under clause 12.4.1 or clause 12.4.2 which, having regard to the value of this Contract, are substantial, the NFSA and the Service Provider will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

Auditor-General and Privacy Commissioner

- 12.4.7. The rights of the NFSA under clause 12.4.2.a to 12.4.2.c apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

Service Provider to comply with Auditor-General's requirements

- 12.4.8. The Service Provider must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 12.4.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

No reduction in responsibility

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

Subcontractor requirements

- 12.4.10. The Service Provider must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause.

No restriction

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

General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

Survival

- 12.4.12. This clause applies for the term of the Contract and for a period of seven years from the termination or expiry of this Contract.

12.5. Insurance

- 12.5.1. The Service Provider agrees:
- a. to effect and maintain the insurance specified in Item L [Insurance] for the period specified at that Item; and
 - b. on request, to provide proof of insurance acceptable to the NFSA.

12.6. Subcontractors

- 12.6.1. The Service Provider agrees not to subcontract the performance of any part of the performance of this Contract without the NFSA's prior written approval and make available to the NFSA (if requested), details of all subcontractors engaged in the performance of the Services.
- 12.6.2. The NFSA may impose any terms and conditions it considers appropriate when giving its approval under clause 12.6.1.
- 12.6.3. The Service Provider will ensure that any subcontract for the performance of any part of the Services is consistent with, and gives effect to, the Service Provider's obligations under this Contract, including by ensuring that any such subcontract contains provisions equivalent to clauses 4, 5, 6, 7, 9, 11.1, 12.4 and 12.5 of this Contract.
- 12.6.4. The Service Provider acknowledges, and must inform all subcontractors that, the NFSA may publicly disclose the names of any subcontractors engaged in the performance of the Services.

12.7. Relationship of the parties

- 12.7.1. The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the NFSA, nor does the Service Provider have any power or authority to bind or represent the NFSA.
- 12.7.2. The Service Provider agrees:
- a. not to misrepresent its relationship with the NFSA; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Services.

12.8. Waiver

- 12.8.1. A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 12.8.2. A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

12.9. Assignment and novation

- 12.9.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Contract without the NFSA's prior written approval.
- 12.9.2. The Service Provider shall not enter into an arrangement requiring the novation of this Contract without the NFSA's prior written agreement to the Service Provider entering into that arrangement.

12.10. Entire Agreement and variation

- 12.10.1. The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Contract.
- 12.10.2. No agreement or understanding varying or extending this Contract, including in particular the scope of the Services in Schedule 1, shall be legally binding upon either party unless in writing and signed by both parties.
- 12.10.3. In the event of a variation to the scope of the Services in Schedule 1, the rates set out in Item E [Fees] will be used as the basis for any amended Fees, unless otherwise agreed by the parties.

12.11. Applicable Law

- 12.11.1. This Contract shall be governed by and construed in accordance with the Law for the time being in force in the Australian Capital Territory. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.
- 12.11.2. The Service Provider shall comply, and ensure that all work done under this Contract complies, with the Law from time to time in force in the State or Territory in which any part of this Contract is to be carried out.

12.12. Survival

- 12.12.1. Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:
- a. licensing of Intellectual Property;
 - b. Confidential Information;
 - c. Official Information;
 - d. the protection of Personal Information;
 - e. audit;
 - f. information security;
 - g. an indemnity; or
 - h. any other provision which expressly or by implication from its nature is intended to continue.
- 12.12.2. Clause 9 applies for the Time-frame specified in Item D [Commencement, Term and time-frame] and for seven years from the termination or expiry of this Contract.

12.13. Notice

- 12.13.1. A notice under this Contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Service Provider to the NFSA* – addressed to the Project Officer at the address specified in Item Schedule 1.M [NFSA’s address for notices] or as otherwise notified by the NFSA; or
- b. *if given by the NFSA to the Service Provider* – given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in Item Schedule 1.N [Service Provider’s address for notices] or as otherwise notified by the Service Provider.

12.13.2. A notice is to be:

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

12.13.3. A notice is deemed to be effected:

- a. if delivered by hand – upon delivery to the relevant address;
- b. if sent by post – upon delivery to the relevant address; and
- c. if transmitted electronically – upon actual receipt by the addressee.

12.13.4. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

12.14. Public Interest Disclosure Act 2013 (Cth)

12.14.1. The Service Provider must familiarise itself with the *Public Interest Disclosure Act 2013* (Cth) (PID Act) and acknowledges that public officials, including service providers and their subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth may raise their concerns under the PID Act.

12.14.2. Information for disclosers is available at <https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>.

12.15. National Anti-Corruption Commission Act 2022 (Cth) Requirements

12.15.1. The Service Provider acknowledges that in providing the Services/Products to the NFSA under the Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act).

12.15.2. The Service Provider must comply with any reasonable request, policy or direction issued by the NFSA and otherwise cooperate with the NFSA in relation to any action taken by the NFSA required or authorised by the NACC Act.

12.16. Notification of Significant Events

12.16.1. The Service Provider must immediately issue the NFSA a notice (in accordance with clause 12.13) on becoming aware of a Significant Event.

12.16.2. The notice issued under clause 12.16.1 must provide a summary of the Significant Event, including the date that it occurred and whether any Specific Personnel or other personnel engaged in connection with the Services/Products were involved.

12.16.3. The NFSA may notify the Service Provider in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Service

Provider must issue a notice under clause 12.16.1 in relation to the event within three (3) Business Days of being notified by the NFSA.

- 12.16.4. Where reasonably requested by the NFSA, the Service Provider must provide the NFSA with any additional information regarding the Significant Event with three (3) Business Days of the request.
- 12.16.5. If requested by the NFSA, the Service Provider must prepare a draft remediation plan and submit that draft plan to the NFSA Project Officer for approval within ten (10) Business Days of the request.
- 12.16.6. A draft remediation plan prepared by the Service Provider under clause 12.16.5 must include the following information:
- a. how the Service Provider will address the Significant Event in the context of the Services/Products, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services/Products or compliance by the Service Provider with its obligations under the Contract; and
 - b. how the Service Provider will ensure events similar to the Significant Event do not occur again; and
 - c. any other matter reasonably requested by the NFSA.
- 12.16.7. The NFSA will review the draft remediation plan and either approve the draft remediation plan or provide the Service Provider with the details of any changes that are required. The Service Provider must make any changes to the draft remediation plan reasonably requested by the NFSA and resubmit the draft remediation plan to the NFSA for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the NFSA. This clause 12.16.7 will apply to any resubmitted draft remediation plan.
- 12.16.8. Without limiting its other obligations under the Contract, the Service Provider must comply with the remediation plan as approved by the NFSA. The Service Provider agrees to provide reports and other information about the Service Provider's progress in implementing the remediation plan as reasonably requested by the NFSA.
- 12.16.9. A failure by the Service Provider to comply with its obligations under this clause 12.16 will be a material breach of the Contract. The NFSA's rights under this clause 12.16 are in addition to and do not otherwise limit any other rights the NFSA may have under the Contract. The performance by the Service Provider of its obligations under this clause 12.16 will be at no additional cost to the NFSA.

12.17. Compliance with the Commonwealth Supplier Code of Conduct

- 12.17.1. For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 12.17.2. The Service Provider must comply with, and ensure that its officers, employees, agents and subcontractors comply with, the Code in connection with the performance of this Contract.
- 12.17.3. The Service Provider must:
- a. periodically monitor and assess its, and its officers', employees', and agents' compliance with the Code; and

- b. on request from the NFSA, promptly provide information regarding:
 - i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - ii. the Service Provider's compliance with clause 12.17.2.
- 12.17.4. The Service Provider must immediately issue the NFSA a notice on becoming aware of any breach of clause 12.17.2. This notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 12.17.5. Where the NFSA identifies a possible breach of clause 12.17.2, it may issue the Service Provider a notice, and the Service Provider must, within three (3) Business Days of receiving this notice, either:
 - a. where the Service Provider considers a breach has not occurred: advise the NFSA that there has not been a breach and provide information supporting that determination; or
 - b. where the Service Provider considers that a breach has occurred: issue a notice under clause 12.17.4 and otherwise comply with its obligations under this clause 12.17.
- 12.17.6. Notwithstanding clause 12.17.5, the NFSA may notify the Service Provider in writing that it considers that the Service Provider has breached clause 12.17.2, in which case the Service Provider must issue a written notice under clause 12.17.4 and otherwise comply with its obligations under this clause 12.17.
- 12.17.7. A failure by the Service Provider to comply with its obligations under any part of this clause will be a material breach of the Contract.
- 12.17.8. Nothing in this clause or the Code limits, reduces, or derogates from the Service Provider's other obligations under the Contract. The NFSA's rights under this clause are in addition to and do not otherwise limit any other rights the NFSA may have under the Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to the NFSA.
- 12.17.9. The Service Provider agrees that the NFSA or any other Commonwealth agency may take into account the Service Provider's compliance with the Code in any future approach to market or procurement process.

EXECUTED AS A CONTRACT

<p>IF SERVICE PROVIDER IS A COMPANY:</p> <p>Signed for and on behalf of the Service Provider in accordance with s127 of the <i>Corporations Act 2001</i> (Cth) by</p> <hr/>	
<p>Name of first signatory</p> <p>and by</p> <hr/>	<p>Signature</p> <p>Director/Secretary/Sole Director (select applicable titles)</p> <hr/>
<p>Name of second signatory</p>	<p>Signature</p> <p>Director/Secretary (select applicable titles)</p> <p>Date:</p>
<p>NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA</p> <p>Signed for and on behalf of the National Film and Sound Archive of Australia by</p> <hr/>	
<p>Name of signatory</p>	<p>Signature</p> <p>Date:</p>

SCHEDULE 1.

A. Proposal

(see Context paragraph B)

The Service Provider’s Proposal is set out at *Attachment B – Service Provider’s Proposal (Submission Date)*.

B. Services and Products

(see clauses 1.1 and 2)

Services/Products

Requirement Summary

Outcome Summary

Delivery Timing Summary

Additional information regarding the NFSA’s requirements is provided at *Attachment A – NFSA RFQ X – Procurement Title*.

Additional information regarding the proposed delivery methodology, timing, and governance arrangements is provided at *Attachment B – Service Provider’s Proposal (Submission Date)*.

All services are to be delivered to the NFSA Building, 20 McCoy Circuit, Acton ACT 2601.

C. Specific standards and best practice

(see clauses 1.1 Minimum Performance Requirement, Performance Objective, Specifications, 2.1.2.b and 2.1.2.c)

The Service Provider and its Specified Personnel must perform their duties to a high professional standard and subject to industry best practice.

D. Commencement, Term and time-frame

(see clauses 1.1 Commencement Date, 1.3, 2.1.2.d, 12.12.2 and Items L & O)

Commencement Date:

The Commencement Date is the date of Contract execution by the last party to do so.

Term:

The Term of this Contract commences on the Commencement Date and (unless otherwise lawfully terminated) shall continue in full force and effect until

Day/Month/Year (Initial Period).

The Term may be extended for a further period of XX months through Day/Month/Year (Extended Period) at the NFSA’s sole discretion, to be notified in writing not less than 30 days prior to the end of the Initial Period.

Time-frame:

The Services/Products must be provided in accordance with the following timeframe:

Milestone	Due Date

E. Fees

(see clauses 3.1.1.a, 6.1.2, 11.1.4 and Item F)

The total maximum fees payable for the Services is **\$Value (GST Inclusive)**, to be invoiced upon completion of the following milestones:

Milestone	Due Date	Fee (GST Exc.)
Total (GST Exc.)		
Total (GST Inc.)		

Rates to apply in the event of a Variation

Unless otherwise agreed by the parties, the following rates will be used as the basis for any amended Fees in the event of a variation to the scope of the Services under clause 12.10.3:

Resource	Hourly Rate (GST Exc.)

F. Allowances and costs

(see clauses 3.1.1.b & 11.1.3.c)

None Specified.

G. Facilities and assistance

(see clause 3.1.1.d & 11.1.3.d)

None Specified.

H. Invoicing and payment

(see clauses 3.1.1 & 3.1.1.c)

Invoices must be issued by the Service Provider each month and must include the following information:

- a. title of the Products/Services;
- b. name of Project Officer;
- c. details of the specific Services for which payment of an Instalment is being claimed;
- d. details of Fees, allowances and costs;
- e. all relevant supporting material, including receipts substantiating any allowances and costs claimed and a copy of the written approval by the NFSA Project Officer for those allowances and costs to be incurred;
- f. contract number or purchase order number (if any); and
- g. formal written certification by a duly authorised officer of the Service Provider that the Service Provider has paid all remuneration, Fees or other amounts payable to an employee, agent or subcontractor performing Services under this Contract (and a confirming Statutory Declaration if the NFSA requests).

The due date for payment by the NFSA is 20 Business Days after delivery of a correctly rendered invoice in accordance with this Contract.

Payment will be effected by electronic funds transfer (EFT) to the nominated bank account of the Service Provider, to be advised following the Commencement Date.

I. Specified Personnel

(see clauses 1.1 Specified Personnel, 2.2.1 and 2.1)

Personnel	Position

J. Subcontractors

(see clauses 12.4.10, and 12.6 Subcontractors)

Subcontractor	Services/Products To Be Subcontracted

K. Project Officer

(see clauses 1.1 Project Officer, and 2.3)

The NFSA Project Officer is the person for the time-being holding, occupying or performing the duties of **Role**, currently **Name**, available by phone on **Phone Number** or via the address set out in Item M [NFSA’s address for notices].

L. Insurance

(see clause 12.5)

Insurance Type	Limitation	Duration
Public liability insurance	\$20 million per occurrence	Term of the Contract
Professional indemnity insurance	\$20 million per occurrence	Term of the Contract plus seven (7) years
Workers compensation	As required by Australian law	Term of the Contract

M. NFSA’s address for notices

(see clause 12.13.1.a)

Physical address	20 McCoy Circuit, Canberra, ACT 2601
Postal address	GPO Box 2002, Canberra, ACT 2601
Email (Preferred)	procurement@nfsa.gov.au

N. Service Provider's address for notices
(see clause 12.13.1.b)

Physical address	
Postal address	
Email (Preferred)	

O. Service Provider's Confidential Information
(see clauses 1.1 Confidential Information (of the Service Provider) & 5)

(a) Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality
N/A	N/A

(b) Contract-related material

Item	Period of Confidentiality
N/A	N/A

P. Privacy directions
(see clause 7)

None specified.

Q. Security requirements
(see clauses 6.1.1.b, 6.3.7.c, 6.3.9, 6.5.2, 6.6.1)

NFSA may require that Specified Personnel obtain and maintain an Australian Government Security Vetting Agency (AGSVA) Baseline security clearance and/or undergo an Australian Federal Police Check with no adverse findings.

Service Provider personnel required in the on-site delivery of services to NFSA premises will also be required to comply with the NFSA Contractor Protocols and all reasonable directions of the Australian Government Protective Security Policy Framework (PSPF).

R. Work health and safety
(see clause 2.12)

Additional work health and safety protocols may be in effect, informed by various Government bodies and Safe Work Australia. The specific protocols to be observed will be advised on commencement, and subject to any revised advisory published by the Commonwealth/State Governments and Safe Work Australia as made available.

S. Required NFSA Material
(see clause 4.1)

The NFSA will provide a copy of all available material pertaining to **XX** in the format/state of completeness that they exist on Contract commencement.

T. Existing Material
(see clause 4.2)

In accordance with clause 4.2.

U. Moral Rights

(see clause 4.3)

Permitted Acts

None specified.

NFSA policy on Moral Rights

None specified.

SCHEDULE 2. (See clauses 6.3.3 and 7.1.1.f)

Note: Sign only as instructed by the NFSA in accordance with clause 6.3.3 of this Contract. An editable word version will be provided upon request.

DEED OF CONFIDENTIALITY, CONFLICT OF INTEREST, IP AND MORAL RIGHTS

THIS DEED POLL is made

BY **[Signatory Name and Supplier Address]** (the **Recipient**)

in favour of the National Film and Sound Archive of Australia ABN 41 251 017 588 (the **NFSA**) and **[Supplier Name]** ABN **[Supplier ABN]** (the **Service Provider**)

RECITALS

- A. The NFSA requires the provision of **[Procurement Title]** (Contract No. 2324/P**XXX**).
- B. The provision of the services may require access to information confidential to the NFSA.

COVENANTS**1. INTERPRETATION**

1.1. In this Deed:

Conflict of Interest includes any circumstances where, due to a direct or indirect relationship or interest, the Recipient is or may reasonably be perceived to be, unable to discharge their obligations or duties in relation to the NFSA in an objective and independent manner to the best of their ability. There need not be an actual conflict for a perception of one to be formed by a reasonable person.

Contract means the contract between the NFSA and the Service Provider dated **[DD/MM/YYYY]** for the provision of **[Procurement Title]**.

Moral Rights Material means all Contract Material in which Moral Rights subsist.

Terms not defined in this Deed have the same meaning as in the Contract unless a contrary intention is expressed.

[Note: These definitions are available from the Service Provider or from the NFSA.]

2. RESTRICTIONS ON USE AND HANDLING OF INFORMATION

2.1. The Recipient must:

- a. use the Contract Material, NFSA Material and any Intellectual Property provided in connection with the Contract only for the purposes of the Contract;
- b. not, except as permitted by this Deed or required by law, copy, reproduce or disclose any of the Official Information without the prior written consent of the NFSA (The NFSA may grant or withhold this consent in its absolute discretion); and
- c. comply with, and work with the NFSA to ensure compliance with the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, in respect of personal information accessible by the Recipient in relation to the Contract, whether or not it is legally bound to comply with that Act and as if the Recipient were an 'agency' within the definition of that Act.

- 2.2. The Recipient's obligations under this Deed are in addition to, and do not restrict, any obligations it may have, including under the *Privacy Act 1988* (Cth) or any applicable privacy codes.

3. SECURITY

- 3.1. If requested by the NFSA, the Recipient must cooperate in any background or national security checks the NFSA wishes to make of the Recipient, including by providing information usually requested in such circumstances.

4. ACKNOWLEDGMENTS

- 4.1. The Recipient acknowledges that it is aware of all relevant statutory and other obligations and standards of performance applicable to the Services.
- 4.2. The Recipient acknowledges that the NFSA may require the Recipient's removal from the performance of the Services if the Recipient breaches this Deed.

5. INTELLECTUAL PROPERTY

- 5.1. The Recipient:
- a. assigns any Intellectual Property in materials developed or created by the Recipient in the course of performing the Services to the Service Provider from the date of creation of those materials; and
 - b. to the extent permitted by applicable law, consents, and must ensure its employees and agents consent to any act or omission that would otherwise infringe any Moral Rights in Moral Rights Material, including any act or omission that may have taken place before or after consent, and in particular consents to the following acts:
 - i. any alteration to or deletion from the Moral Rights Material;
 - ii. any use of the Moral Rights Material that does not identify the author; and
 - iii. any use of the Moral Rights Material that may falsely attribute authorship of the Moral Rights Material to any other person;

for the benefit of the Service Provider, the NFSA and anyone authorised by any of them to do acts comprised in the copyright in the Moral Rights Material.

6. CONFLICT OF INTEREST

- 6.1. The Recipient warrants that:
- a. no Conflict of Interest exists or is likely to arise during the Recipient's performance of the Services; and
 - b. it will use its best endeavors to ensure that a situation does not arise that may result in a Conflict of Interest, during the Recipient's provision of the Services and Products.
- 6.2. The Recipient undertakes that if it becomes aware of any Conflict of Interest, or a potential Conflict of Interest, during provision of the Services and Products, it will notify the NFSA and comply with all directions given for dealing with that Conflict of Interest.

7. GENERAL

- 7.1. The obligations in this Deed are perpetual and cumulative. Except to the extent of inconsistency, this Deed does not exclude the operation of any principle of law or equity.
- 7.2. This Deed is governed by and construed in accordance with the laws of the Australian Capital Territory.

Executed as a Deed Poll

FINAL EXECUTION BLOCK PROVIDED IN WORD VERSION; TO BE MADE AVAILABLE AS AND IF INSTRUCTED BY THE NFSA IN ACCORDANCE WITH CLAUSE 6.3.3 OF THIS CONTRACT.

Attachment A – NFSA RFQ 2324/PXXX – Procurement Title

A copy of NFSA RFQ 2324/PXXX – Procurement Title follows this page.

Attachment B – Service Provider’s Proposal (Submission Date)

A copy of the Service Provider’s Proposal [and post-submission correspondence] follows this page.