



**Australian Government**

---

**Department of the Prime Minister and Cabinet**

# **MEMORANDUM OF UNDERSTANDING**

between

**THE DEPARTMENT OF THE PRIME MINISTER AND  
CABINET**

and

**THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY**

## TABLE OF CONTENTS

PARTIES .....	3
CONTEXT .....	3
PART 1 - MOU DETAILS .....	5
PART 2 - MOU CONDITIONS .....	6
1. DEFINITIONS.....	6
2. IMPLEMENTATION ARRANGEMENTS .....	6
3. CREATION OF SERVICES SCHEDULES .....	7
4. SERVICES AND PAYMENT.....	7
5. ADMINISTRATION AND GOVERNANCE.....	8
6. INTELLECTUAL PROPERTY .....	9
7. CONFIDENTIAL INFORMATION AND PRIVACY .....	10
8. RISKS, RESPONSIBILITY AND DISPUTE RESOLUTION .....	11
9. LIABILITY .....	11
10. TERMINATION.....	11
11. MACHINERY OF GOVERNMENT CHANGES .....	12
12. NOTICES.....	12
13. VARIATION .....	13
14. INTERPRETATION.....	13

## PARTIES

This Memorandum of Understanding (MOU) is between

*The Department of the Prime Minister and Cabinet (PM&C)*

*The Australian Communications and Media Authority (Agency)*, a statutory agency established by section 6 of the *Australian Communications and Media Authority Act 2005 (ACMA Act)*.

## CONTEXT

- A. The intention of the MOU is to engage both Commonwealth agencies to share information and work collectively on projects to apply behavioural insights in the communications sector.
- B. The parties are both Commonwealth agencies and have determined that the most effective, efficient and economical use of Commonwealth resources will involve PM&C providing certain services to, or in respect of, the Agency.
- C. The parties wish to enter this overarching MOU, which contains:
- a. a mechanism for the parties to agree separate Services Schedules, that will detail the particular arrangements for the Services that are to be provided; and
  - b. other general relationship and governance provisions that will apply to all Services Schedules agreed in accordance with this MOU.
- D. The parties agree to work collaboratively and co-operatively at all levels and perform their respective obligations under this MOU in an ethical and responsible manner.
- E. This MOU consists of:
- a. the MOU Details in PART 1; and
  - b. the MOU Conditions in PART 2.

Executed as a Memorandum of Understanding:

<p>Signed for and on behalf of the <b>DEPARTMENT OF THE PRIME MINISTER AND CABINET</b> by its duly authorised delegate:</p> <p>_____</p> <p>Signature of delegate Name: Tara Oliver Position: Managing Director, BETA Date: /05/18</p>	<p>Signed for and on behalf of the <b>AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY</b> by its duly authorised delegate:</p> <p>_____</p> <p>Signature of delegate Name: Vince Humphries Position: Executive Manager, Communication Safeguards and Networks</p>
--	---

<hr/> Signature of witness Name: Date:	Date: /05/18 <hr/> Signature of witness Name: Date:
---	---

## PART 1 - MOU DETAILS

Item/Description	Details
1. PM&C details	Department of the Prime Minister and Cabinet ABN: 18 108 001 191  1 National Circuit Barton ACT 2600 Australia
2. PM&C Contact Officer details	<b>Heather Cotching</b> <b>Senior Advisor</b>  <b>1 National Circuit</b> <b>Barton ACT 2600</b> <b>Australia</b>  <b>(02) 6152 3953</b> <b>heather.cotching@pmc.gov.au</b>
3. Agency details	The Australian Communications and Media Authority ABN: 55 386 169 386  Level 32 Melbourne Central Tower, 360 Elizabeth Street Melbourne VIC 3000
4. Agency Contact Officer details	<b>Kelly Mudford</b> <b>Manager, Communications Futures</b>  <b>Level 32 Melbourne Central Tower,</b> <b>360 Elizabeth Street</b> <b>Melbourne VIC 3000</b>  <b>(03) 9963 6868</b> <b>Kelly.mudford@acma.gov.au</b>
5. Term of this MOU	<b>Start Date:</b> On signature <b>End Date:</b> 30 June 2020, unless the parties agree a different End Date.
6. Services Schedules as at Start Date:	<b>Services Schedule No. [1] – Services provided by the Behavioural Economics Team of the Australian Government</b>

## **PART 2 - MOU CONDITIONS**

### **1. DEFINITIONS**

#### 1.1 In this MOU:

**Business Day** means any day that is not a Saturday or Sunday or a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.

**Confidential Information** means information which:

- (i) is by its nature confidential whether arising by the application of statute, common law or equity; or
- (ii) which a party designates as confidential or which the receiving party knows or ought reasonably to know is confidential.

**Notice** means a notice, demand, consent, approval or communication issued under this MOU or Services Schedule in accordance with clause 11. **Notify** and **Notification** have a corresponding meaning.

**Services** means those activities to be undertaken and services that are to be provided by a party to this MOU as set out in a Services Schedule.

**Services Schedule** means a schedule created in accordance with clause 3, which sets out and describes the arrangements in relation to particular Services to be provided as part of this MOU.

**Material** means any documents, equipment, software, goods, computer file, design, know-how, information and data stored by any means, and the subject matter of any category of intellectual property right.

**MOU** means this Memorandum of Understanding including any Services Schedules that have been executed by both parties, other schedules, attachments and annexures and any documents incorporated by reference.

**MOU Details** means the details applying to this MOU as set out in Part 1 of this MOU.

**MOU Conditions** means the terms and conditions in this Part 2 of this MOU.

**Payments** means the amounts to be paid by one party to the other in accordance with a Services Schedule.

**Term** means the period of time that the MOU will run, as specified in item 5 of the MOU Details.

### **2. IMPLEMENTATION ARRANGEMENTS**

2.1 This MOU constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

2.2 The Parties agree to implement this arrangement in accordance with the terms and conditions of this MOU

### **3. CREATION OF SERVICES SCHEDULES**

- 3.1 The parties will implement the arrangements set out in Services Schedules that have been executed by both parties, in accordance with the terms of those Services Schedules and this MOU.
- 3.2 The Services Schedules will set out or describe:
- 3.2.1 the Services that are to be undertaken or provided by each Party, including any activities to be undertaken in preparation for undertaking or providing the Services;
  - 3.2.2 the specific obligations of both parties;
  - 3.2.3 any service delivery requirements;
  - 3.2.4 any reporting requirements;
  - 3.2.5 the Payments that will apply in respect of the Services and/or preparation for the Services; and
  - 3.2.6 any other matters relevant to the Services.
- 3.3 The Services Schedules that have been agreed as at the Start Date are listed or described in item 6 of the MOU Details.
- 3.4 If at any time during the term of this MOU, the parties agree that there are additional Services to be provided by one party to another, the parties will complete and sign a new Services Schedule.
- 3.5 From the date that a Services Schedule is executed by both parties, the Services Schedule will be deemed to form part of this MOU.

### **4. SERVICES AND PAYMENT**

- 4.1 The parties agree that the Services will be provided in accordance with the agreed Services Schedules.
- 4.2 A Services Schedule may provide that one party (**First Party**) will pay the other party amounts in connection with the provision of the Services. In this case:
- 4.2.1 the other party must, at the times indicated in the Services Schedule, issue the First Party with invoices for the amount(s) set out in, or calculated in accordance with, the Services Schedule; and
  - 4.2.2 the First Party must pay the other party the amount specified in an invoice within 30 days of receiving it.
- 4.3 The parties acknowledge that goods and services tax (**GST**) under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) will not be payable for many Services provided under the Services Schedules. Before execution of a Services Schedule, the parties will consider and agree whether GST or any other tax will apply to any Services to be provided under that Services Schedule. If GST or another tax will apply, the Services Schedule will specify:

- 4.3.1 whether the Payment amounts in the Services Schedule are inclusive or exclusive of GST or the other tax;
  - 4.3.2 the arrangements between the parties for the payment of the GST or other tax; and
  - 4.3.3 if applicable, a requirement for invoices to be tax invoices under the GST Act.
- 4.4 If at any time GST or another tax is or becomes payable in respect of Services provided under a Services Schedule, but that Services Schedule does not adequately make provision for the payment of the GST or the other tax, the parties will do all things necessary to ensure the proper payment of the GST or other tax by the party receiving the Service, including making appropriate adjustments to the Payments and taking all other necessary action.
- 4.5 Each invoice issued by a party must specify:
- 4.5.1 the Services, or that part of the Services, to which the invoice relates;
  - 4.5.2 the amount(s) claimed; and
  - 4.5.3 any other matters which are specified in the relevant Services Schedule or which are agreed between the parties.
- 4.6 All amounts payable under a Services Schedule will be paid in accordance with the Payment requirements as set out in the relevant Services Schedule. For each Services Schedule which provides for the payment of an amount by a party, the party issuing the invoice must:
- 4.6.1 advise the other party of the details of its nominated bank account for electronic funds transfer at or before the date of the first invoice; and
  - 4.6.2 if those details change, promptly Notify the other party of the change.
- 4.7 If there is any over or under payment of an amount due and payable under a Services Schedule by a party, any other current or future amount owing or payable by one party to the other may be adjusted to take into account the over or underpayment.

## **5. ADMINISTRATION AND GOVERNANCE**

- 5.1 The parties intend to act in good faith and cooperate with each other in the performance of this MOU and the Services Schedules.
- 5.2 The parties agree to raise and discuss any issues which could affect the other party's performance of its obligations under this MOU and the Services Schedules in a prompt, open and honest manner.
- 5.3 Each party will use its best endeavours to:
- 5.3.1 provide the other party with any information that the other party may reasonably require in order to undertake the actions set out in a Services Schedule;
  - 5.3.2 ensure that any information provided to the other party is accurate, current, complete and correct (and as soon as possible after becoming aware that any information provided is not accurate, current, complete or correct, advise that other party of the deficiency in the information);

- 5.3.3 ensure that its officers responsible for administration and implementation of this MOU and the Services Schedules have the appropriate authority and delegation necessary to give effect to the arrangements contained in those documents.
- 5.4 The parties will each appoint a Contact Officer who will be the primary point of contact in relation to general MOU matters and who will:
  - 5.4.1 oversee the operation of the MOU;
  - 5.4.2 promote an effective working relationship between the parties;
  - 5.4.3 seek opportunities to improve the effectiveness and efficiency of the working relationship;
  - 5.4.4 resolve disagreements which arise in relation to the operation of the MOU;
  - 5.4.5 escalate within its organisation as appropriate any matters relevant to the operation of the MOU; and
  - 5.4.6 perform other functions necessary for the administration of the MOU.
- 5.5 The initial Contact Officers are set out in items 2 and 4 of the MOU Details.
- 5.6 A Services Schedule may also appoint an additional Contact Officer in relation to the specific Services to be provided under that Services Schedule.
- 5.7 The Contact Officers will not be a conduit for all activity and communication between the parties in relation to the Services, but they will be integral to ensuring that the relationship between the parties is operating optimally.
- 5.8 The parties agree to:
  - 5.8.1 notify each other of any change in the identity of a Contact Officer as soon as practicable (but in any case within one week of the change);
  - 5.8.2 use its best endeavours to ensure that their Contact Officers are available at all times as reasonably required by the other party; and
  - 5.8.3 advise the Contact Officer of the other party as soon as possible after becoming aware of any issues that are likely to affect the matters in the MOU or a Services Schedule (including any factors likely to affect the undertaking or provision of the Services).

## **6. INTELLECTUAL PROPERTY**

- 6.1 The parties recognise and agree that all intellectual property rights (**IPR**) created by either of them in association with the provision and administration of the relevant Services is owned by the Commonwealth. The parties agree to work cooperatively in dealing with the management of IPR and in accordance with the *Intellectual Property Principles for Australian Government Agencies (the Statement of Principles)* and any other applicable Australian Government policy.
- 6.2 The Services Schedules will set out any specific provisions regarding access to, and the use of, intellectual property.

- 6.3 If either party considers that it needs rights in relation to Material or IPR in connection with a Services Schedule which is owned, licensed or controlled by the other party:
- 6.3.1 it will Notify the other party and seek those rights in respect of that IPR; and
  - 6.3.2 the parties acknowledge that:
    - 6.3.2.1 they intend to grant or obtain those rights to the extent that they are able and to the extent that those rights are necessary to allow the other party to perform the activities contemplated by a Services Schedule; and
    - 6.3.2.2 that a failure to do so may prevent the other party from performing the activities contemplated by a Services Schedule.

## **7. CONFIDENTIAL INFORMATION AND PRIVACY**

- 7.1 The parties will consult wherever practicable in relation to any press release or public statement about this MOU or any Services Schedule.
- 7.2 The parties acknowledge that they are each subject to certain legislative obligations and restrictions (including the *Privacy Act 1988* (Cth) and secrecy provisions under Commonwealth legislation) and that each party must conduct its activities under this MOU and the Services Schedules in accordance with the legislative obligations and restrictions applying to it.
- 7.3 Each party receiving information or Material from the other party will take all reasonable actions necessary to ensure that the information and Material provided is held, used and protected in at least the same manner in which the receiving party holds, uses and protects its own Material of a similar type or nature. A Services Schedule may specify additional arrangements in relation to the protection of information and Material.
- 7.4 Where any Confidential Information is provided under a Services Schedule or in connection with this MOU, the receiving party will not disclose that Confidential Information without first obtaining the providing party's consent (which may be granted on such conditions as the providing party sees fit), except to the extent that the Confidential Information:
- 7.4.1 is disclosed by the receiving party to comply with its obligations, or to exercise its rights, under this MOU or a Services Schedule;
  - 7.4.2 is disclosed to a party's internal personnel or external advisers who have a need to know (and who have agreed to keep the information confidential) to enable effective management or review of MOU related activities;
  - 7.4.3 is disclosed by a party to its Minister or in response to a request or direction of a House or Committee of the Commonwealth Parliament;
  - 7.4.4 is disclosed in the public domain other than through unauthorised disclosure by the receiving party; or
  - 7.4.5 is authorised or required to be disclosed by law.
- 7.5 If a Services Schedule requires a party to use the premises of the other party, the first party will ensure that its employees, officers, agents and contractors comply with all of the other party's procedures and directions relating to safety and security at those premises (including occupational health and safety requirements) as Notified by that other party.

## **8. RISKS, RESPONSIBILITY AND DISPUTE RESOLUTION**

- 8.1 A Services Schedule may set out how any issues involving risks and/or responsibility in connection with the performance of the Services will be managed.
- 8.2 The parties agree to work co-operatively at all levels and perform their respective obligations under this MOU in good faith with a view to avoiding disputes where possible.
- 8.3 If, however, any disagreement or dispute arises between the parties in relation to this MOU or a Services Schedule, the Contact Officers will use best endeavours to resolve the matter expeditiously and amicably by negotiating between themselves in the first instance.
- 8.4 If the Contact Officers are unable to resolve the dispute between themselves within 5 days of the matter first being raised by either party (or such other reasonable time as agreed between the parties), the matter will be promptly escalated to the respective Chief Financial Officers of the parties (or their delegates) for resolution.
- 8.5 Where a dispute is not resolved within 60 days (or any other period agreed by the parties), the parties may terminate this MOU and/or any Services Schedule affected by the dispute, in accordance with clause 10.
- 8.6 Both parties agree to continue to carry out their obligations and provide the Services until an outcome of the dispute is reached.

## **9. LIABILITY**

- 9.1 The parties have entered into an administrative arrangement for the provision of the Services. Therefore, while PM&C will use its best endeavours to meet its requirements under this MOU and respective Services Schedules, PM&C will not be responsible for any liability of a contractual nature.
- 9.2 If the Agency incurs loss or damage directly caused by the negligent or unlawful conduct of PM&C or PM&C's performance of obligations under a Services Schedule, PM&C's liability is limited to the extent that PM&C is able to recoup the loss or damage from third parties.
- 9.3 The Agency is responsible for any costs or liability associated with its participation in this MOU and any Services Schedules.

## **10. TERMINATION**

- 10.1 Either party may terminate this MOU by providing 90 days' Notice to the other party's Contact Officer for this MOU.
- 10.2 Termination of this MOU will automatically terminate each Services Schedule.
- 10.3 A Services Schedule may contain additional circumstances under which that Services Schedule may be terminated.
- 10.4 After expiry of the Term, or on termination of this MOU or a Services Schedule:
  - 10.4.1 each party will return to the other any information or property obtained from the other in connection with this MOU or the relevant Services Schedules(s), unless the parties otherwise agree in writing;

- 10.4.2 each party must stop work on the matters described in the Services Schedule(s), unless the parties otherwise agree in writing; and
  - 10.4.3 each party will take all available steps to minimise any loss that results from the termination or expiry.
- 10.5 A Services Schedule may set out other consequences that apply upon termination or expiry.

## **11. MACHINERY OF GOVERNMENT CHANGES**

- 11.1 In the event of a Machinery of Government (MoG) change affecting either Party, then the terms of the MOU will be reviewed by all parties as soon as possible to determine the need for changes to, or termination of, the MOU. All Parties undertake to make reasonable effort to ensure continuity of Services.
- 11.2 In the event of a MoG change affecting the Services, the provisions of clause 8.3, 8.4 and 8.5 will not apply and the Parties may terminate or extend Services by agreement and with reasonable notice, taking into account the time required for complete disengagement if required. The Parties must make all reasonable efforts to avoid or minimise disruption to the operations of all Parties.
- 11.3 In the event of a MoG change affecting the MOU fee arrangements or the Services, the charges and payments will be reviewed and any amendments agreed following negotiations between the Parties.

## **12. NOTICES**

- 12.1 Except where otherwise expressly stated, any Notice under this MOU is to be provided to the other party's Contact Officer for the MOU at the postal address, facsimile number or email address set out in the MOU Details.
- 12.2 Except where otherwise expressly stated, any Notice under a Services Schedule is to be provided to the other party's Contact Officer for that Services Schedule at the postal address, facsimile number or email address set out in that Services Schedule.
- 12.3 A Notice takes effect when it is taken to be received:
  - 12.3.1 if hand delivered, on delivery;
  - 12.3.2 if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
  - 12.3.3 if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
  - 12.3.4 if transmitted electronically (via email), on the day it is sent,

but if the delivery, receipt, or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### **13. VARIATION**

- 13.1 This MOU may only be varied by the agreement in writing of the parties who hold the same positions as those who originally executed this MOU.

### **14. INTERPRETATION**

- 14.1 In this MOU and the Services Schedules, unless the contrary intention is expressed:
- 14.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
  - 14.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
  - 14.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this MOU, and a reference to this MOU includes any schedule or annexure;
  - 14.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - 14.1.5 a reference to A\$, \$A, dollar or \$ is to Australian currency;
  - 14.1.6 a reference to time is to the time in the place where the obligation is to be performed;
  - 14.1.7 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 14.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
  - 14.1.9 if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
  - 14.1.10 headings are for ease of reference only and do not affect interpretation.
- 14.2 The parties agree that this MOU is a voluntary statement of the intent of the parties to cooperate and assist with each other, and accordingly cannot, and is not intended to, create legal obligations between them. However, both parties intend to act in a manner that is consistent with this MOU and their obligations at law at all times.
- 14.3 If there is inconsistency between any of the documents forming part of this MOU, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
- 14.3.1 MOU Details;
  - 14.3.2 MOU Conditions;
  - 14.3.3 Services Schedules (with later Services Schedules having priority over earlier Services Schedules);

- 14.3.4 any attachments to the Services Schedules; and
- 14.3.5 documents incorporated by reference in this MOU.

\*\*\*  
End of MOU