



# **SERVICES CONTRACT**

**08/XX**

between

**COMMONWEALTH OF AUSTRALIA**

as represented by the

**Australian Fair Pay Commission Secretariat**

and

**[insert name of Contractor]**

for the provision of **Insert Services**

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THIS CONTRACT is made

between

the **COMMONWEALTH OF AUSTRALIA** ('the Commonwealth'), as represented by the Australian Fair Pay Commission Secretariat ABN 14 460 763 247 (the 'Secretariat')

and

**[insert name of Contractor]** ('the Contractor')

ABN **[insert ABN]**, **[insert full street address]**

WHEREAS:

- A. The Secretariat requires the provision of certain services (the 'Contract'), namely **[insert details]**.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted a Tender in response to **RFT/RFQ/RFP XX/XX**.
- C. The Commonwealth has agreed to accept the Contractors offer to provide the Services upon the terms and conditions contained in this Contract.

**NOW IT IS HEREBY AGREED as follows:**

**1. Interpretation**

In this Contract, unless the contrary intention appears:

'**ABN**' has the same meaning as it has in the *A New Tax System (Australian Business Number) Act 1999*;

'**Advisers**' means a party's advisers engaged in, or in relation to, the performance or management of this Contract;

'**Auditor-General**' means the person so appointed in accordance with the *Auditor-General Act 1997* or a properly appointed delegate;

'**Commonwealth**' means the Commonwealth of Australia, including, but not limited to, where the context so admits, the Commonwealth as represented by the Secretariat;

'**Commonwealth Material**' means any Material provided by the Commonwealth to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided;

'**Confidential Information**' means:

- (a) the information described in Schedule 3; and
- (b) information that is agreed between the parties in writing after the date of this Contract as constituting confidential information for the purposes of this Contract; and
- (c) is of an inherently confidential nature;

'**Contractor**' shall, where the context so admits, include the officers, employees, subcontractors and agents of the Contractor;

**‘Contract Manager’** means the person for the time being holding, occupying or performing the duties of the office of the Secretariat specified in Item B of Schedule 2 or any other person in writing and notified to the Contractor;

**‘Contract Material’** means all Material:

- (a) brought into existence for the purpose of performing the Services;
  - (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
  - (c) copied or derived from Material referred to in paragraphs (a) or (b);
- particularly including (but not necessarily exclusively) the Material described in Item B of Schedule 1;

**‘Director’** means the person for the time being holding, occupying or performing the duties of the office of Director of the Secretariat and includes any other person designated in writing by that person to perform any function or to exercise any of the powers of the Director;

**‘General Interest Charge Rate’** has the same meaning given by section 8AAD of the *Taxation Administration Act 1953*;

**‘GST’** means Goods and Service Tax payable under the GST Act;

**‘GST Act’** means the *A New Tax System (Goods and Services Tax) Act 1999*;

**‘Intellectual Property’** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**‘Key Personnel’** means the personnel performing the Services;

**‘Material’** means any thing in relation to which Intellectual Property rights arise;

**‘Moral Rights’** means the following non-proprietary rights of authors of copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

**‘Party’** means the Contractor or the Secretariat;

**‘Personal Information’** has the same meaning given by section 6 of the *Privacy Act 1988*;

**‘Privacy Commissioner’** means the person so appointed in accordance with the *Privacy Act 1988* or a properly appointed delegate;

**‘Project Delegate’** means the Director;

**‘Secretariat’** means the Commonwealth Australian Fair Pay Commission Secretariat or such other government agency or Secretariat as may, from time to time, administer this Contract on behalf of the Commonwealth;

**‘Security Incident’** means a security breach, violation, contact or approach from those seeking or gaining unauthorised access to Confidential Information which is likely to affect the performance of the Contract function.

**‘Services’** means the services described in Item A of Schedule 1;

**‘Specified Personnel’** means the personnel specified in Item E of Schedule 1 as personnel required to undertake the Services or part of the work constituting the Services;

**‘Taxable Supply’** has the same meaning as it has in the GST Act;

**‘Third Party Interest’** means any legal or equitable right, interest, power or remedy in favour of any person other than the Contractor or the Secretariat in connection with this Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) words importing a gender include any other gender; and
- (c) words importing persons include a partnership and a body whether corporate or otherwise; and
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“ [ ]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (e) all references to clauses are clauses in this Contract; and
- (f) all references to dollars are to Australian dollars and this Contract uses Australian currency; and
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 Schedule 1, Schedule 2, Schedule 3, Schedule 4 and annexures (if any) form part of this Contract. In the event of any conflict between the terms and conditions contained in the clauses of this Contract and any part of the Schedules (and annexures if any), the terms and conditions of the clauses take precedence. In the event of any conflict between any part of the Schedules and any part of any annexures if any, the Schedules take precedence.

1.4 A provision of this Contract will not be construed to the disadvantage of a Party solely on the basis that it proposed that provision.

## **2. Provision of Services**

- 2.1 The Contractor must perform the Services (including the preparation of Contract Material) in accordance with Schedule 1 and their response to **RFT/RFQ 07/XX**.
- 2.2 The Services are to be performed to a standard recognised as a high professional standard by the industry to which the Contractor belongs.
- 2.3 The Contractor is fully responsible for the performance of the Services, and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- (a) involvement by the Commonwealth in the performance of the Services;
  - (b) payment made to the Contractor on account of the Services;
  - (c) subcontracting of the Services; or
  - (d) acceptance by the Commonwealth of replacement Specified Personnel.
- 2.4 The Contractor is not by virtue of this Contract an officer, employee, partner or agent of the Commonwealth, nor does the Contractor have any power or authority to bind or represent the Commonwealth.
- 2.5 The Contractor agrees:
- (a) not to misrepresent its relationship with the Secretariat or the Commonwealth; and
  - (b) not to engage in any misleading or deceptive conduct in relation to the Services.

## **3. Fees, GST, Allowances and Assistance**

- 3.1 The Commonwealth must pay to the Contractor the reasonable and proper fees and allowances as specified in the Contract, on completion of the Services and subject to acceptance by the Commonwealth.
- 3.1A Subject to any shorter period being specified in this Contract but notwithstanding any other clause, the Commonwealth must pay the Contractor the fees for the Services within 30 days from:
- (a) the receipt by the Secretariat of the Services and where required by this Contract, approval of the Services; and
  - (b) the receipt by the Secretariat of a correctly rendered tax invoice in relation to the Services;
- but only if:
- (c) the invoice totals an amount equal to or less than **[insert value]**, inclusive of GST;
- 3.2 The fee determined in accordance with clause 3.1 includes GST for Taxable Supplies made by the Contractor under this Contract.
- 3.3 Where Item C of Schedule 2 provides that the Contractor is to be paid by progressive instalments (or by a single payment), the Commonwealth is entitled,

without derogating from any other right it may have, to defer payment of an instalment (or the single payment) until the Contractor has completed to the satisfaction of the Commonwealth that part of the Services to which that instalment (or the single payment) relates.

- 3.4 The Contractor must submit invoices for payment in the manner specified in Item D of Schedule 1.
- 3.5 The Contractor agrees to issue the Commonwealth with a tax invoice in accordance with the GST Act in relation to Taxable Supplies made by the Contractor under this Contract.
- 3.6 If required by the *Taxation Administration Act 1953*, the Commonwealth will withhold a certain percentage of the amount claimed under an invoice that does not specify an ABN in respect of the Contractor.
- 3.7 If an invoice is found to have been incorrectly rendered after payment, any underpayment or overpayment is recoverable by or from the Contractor, as the case may be, and without limiting recourse to other available means, may be offset against any amount subsequently due by the Commonwealth to the Contractor, whether under this Contract or any other contract the Commonwealth has with the Contractor.
- 3.8 If a party fails to pay an amount payable by it to the other party under this Contract by the due date for payment, the first mentioned party must also pay to the other party simple interest on such unpaid amount at the General Interest Charge Rate calculated daily from the next day after the due date up to and including the date of payment.
- 3.9 The Commonwealth is notionally liable to pay GST.
- 3.10 Without limiting the generality of clause 3.2, if a supply made by the Commonwealth under this Contract is a Taxable Supply, the Commonwealth may, by notice in writing to the Contractor, require the Contractor to pay the Commonwealth within 30 days of receiving such notice, an amount equal to the amount of GST which is payable by the Commonwealth on the value of that Taxable Supply.
- 3.11 The Commonwealth agrees to issue the Contractor with a tax invoice in accordance with the GST Act in relation to Taxable Supplies made by the Commonwealth under this Contract.

#### **4. Entire Agreement and Variation**

- 4.1 This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.
- 4.2 No agreement or understanding varying or extending this Contract, including in particular the scope of the Services in Item A of Schedule 1, is legally binding upon either party unless in writing and signed by both parties.

#### **5. Subcontracting**

- 5.1 Except where a subcontractor is one of the Specified Personnel, the Contractor must not, without the prior written approval of the Commonwealth, subcontract the performance of any part of the Services. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit.

- 5.2 The Contractor will not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under this Contract unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in clause 12 and in this subclause.
- 5.3 The Contractor is fully responsible for the performance of the Services notwithstanding that the Contractor subcontracts the performance of any part of those services.
- 5.4 Despite any approval given by the Commonwealth under clause 5.1, the Contractor is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out, and that the work carried out meets the requirements of this Contract.
- 5.5 The Contractor must ensure that a subcontractor is aware of all terms and conditions of this Contract relevant to the subcontractor's part in the provision of the Services.
- 5.6 The Contractor must pay the subcontractors in accordance with the terms of the relevant subcontract.

## **6. Specified Personnel and Other Personnel**

- 6.1 The Contractor must ensure that the Specified Personnel undertake work in respect of the Services in accordance with the terms of this Contract.
- 6.2 Where Specified Personnel are unable to perform the work the Contractor agrees to notify the Commonwealth immediately. The Contractor must, if so requested by the Commonwealth, provide replacement personnel acceptable to the Commonwealth at no additional charge and at the earliest opportunity.
- 6.3 The Commonwealth may, at its absolute discretion, give notice requiring the Contractor to remove personnel (including Specified Personnel) from work in respect of the Services. The Contractor must, at its own cost, promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to the Commonwealth.
- 6.4 If the Contractor is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of clause 21.

## **7. Liaison**

- 7.1 The Contractor must liaise with and report to the Contract Manager or the Project Delegate as reasonably required by the Project Delegate during the period of this Contract.
- 7.2 The Contractor may nominate from time to time a person who has authority to receive and sign notices and written communications for the Contractor under this Contract and accept any request or direction in relation to the Services.

## **8. Contract Material**

- 8.1 Ownership of all Contract Material vests in the Commonwealth upon creation.
- 8.2 Upon the expiration or earlier termination of this Contract the Contractor must, subject to clause 12, deliver to the Secretariat all Contract Material remaining in its possession save for one copy which must be retained for the Contractors file.

8.3 The preceding subclauses of this clause apply subject to any stipulation to the contrary in Item B1 of Schedule 1.

**9. Commonwealth Material**

9.1 Ownership of all Commonwealth Material remains vested at all times in the Commonwealth.

9.2 Upon the expiration or earlier termination of this Contract, the Contractor must return to the Secretariat all Commonwealth Material remaining in its possession.

9.3 The preceding subclauses of this clause apply subject to any stipulation to the contrary in Item B2 of Schedule 1.

9.4 The Contractor must ensure that the Commonwealth Material is used, copied, supplied or reproduced only for the purposes of this Contract.

9.5 The Contractor must use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item B3 of Schedule 1, or notified from time to time in writing by the Commonwealth.

**10. Intellectual Property**

10.1 Subject to this clause, Intellectual Property in all Contract Material vests immediately or will vest in the Commonwealth.

10.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Material which is specified in Item B4 of Schedule 1. However, the Contractor grants to the Commonwealth a permanent, irrevocable royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Material anywhere in the world. Notwithstanding Part VII of the *Copyright Act 1968*, publication of the Material in accordance with this licence does not affect such ownership.

10.3 If requested by the Commonwealth to do so, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause.

10.4 The Contractor warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause.

10.5 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Specified Acts by the Secretariat or any person claiming under or through the Secretariat.

10.6 Where clause 10.5 does not apply, the Contractor agrees to obtain from each author a written consent which extends directly or indirectly to the performance of the Specified Acts by the Secretariat or any person claiming under or through the Secretariat (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the Secretariat.

10.7 Clauses 10.5 and 10.6 do not apply to any Commonwealth Material incorporated in the Contract Material.

10.8 In clauses 10.5 and 10.6 'Specified Acts' means any of the following classes or types of acts or missions:

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;

- (b) supplementing the Contract Material with any other Material;
  - (c) using the Contract Material in a different context to that originally envisaged; and
  - (d) the acts or omissions, specifically set out in Item J of Schedule 1, but does not include false attribution of authorship.
- 10.9 The operation of this clause 10 survives the expiration or earlier termination of the term of this Agreement.
- 11. Disclosure of Information**
- 11.1 Subject to clause 11.5, a party must not, without the prior written approval of the other party, disclose any Confidential Information of the other party to a third party.
- 11.2 In giving written consent to the disclosure of the Commonwealth's Confidential Information, the Secretariat may impose such conditions as it thinks fit, and the Contractor agrees to comply with these conditions.
- 11.3 If the Contractor has been requested to disclose or provide access to any Confidential Information of the Commonwealth, it must:
- (a) notify the Commonwealth in writing of the request providing sufficient notice to enable the Commonwealth to seek a protective order or other relief from disclosure; and
  - (b) provide all assistance and co-operation which the Commonwealth reasonably considers necessary for that purpose.
- 11.4 The Commonwealth may at any time require the Contractor to arrange for:
- (a) any persons working on the provision of Services under this Contract;
  - (b) its Advisers; or
  - (c) any person with a Third Party Interest;
- to give a written undertaking in the form of a deed relating to the use and nondisclosure of the Commonwealth's Confidential Information. The Contractor must promptly arrange for all such undertakings to be given.
- 11.5 The obligations on the parties under this clause will not be taken to have been breached to the extent that the Confidential Information:
- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
  - (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of contract related activities;
  - (c) is disclosed by the Secretariat to the Department's Minister or another Commonwealth Minister;
  - (d) is disclosed by the Secretariat, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (e) is authorised or required by law to be disclosed;
  - (f) is disclosed by the Secretariat and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual

Property in relation to that material form, has vested in, or is assigned to, the Secretariat under this Contract or otherwise, and that disclosure is permitted by that licence or otherwise; or

- (g) is in the public domain otherwise than due to a breach of this clause.
- 11.6 Where a party discloses the other party's Confidential Information to another person:
- (a) pursuant to clauses 11.5 (a) or (b), the disclosing party must:
    - (i) notify the receiving person that the information is the other party's Confidential Information; and
    - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
  - (b) pursuant to clauses 11.5 (c) and (d), the disclosing party must notify the receiving party that the information is the other party's Confidential Information.
- 11.7 The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- 11.8 Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.
- 11.9 The obligations under this clause continue, notwithstanding the expiry or termination of this Contract:
- (a) in relation to an item of information described in Schedule 3 — for the period set out in that Schedule in respect of that item; and
  - (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract—for the period agreed by the parties in writing in respect of that information.
- 11.10 Nothing in this clause derogates from any obligation which the Contractor may have under the *Privacy Act 1988* as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

## **12. Protection of Personal Information**

- 12.1 This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing the Services under this Contract.
- 12.2 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act) and agrees in respect of the provision of Services:
- (a) to use or disclose personal information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
  - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would amount to a breach of that IPP;

- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
  - (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
  - (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
    - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
    - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
  - (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
  - (g) to immediately notify the agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 12, whether by the Contractor or any Subcontractor;
  - (h) to comply with any directions, guidelines, determinations or recommendations arising in relation to this Contract to the extent that they are not inconsistent with the requirements of this clause; and
  - (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 12.
- 12.3 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.
- 12.4 The Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor or a subcontractor under this clause 12.
- 12.5 In this clause 12, the terms *agency*, *approved privacy code* (APC), *Information Privacy Principles* (IPPs), *National Privacy Principles* (NPPs) and *personal information* have the same meaning as they have in section 6 of the Privacy Act.
- 12.6 The provisions of this clause 12 survive the termination or expiration of this Contract.

**13. Official Secrets**

13.1 The Contractor:

- (a) acknowledges that it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets; and
- (b) undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of the section that prior to having such access the said officer, employee, agent and subcontractor will first be required by the Contractor to provide the Contractor with an acknowledgment that such officer, employee, agent or subcontractor is aware of the provisions of the section.

**14. Compliance with Commonwealth Policies**

14.1 When performing its contractual obligations, the Contractor agrees to comply with any of the Commonwealth's policies as notified by the Secretariat in writing, including those listed in Item I of Schedule 1.

14.2 The Contractor must, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.

14.3 The Contractor agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and the Secretariat's procedures relating to occupational health safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

14.4 The Contractor acknowledges that:

- (a) the Commonwealth is required to publish the award of all contracts valued at \$10,000, inclusive of GST, or more; and
- (b) The Secretariat is required to publish on the Internet details of any contracts with a value of \$100,000, inclusive of GST, or more.

**15. Indemnity**

15.1 The Contractor agrees to at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as "those indemnified") from and against:

- (a) any liability incurred by the Commonwealth;
- (b) any loss of or damage to property of the Commonwealth; or
- (c) any loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,

arising from:

- (d) any act or omission by the Contractor in connection with this Contract;

- (e) any breach by the Contractor of its obligations or warranties under this Contract;
- (f) any act or omission by a subcontractor in connection with, or incidental to, the provision of the Services under this Contract or the subcontract;
- (g) any act or omission by a subcontractor that results in a breach by the Contractor of any of the Contractors obligations or warranties under this Contract; or
- (g) any infringement of Intellectual Property by the Contractor in the course of, or incidental to, performing the Services or the use by the Commonwealth of the Contract Material,

where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage or expense.

15.2 The Contractor liability to indemnify the Commonwealth under clause 15.1 is reduced proportionally to the extent that any act or omission of the Commonwealth or its employees or agents contributed to the loss or liability.

15.3 The right of the Commonwealth to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

15.4 The indemnity referred to in clause 15.1 survives the expiration or termination of this Contract.

## **16. Insurance**

16.1 With respect to the performance of the Services under this Contract, the Contractor must maintain and must require all of its subcontractors to maintain, the insurances as described in Item F of Schedule 1.

16.2 Such insurance must be maintained from the time the Services first commence until completion of the Services under this Contract. Failure to maintain the insurance will entitle the Commonwealth to terminate this Contract in accordance with clause 21.

16.3 Such insurance must not be cancelled except on 30 days' prior written notice to the Commonwealth.

16.4 Whenever requested, the Contractor must provide the Commonwealth with a copy of any insurance policy held in accordance with clause 16.1 or a certificate of currency.

## **17. Conflict of Interest**

17.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its employees, agents or subcontractors.

17.2 The Contractor undertakes that:

- (a) subject to the remaining parts of this clause, it will not enter into any arrangement, scheme or contract, however described, which may cause a conflict of interest concerning the Contractors performance of the Services;
- (b) should it become aware of the possibility of a conflict of interest, it will immediately notify the Project Delegate of the details of such a possible

conflict of interest, and will provide details of steps that the Contractor will take to resolve or deal with the conflict; and

- (c) if the Contractor fails to notify the Project Delegate of the possibility of such conflicts of interest, or is unable or unwilling to resolve or deal with the conflicts as may reasonably be required by the Project Delegate, the Secretariat may terminate this Contract.

17.3 The Contractor must not, and must ensure that any employee, agent or subcontractor of the Contractor does not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Services to the Commonwealth fairly and independently.

## **18. Access and Audits**

18.1 The Contractor must at all reasonable times give to the Project Delegate or to any persons authorised in writing by the Director, access to premises occupied by the Contractor where the Services are being undertaken and shall permit those persons to inspect the performance of the Services and any Commonwealth Material, Contract Material or any other Material relevant to the Services.

18.2 The Contractor must, on receiving reasonable notice, participate promptly and cooperatively in any audits determined by the Commonwealth to be relevant to the Services or Contract at the frequency and in relation to the matters specified by the Commonwealth, (including on an ad hoc basis if requested by the Commonwealth), for the purpose of ensuring that this Contract is being properly performed and administered.

18.3 The Commonwealth may appoint an independent person to assist in the audits, and may request assistance from the Contractor in conducting any inquiry. Audits may consider all aspects of the Contractors performance including the following:

- (a) the Contractors practices and procedures as they relate to this Contract, including security procedures;
- (b) the Contractors compliance with all its obligations under this Contract;
- (c) the compliance of the Contractors invoices and reports with its obligations under this Contract; and
- (d) the Contractors compliance with the confidentiality, privacy, and security provisions of this Contract and all relevant Commonwealth policy obligations under this Contract.

18.4 Subject to any express provisions in this Contract to the contrary, each party must bear its own costs of any audits.

18.5 The Commonwealth must use reasonable endeavours to ensure that audits performed pursuant to clause 18.2 do not unreasonably delay or disrupt in any material respect the Contractors performance of its obligations under this Contract.

18.6 The Contractor must promptly take, at no additional cost to the Commonwealth, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has under this Contract:

- (a) supplied any goods or services; or

- (b) calculated fees, or any other amounts or charges billed to the Commonwealth.
- 18.7 The Project Delegate or any persons authorised in writing by the Director, the Auditor-General or the Privacy Commissioner may, at reasonable times during the term of this Contract and for a period of 7 years from the date of its expiration or termination:
  - (a) access the premises of the Contractor;
  - (b) require the provision by the Contractor, its employees, agents, or subcontractors, of records and other information in a common data format and storage medium which are related to this Contract; and
  - (c) access, inspect and copy documentation and records or any other matter relevant to the Contractor's obligations or performance of this Contract, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors.
- 18.8 The Contractor must ensure that it keeps full and complete records in accordance with all applicable Australian Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under clause 18.2.
- 18.9 The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in clauses 18.2, 18.3 and 18.7 with respect to the subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- 18.10 Clause 18.7 applies for the term of this Contract and for a period of 7 years from the date of its expiration or termination.
- 18.11 The Contractor must bear its own costs of complying with this clause 18.
- 18.12 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.
- 18.13 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 19. Negation of Employment, Partnership and Agency**
- 19.1 The Contractor must not represent itself, and must ensure that its employees do not represent themselves, as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 19.2 The Contractor will not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.
- 20. Termination and Reduction**
- 20.1 The Commonwealth may, at any time by written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Commonwealth is liable only for:
  - (a) payments under the payment provisions of this Contract for Services rendered before the effective date of termination; and

- (b) subject to clauses 20.3 and 20.4 any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract.
- 20.2 Upon receipt of a notice of termination the Contractor must:
- (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
  - (c) continue work on any part of the Services not affected by the notice.
- 20.3 In the event of partial termination the Commonwealth's liability to pay fees under Item C of Schedule 2 will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.
- 20.4 The Commonwealth will not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item C of Schedule 2. The Contractor will not be entitled to compensation for loss of prospective profits.

## **21. Default**

- 21.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may, subject to clause 21.2, by notice in writing to the other party, terminate this Contract in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.
- 21.2 Where the default is capable of being remedied, a party must not exercise its rights of termination under clause 21.1 unless it has first given to the other party notice in writing specifying the default and requiring the other party to remedy it within the time (being not less than 10 working days) specified in the notice and the default is not remedied within the time allowed.
- 21.3 If the Contractor:
- (a) in the case of a company, comes under any form of external administration, including any of those referred to in Chapter 5 of the *Corporations Act 2001*, or an order, or application, has been made for the purpose of placing the Contractor under external administration; or
  - (b) in the case of an individual, becomes bankrupt or makes any arrangements, assignments, compositions or agreements for the benefit of his or her creditors under the *Bankruptcy Act 1966* (Cth), or a creditor's petition is filed with an Australian court seeking a sequestration order against his or her estate,

the Commonwealth may, by notice in writing, terminate this Contract without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

## **22. Waiver**

- 22.1 A waiver by either party in respect of any breach of a condition or provision of this Contract will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure

of either party to enforce at any time any of the provisions of this Contract will in no way be interpreted as a waiver of such provision.

**23 Compliance with Law**

23.1 The Contractor must in carrying out this Contract comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority, including those listed in Item I of Schedule 1.

**24. Dispute Resolution**

24.1 Subject to clause 24.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Contract including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

24.2 If a dispute is not settled by the parties within 10 working days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.

24.3 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Contract.

24.4 A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

24.5 This clause survives the expiration or termination of this Contract.

**25. Assignment and Novation**

25.1 The Contractor must not assign, in whole or in part, its benefits under this Contract without the prior written approval of the Commonwealth.

25.2 The Contractor must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Contract without first consulting the Commonwealth.

**26. Severability**

26.1 Each provision of this Contract and each part thereof is, unless the context otherwise necessarily requires it, to be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) is severed and the remainder will be read and construed as if the severable provision or part had never existed.

**27. Applicable Law**

27.1 This Contract is governed by and construed in accordance with the laws of the State or Territory nominated in Item H of Schedule 1 and the parties agree, subject to this Contract that the Courts of that State or Territory have jurisdiction to entertain any action in respect of, or arising out of, this Contract.

**28. Notices**

28.1 Any notice, request or other communication to be given or served pursuant to this Contract must be in writing and dealt with as follows:

- (a) if given by the Contractor to the Commonwealth — marked for the attention of the Project Delegate at the address indicated in Item A of Schedule 2 or as otherwise notified by the Commonwealth; or
  - (b) if given by the Commonwealth to the Contractor — signed by the Project Delegate and marked with the address indicated in Item G of Schedule 1 or as otherwise notified by the Contractor under clause 7.
- 28.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 28.3 Any notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
  - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

## **29. Engagement of Illegal Workers Prohibited**

- 29.1 The Contractor must ensure that all its employees, agents, and any other person engaged to carry out the Services, including those engaged by any subcontractors are at all times:
- (a) Australian citizens; or
  - (b) in the case of persons who are not Australian citizens, not illegal workers.
- 29.2 The Contractor must remove or cause to be removed any illegal worker from any involvement in the carrying out of Services and arrange for their replacement at no cost to the Commonwealth immediately it becomes aware of the involvement of the illegal worker. The Contractor must immediately notify the Commonwealth of the involvement of the illegal worker and the removal.
- 29.3 For avoidance of doubt, compliance with the Contractors obligations under this clause 29 will not give rise to an entitlement to claim any delay or otherwise excuse the Contractor from compliance with its obligations under this Contract.
- 29.4 When requested by the Commonwealth, the Contractor will provide evidence that it has taken all reasonable steps to ensure it has complied and is complying with its obligations under this clause 29, including in relation to any subcontractors.
- 29.5 The Contractor must provide the Commonwealth with evidence referred to in clause 29.4 within 5 working days of receiving the Commonwealth's request.
- 29.6 For the purposes of this clause an illegal worker is a person who:
- (a) has unlawfully entered and remains in Australia;
  - (b) has lawfully entered Australian, but remains in Australia after his/her visa has expired; or
  - (c) is working in breach of his/her visa conditions.

**30. Security Incident**

- 30.1 The Contractor must provide a written security report to the Secretariat immediately, in writing, of any Security Incidents.
- 30.2 The security report will, at a minimum, include the following information:
- (a) details regarding the Security Incident, including steps taken, or proposed to be taken by the Contractor to address these;
  - (b) where appropriate, recommendations for security improvements; and
  - (c) any other information which the Secretariat may require.

# SCHEDULE 1

## Contractor's Obligations and Work to be Performed

### A. Services (see clauses 1.1 and 2.1)

The Services to be provided are described in the Request for [insert **Tender/Quote** for the provision of [insert title of services] dated [insert date] 2007, namely the provision of [insert details].

### B. Contract Material (see clauses 1.1, 2.1 and 8)

The Contractor will produce the following materials:

- 
- 

### B1. Contractors Rights to Contract Material (see clause 8.3)

The Contractor may retain [insert number] of copies of the Contract Material as outlined above.

### B2. Contractors Rights to Commonwealth Material (see clause 9.3)

There is no contrary stipulation.

### B3. Use of Commonwealth Material (see clause 9.5)

There is no contrary stipulation.

### B4. Material Not to Vest in Commonwealth (see clause 10.2)

None.

### B5. Material Not to Vest in Commonwealth (see clause 10.2)

None.

### C. Time-frame (see clause 2.2)

The Contract will commence on [insert date] and continue in force until [insert date].

The Secretariat reserves the right to extend the Contract for further periods not exceeding [insert number] months in aggregate, subject to written agreement between the parties.

### D. Invoice Procedures (see clauses 3.1, 3.4, 3.5 and 3.6)

Invoices forwarded by the Contractor must be correctly addressed and must include the following information:

- (a) the words 'tax invoice' stated prominently;
- (b) the Contractor's name;
- (c) the Secretariat's name and address;
- (d) - the date of issue of the tax invoice;
- (e) title of Services;
- (f) name of Project Delegate;
- (g) contract number or purchase order number (if any)
- (h) the Contractor's ABN;

- (i) The amount for services
- (j) the GST amount ;
- (k) the total cost of services inclusive of GST.

Invoices may be sent by facsimile to the number or email address specified in Item A of Schedule 2.

Subject to acceptance of the Services by the Commonwealth, the due date for payment will be 30 days after delivery of a correctly rendered invoice to the Commonwealth and following delivery of the Services.

**E. Specified Personnel (see clauses 1.1 and 6)**

The Contractor must ensure that the Services are undertaken by [insert key personnel]

**F. Insurance (see clause 16)**

The Contractor must maintain:

- workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- commercial general liability insurance covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract on an occurrence basis, with a limit of not less than \$10 million each occurrence and in the aggregate; and
- professional indemnity insurance for an amount of not less than \$5 million dollars.

**G. Liaison & Notices (see clauses 7 and 28)**

[Insert Contractor details]

**H. Applicable Law (see clause 27)**

MELBOURNE VIC 3000

**I. Compliance with Commonwealth Policies and Legislation (see clauses 14 and 23)**

The Contractor must comply with the following Commonwealth policies:

- (a) *Australian Government Web Publishing Guide*  
[\(http://webpublishing.agimo.gov.au/\)](http://webpublishing.agimo.gov.au/)

The Contractor must comply with the following legislation:

- (a) *Age Discrimination Act 2004 (Cth) and the Age Discrimination (Consequential Provisions) Act 2004 (Cth);*
- (b) *Crimes Act 1914 (Cth);*
- (c) *Disability Discrimination Act 1975 (Cth);*
- (d) *Equal Opportunity for Women in the Workplace Act 1999 (Cth);*
- (e) *Occupational Health and Safety (Commonwealth Employment) Act 1991 (Cth);*
- (f) *Occupational Health and Safety (Commonwealth Employment)(National Standards) Regulations 1994 (Cth);*
- (g) *Racial Discrimination Act 1975 (Cth);*

- (h) *Sex Discrimination Act 1984* (Cth);
- (i) *Workplace Relations Act 1996* (Cth); and
- (j) *Workplace Relations Regulations 1996* (Cth).

**J. Moral Rights (see clause 10)**

**J1. Specified Acts (see clause 10.8)**

[Insert any additional, specific acts or omissions which are to be Specified Acts or insert 'not applicable']

## **SCHEDULE 2**

### **Commonwealth Obligations**

**A. Secretariat (see clauses 1.1 and 28)**

Australian Fair Pay Commission Secretariat, Locked Bag 35003, Collins Street West, Melbourne VIC 8007

or

Australian Fair Pay Commission Secretariat, Level 6, 595 Collins Street, Melbourne VIC 3007

Fax: (03) 9620 4868

**B. Project Delegate & Contract Manger (see clauses 1.1, 7 and 28)**

The Project Delegate is the person holding, occupying or performing the duties of Director, Australian Fair Pay Commission Secretariat, Tel: (03) 8621 8212; Fax: (03) 9620 4868 and the current occupant is: Jennifer Taylor.

The Contract Manager is the person holding, occupying or performing the duties of [insert title], Australian Fair Pay Commission Secretariat, Tel: (03) [insert number], and the current occupant is: [insert manager name]

**C. Fees (see clauses 3.1 and 3.2)**

The total fee payable under the Contract is up to [\$ insert total value], inclusive of GST, per year.

Fees are payable on completion of the Services and subject to acceptance by the Commonwealth.

Variations to Services or fees are to be provided in writing and agreed by both parties.

Subject to acceptance by the Commonwealth, the due date for payment will be 30 days after delivery of a correctly rendered invoice to the Commonwealth and following delivery of the Services.

## **SCHEDULE 3**

### **Confidential Information**

The definition in clause 1 and the operation of clause 11 ensures that any information which each party has indicated is confidential and is listed here, derives the protection of clause 11.

The Contractor should supply this information and if no information is supplied, that part of the Schedule relating to the Contractor can be left blank.

Material can be listed during the period of the Contract – see 11.9(b).

#### **A. COMMONWEALTH'S CONFIDENTIAL INFORMATION**

##### **1. Contract Provisions/Schedules/Attachments**

Item	Period of Confidentiality
All information – including text, tables and charts - provided to the Contractor by the Secretariat for the purpose of completing the Services.	Indefinitely

##### **2. Contract-related material**

Item	Period of Confidentiality
Nil.	

#### **B. CONTRACTORS CONFIDENTIAL INFORMATION**

##### **1. Contract Provisions/Schedules/Attachments**

Item	Period of Confidentiality

##### **2. Contract-related material**

Item	Period of Confidentiality

## SCHEDULE 4

### Deed of Confidentiality

This Deed of Confidentiality is dated [insert day (numeric) month (name) year (numeric)].

This Deed of Confidentiality is made by:

[insert name of individual Confidant] of [insert address] (“Confidant” or “You”);

#### A. Context

- a) The Commonwealth of Australia (“Commonwealth”) represented by the Australian Fair Pay Commission Secretariat has entered into a contract with [insert name of business] ABN [insert ABN] (the ‘Contractor’) (collectively referred to as the ‘Parties’) dated [insert date] for the provision of [insert title of Services] Services (the ‘Contract’).
- b) The Confidant [insert role of the Confidant and explain why they are required to enter into a deed of confidentiality - eg., is one of the Specified Personnel under the Contract and will be involved in performing the Services].
- c) The Confidant acknowledges that in the course of performing his/her role the information that the Confidant will have access to is of a sensitive and confidential nature.
- d) Improper use or disclosure of the Secretariat Confidential Information will hinder the Secretariat in the performance of its government functions.

#### B. Operative Provisions

The Confidant provides the undertakings set out below in respect of information to which the Confidant has access in the course of performing the Services under the Contract:

#### C. Interpretation

‘Confidential Information’ means information, documents and data stored by any means which is made available to the Contractor by the Secretariat and which is:

- a) designated either specifically or generally in Schedule 3 to the Contract;  
or
- b) not designated in Schedule 3 but:
  - i. is marked as proprietary or confidential information; or
  - ii. is of an inherently confidential nature and which You know or ought to know is confidential; or
- c) agreed in writing subsequently by the Parties to be confidential.

‘Documents’ includes:

- a) any paper or other material; and

- b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

**D. Non-Disclosure**

You agree to treat as secret and confidential all Confidential Information to which You have access or which is disclosed to You.

The confidentiality obligations under this clause continue indefinitely except in relation to:

- a) an item of Confidential Information described in Schedule 3 which has a period of confidentiality set out in that Schedule; and
- b) information which the Parties subsequently agree in writing is to constitute Confidential Information for the purposes of this Deed, and for which the Parties specify a period of confidentiality in writing;
- c) in which circumstances the period of confidentiality is the length of time agreed between the Parties.

Your obligations under this Deed will not be taken to have been breached where:

- a) You are required by law to disclose the Confidential Information;
- b) the Confidential Information is in the public domain otherwise than due to a breach of this Deed, a breach of the Contract or a breach of any other obligation of confidence;
- c) the Confidential Information has been independently developed or acquired by You.

**E. Restriction on use**

You may use the Confidential Information only for the purpose of your involvement in the performance of Services under the Contract.

You must not disclose the Confidential Information to any other person outside of the Secretariat without the prior written consent of the Secretariat.

You must comply with any guidelines or requirements notified to You by the Secretariat with respect to confidentiality and disclosure of information within and outside the Secretariat.

You must not copy or reproduce the Confidential Information without the written approval of the Secretariat, and You must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information.

**F. Your Obligations**

You must notify the Secretariat immediately if Confidential Information is used or disclosed in any way other than as permitted under this Deed. You must provide full details of the relevant use and/or disclosure.

Immediately upon and in accordance with a request by the Secretariat, You must deliver to the Secretariat or destroy all Documents in Your possession or control containing Confidential Information. If at the time such a request is made You have placed or are aware of any Confidential Information beyond your possession or control, You must provide the Secretariat with full particulars of the whereabouts of the Confidential Information and the identity of the person in whose custody or control it lies.

The return or destruction of the Confidential Information does not release You from Your obligations under this Deed.

The obligations arising out of this Deed are in addition to any obligations of confidence at common law or equity.

**G. Security Acknowledgement**

Without limiting anything contained in this Deed, You acknowledge that Your attention has been drawn to the following legislative provisions which may have application to Your handling of Confidential Information:

- Sections 70 and 79 of the Crimes Act 1914 (Cth); and
- Part 10.7 of the Criminal Code Act 1995 (Cth).

**H. Survival**

This Deed will survive the termination or expiry of any contract under which You are engaged and the termination or expiry of the Contract.

**I. Applicable law**

This Deed will be governed in accordance with the law in Victoria.

EXECUTED as a Deed

SIGNED, SEALED AND DELIVERED by:

(insert name of Confidant)

.....

in the presence of:

Signature of Confidant

.....

.....

Name of Witness

Signature of Witness

SIGNED for and on behalf of:

**THE COMMONWEALTH OF AUSTRALIA** as represented by:

The Australian Fair Pay Commission Secretariat (ABN 14 460 763 247)

.....

*(Printed Name)*

.....

*(Signature)*

.....

*(Title)*

.....

*(Date)*

In the presence of:

.....

*(Printed Name)*

.....

*(Signature)*

.....

*(Date)*

SIGNED for and on behalf of:

[Insert details of Contractor] (ABN [insert ABN])

.....

*(Printed Name)*

.....

*(Signature)*

.....

*(Title)*

.....

*(Date)*

In the presence of:

.....

*(Printed Name)*

.....

*(Signature)*

.....

*(Date)*