



Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Date: 6 April 2020

Mr N Power
Director
Myube Investments Pty Ltd atf Myube Trust
s 47G, s 47F

Dear Mr Power

This document sets out the agreement with Myube Investments Pty Ltd (ACN 619 855 533) (**Myube Investments**) to provide the services of Mr Neville Power to the Commonwealth of Australia, represented by the Department of the Prime Minister and Cabinet (**PM&C**), as a Commissioner for the National COVID-19 Coordination Commission (**NCCC**).

Documents comprising the Agreement

The Agreement comprises the following documents:

- (a) this Letter;
- (b) the Key Information at Attachment A;
- (c) the General Conditions of Services at Attachment B;
- (d) the Terms of Reference at Attachment C;
- (e) a Deed of Indemnity to be entered into with Myube Investments at Attachment D;
- (f) a Deed of Indemnity to be entered into with Mr Power at Attachment E; and
- (g) a Deed Poll to be executed by Mr Power at Attachment F.

If there are any inconsistencies between the documents included in this Agreement, the provisions in documents higher in the order will take precedence over inconsistent provisions in documents lower in the order.

Action required

Please indicate Myube Investments' acceptance of this Agreement by arranging for an authorised officer to sign, date and return the enclosed duplicate Agreement (with completed Attachments including the Deeds of Indemnity) to PM&C within 7 days after the date of this Letter.

PM&C reserves the right to withdraw this offer at any time before the Agreement is signed and returned on behalf of Myube Investments.

Yours sincerely

Stephanie Foster
Associate Secretary
Department of the Prime Minister and Cabinet
April 2020

The parties agree to the terms of the Agreement:

Date: 28 April 2020

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA AS
REPRESENTED BY THE DEPARTMENT OF
PRIME MINISTER AND CABINET (ABN 18
108 001 191) by its duly authorised officer, in
the presence of:

s 22

Signature of officer

STEPHANIE FASTER

Name of officer

s 22

s 22

Name of witness

SIGNED by MYUBE INVESTMENTS PTY
LTD (ACN 619 855 533) in accordance
with the requirements of section 127 of
the Corporations Act 2006 (Cth):

s 47F

Signature

Neville Power

Name

Signature of director/secretary

Name

Address for notices:	Postal address	s 47G, s 47F
	Physical address:	
	Email address:	s 47F

ATTACHMENT A – KEY INFORMATION

1. SERVICES

- 1.1 Myube Investments (**you**) will provide the services of Mr Neville Power to undertake all tasks and duties required to perform the role of Commissioner of the National COVID-19 Coordination Commission (NCCC).
- 1.2 The NCCC will bring together a co-ordinated national picture and assist in mobilising a whole of-society and whole-of-economy effort, to take action against the impacts of the global COVID-19 pandemic. The terms of reference of the NCCC are included at Attachment C.
- 1.3 The NCCC will advise the Prime Minister on all non-health aspects of the pandemic response, working in tandem with the Chief Medical Officer (CMO), Dr Brendan Murphy.
- 1.4 If incidental Materials, services or functions are required for the proper performance of the Services, they will be taken to be included in the scope of the Services. You also agree that minor and reasonable requests will be accommodated as part of the Services at no additional cost notwithstanding that they are not specifically set out in this Agreement.

2. TIMING

- 2.1 This Agreement will commence on 23 March 2020, and subject to earlier termination in accordance with this Agreement, will expire on 22 September 2020 (the **Term**).

3. PAYMENT

- 3.1 On receipt of an invoice from you, PM&C will pay you a monthly payment of \$44,557.50 plus GST (**Payment**), including to subsidise the cost to you of Mr Power's travel to, and accommodation in, Canberra for the duration of the Term.
- 3.2 The cost of additional reasonable work related travel expenses incurred by Mr Power in the provision of the Services will be reimbursed to you in line with PM&C practice on receipt of an invoice and any evidence required by PM&C from you.

4. AMOUNTS PAYABLE UNDER AGREEMENT

- 4.1 PM&C may withhold from amounts payable to you the amounts PM&C considers necessary for PM&C to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.
- 4.2 The amounts payable to you under the Agreement are inclusive of all other costs of performing the Services.
- 4.3 You are responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.4 You must comply with all applicable taxation laws in relation to payments received from PM&C relating to the Services under this Agreement.

5. INVOICE PROCEDURES

- 5.1 PM&C's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 5.2 Tax Invoices should be provided monthly.

- 5.3 Tax Invoices must be sent to:

SESUnit@pmc.gov.au

and must include the following information:

- (a) title of Services;
- (b) name of the PM&C Representative; and
- (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges).

- 5.4 If PM&C fails to pay an approved claim within 20 days after the receipt of the claim, PM&C must pay interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that PM&C makes the late payment.

- 5.5 Interest will only be payable in accordance with clause 5.4 if the interest amount owed by PM&C to you in respect of the late payment exceeds \$100.00.

- 5.6 Where any money is due to PM&C under this Agreement or any damages, costs, expenses or other amounts are recoverable by PM&C from you in consequence of your breach of this Agreement, then PM&C may:

- (a) offset them against any other amounts owing by PM&C to you under the Agreement;
or
- (b) invoice you for the amount due.

6. CONFIDENTIAL INFORMATION

- 6.1 You have not advised PM&C that any information provided by you is your Confidential Information.
- 6.2 All PM&C Material is PM&C Confidential Information unless PM&C otherwise advises you in writing.

7. SECURITY

- 7.1 You must perform your obligations under this Agreement in accordance with security requirements notified by PM&C from time to time in its absolute discretion.
- 7.2 PM&C may, at its cost, require you to undertake police or other security checks before commencing the Services, and you agree to provide all reasonable assistance in relation to such requests.

8. COMPLIANCE WITH DIRECTIONS

- 8.1 In performing the Services, you must comply with:
- (a) all lawful directions and instructions issued by PM&C, whether they are issued with respect to the Services or any other matter;
 - (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and

- (c) all applicable policies and procedures relating to work health and safety, including those that apply to PM&C's premises when using those premises.
- 8.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 8.1, you will comply with the requirements that produce the highest level of health and safety.

9. PM&C REPRESENTATIVE

- 9.1 The PM&C Representative is the person holding, occupying or performing the duties of the ***Associate Secretary***. The PM&C Representative is currently ***Stephanie Foster***.
- 9.2 The PM&C Representative is responsible for supervision of this Agreement on behalf of PM&C and has authority to issue and receive any written notices under this Agreement.
- 9.3 You must comply with all reasonable directions given by the PM&C Representative, provided that such directions are within the general scope of the administration of this Agreement.

10. YOUR ADDRESS FOR NOTICES

- 10.1 Unless you advise the PM&C Representative of another address for notice, PM&C will issue any notices or other communications for your attention to the address to which the letter was sent.



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ATTACHMENT B - GENERAL CONDITIONS FOR SERVICES

11. INTERPRETATION

- 11.1 In this Agreement, unless the contrary intention appears, the term:

applicable WHS law means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act).

appointment means the appointment of Neville Power to the role of Commissioner for the NCCC.

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of performing, your obligations under this Agreement. Agreement Material does not include PM&C Material.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Illegal Worker means a person who:

- (a) has unlawfully entered and remains in Australia;
- (b) has lawfully entered Australia, but remains in Australia after the person's visa has expired; or
- (c) is working in breach of the person's visa conditions.

Insolvency Event means the occurrence of an event or circumstance that PM&C considers has or may have an adverse effect on the commercial or financial viability of you, your ability to perform your obligations under this Agreement, or the ability of PM&C to enforce its rights against you under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Loss means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Moral Rights 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 exist, or may come to exist, anywhere in the world.

ePayment means the amount referred to in clause 3.1.

Personal Information has the same meaning as the term 'personal information' in the *Privacy*

Act 1988 (Cth) and includes 'sensitive information'.

PM&C Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is listed in Attachment A as PM&C Confidential Information or is otherwise designated by PM&C as confidential; or
- (c) you know or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (e) has been independently developed or acquired by you, as established by written evidence.

PM&C Material means any Material provided by or on behalf of PM&C to you in connection with this Agreement.

PM&C Representative has the meaning given in clause 9 of Attachment A.

Privacy Act means *Privacy Act 1988 (Cth)*.

Services means the services set out in clause 1 of Attachment A.

Subcontractor means any person, other than PM&C, that, for the purposes of this Agreement, furnishes goods or services to or on behalf of you or indirectly through another person; and 'Subcontract' has a corresponding meaning.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

you includes, where the context permits, your personnel and your permitted assigns.

your Confidential Information means the information identified as your confidential information in clause 6.1 of Attachment A.

your personnel means Mr Neville Power.

WHS means work health and safety.

WHS Act means the *Work Health and Safety Act 2011 (Cth)*.

11.2 A singular word includes the plural and vice-versa.

11.3 All references to currency are references to Australian legal currency and references to weights and measures are references to Australian legal units of weight and measurement.

11.4 A reference in this Agreement to a clause is a reference to a clause in this Attachment B unless the context implies otherwise, and includes a reference to a subclause of that clause.

12. PERFORMANCE OF THE SERVICES

12.1 You must perform the Services, and ensure that your personnel perform the Services:

- (a) exercising high professional standards of skill, care and diligence consistent with the standards of well-managed operations or persons performing services similar to the Services;
- (b) to ensure that the Services meet their purposes, are complete and are performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
- (c) to ensure that PM&C is fully and accurately informed on all matters which are relevant to the Services;
- (d) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
- (e) to ensure that all obligations specified in this Agreement are fully satisfied; and
- (f) to ensure that all information provided to PM&C, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect.

12.2 You must not subcontract the performance of any part of the Services.

13. NO EMPLOYMENT OR AGENCY

13.1 You are not, by virtue of this Agreement, an employee, partner or agent of PM&C.

13.2 You must not represent yourself, and must ensure that your personnel performing Services on your behalf under this Agreement, do not

represent themselves, as being employees, partners or agents of PM&C.

- 13.3 You have no authority to incur, and must not incur, any obligation on behalf of PM&C.

14. YOUR PERSONNEL

- 14.1 The Parties agree that your personnel performing Services on your behalf under this Agreement are and remain at all times an employee, independent contractor or agent of you or a Subcontractor.

- 14.2 You warrant that you do not have any unpaid claims in respect of any judicial decision made against you relating to employee entitlements, other than those for which you have lodged a formal appeal that has not yet been determined.

- 14.3 You must ensure that none of your personnel are Illegal Workers.

- 14.4 You must, at all times and at your own expense, comply with the provisions of any relevant legislation, including all Commonwealth, State and Territory WHS legislation and industrial instruments (as defined by the relevant law) in respect of the Services referred to in clause 1.1. If requested by PM&C you must provide proof to PM&C of compliance with any such legislation or industrial instrument.

- 14.5 You must ensure that your personnel comply with the terms of this Agreement, and you accept and agree that a breach of any of the terms of this Agreement by your personnel constitutes a breach of this Agreement by you.

15. WORK HEALTH AND SAFETY

- 15.1 You must ensure that the Services provided and/or the work you perform complies with all applicable legislative requirements, standards and policies, and requirements of this Agreement, that relate to the health and safety of you, PM&C personnel and third parties.

- 15.2 You must comply with any applicable WHS law and must ensure, so far as is reasonably practicable, that your officers (as defined by applicable WHS law) and workers comply with their obligations under any applicable WHS law. The other provisions of clause 14 do not limit this sub-clause 15.2.

- 15.3 You must ensure, so far as is reasonably practicable, the health and safety of:

(a) workers engaged, or caused to be engaged by you; and

(b) workers whose activities in carrying out work are influenced or directed by you,

while the workers are at work in relation to this Agreement.

- 15.4 You must ensure, so far as is reasonably practicable, that the health and safety of other persons (including PM&C personnel and PM&C's contractors) is not put at risk from work carried out under this Agreement.

- 15.5 You must consult, cooperate and coordinate with PM&C in relation to its WHS duties.

- 15.6 Without limiting any other clause of this Agreement, you must, on request, give all reasonable assistance to PM&C by way of provision of information and documents, to assist PM&C and its officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.

- 15.7 PM&C may direct you to take specified measures in connection with its work under this Agreement or otherwise in connection with the Services that PM&C considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. You must comply with the direction. You are not entitled to an adjustment to any fees, allowances, or costs, or to charge additional allowances or expenses, merely because of compliance with the direction.

- 15.8 If an event occurs in relation to your work under this Agreement that leads, or could lead, to the death, or an injury or illness to, a person (Notifiable Incident), you must:

(a) immediately report the matter to PM&C, including all relevant details that are known to you;

(b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:

(i) its cause; and

(ii) what adverse effects (if any) it will have on your work under this Agreement, including adverse effects on risks to health and safety;

(c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;

- (d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
- (e) within three Business Days after the Notifiable Incident, give PM&C a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 15.8(b) and a statement of the steps taken by you or that you propose to take as required by clauses 15.8(c) and 15.8(d); and
- (f) within three months after the Notifiable Incident, give PM&C a written report giving full details of its actions in relation to the Notifiable Incident.
- 15.9 Your obligations under this clause 14 are in addition to any reporting obligation that you have under a written law.
- 15.10 You must fully co-operate, at your own cost, with any investigation by any government agency (including Comcare) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 15.11 A word or expression in this clause 15:
- (a) used or defined in an applicable WHS law; and
- (b) not otherwise defined in this clause 15 14 or elsewhere in this Agreement,
- has, for the purposes of this clause 15 14, the meaning given to it under the applicable WHS law.
- 16. AGREEMENT MATERIAL AND PM&C MATERIAL**
- 16.1 You acknowledge that all of the Agreement Material is made under the direction and control of PM&C.
- 16.2 Title to and risk in relation to the physical property in Agreement Material passes to PM&C upon delivery of the Agreement Material to PM&C.
- 16.3 Subject to clause 16.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in PM&C.
- 16.4 Nothing in this clause 16 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 16.5 Except as set out in Attachment A, you grant to PM&C a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by PM&C.
- 16.6 Title to the PM&C Material does not pass to you by virtue of any delivery to you or any other action taken under this Agreement.
- 16.7 At PM&C's request, you must bring into existence, sign, execute or otherwise deal with any document which may be necessary to give effect to this clause 16.
- 16.8 You must ensure that all PM&C Material, and any Agreement Material to be provided to PM&C, is used, copied, reproduced or supplied by you or any persons to whom you supply Agreement Material (other than PM&C) only for the purposes of this Agreement.
- 16.9 You must keep full and accurate records of the location and development of all PM&C Material and Agreement Material and make the records available to PM&C on request.
- 16.10 You acknowledge that PM&C may, at any time and without notice, demand either orally or in writing, the destruction or delivery to PM&C of all:
- (a) PM&C Material;
- (b) Agreement Material; or
- (c) other documents that contain PM&C Confidential Information,
- that may be in your possession or control.
- 16.11 To the extent permitted by law you consent, and must ensure your personnel consent, to any act or omission that would otherwise infringe any Moral Rights in the Agreement Material.
- 17. DISCLOSURE OF INFORMATION**
- 17.1 Except as specified in clause 17.2, or with the prior consent of the other party:
- (a) PM&C must not, and must ensure that PM&C personnel do not, make public or disclose to any person other than you any of your Confidential Information; and

- (b) you must not, and must ensure your personnel do not, make public or disclose to any person other than PM&C any PM&C Confidential Information.

17.2 Clause 17.1 does not apply:

- (a) to the extent required by law, or as required of PM&C by any government or governmental body, authority or agency having authority over PM&C;
- (b) as required in connection with legal proceedings;
- (c) to the extent necessary for the proper discharge of PM&C's public accountability or reporting functions, including for the provision of information to a Minister, Parliament or a parliamentary committee;
- (d) to disclosures by PM&C made for the purpose of conducting an audit in accordance with clause 21.2;
- (e) to disclosures by PM&C to PM&C personnel and other contractors on a need-to-know basis; or
- (f) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,

but in each case of disclosure by you, you must give PM&C sufficient notice of any proposed disclosure to enable PM&C to seek a protective order or other remedy to prevent the disclosure.

17.3 You must ensure that PM&C Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.

17.4 You must not transfer PM&C Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of PM&C.

18. PRIVACY

18.1 Except as set out in clause 18.2, or with the written permission of the PM&C Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, you must:

- (a) not do any act or engage in any practice that would breach the

Privacy Act if done or engaged in by PM&C;

- (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:

- (i) performing the Agreement; or
- (ii) complying with the Privacy Act;

- (c) implement all reasonable measures to meet the requirements of this clause 18.1;

- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or PM&C, including in the investigation of any complaints;

- (e) immediately notify PM&C if it becomes aware that a disclosure of such Personal Information may be required by law, or when you become aware of a breach of any obligation concerning such information;

- (f) ensure that any person who obtains access from you or your personnel to any Personal Information in respect of which you have obligations under the Privacy Act or this clause 18.1 signs a Confidentiality Declaration, if required by PM&C, prior to the access;

- (g) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse, and that your personnel with the relevant authorisations have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;

- (h) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of PM&C;

- (i) notify PM&C of, and cooperate with PM&C in the resolution of, any complaint alleging an interference with privacy; and

- (j) upon written notice from PM&C, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

18.2 You must ensure that all of your personnel are aware of the need to comply with clause 18.1 in the course of performing the Services.

18.3 You must:

- (a) refer any requests for access by third parties to Personal Information to PM&C; and
- (b) assist PM&C, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether you have possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which you use the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

18.4 Your obligations in this Agreement (including this clause 18) are in addition to your obligations under the Privacy Act.

19. CONFLICT OF INTEREST

19.1 For the purposes of this clause 19, a **Conflict of Interest** would include any circumstances where, due to a direct or indirect relationship or interest, you or your personnel are or may reasonably be perceived to be, unable to discharge their obligations or duties in relation to PM&C 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.

19.2 You warrant that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the performance of your or your personnel's obligations under this Agreement which has not already been advised to PM&C in writing and consented to by PM&C.

19.3 You agree to:

- (a) use your best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during your performance of the Services;
- (b) notify PM&C if you become aware of any Conflict of Interest or potential

Conflict of Interest, during your performance of the Services; and

- (c) comply with all directions given by PM&C for dealing with any Conflict of Interest.

19.4 If you are unable or unwilling to resolve or deal with the Conflict of Interest as required, PM&C may terminate this Agreement in accordance with clause 26.

20. SECURITY

20.1 You must comply with and must ensure that your personnel comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.

20.2 You must perform your obligations under this Agreement in accordance with security requirements notified by PM&C from time to time in its absolute discretion which may include a requirement for your personnel to obtain a security clearance.

20.3 If any breach of any security requirement occurs then, without limiting PM&C's rights under this Agreement, you must comply with any reasonable directions of PM&C in order to rectify the issue and prevent further issues.

20.4 You must:

- (a) regularly review information concerning each member of your personnel; and
- (b) advise PM&C promptly in writing of any relevant circumstances of any of your personnel involved in the performance of this Agreement that, in your reasonable opinion, might affect any authorisation or security clearance provided.

21. ACCESS TO YOUR PREMISES AND RECORDS

21.1 You must grant, at all reasonable times, access to your premises, records, accounts and other financial material or Material relevant to this Agreement, including PM&C Material and Agreement Material, however and wherever

stored or located, in your custody, possession or control or your personnel to:

- (a) PM&C or any persons authorised in writing by PM&C, including PM&C auditors; and
- (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,

for the purposes of performing their respective statutory functions and/or for inspection and/or copying.

- 21.2 You must make available on request, and at no expense to PM&C, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 21.1 to be created.

22. AUDIT REQUIREMENTS

- 22.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by PM&C or its nominee.
- 22.2 You must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by PM&C, including on an ad hoc basis if requested by PM&C, for the purpose of ensuring that this Agreement is being properly performed and administered. PM&C may appoint an independent person to assist in the audits.
- 22.3 Each party must bear its own costs of any audits.

23. ARCHIVES ACT 1983

- 23.1 You must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of PM&C and the National Archives of Australia.
- 23.2 Where PM&C and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to you, you must comply in every respect with the requirements of the Archives Act 1983 (Cth) or guidelines issued by National Archives of Australia.
- 23.3 You must comply with any direction given by PM&C 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.

24. INDEMNITY

- 24.1 PM&C agrees to provide you and your personnel with indemnities in the form of **Attachment D and Attachment E**.
- 24.2 This clause 24 survives the expiration or termination of this Agreement.

25. TERMINATION WITHOUT DEFAULT

- 25.1 PM&C may at any time by notice, terminate this Agreement in whole or in part. Upon such notice being given, you must cease or reduce work in accordance with that notice and must do everything possible to mitigate losses arising from that termination.
- 25.2 If this Agreement is terminated under clause 25.1, PM&C is liable only for:
- (a) the making of the Payment with respect to the period of Services rendered before the effective date of termination, provided that those Services have been rendered in accordance with this Agreement and you are not otherwise in breach of this Agreement; and
 - (b) any reasonable costs in respect of unavoidable loss or damage sustained or incurred by you and directly attributable to the termination or partial termination of this Agreement. These costs must not exceed the total amount payable under this Agreement and must not include payments to any employees or former employees or loss of potential or prospective profit.

- 25.3 In the event of partial termination, PM&C's liability to make the Payment, in the absence of agreement to the contrary, will abate proportionately to the reduction in the Services.

26. TERMINATION FOR DEFAULT

- 26.1 Without prejudice to its rights at common law or under any statute, PM&C may by notice to you, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of you;
 - (b) PM&C is entitled to terminate this Agreement in accordance with clause 26.2, 26.3 or 26.4;

- (c) you fail to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.

26.2 Subject to clause 26.3, if:

- (a) you breach this Agreement (including by failing, in PM&C's sole and absolute opinion, to perform the Services in accordance with clause 12.1); and
- (b) in PM&C's sole and absolute opinion, a breach is capable of being remedied,

PM&C will give you 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of PM&C, then PM&C may terminate this Agreement under this clause 26.

26.3 If you commit three or more breaches of this Agreement, PM&C is not required to give you 15 Business Days to remedy the breach under clause 26.2, and may immediately terminate this Agreement under this clause 26.

26.4 If:

- (a) you breach this Agreement; and
- (b) PM&C determines under clause 26.2 that a breach is not capable of being remedied,

PM&C may immediately terminate this Agreement under this clause 26.

27. TERMINATION BY YOU

You may only terminate this Agreement by giving at least 20 Business Days' notice to PM&C and only if you have submitted notice to PM&C that Mr Power wishes to relinquish the appointment which is the subject of this Agreement for specific reasons set out in the notice and PM&C has accepted your request.

28. DISPUTE RESOLUTION

28.1 Subject to the application of any relevant limitation period, a party must not commence proceedings in any court or tribunal in relation to any dispute relating to, in connection with, or arising out of this Agreement (a **Dispute**), unless the party has complied with this clause 28 and the Dispute remains unresolved, unless clause 28.8 applies.

28.2 The parties undertake to use all reasonable efforts in good faith to resolve any Dispute. If a Dispute arises, the party wishing to take the Dispute further must give the other party a

notice of dispute setting out the nature of the Dispute.

28.3 Following the giving of a notice of dispute, the Dispute must initially be referred to the PM&C Representative, who will endeavour to resolve the Dispute within 10 Business Days after the giving of the notice of dispute.

28.4 If the parties have not been able to resolve the Dispute in accordance with clause 28.3, then the parties may agree on a process for resolving the Dispute through means other than litigation or arbitration, including by mediation, conciliation or expert determination. If the parties agree upon expert determination as a means of resolving the Dispute, that expert determination will be binding on both parties.

28.5 If the parties have not been able to resolve the Dispute in accordance with clause 28.3 and have not been able to agree on a process for resolving the Dispute in accordance with clause 28.4, the Dispute must be referred to mediation using the Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes as applying from time to time with the mediator being appointed by the President of the Law Society of the Australian Capital Territory.

28.6 If the Dispute is not resolved within 30 Business Days (or such other period as agreed between the parties in writing) after the appointment of the mediator, conciliator or expert in accordance with clause 28.4 or clause 28.5, then either party may, if it wishes, commence proceedings in a court or tribunal in respect of the Dispute.

28.7 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any related agreements.

28.8 Nothing in this clause 28 prevents either party from seeking urgent relief.

29. TRANSITION OUT

29.1 In the event of termination or expiration of this Agreement for any reason, you must:

- (a) cease access to and use of PM&C's systems, Agreement Material and PM&C Material;
- (b) at PM&C's direction, either return or destroy all:
 - (i) PM&C Material;
 - (ii) Agreement Material; or

(iii) other documents that contain PM&C Confidential Information,

that may be in your possession or control;

- (c) where requested by PM&C deliver to PM&C a statutory declaration made by one of your authorised officers declaring that, to the best of that person's information and belief (after having made proper inquiries), neither you nor your personnel have retained any of the Material specified in clause 29.1(b);
- (d) comply with all other obligations in this Agreement, including those relating to PM&C Material and Agreement Material; and
- (e) undertake all reasonable measures to ensure that all of your personnel are aware of their obligations under this Agreement relating to confidentiality, security and privacy that continue after the expiry or termination of this Agreement.

29.2 The following clauses will survive the expiration or termination of this Agreement:

- (a) clause 17 (Disclosure of Information);
- (b) clause 18 (Privacy);
- (c) clause 20 (Security);
- (d) clause 21 (Access to your Premises and Records);
- (e) clause 21.2 (Audit Requirements);
- (f) clause 24 (Indemnity);
- (g) clause 28 (Dispute Resolution);
- (h) this clause 29 (Transition Out); and
- (i) clause 32 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

30. ASSIGNMENT

30.1 You must not assign, in whole or in part, your rights or obligations under this Agreement without the prior written consent of PM&C.

31. ENTIRE AGREEMENT AND VARIATION

- 31.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 31.2 No agreement or understanding that varies or extends this Agreement (including in particular the scope or performance of the Services or the Payment) and which would result in an increase in the monies payable by, or other liability of, PM&C will be legally binding upon either party unless in writing and signed by both parties.
- 31.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

32. APPLICABLE LAW

- 32.1 This Agreement will be governed by the law for the time being in force in the Australian Capital Territory and the parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.
- 32.2 You must ensure that the work done under this Agreement complies with all relevant Commonwealth policies and the laws from time to time in force in the State or Territory in which the Services, or any part thereof, are to be carried out.

ATTACHMENT C

NATIONAL COVID-19 COORDINATION COMMISSION

TERMS OF REFERENCE

The Australian Government has established the National COVID-19 Coordination Commission (NCCC) to coordinate advice to the Australian Government on actions to anticipate and mitigate the economic and social impacts of the global COVID-19 pandemic.

The NCCC will be led by Mr Neville Power, an eminent Australian businessman. He will be supported by an Executive Board of Directors drawn from across the private and not-for-profit sectors comprising: Mr Greg Combet AM, Ms Jane Halton AO, Mr Paul Little AO, Ms Catherine Tanna, and Mr David Thodey AO. They will be joined by the Secretaries of the Department of the Prime Minister and Cabinet, Mr Philip Gaetjens and the Department of Home Affairs, Mr Mike Pezzullo. The NCCC will advise the Prime Minister and operate within his portfolio.

The NCCC will bring together a co-ordinated national picture and assist in mobilising a whole-of-society and whole-of-economy effort, to take action against the impacts of the global COVID-19 pandemic.

It will advise the Prime Minister on all non-health aspects of the pandemic response, working in tandem with the Chief Medical Officer (CMO), Dr Brendan Murphy. The CMO and the medical expert panel he leads – the Australian Health Protection Principal Committee (AHPPC) - will continue their role of advising the National Cabinet on Australia's health management and response to the virus.

The National Cabinet, comprising State Premiers and Territory Chief Ministers, continues to lead the national response at a government level.

The Treasury will continue to lead and coordinate on economic policy and financial markets issues advice, given its deep understanding of and connections to market participants.

Working with the CMO to fully understand the health position, the NCCC will, through its own inquiries and analysis of matters referred to it, ensure the Government receives the most comprehensive advice available to meet with challenges ahead. The intention is to work cooperatively across private-to-private and public-to-private networks to unlock resources, break bottlenecks and fix problems so Australian families, businesses and communities are supported in the months ahead.

Each member of the NCCC's Executive Board will lead the development of strategies and engagement within a specific stream or sector relevant to their expertise, with a focus on mobilising and coordinating public, private and not-for-profit actions. APS Departmental Secretaries and Agency Heads will support their work and ensure necessary resources are committed to the delivery of agreed outcomes.

The existing National Coordination Mechanism, which coordinates the cross jurisdictional response to non-health aspects of the pandemic, and the Business Liaison Unit on Coronavirus will report to the NCCC, providing direct, real-time advice and driving national consistency across all Australian jurisdictions.

The functions of the NCCC will be to:

- mobilise a whole-of-society and whole-of-economy effort to address the health crisis and take necessary action to ensure the economic and social impacts from the global COVID-19 pandemic are anticipated and mitigated;

- assist the Government to ensure all resources are marshalled in a coordinated and effective manner; and
- drive the development and co-ordination of staged and proportionate plans on critical non-health factors including:
 - transport and logistics challenges;
 - industry co-ordination and adjustment;
 - labour and workforce planning;
 - delivery of essential services and maintenance of critical infrastructure;
 - support to vulnerable Australians; and
 - input of scientific and technological expertise.

ATTACHMENT D – DEED OF INDEMNITY

THIS DEED is made on 28 April 2020

BETWEEN:

- (1) **Commonwealth of Australia**, represented by the Department of the Prime Minister and Cabinet (the "**Commonwealth**"); and
- (2) **Myube Investments Pty Ltd (ACN 619 855 533)** of s 47G, s 47F ("**You**").

RECITALS:

The Commonwealth has agreed to indemnify you against Indemnified Liabilities on the terms of this Deed.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed.

"Claim" means any writ, summons, claim, cross claim, counterclaim, application, examination, allegation, cause of action, civil proceeding, criminal proceeding, suit or demand of any nature whatsoever.

"Defend" includes avoid, dispute, resist, mitigate, settle, compromise, defend or appeal and "Defending" has a corresponding meaning.

"Department" means the Department of the Prime Minister and Cabinet.

"Indemnified Liabilities" means each liability incurred by You with respect to Mr Power performing the role of Commissioner of NCCC for the Purpose.

"Liability" means liability of any kind, including damages, judgments, settlements, interest, fines and penalties, and any applicable taxes levied in respect of that liability.

"NCCC" means National COVID-19 Coordination Commission (NCCC).

"Proceeding" includes a civil proceeding, criminal proceeding, or an official examination, inquiry, hearing or investigation (including a Royal Commission).

"Purpose" means to effect any of the purposes or objectives of the NCCC.

"Term" means the term of the Agreement entered into between the Commonwealth and You for the provision of the services of Mr Neville Power to perform the role of Commissioner of NCCC, set out at Attachment A to that Agreement.

2. INDEMNITY

2.1 Indemnity by the Commonwealth

Subject to the terms of this Deed, the Commonwealth indemnifies You to the fullest extent permitted by law, against:

- (a) any Liability incurred by You as a result of any Claim in respect of any of the Indemnified Liabilities;
- (b) reasonable legal costs and expenses and any liability for legal costs and expenses of another person incurred by You:
 - (i) in Defending a Claim in respect of any of the Indemnified Liabilities; or
 - (ii) in any Proceeding commenced by You seeking relief from Liability that may otherwise have been or would be incurred in respect of any of the Indemnified Liabilities; and
- (c) reasonable legal costs and expenses incurred by You in connection with any Claim in respect of any of the Indemnified Liabilities and which indirectly involves You because of either Your present or former role as a Commissioner of the NCCC, which costs are incurred by You with the prior written consent of the Commonwealth (such consent not to be unreasonably withheld or delayed).

2.2 Nature and duration of indemnity

- (a) The indemnity granted under this Deed applies for the entire Term.
- (b) For the avoidance of doubt, the indemnity granted under this Deed continues in full force even if Mr Power has ceased to be a Commissioner when You make a claim under the indemnity if the claim relates to Mr Power's acts or omissions during the Term.

2.3 Restriction on indemnity

The indemnity granted by the Commonwealth under this Deed shall not apply:

- (a) in respect of any Indemnified Liabilities incurred by You on matters which are not related to the Purpose;
- (b) to the extent that You recover the amount of any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed under any other Deed of Indemnity given to You;
- (c) to the extent that You recover, under any insurance policy effected for the benefit of You, any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed, unless You are legally required to disgorge the payment to any liquidator, administrator or receiver of the insurer;
- (d) unless (and then only to the extent that) You acted in good faith, and without malice, fraud or recklessness, but will apply if You acted negligently;
- (e) in respect of legal costs incurred in Defending an action if the costs are incurred:

- (i) in Defending or resisting Proceedings in which You are found to have a liability for which You could not be indemnified under this clause 2.3;
- (ii) in Defending or resisting criminal Proceedings in which You are found guilty;
- (iii) in Defending or resisting Proceedings brought by the Commonwealth, for a court order if the grounds for making the order are found by the court to have been established, however, this clause 2.3(e)(iii) does not apply to costs incurred in responding to actions taken by the Commonwealth as part of an investigation before commencing proceedings for the court order; or
- (f) to Your conduct after the expiry of 30 days from the date of despatch of a notice in writing to You from the Commonwealth (to the address set out at clause 5.5 or such other address as You may notify) to the effect that the indemnity shall not apply to any such conduct as a Commissioner after that period; or
- (g) to the extent that You recover, from a third party any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed, unless You are legally required to disgorge the payment to any liquidator, administrator or receiver of the third party or indemnifier.

3. PROCEEDINGS

3.1 Your obligations

It is a condition of the indemnity granted under this Deed that You must:

- (a) as soon as reasonably practicable after becoming aware of any Claim irrespective of whether or not the Claim may be covered by insurance, notify the Secretary of the Department of the Claim with all available details;
- (b) keep the Secretary of the Department fully informed at all times about the Claim and its conduct;
- (c) notify the Secretary of the Department of any offer of settlement or compromise received from the person making the Claim as soon as reasonably practicable after becoming aware of the offer;
- (d) not make any admission of liability in respect of or settle the Claim or any counterclaim to the Claim without the prior written consent of the Commonwealth;
- (e) take any step to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal the Claim in the way requested by the Commonwealth; and
- (f) settle or compromise the Claim or any counterclaim to the Claim as required by the Commonwealth.

3.2 Rights of the Commonwealth to conduct defence

- (a) The Commonwealth may, by written notice to You, do any one or more of the following in relation to any Claim for which indemnification is being sought by You:
 - (i) Defend the Claim;
 - (ii) institute a cross claim or counterclaim in relation to the Claim;

- (iii) exercise any right You may have against a third party in respect of the Claim or its subject matter (for example, by making a claim against some person); and
 - (iv) retain lawyers to act on behalf of both You and the Commonwealth in relation to the Claim (or any cross claim, counterclaim or third party claim).
- (b) If the Commonwealth does not elect to take control of the conduct of proceedings under clause 3.2(a), You must ensure that the Commonwealth is kept fully informed of any actual or proposed developments (including, without limitation, any meetings) and is provided with copies of all material correspondence and documentation relating to such third party claim or action, and such other information, assistance and access to records and personnel as the Commonwealth reasonably requires.

3.3 Assistance from You

It is a condition of the indemnity granted under this Deed that You must:

- (a) give the Commonwealth all reasonable assistance in relation to any step taken by the Commonwealth pursuant to clause 3.2, or in obtaining an indemnity in relation to any Claim under an insurance policy effected for Your benefit;
- (b) give the Commonwealth any document, authority or direction that the Commonwealth may require to bring any claim, counterclaim or defence in Your name; and
- (c) do anything necessary to enable the Commonwealth (so far as possible) to obtain the benefit of any rights You may have against any third party connected with any Claim or its subject matter.

3.4 Exclusion

In the event that the Claim is or may be covered by an insurance policy effected for Your benefit, the Commonwealth's rights and the conditions in this clause 3 will not apply to the extent that such rights and conditions conflict with Your duties to the insurer of any such insurance policy.

4. GENERAL

4.1 Governing law

This Deed is governed by the law in force in the Australian Capital Territory.

4.2 Waiver of rights

A right may only be waived in writing, signed by the person giving the waiver, and:

- (a) no other conduct (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

4.3 Operation of this Deed

Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

4.4 Operation of indemnities

Each indemnity in this Deed survives the expiry or termination of this Deed.

4.5 Further action

Each party must do all things and execute all further documents necessary to give full effect to this Deed.

4.6 Stamp duty

The Commonwealth must pay any stamp duty chargeable on this Deed.

4.7 Other rights

Nothing in this Deed limits or restricts any other right of indemnity or other exoneration or protection available to You independently of this Deed, whether under general or statutory law or otherwise.

4.8 Tax on payments

If payment is due You under this Deed and its receipt or derivation gives rise to a liability for tax (including income or goods and services tax) on or payable by You, the Commonwealth must increase the payment by the amount necessary to ensure that, after payment of the tax, the balance remaining to You is equal to the amount of the payment.

4.9 No reliance

No party has relied on any statement by any other party not expressly included in this Deed.

4.10 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.

EXECUTED as a deed,

SIGNED, SEALED and DELIVERED for
and on behalf of the **COMMONWEALTH
OF AUSTRALIA** by:

s 22

Signature

STEPHANIE FOSTER

Name of officer

s 22

Signature of witness

s 22

Name of witness

SIGNED SEALED AND DELIVERED by
**MYUBE INVESTMENTS PTY LTD (ACN
619 855 533)** In accordance with the
requirements of section 127 of the
Corporations Act 2006 (Cth):

s 47F

Signature of

Signature of director/secretary

Neville Power

Name

Name

ATTACHMENT E – DEED OF INDEMNITY

THIS DEED is made on 29 April 2020

BETWEEN:

- (3) the Commonwealth of Australia, represented by the Department of the Prime Minister and Cabinet (the "Commonwealth"); and
- (4) Mr Neville Power of s 47F, s 47G ("You").

RECITALS:

The Commonwealth has agreed to indemnify You against Indemnified Liabilities on the terms of this Deed.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed.

"Appointment" means your appointment to the role of Commissioner for the NCCC.

"Claim" means any writ, summons, claim, cross claim, counterclaim, application, examination, allegation, cause of action, civil proceeding, criminal proceeding, suit or demand of any nature whatsoever.

"Defend" includes avoid, dispute, resist, mitigate, settle, compromise, defend or appeal and "Defending" has a corresponding meaning.

"Department" means the Department of the Prime Minister and Cabinet.

"Indemnified Liabilities" means each liability incurred by You for the Purpose.

"Liability" means liability of any kind, including damages, judgments, settlements, interest, fines and penalties, and any applicable taxes levied in respect of that liability.

"NCCC" means National COVID-19 Coordination Commission.

"Proceeding" includes a civil proceeding, criminal proceeding, or an official examination, inquiry, hearing or investigation (including a Royal Commission).

"Purpose" means to effect any of the purposes or objectives of the NCCC.

2. INDEMNITY

2.1 Indemnity by the Commonwealth

Subject to the terms of this Deed, the Commonwealth indemnifies You to the fullest extent permitted by law, against:

- (a) any Liability incurred by You as a result of any Claim in respect of any of the Indemnified Liabilities;
- (b) reasonable legal costs and expenses and any liability for legal costs and expenses of another person incurred by You:
 - (i) in Defending a Claim in respect of any of the Indemnified Liabilities; or
 - (ii) in any Proceeding commenced by You seeking relief from Liability that may otherwise have been or would be incurred in respect of any of the Indemnified Liabilities; and
- (c) reasonable legal costs and expenses incurred by You in connection with any Claim in respect of any of the Indemnified Liabilities and which indirectly involves You because of either Your present or former role as a Commissioner of the NCCC, which costs are incurred by You with the prior written consent of the Commonwealth (such consent not to be unreasonably withheld or delayed).

2.2 Nature and duration of indemnity

- (a) The indemnity granted under this Deed applies for the entire term of the Appointment.
- (b) For the avoidance of doubt, the indemnity granted under this Deed continues in full force even if You have ceased Your Appointment when You make a Claim under the indemnity if the Claim relates to Your acts or omissions during the term of your Appointment.

2.3 Restriction on indemnity

The indemnity granted by the Commonwealth under this Deed shall not apply:

- (a) in respect of any Indemnified Liabilities incurred by You on matters which are not related to the Purpose;
- (b) to the extent that You recover the amount of any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed under any other Deed of Indemnity given to You;
- (c) to the extent that You recover, under any insurance policy effected for the benefit of You, any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed, unless You are legally required to disgorge the payment to any liquidator, administrator or receiver of the insurer;
- (d) unless (and then only to the extent that) You acted in good faith, and without malice, fraud or recklessness, but will apply if You acted negligently;
- (e) in respect of legal costs incurred in Defending an action if the costs are incurred:

- (i) in Defending or resisting Proceedings in which You are found to have a liability for which You could not be indemnified under this clause 2.3;
- (ii) in Defending or resisting criminal Proceedings in which You are found guilty;
- (iii) in Defending or resisting Proceedings brought by the Commonwealth, for a court order if the grounds for making the order are found by the court to have been established, however, this clause 2.3(e)(iii) does not apply to costs incurred in responding to actions taken by the Commonwealth as part of an investigation before commencing proceedings for the court order; or
- (f) to Your conduct after the expiry of 30 days from the date of despatch of a notice in writing to You from the Commonwealth (to the address set out at clause 5.5 or such other address as You may notify) to the effect that the indemnity shall not apply to any such conduct as a Commissioner after that period; or
- (g) to the extent that You recover, from a third party any Liability, legal costs or expenses otherwise indemnified under the indemnity granted under this Deed, unless You are legally required to disgorge the payment to any liquidator, administrator or receiver of the third party or indemnifier.

3. PROCEEDINGS

3.1 Your obligations

It is a condition of the indemnity granted under this Deed that You must:

- (a) as soon as reasonably practicable after becoming aware of any Claim irrespective of whether or not the Claim may be covered by insurance, notify the Secretary of the Department of the Claim with all available details;
- (b) keep the Secretary of the Department fully informed at all times about the Claim and its conduct;
- (c) notify the Secretary of the Department of any offer of settlement or compromise received from the person making the Claim as soon as reasonably practicable after becoming aware of the offer;
- (d) not make any admission of liability in respect of or settle the Claim or any counterclaim to the Claim without the prior written consent of the Commonwealth;
- (e) take any step to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal the Claim in the way requested by the Commonwealth; and
- (f) settle or compromise the Claim or any counterclaim to the Claim as required by the Commonwealth.

3.2 Rights of the Commonwealth to conduct defence

- (a) The Commonwealth may, by written notice to You, do any one or more of the following in relation to any Claim for which indemnification is being sought by You:
 - (i) Defend the Claim;
 - (ii) institute a cross claim or counterclaim in relation to the Claim;

- (iii) exercise any right You may have against a third party in respect of the Claim or its subject matter (for example, by making a claim against some person); and
 - (iv) retain lawyers to act on behalf of both You and the Commonwealth in relation to the Claim (or any cross claim, counterclaim or third party claim).
- (b) If the Commonwealth does not elect to take control of the conduct of proceedings under clause 3.2(a), You must ensure that the Commonwealth is kept fully informed of any actual or proposed developments (including, without limitation, any meetings) and is provided with copies of all material correspondence and documentation relating to such third party claim or action, and such other information, assistance and access to records and personnel as the Commonwealth reasonably requires.

3.3 Assistance from You

It is a condition of the indemnity granted under this Deed that You must:

- (a) give the Commonwealth all reasonable assistance in relation to any step taken by the Commonwealth pursuant to clause 3.2, or in obtaining an indemnity in relation to any Claim under an insurance policy effected for Your benefit;
- (b) give the Commonwealth any document, authority or direction that the Commonwealth may require to bring any claim, counterclaim or defence in Your name; and
- (c) do anything necessary to enable the Commonwealth (so far as possible) to obtain the benefit of any rights You may have against any third party connected with any Claim or its subject matter.

3.4 Exclusion

In the event that the Claim is or may be covered by an insurance policy effected for Your benefit, the Commonwealth's rights and the conditions in this clause 3 will not apply to the extent that such rights and conditions conflict with Your duties to the insurer of any such insurance policy.

4. GENERAL

4.1 Governing law

This Deed is governed by the law in force in the Australian Capital Territory.

4.2 Waiver of rights

A right may only be waived in writing, signed by the person giving the waiver, and:

- (a) no other conduct (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

4.3 Operation of this Deed

Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

4.4 Operation of indemnities

Each indemnity in this Deed survives the expiry or termination of this Deed.

4.5 Further action

Each party must do all things and execute all further documents necessary to give full effect to this Deed.

4.6 Stamp duty

The Commonwealth must pay any stamp duty chargeable on this Deed.

4.7 Other rights

Nothing in this Deed limits or restricts any other right of indemnity or other exoneration or protection available to You independently of this Deed, whether under general or statutory law or otherwise.

4.8 Tax on payments

If payment is due to You under this Deed and its receipt or derivation gives rise to a liability for tax (including income or goods and services tax) on or payable by You, the Commonwealth must increase the payment by the amount necessary to ensure that, after payment of the tax, the balance remaining to You is equal to the amount of the payment.

4.9 No reliance

No party has relied on any statement by any other party not expressly included in this Deed.

4.10 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart **EXECUTED** as a deed.

SIGNED, SEALED and DELIVERED for and on
behalf of the COMMONWEALTH OF
AUSTRALIA by:

s 22

Signature

STEPHANIE FOSTER

Name of officer

s 22

395

s 22

Name of witness

SIGNED, SEALED and DELIVERED by
NEVILLE POWER in the presence of:

s 47F

Signature

s 47F

Name of witness

s 47F

S

ATTACHMENT F: Deed Poll

DATE: 28 April 2020

BY:

Neville Power, Commissioner, National COVID-19 Coordination Commission, of s 47G, s 47F

FOR THE BENEFIT OF THE BENEFICIARY:

The Commonwealth of Australia, represented by the Department of Prime Minister and Cabinet

I, Neville Power, declare as follows:

AGREEMENT MATERIAL AND PM&C MATERIAL

1. I acknowledge that all of the Agreement Material is made under the direction and control of PM&C.
2. Title to and risk in relation to the physical property in Agreement Material passes to PM&C upon delivery of the Agreement Material to PM&C.
3. Subject to clauses 11 to 11 of this Deed Poll, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in PM&C.
4. Nothing in clauses 1 to 11 of this Deed Poll affects the ownership of Intellectual Property created before the Agreement was executed, or created by a third party for a purpose unrelated to the Agreement or the Appointment.
5. I grant to PM&C a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by PM&C.
6. Title to the PM&C Material does not pass to me by virtue of any delivery to me or any other action taken under the Agreement or the Appointment.
7. At PM&C's request, I will bring into existence, sign, execute or otherwise deal with any document which may be necessary to give effect to these clause 1 to 11 of this Deed Poll.
8. I will ensure that all PM&C Material, and any Agreement Material to be provided to PM&C, is used, copied, reproduced or supplied by me or any persons to whom I supply Agreement Material (other than PM&C) only for the purposes of the Agreement or the Appointment.
9. I will keep full and accurate records of the location and development of all PM&C Material and Agreement Material and make the records available to PM&C on request.
10. I acknowledge that PM&C may, at any time and without notice, demand either orally or in writing, the destruction or delivery to PM&C of all:

- (a) PM&C Material;
 - (b) Agreement Material; or
 - (c) other documents that contain PM&C Confidential Information,
that may be in my possession or control.
11. To the extent permitted by law I consent to any act or omission that would otherwise infringe any Moral Rights in the Agreement Material.

DISCLOSURE OF INFORMATION

12. Except as specified in clause 13 or with the prior consent of PM&C, I will not make public or disclose to any person other than PM&C any PM&C Confidential Information.
13. Clause 12 does not apply:
- (a) to the extent required by law, or as required of PM&C by any government or governmental body, authority or agency having authority over PM&C;
 - (b) as required in connection with legal proceedings;
 - (c) to the extent necessary for the proper discharge of PM&C's public accountability or reporting functions, including for the provision of information to a Minister, Parliament or a parliamentary committee;
 - (d) to disclosures by PM&C made for the purpose of conducting an audit;
 - (e) to disclosures by PM&C to PM&C staff and other contractors on a need-to-know basis; or
 - (f) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under the Agreement,
- but in each case of disclosure by me, I will give PM&C sufficient notice of any proposed disclosure to enable PM&C to seek a protective order or other remedy to prevent the disclosure.
14. I will ensure that PM&C Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
15. I will not transfer PM&C Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior written approval of PM&C.

PRIVACY

16. Except as set out in clauses 16 and 17, or with the written permission of the PM&C Representative, with respect to all Personal Information that I have access to or collect in or in relation to the performance of the Agreement or the Appointment, I will:
- (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by PM&C;
 - (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement or the Appointment; or
 - (ii) complying with the Privacy Act;

- (c) implement all reasonable measures to meet the requirements of these clauses 16 to 18;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or PM&C, including in the investigation of any complaints;
- (e) immediately notify PM&C if I become aware that a disclosure of such Personal Information may be required by law, or when I become aware of a breach of any obligation concerning such information;
- (f) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse;
- (g) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of PM&C;
- (h) notify PM&C of, and cooperate with PM&C in the resolution of, any complaint alleging an interference with privacy; and
- (i) upon written notice from PM&C destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

17. I will:

- (a) refer any requests for access by third parties to Personal Information to PM&C; and
- (b) assist PM&C, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether I have possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which I use the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

18. I acknowledge that my obligations under this Deed Poll are in addition to my obligations under the Privacy Act.

CONFLICT OF INTEREST

19. I warrant that, having made all reasonable enquiries, at the date of entering into this Deed Poll, no Conflict of Interest exists or is likely to arise in the performance of my obligations under the Agreement or the Appointment which has not already been advised to PM&C in writing and consented to by PM&C.

20. I agree to:

- (a) use my best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during the performance of my Appointment;
- (b) notify PM&C if I become aware of any Conflict of Interest or potential Conflict of Interest, during my performance of the Appointment; and
- (c) comply with all directions given by PM&C for dealing with any Conflict of Interest.

21. **SECURITY**

22. I will comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.
23. I will perform the Appointment in accordance with security requirements notified by PM&C from time to time in its absolute discretion which may include a requirement for me to obtain security clearances.
24. If any breach of any security requirement occurs then, without limiting PM&C's rights, I will comply with any reasonable directions of PM&C in order to rectify the issue and prevent further issues.
25. I will advise PM&C promptly in writing of any relevant circumstances that, in my reasonable opinion, might affect any authorisation or security clearance provided.

DEFINITIONS

Agreement means the agreement entered into between the Commonwealth and Myube Investments Pty Ltd for the provision of services by Mr Neville Power to perform the role of Commissioner of NCCC, set out at Attachment A to that Agreement.

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of performing, the obligations under the Agreement. Agreement Material does not include PM&C Material.

Appointment means the appointment of Mr Neville Power to the role of Commissioner for the NCCC.

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

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Moral Rights 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 exist, or may come to exist, anywhere in the world.

NCCC means the National COVID-19 Coordination Commission.

PM&C Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is listed in Attachment A to the Agreement as PM&C Confidential Information or is otherwise designated by PM&C as confidential; or
- (c) I know or ought to know is confidential,

but does not include information which:

- (a) is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligations; or
- (b) has been independently developed or acquired by me, as established by written evidence.

PM&C Material means any Material provided by or on behalf of PM&C to me in connection with the Agreement.

Privacy Act means *Privacy Act 1988* (Cth).

EXECUTED AS A DEED POLL


SIGNED, SEALED and DELIVERED by
NEVILLE POWER in the presence of:

 s 47F

Signature

 s 47F

Name of witness

 s 47F

Signature



Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Date: 23 April 2020

Dear Ms Tanna,

This document comprises the agreement governing your appointment to the role of Associate Commissioner for the National COVID-19 Coordination Commission (NCCC) for the Commonwealth of Australia, represented by the Department of the Prime Minister and Cabinet (PM&C).

Documents comprising the Agreement

- 1.1 The Agreement comprises the following documents:
- (a) this Letter;
 - (b) the Key Information at Attachment A;
 - (c) the Standard Terms at Attachment B;
 - (d) the Terms of Reference at Attachment C; and
 - (e) a Deed of Indemnity at Attachment D.

If there are any inconsistencies between the documents included in this Agreement, the provisions in documents higher in the order will take precedence over inconsistent provisions in documents lower in the order.

Action required

- 1.2 Please indicate your acceptance of this Agreement by signing, dating and returning the enclosed duplicate Agreement (with completed Attachments including the Deed of Indemnity) to PM&C within 7 days after the date of this Letter.
- 1.3 Please also provide your preferred address for notices
- 1.4 PM&C reserves the right to withdraw this offer at any time before you sign and return this Agreement.

Yours sincerely

s 22

Associate Secretary
Department of the Prime Minister and Cabinet

23 April 2020

I, Catherine Tanna, accept the appointment in accordance with the terms and conditions set out in the Agreement.

Name: Catherine Leigh Tanna

Date: 7 May 2020

Address for notices:	Postal address:
	Physical address:
	Email address:

ATTACHMENT A – KEY INFORMATION

1. SERVICES

- 1.1 You are to undertake all tasks and duties required to perform the role of Associate Commissioner of the National COVID-19 Coordination Commission (NCCC).
- 1.2 The Commission will bring together a co-ordinated national picture and assist in mobilising a whole of-society and whole-of-economy effort, to take action against the impacts of the global COVID-19 pandemic. The terms of reference of the NCCC are included at Attachment C.
- 1.3 The Commission will advise the Prime Minister on all non-health aspects of the pandemic response, working in tandem with the Chief Medical Officer (CMO), Dr Brendan Murphy.
- 1.4 If incidental Materials, services or functions are required for the proper performance of the Services, they will be taken to be included in the scope of the Services. You also agree that minor and reasonable requests will be accommodated as part of the Services at no additional cost notwithstanding that they are not specifically set out in this Agreement.

2. TIMING

- 2.1 This Agreement will commence on 23 March 2020, and subject to earlier termination in accordance with this Agreement, will expire on 22 September 2020 (the **Term**).

3. PAYMENT AND OTHER ALLOWANCES

- 3.1 You will receive a payment of \$2,000 per day to a maximum of 1 days per week for performing Services for the NCCC.
- 3.2 The payments will be paid in fortnightly instalments for the duration of the Term.
- 3.3 PM&C will reimburse any work related travel costs associated with performing Services for the NCCC, in line with PM&C practice.

4. AMOUNTS PAYABLE UNDER AGREEMENT

PAYG taxation

- 4.1 PM&C may withhold from amounts payable to you the amounts PM&C considers necessary for PM&C to comply with its taxation obligations under Australian taxation legislation. The amounts payable under this Agreement are subject to reduction for any such withholding.

Amounts otherwise inclusive

- 4.2 The amounts payable to you under the Agreement are inclusive of all other costs of performing the Services.
- 4.3 You are responsible for all payments and contributions including but not limited to taxes, duties or other Government charges.
- 4.4 You must comply with all applicable taxation laws in relation to payments received from PM&C relating to the Services under this Agreement.

5. INVOICE PROCEDURES

- 5.1 PM&C's preferred method of payment is by electronic funds transfer to the bank account notified by you.
- 5.2 Tax Invoices (if applicable) should be provided monthly.
- 5.3 Subject to this Agreement, correctly rendered Tax Invoices will be paid within 30 days. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 5.4 Tax Invoices must be sent to:
SESUnit@pmc.gov.au
and must include the following information:
- (a) title of Services;
 - (b) name of the PM&C Representative; and
 - (c) the amount invoiced (separately identifying the amount charged as GST and other taxes, interest or other charges).
- 5.5 Where any money is due to PM&C under this Agreement or any damages, costs, expenses or other amounts are recoverable by PM&C from you in consequence of your breach of this Agreement then PM&C may:
- (a) offset them against any other amounts owing by PM&C to you under the Agreement; or
 - (b) invoice you for the amount due.

6. CONFIDENTIAL INFORMATION

- 6.1 You have not advised PM&C that any information provided by you is your Confidential Information.
- 6.2 All PM&C Material is PM&C Confidential Information unless PM&C otherwise advises you in writing.

7. SECURITY

- 7.1 You must perform your obligations under this Agreement in accordance with security requirements notified by PM&C from time to time in its absolute discretion.
- 7.2 PM&C may, at its cost, require you to undertake police or other security checks before commencing the Services, and you agree to provide all reasonable assistance in relation to such requests.

8. COMPLIANCE WITH DIRECTIONS

- 8.1 In performing the Services, you must comply with:
- (a) all lawful directions and instructions issued by PM&C, whether they are issued with respect to the Services or any other matter;

- (b) all relevant legislation, codes of practice and national standards relating to work health and safety; and
- (c) all applicable policies and procedures relating to work health and safety, including those that apply to PM&C's premises when using those premises.

8.2 In the event of any inconsistency between any of the legislation, codes, standards, policies or procedures referred to in clause 8.1, you will comply with the requirements that produce the highest level of health and safety.

9. PM&C REPRESENTATIVE

9.1 The PM&C Representative is the person holding, occupying or performing the duties of the **Associate Secretary**. The PM&C Representative is currently **Stephanie Foster**.

9.2 The PM&C Representative is responsible for supervision of this Agreement on behalf of PM&C and has authority to issue and receive any written notices under this Agreement.

9.3 You must comply with all reasonable directions given by the PM&C Representative, provided that such directions are within the general scope of the administration of this Agreement.

10. YOUR ADDRESS FOR NOTICES

10.1 Unless you advise the PM&C Representative of another address for notice, PM&C will issue any notices or other communications for your attention to the address to which the letter was sent.



Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

ATTACHMENT B - GENERAL CONDITIONS FOR SERVICES

11. INTERPRETATION

- 11.1 In this Agreement, unless the contrary intention appears, the term:

Allowance means the allowance referred to in clause 3.1.

applicable WHS law means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act).

Business Day means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.

Commonwealth Record means a "Commonwealth record" as defined in the *Archives Act 1983* (Cth).

Agreement Material means all Material supplied, created or collected, or required to be supplied, created or collected, as part of, or for the purpose of performing, your obligations under this Agreement. Agreement Material does not include PM&C Material.

GST has the meaning given by the GST Law.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Illegal Worker means a person who:

- (a) has unlawfully entered and remains in Australia;
- (b) has lawfully entered Australia, but remains in Australia after the person's visa has expired; or
- (c) is working in breach of the person's visa conditions

Insolvency Event means the occurrence of an event or circumstance that PM&C considers has or may have an adverse effect on the commercial or financial viability of you, your ability to perform your obligations under this Agreement, or the ability of PM&C to enforce its rights against you under or in connection with this Agreement.

Intellectual Property or IP means all present and future rights conferred by statute, common law, equity, in or relating to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields and includes the rights to the registration of those rights. Intellectual Property does not include Moral Rights or rights to keep information confidential.

Loss means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include rights in relation to Intellectual Property.

Moral Rights 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 exist, or may come to exist, anywhere in the world.

Personal Information has the same meaning as the term 'personal information' in the *Privacy Act 1988* (Cth) and includes 'sensitive information'.

PM&C Confidential Information means information that:

- (d) is by its nature confidential;
- (e) is listed in Attachment A as PM&C Confidential Information or is otherwise designated by PM&C as confidential; or
- (f) you know or ought to know is confidential,

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligations; or
- (h) has been independently developed or acquired by you, as established by written evidence.

PM&C Material means any Material provided by or on behalf of PM&C to you in connection with this Agreement.

PM&C Representative has the meaning given in clause 9 of Attachment A.

Services means the services set out in clause 1 of Attachment A.

Subcontractor means any person, other than PM&C, that, for the purposes of this Agreement, furnishes goods or services to or on behalf of you or indirectly through another person; and 'Subcontract' has a corresponding meaning.

Tax Invoice means an invoice. Where there is a Taxable Supply (as defined in the GST Law), a Tax Invoice must be in the form of a tax invoice complying with the requirements of the GST Law.

you includes, where the context permits, your permitted assigns.

your Confidential Information means the information identified as your confidential information in clause 6.1 of Attachment A.

WHS Act means the *Work Health and Safety Act 2011 (Cth)*.

11.2 A singular word includes the plural and vice-versa.

11.3 All references to currency are references to Australian legal currency and references to weights and measures are references to

Australian legal units of weight and measurement.

11.4 A reference in this Agreement to a clause is a reference to a clause in this Attachment B unless the context implies otherwise, and includes a reference to a subclause of that clause.

12. PERFORMANCE OF THE SERVICES

12.1 You must perform the Services:

- (a) exercising high professional standards of skill, care and diligence consistent with the standards of well-managed operations or persons performing services similar to the Services;
- (b) to ensure that the Services meet their purposes, are complete and are performed in a manner that achieves all standards of performance included in or referred to in this Agreement;
- (c) to ensure that PM&C is fully and accurately informed on all matters which are relevant to the Services;
- (d) to comply with all applicable legal (including statutory and regulatory) and Australian Government policy requirements;
- (e) to ensure that all obligations specified in this Agreement are fully satisfied; and
- (f) to ensure that all information provided to PM&C, including in reports, documents and other Agreement Material is correct, complete and not misleading in any respect.

12.2 You must not subcontract the performance of any part of the Services.

13. NO EMPLOYMENT OR AGENCY

13.1 You are not, by virtue of this Agreement, an employee, partner or agent of PM&C.

13.2 You must not represent yourself as being an employee, partner or agent of PM&C.

13.3 You have no authority to incur, and must not incur, any obligation on behalf of PM&C

14. WORK HEALTH AND SAFETY

14.1 You must ensure that the Services provided and/or the work You perform complies with all applicable legislative requirements, standards

- and policies, and requirements of this Agreement, that relate to the health and safety of you, PM&C Personnel and third parties.
- 14.2 You must comply with any applicable WHS law and must ensure, so far as is reasonably practicable, that your officers (as defined by applicable WHS Law) and workers comply with their obligations under any applicable WHS law. The other provisions of clause 14 do not limit this sub-clause 14.2.
- 14.3 You must ensure, so far as is reasonably practicable, the health and safety of:
- (a) workers engaged, or caused to be engaged by you; and
 - (b) workers whose activities in carrying out work are influenced or directed by you,
- while the workers are at work in relation to this Agreement.
- 14.4 You must ensure, so far as is reasonably practicable, that the health and safety of other persons (including PM&C Personnel and PM&C's contractors) is not put at risk from work carried out under this Agreement.
- 14.5 You must consult, cooperate and coordinate with PM&C in relation to its work health and safety duties.
- 14.6 Without limiting any other clause of this Agreement, you must, on request, give all reasonable assistance to PM&C by way of provision of information and documents, to assist PM&C and its officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.
- 14.7 PM&C may direct you to take specified measures in connection with its work under this Agreement or otherwise in connection with the Services that PM&C considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. You must comply with the direction. You are not entitled to an adjustment to any fees, allowances, or costs, or to charge additional allowances or expenses, merely because of compliance with the direction.
- 14.8 If an event occurs in relation to your work under this Agreement that leads, or could lead, to the death, or an injury or illness to, a person (Notifiable Incident), you must:
- (a) immediately report the matter to PM&C, including all relevant details that are known to you;
 - (b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - (i) its cause; and
 - (ii) what adverse effects (if any) it will have on your work under this Agreement, including adverse effects on risks to health and safety;
 - (c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
 - (d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - (e) within three Business Days after the Notifiable Incident, give PM&C a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 14.8(b) and a statement of the steps taken by you or that you propose to take as required by clauses 14.8(c) and 14.8(d); and
 - (f) within three months after the Notifiable Incident, give PM&C a written report giving full details of its actions in relation to the Notifiable Incident.
- 14.9 Your obligations under this clause 14 are in addition to any reporting obligation that you have under a written law.
- 14.10 You must fully co-operate, at your own cost, with any investigation by any government agency (including Comcare) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 14.11 A word or expression in this clause 14:
- (a) used or defined in an applicable WHS law; and
 - (b) not otherwise defined in this clause 14 or elsewhere in this Agreement,
- has, for the purposes of this clause 14, the meaning given to it under the applicable WHS law.

15. AGREEMENT MATERIAL AND PM&C MATERIAL

- 15.1 You acknowledge that all of the Agreement Material is made under the direction and control of PM&C.
- 15.2 Title to and risk in relation to the physical property in Agreement Material passes to PM&C upon delivery of the Agreement Material to PM&C.
- 15.3 Subject to clause 15.4, title to and ownership of all Intellectual Property in all Agreement Material vests immediately upon its creation in PM&C.
- 15.4 Nothing in this clause 15 affects the ownership of Intellectual Property created before this Agreement was executed, or created by a third party for a purpose unrelated to this Agreement.
- 15.5 Except as set out in Attachment A, you grant to PM&C a worldwide, permanent, irrevocable, royalty-free, transferable, non-exclusive licence (including the right of sublicense) to use, reproduce, communicate, publish, modify, adapt and exploit any Intellectual Property in the Agreement Material not owned by PM&C.
- 15.6 Title to the PM&C Material does not pass to you by virtue of any delivery to you or any other action taken under this Agreement.
- 15.7 At PM&C's request, you must bring into existence, sign, execute or otherwise deal with any document which may be necessary to give effect to this clause 15.
- 15.8 You must ensure that all PM&C Material, and any Agreement Material to be provided to PM&C, is used, copied, reproduced or supplied by you or any persons to whom you supply Agreement Material (other than PM&C) only for the purposes of this Agreement.
- 15.9 You must keep full and accurate records of the location and development of all PM&C Material and Agreement Material and make the records available to PM&C on request.
- 15.10 You acknowledge that PM&C may, at any time and without notice, demand either orally or in writing, the destruction or delivery to PM&C of all:
- (a) PM&C Material;
 - (b) Agreement Material; or
 - (c) other documents that contain PM&C Confidential Information,

that may be in your possession or control.

- 15.11 To the extent permitted by law you consent to any act or omission that would otherwise infringe any Moral Rights in the Agreement Material.

16. DISCLOSURE OF INFORMATION

- 16.1 Except as specified in clause 16.2, or with the prior consent of the other party:
- (a) PM&C must not, and must ensure that PM&C staff do not, make public or disclose to any person other than you any of your Confidential Information; and
 - (b) you must not make public or disclose to any person other than PM&C any PM&C Confidential Information.
- 16.2 Clause 16.1 does not apply:
- (a) to the extent required by law, or as required of PM&C by any government or governmental body, authority or agency having authority over PM&C;
 - (b) as required in connection with legal proceedings;
 - (c) to the extent necessary for the proper discharge of PM&C's public accountability or reporting functions, including for the provision of information to a Minister, Parliament or a parliamentary committee;
 - (d) to disclosures by PM&C made for the purpose of conducting an audit in accordance with clause 20.2;
 - (e) to disclosures by PM&C to PM&C staff and other contractors on a need-to-know basis; or
 - (f) to disclosures to legal advisors to the extent necessary to obtain advice in relation to rights under this Agreement,
- but in each case of disclosure by you, you must give PM&C sufficient notice of any proposed disclosure to enable PM&C to seek a protective order or other remedy to prevent the disclosure.
- 16.3 You must ensure that PM&C Confidential Information is protected against loss, unauthorised access, use, modification, disclosure, or other misuse.
- 16.4 You must not transfer PM&C Confidential Information outside Australia, or allow persons

outside Australia to have access to it, without the prior written approval of PM&C.

17. PRIVACY

17.1 Except as set out in clause 17.2, or with the written permission of the PM&C Representative, with respect to all Personal Information that it has access to or collects in or in relation to the performance of this Agreement, you must:

- (a) not do any act or engage in any practice that would breach the Privacy Act if done or engaged in by PM&C;
- (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with the Personal Information in any way, except for the purpose of:
 - (i) performing the Agreement; or
 - (ii) complying with the Privacy Act;
- (c) implement all reasonable measures to meet the requirements of this clause 17.1;
- (d) cooperate with any reasonable demands or enquiries made by the Privacy Commissioner or PM&C, including in the investigation of any complaints;
- (e) immediately notify PM&C if it becomes aware that a disclosure of such Personal Information may be required by law, or when you become aware of a breach of any obligation concerning such information;
- (f) ensure that any person who obtains access from you to any Personal Information in respect of which you have obligations under the Privacy Act or this clause 17.1 signs a Confidentiality Declaration, if required by PM&C, prior to the access;
- (g) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (h) not transfer such Personal Information outside Australia, or allow parties

outside Australia to have access to it, without the prior approval of PM&C;

- (i) notify PM&C of, and cooperate with PM&C in the resolution of, any complaint alleging an interference with privacy; and
- (j) upon written notice from PM&C destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

17.2 You must:

- (a) refer any requests for access by third parties to Personal Information to PM&C; and
- (b) assist PM&C, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
 - (i) whether you have possession or control of any records that contain such information;
 - (ii) the nature of the information;
 - (iii) the main purposes for which you use the information; and
 - (iv) the steps the person should take if the person wishes to obtain access to the information.

17.3 Your obligations in this Agreement (including this clause 17) are in addition to your obligations under the Privacy Act.

18. CONFLICT OF INTEREST

18.1 For the purposes of this clause 18, a **Conflict of Interest** would include any circumstances where, due to a direct or indirect relationship or interest, you are or may reasonably be perceived to be, unable to discharge their obligations or duties in relation to PM&C 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.

18.2 You warrant that, having made all reasonable enquiries, at the date of entering into this Agreement, no Conflict of Interest exists or is likely to arise in the performance of your obligations under this Agreement which has not already been advised to PM&C in writing and consented to by PM&C.

- 18.3 You agree to:
- (a) use your best endeavours to ensure that a situation does not arise that may result in a Conflict of Interest arising during your performance of the Services;
 - (b) notify PM&C if you become aware of any Conflict of Interest or potential Conflict of Interest, during your performance of the Services; and
 - (c) comply with all directions given by PM&C for dealing with any Conflict of Interest.
- 18.4 If you are unable or unwilling to resolve or deal with the Conflict of Interest as required, PM&C may terminate this Agreement in accordance with clause 25.
- (b) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, or their delegates,
- for the purposes of performing their respective statutory functions and/or for inspection and/or copying.
- 20.2 You must make available on request, and at no expense to PM&C, such facilities as necessary to enable a legible reproduction of the Material referred to in clause 20.1 to be created.

19. SECURITY

- 19.1 You must comply with all relevant security requirements specified in any policy which forms part of the Commonwealth's Protective Security Policy Framework as amended from time to time.
- 19.2 You must perform your obligations under this Agreement in accordance with security requirements notified by PM&C from time to time in its absolute discretion.
- 19.3 If any breach of any security requirement occurs then, without limiting PM&C's rights under this Agreement, you must comply with any reasonable directions of PM&C in order to rectify the issue and prevent further issues.
- 19.4 You must advise PM&C promptly in writing of any relevant circumstances that, in your reasonable opinion, might affect any authorisation or security clearance provided.

20. ACCESS TO YOUR PREMISES AND RECORDS

- 20.1 You must grant, at all reasonable times, access to your premises, records, accounts and other financial material or Material relevant to this Agreement, including PM&C Material and Agreement Material, however and wherever stored or located, in your custody, possession or control to:
- (a) PM&C or any persons authorised in writing by PM&C, including PM&C auditors; and

21. AUDIT REQUIREMENTS

- 21.1 An audit of all or any part of this Agreement and its performance may be undertaken at any time by PM&C or its nominee.
- 21.2 You must participate cooperatively in audits of this Agreement at the frequency and in relation to the matters specified by PM&C, including on an ad hoc basis if requested by PM&C, for the purpose of ensuring that this Agreement is being properly performed and administered. PM&C may appoint an independent person to assist in the audits.
- 21.3 Each party must bear its own costs of any audits.

22. ARCHIVES ACT 1983

- 22.1 You must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of PM&C and the National Archives of Australia.
- 22.2 Where PM&C and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to you, you must comply in every respect with the requirements of the Archives Act 1983 (Cth) or guidelines issued by National Archives of Australia.
- 22.3 You must comply with any direction given by PM&C 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.

23. INDEMNITY

- 23.1 PM&C agrees to provide you with an indemnity in the form of **Attachment D**.
- 23.2 This clause 23 survives the expiration or termination of this Agreement.

24. TERMINATION WITHOUT DEFAULT

- 24.1 PM&C may at any time by notice, terminate this Agreement in whole or in part. Upon such notice being given, you must cease or reduce work in accordance with that notice and must do everything possible to mitigate losses arising from that termination.
- 24.2 If this Agreement is terminated under clause 24.1, PM&C is liable only for:

- (a) payment of the Allowance with respect to the period of Services rendered before the effective date of termination, provided that those Services have been rendered in accordance with this Agreement and you are not otherwise in breach of this Agreement; and
- (b) any reasonable costs in respect of unavoidable loss or damage sustained or incurred by you and directly attributable to the termination or partial termination of this Agreement. These costs must not exceed the total amount payable under this Agreement and must not include payments to any employees or former employees or loss of potential or prospective profit.

- 24.3 In the event of partial termination, PM&C's liability to pay the Allowance, in the absence of agreement to the contrary, will abate proportionately to the reduction in the Services.

25. TERMINATION FOR DEFAULT

- 25.1 Without prejudice to its rights at common law or under any statute, PM&C may by notice to you, terminate this Agreement if:
- (a) an Insolvency Event occurs in respect of you;
- (b) PM&C is entitled to terminate this Agreement in accordance with clause 25.2, 25.3 or 25.4;
- (c) you fail to commence performance of this Agreement, or to proceed at a rate of progress, so as to ensure the due and proper performance of this Agreement.
- 25.2 Subject to clause 25.3, if:
- (a) you breach this Agreement (including by failing, in PM&C's sole and absolute opinion, to perform the Services in accordance with clause 12.1); and
- (b) in PM&C's sole and absolute opinion, a breach is capable of being remedied,
- PM&C will give you 15 Business Days in which to remedy the breach. If after 15 Business Days the breach is not remedied to the satisfaction of PM&C, then PM&C may terminate this Agreement under this clause 25.
- 25.3 If you commit three or more breaches of this Agreement, PM&C is not required to give you 15 Business Days to remedy the breach under

clause 25.2, and may immediately terminate this Agreement under this clause 25.

25.4 If:

- (a) you breach this Agreement; and
- (b) PM&C determines under clause 25.2 that a breach is not capable of being remedied,

PM&C may immediately terminate this Agreement under this clause 25.

26. TERMINATION BY YOU

You may only terminate this Agreement by giving at least 20 Business Days' notice to PM&C and only if you have submitted notice to PM&C that you wish to relinquish the appointment which is the subject of this Agreement for specific reasons set out in the notice and PM&C has accepted your request.

27. DISPUTE RESOLUTION

27.1 Subject to the application of any relevant limitation period, a party must not commence proceedings in any court or tribunal in relation to any dispute relating to, in connection with, or arising out of this Agreement (a **Dispute**), unless the party has complied with this clause 27 and the Dispute remains unresolved, unless clause 27.8 applies.

27.2 The parties undertake to use all reasonable efforts in good faith to resolve any Dispute. If a Dispute arises, the party wishing to take the Dispute further must give the other party a notice of dispute setting out the nature of the Dispute.

27.3 Following the giving of a notice of dispute, the Dispute must initially be referred to the PM&C Representative, who will endeavour to resolve the Dispute within 10 Business Days after the giving of the notice of dispute.

27.4 If the parties have not been able to resolve the Dispute in accordance with clause 27.3, then the parties may agree on a process for resolving the Dispute through means other than litigation or arbitration, including by mediation, conciliation or expert determination. If the parties agree upon expert determination as a means of resolving the Dispute, that expert determination will be binding on both parties.

27.5 If the parties have not been able to resolve the Dispute in accordance with clause 27.3 and have not been able to agree on a process for resolving the Dispute in accordance with clause 27.4, the Dispute must be referred to mediation using the Institute of Arbitrators

Australia Rules for the Mediation of Commercial Disputes as applying from time to time with the mediator being appointed by the President of the Law Society of the Australian Capital Territory.

27.6 If the Dispute is not resolved within 30 Business Days (or such other period as agreed between the parties in writing) after the appointment of the mediator, conciliator or expert in accordance with clause 27.4 or clause 27.5, then either party may, if it wishes, commence proceedings in a court or tribunal in respect of the Dispute.

27.7 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any related agreements.

27.8 Nothing in this clause 27 prevents either party from seeking urgent relief.

28. TRANSITION OUT

28.1 In the event of termination or expiration of this Agreement for any reason, you must:

- (a) cease access to and use of PM&C's systems, Agreement Material and PM&C Material;
- (b) at PM&C's direction, either return or destroy all:
 - (i) PM&C Material;
 - (ii) Agreement Material; or
 - (iii) other documents that contain PM&C Confidential Information,
- (c) that may be in your possession or control;
- (d) where requested by PM&C deliver to PM&C a statutory declaration declaring that to the best of your information and belief (after having made proper inquiries) you have not retained any of the Material specified in clause 28.1(b); and
- (e) comply with all other obligations in this Agreement, including those relating to PM&C Material and Agreement Material.

28.2 The following clauses will survive the expiration or termination of this Agreement:

- (a) clause 16 (Disclosure of Information);

- (b) clause 17 (Privacy);
- (c) clause 19 (Security);
- (d) clause 20 (Access to your Premises and Records);
- (e) clause 20.2 (Audit Requirements);
- (f) clause 23 (Indemnity);
- (g) clause 27 (Dispute Resolution);
- (h) this clause 28 (Transition Out); and
- (i) clause 31 (Applicable Law),

as well as any other provision which by its nature is intended, either expressly or implicitly, to survive the expiration or termination of this Agreement.

- 31.2 You must ensure that the work done under this Agreement complies with all relevant Commonwealth policies and the laws from time to time in force in the State or Territory in which the Services, or any part thereof, are to be carried out.

29. ASSIGNMENT

- 29.1 You must not assign, in whole or in part, your rights or obligations under this Agreement without the prior written consent of PM&C.

30. ENTIRE AGREEMENT AND VARIATION

- 30.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, statements, communications, negotiations, arrangements, understandings and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 30.2 No agreement or understanding that varies or extends this Agreement (including in particular the scope or performance of the Services or the Allowance) and which would result in an increase in the monies payable by, or other liability of, PM&C will be legally binding upon either party unless in writing and signed by both parties.
- 30.3 If any provision of this Agreement is invalid or not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid or unenforceable provision are, and continue to be, valid and enforceable in accordance with their terms.

31. APPLICABLE LAW

- 31.1 This Agreement will be governed by the law for the time being in force in the Australian Capital Territory and the parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

ATTACHMENT C

NATIONAL COVID-19 COORDINATION COMMISSION

TERMS OF REFERENCE

The Australian Government has established the National COVID-19 Coordination Commission (NCCC) to coordinate advice to the Australian Government on actions to anticipate and mitigate the economic and social impacts of the global COVID-19 pandemic.

The Commission will be led by Mr Neville Power, an eminent Australian businessman. He will be supported by an Executive Board of Directors drawn from across the private and not-for-profit sectors comprising: Mr Greg Combet AM, Ms Jane Halton AO, Mr Paul Little AO, Ms Catherine Tanna, and Mr David Thodey AO. They will be joined by the Secretaries of the Department of the Prime Minister and Cabinet, Mr Philip Gaetjens, Home Affairs, Mr Mike Pezzullo. The Commission will advise the Prime Minister and operate within his portfolio.

The Commission will bring together a co-ordinated national picture and assist in mobilising a whole-of-society and whole-of-economy effort, to take action against the impacts of the global COVID-19 pandemic.

It will advise the Prime Minister on all non-health aspects of the pandemic response, working in tandem with the Chief Medical Officer (CMO), Dr Brendan Murphy. The CMO and the medical expert panel he leads – the Australian Health Protection Principal Committee (AHPPC) – will continue their role of advising the National Cabinet on Australia's health management and response to the virus.

The National Cabinet, comprising State Premiers and Territory Chief Ministers, continues to lead the national response at a government level.

The Treasury will continue to lead and coordinate on economic policy and financial markets issues advice, given its deep understanding of and connections to market participants.

Working with the CMO to fully understand the health position, the Commission will, through its own inquiries and analysis of matters referred to it, ensure the Government receives the most comprehensive advice available to meet with challenges ahead. The intention is to work cooperatively across private-to-private and public-to-private networks to unlock resources, break bottlenecks and fix problems so Australian families, businesses and communities are supported in the months ahead.

Each member of the Commission's Executive Board will lead the development of strategies and engagement within a specific stream or sector relevant to their expertise, with a focus on mobilising and coordinating public, private and not-for-profit actions. APS Departmental Secretaries and Agency Heads will support their work and ensure necessary resources are committed to the delivery of agreed outcomes.

The existing National Coordination Mechanism, which coordinates the cross jurisdictional response to non-health aspects of the pandemic, and the Business Liaison Unit on Coronavirus will report to the Commission, providing direct, real-time advice and driving national consistency across all Australian jurisdictions.

The functions of the Commission will be to:

- mobilise a whole-of-society and whole-of-economy effort to address the health crisis and take necessary action to ensure the economic and social impacts from the global COVID-19 pandemic are anticipated and mitigated;

- assist the Government to ensure all resources are marshalled in a coordinated and effective manner; and
- drive the development and co-ordination of staged and proportionate plans on critical non-health factors including:
 - transport and logistics challenges
 - industry co-ordination and adjustment
 - labour and workforce planning
 - delivery of essential services and maintenance of critical infrastructure
 - support to vulnerable Australians
 - input of scientific and technological expertise.

ATTACHMENT D – DEED OF INDEMNITY

THIS DEED is made on

2020

BETWEEN:

- (1) **Commonwealth of Australia**, represented by the Department of the Prime Minister and Cabinet (the "**Commonwealth**"); and
- (2) **Ms Catherine Tanna** of [address] ("**You**").

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RECITALS:

The Commonwealth has agreed to indemnify you against Indemnified Liabilities on the terms of this Deed.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed.

"Claim" means any writ, summons, claim, cross claim, counterclaim, application, examination, allegation, cause of action, civil proceeding, criminal proceeding, suit or demand of any nature whatsoever.

"Defend" includes avoid, dispute, resist, mitigate, settle, compromise, defend or appeal and "Defending" has a corresponding meaning.

"Department" means the Department of the Prime Minister and Cabinet.

"Indemnified Liabilities" means each liability incurred by You for the Purpose; or

"Liability" means liability of any kind, including damages, judgments, settlements, interest, fines and penalties, and any applicable taxes levied in respect of that liability.

"NCCC" means National COVID-19 Coordination Commission (NCCC).

"Proceeding" includes a civil proceeding, criminal proceeding, or an official examination, inquiry, hearing or investigation (including a Royal Commission).

"Purpose" means to effect any of the purposes or objectives of the NCCC.

"Term" means the term of the Agreement entered into between the Commonwealth and You for the provision of services to perform the role of Associate Commissioner of NCCC, set out at Attachment A to that Agreement.