



## **Request For Tender**

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### **Accessible Housing in Australia**

### **Australian Building Codes Board**

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Further assistance regarding the Request for Tender may be obtained from:

Mr Jack Bramwell, Project Manager, ABCB on telephone 02 6213 7828 or email:  
jack.bramwell@abcb.gov.au

#### **Lodgement of Tenders**

**Tenders must be enclosed in a plain envelope endorsed as follows:**

Request for Tender (Accessible Housing in Australia)  
Australian Building Codes Board  
Department of Industry, Tourism and Resources  
Tender Box,  
Reception Area  
Ground Floor  
20 Allara Street  
Canberra City ACT 2601

**Closing Time and Date:** 4 pm (Canberra time) on 20 March 2004

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## Part 1 Statement of Work

The Australian Building Codes Board (ABCB) invites suitably qualified consultants to submit a proposal for a report on accessible housing in Australia.

### 1. Background

- 1.1 Current housing construction overlooks economic and social imperatives for the inclusion and participation of all citizens, particularly people with disabilities and the elderly. An exponential increase in this cohort is expected to occur well into this century.
- 1.2 Australia does not have coordinated strategies to ensure that there is a stock of residential accommodation to meet the current or anticipated demand for accessible housing.
- 1.3 Some local governments are pursuing regulation to promote the construction of accessible housing through their town planning schemes, also, some State and Territory building control administrations are promoting the design of accessible or universally designed housing or are contemplating the need for the introduction of uniform regulation within their jurisdictions.
- 1.4 Following submissions by the Australian Network for Universal Housing Design (ANUHD) including a Discussion Paper entitled "Towards an Access Standard for Housing within the Building Code of Australia", April 2003, the ABCB hosted the Accessible Housing Forum in Sydney on 10 April 2003.

The main objectives of the forum were to:

- Facilitate an open discussion on the subject of accessibility in housing that included all present parties and a diverse range of issues and opinions;
  - Canvass the current directions in the field within Australia and overseas;
  - Achieve a shared understanding of the strategies required to improve accessibility in housing.
- 1.5 The key outcomes of the forum were:
- Acceptance of the social disadvantage that inaccessible housing leads to and the negative affects it has for social integration and participation. In the views of some participants this requires a response from government and industry;
  - A manifold approach is required to increase the profile of the issue in the wider community. This would involve education, regulation, research, training, and accreditation, best practice and marketing;
  - The best scenario is that a proactive national harmonized approach be adopted;
  - The ABCB prepare a submission for consideration by the Cooperative Research Centre for Construction Innovation (CRC CI) to undertake a research program on adaptability in housing;

The participants agreed that the forum was a successful first step in establishing the development of a national approach to accessibility in housing.

1.6 In August 2003, the ABCB prepared an application to the CRC CI for a research project to identify:

- Whether current housing construction practice will be sustainable in meeting the access needs of the Australian population in the future;
- If not, what practices should be changed;
- What are the social, economic and environmental consequences for Australians if current housing practice remains the same.

The CRC IC has decided not include this project in its research program.

1.7 In November the ABCB and the Victorian Building Commission agreed in principle to proceed with a research project on accessible housing.

1.8 On 24 November 2003, the ABCB project manager and an officer of the Building Commission attended an ANUHD meeting in Adelaide to confirm their organisations in principle commitment, to undertake research on the need for accessible housing.

1.9 The research project would examine the supply and demand for accessible housing, implications for the future and recommended strategies for the short, medium and long term. The research would not be aimed solely at a Building Code of Australia (BCA) or a regulatory solution.

1.10 The research project should encompass the terms that are commonly used to describe buildings that provide for improved access – visitable, adaptable and universal design. These terms provide different standards of accessibility and are often used for legislative and policy decision making.

1.11 The research project needs to consider the full range of building solutions that could provide for improved access including but not limited to:

- continuous accessible paths of travel
- level entry
- aligning door knobs and light switches
- wider doorways and halls
- colour contrasting bench tops and cupboards as well as paving
- reinforcing walls in toilets and bathrooms for future fixing of handrails
- open plan living and larger rooms that allow adequate circulation space
- control of water temperature
- indoor climate control
- remote control switches and telephony.

1.12 Strategies for increasing accessibility should not be limited to people with mobility impairments but should address the wider range of disabilities including sensory impairments.

## 2. Scope

- 2.1 The scope of this research should be broad enough to be applicable to the current housing and demographic position and emerging trends. The research will report on generic strategies for consideration by industry and government and the relative merits of these strategies.

## 3. Objectives

- 3.1 The main objective is to provide an authoritative and comprehensive document that can be used by governments and industry to plan for the future supply of accessible housing, including the implementation of regulatory or other measures, to stimulate appropriate supply.

## 4. Detailed Requirements

- 4.1 The research project will involve the following tasks:
- Collection and analysis of currently available statistics on the supply and demand for visitable, adaptable or universally designed housing. This should include predictions for the future using current trends towards ageing, increasing numbers of people with disabilities, and emphasis on housing for life including ageing in place.
  - Nomination and explanation of various strategies that should be considered by governments and industry to address current and future deficiencies in accessible housing. Existing Australian and overseas approaches should be considered.
  - Reporting and analysing the strategies implemented by some local government and State government agencies to promote housing that is accessible, universally designed or suitable for the elderly.
  - Discussion of the relative merits of the most appropriate and viable strategies available to State and Territory governments to align the stock of accessible, adaptable and universally designed residential buildings with the current and future need, with respect to:
    - social and economic costs and benefits;
    - the building industry's capacity to deliver;
    - express community interest and demand and, if appropriate;
    - integration with other key health and welfare policies.
  - Draft report that would be suitable for a broad public consultation program.
  - Final report that considers the public comments and gives final recommendations.

## 5. The Boards Responsibilities

- 5.1 The ABCB responsibilities in relation to this RFT, will be to select the most suitable respondents from the information provided, using the selection criteria outlined in Section 12.
- 5.2 The ABCB will provide input during the project duration, when requested. The active involvement of selected ABCB officers within the project team is encouraged.

5.3 The ABCB will make payments on completion of the each stage of the project, based on the production of deliverables to the complete satisfaction of the ABCB.

## 6. Deliverables

6.1 On completion of the study, the consultant will provide ABCB with a detailed report highlighting the following areas:

- Executive summary
- Collection and analysis of currently available statistics on the supply and demand for visitable, adaptable or universally designed housing. This should include predictions for the future using current trends towards ageing, increasing numbers of people with disabilities, and emphasis on housing for life including ageing in place.
- Nomination and explanation of various strategies that should be considered by governments and industry to address current and future deficiencies in accessible housing. Existing Australian and overseas approaches should be considered.
- Reporting and analysing the strategies implemented by some local government and State government agencies to promote housing that is accessible, universally designed or suitable for the elderly.
- Discussion of the relative merits of the most appropriate and viable strategies available to State and Territory governments to align the stock of accessible, adaptable and universally designed residential buildings with the current and future need, with respect to:
  - social and economic costs and benefits;
  - the building industry's capacity to deliver;
  - express community interest and demand and, if appropriate;
  - integration with other key health and welfare policies.
- Consideration of public comments.
- Recommendations.

6.2 All reports will be provided to the ABCB in electronic format. The use of tables and graphics is encouraged. It's expected that the final report would be in excess of 50 pages.

6.3 The consultant should recognise that the recommendations must be based on robust evidence and analysis that is justifiable, relevant and reflects building and occupant characteristics in Australia.

## 7. Timetable

7.1 The duration of this project will be:

Stage 1	4 months from the date the tender is awarded.
Stage 2	7 months from the date the ABCB give approval for this to stage to commence.
Stage 3	7 months from the date the ABCB give approval for this stage to commence.

Stage 4            2 months from the date the ABCB give approval for this stage to commence.

It is expected that the contract will commence in April 2004.

## **8. Payment Schedule**

**8.1** Payments will be made progressively throughout the term of the project (as outlined below), based on achievement of clearly defined and physically verifiable milestones, to the complete satisfaction of the ABCB. The milestone payments will be made as follows:

Stage 1	Supply and demand analysis	30% payment (Month 4)
Stage 2	Strategy analysis	30% payment (Month 11)
Stage 3	Draft report	20% payment (Month 18)
Stage 4	Final report	20% payment (Month 20)

**8.2** The Board's standard terms of payment are 30 days from delivery of services and correctly rendered invoice to the Board.

**8.3** Notwithstanding the above timetable, Stages 2, 3 and/or 4 of the project will not commence unless the previous stage (milestone) of the project is successfully completed, to the satisfaction of the ABCB.

## **9. Further Information**

**9.1** Tenderers should direct any questions arising during the preparation of a response to this RFT or requests for clarification in writing to Jack Bramwell – Project Manager at e-mail: [jack.bramwell@abcb.gov.au](mailto:jack.bramwell@abcb.gov.au).

**9.2** The Board reserves the right to circulate questions and answers to all other Tenderers without disclosing the source of the questions or revealing the substance of a proposed tender.

## **Part 2 Evaluation**

### **10. Purpose**

**10.1** This part outlines the selection process and specifies the minimum tender requirements to be addressed by tenderers.

### **11. Proposal Content**

**11.1** Name and address of the organisation.

**11.2** The Respondent should clearly outline their understanding of the issues of national consistency with respect to the BCA.

**11.3** The Respondent should outline details on how the project will be approached and undertaken, including details of the proposed methodology. This information should be provided to the degree necessary to enable the ABCB to determine, the Respondents knowledge of the relevant issues, and the understanding of the requirement of this project for the regulatory reform process.

**11.4** Respondents are required to provide details of relevant projects, with similar requirements, successfully undertaken, including:

- (i) the organisation(s) for whom such work was undertaken;
- (ii) the nature of the tasks encompassed by the project;
- (iii) the value of the work undertaken;
- (iv) the contract officer (name, position, and contact details) within each of the listed organisations; and
- (v) an outline of the achieved benefits to the organisation resulting from the service delivery.

**11.5** The respondent is to provide details of its capacity to undertake a project of similar scope, size and complexity of this nature including:

- (i) the extent to which the respondent's own resources, will be utilised to deliver the services required, versus resources provided by sub-contractor;
- (ii) the extent to which the respondent's own resources are readily available given concurrent project activity being undertaken by the respondent; and
- (iii) provide details of the responsibilities and skills/experience profile of the respondent's personnel to be used.

**11.6** The respondent is to advise of any formal quality certification held by the respondent and which would be utilised for the proposed requirement.

**11.7** The respondent is to provide details of current insurance coverage.



## 12. Selection Criteria

12.1 Proposals will be assessed according to the criteria outlined below. Accordingly,  
Tenderers are encouraged to address the selection criteria:

- (i) previous performance in comparable projects;
- (ii) demonstrated experience, qualifications and skills of personnel to be responsible for the project; and
- (iii) understanding of the project, including knowledge of the logistical and organisational issues;
- (iv) the quality of the research plan

Value for money will be considered across each of the above criteria.

## **Part 3      Conditions of Tender**

### **13. Request for Tender**

#### **13.1 Purpose**

**13.2** By this RFT, the Australian Building Codes Board (the Board) seeks Tenders on the terms and conditions of the RFT to supply to the Board services including goods described in the RFT.

### **14. Disclaimer**

**14.1** The issue of the RFT does not in any way commit or otherwise obliges the ABCB to proceed with all or any part of this tendering process.

### **15. Tender Lodgement**

#### **16. Deadline for Lodgement of Proposals**

**16.1** Written Tenders will be received until 4pm local time in Canberra on 12 March 2004 (the 'Closing Time') at the address shown in Clause 17.1.

#### **17. Place for Lodgement of Proposals**

**17.1** Proposals are to be addressed as follows and lodged at the Tender Box:

Request for Tender (Accessible Housing in Australia)  
Australian Building Codes Board  
Department of Industry, Tourism and Resources  
Tender Box, Reception Area  
Ground Floor  
20 Allara Street  
Canberra City ACT 2601

### **18. Delivery Method**

**18.1** Subject to 18.2 tenders must be delivered by hand to the Tender Box by the closing time.

**18.2** Tenders may be sent by e-mail to [jack.bramwell@abcb.gov.au](mailto:jack.bramwell@abcb.gov.au), provided the Tenderer contacts the ABCB's project officer by telephone immediately before sending the e-mail.

**18.3** Tenders must ensure that the Tender submitted by e-mail are followed up by hard copies of the Tender, subject to 19.1.

## **19. Copies of Proposal**

**19.1** The original and two copies of the Tender are to be lodged in single-sided A4 loose leaf format. The original is to be marked as the original and each copy sequentially marked with a copy number. In the event of a discrepancy between any copy and the original, the original takes precedence.

**19.2** The ABCB may copy the tender documents as it requires for the purposes of this RFT.

## **20. Definition of a Late Proposal**

**20.1** Any proposal is late if it is lodged with the ABCB after the nominated deadline for the lodgement of proposals.

## **21. Extension of Deadline**

**21.1** Tenders received after the Closing Time will be registered as late. The decision to include a late Tender will be made by the ABCB in its absolute discretion.

**21.2** The decision to consider a late Tender or exclude it from consideration will be based on the circumstances surrounding the submission and the receipt of the late Tender. An important issue is whether the Tenderer concerned is likely to have had an opportunity to obtain some unfair advantage from late submission.

## **22. Communication with Tenderers**

**22.1** The ABCB reserves the right, at its absolute discretion, to engage in any discussions with, or seek clarification on any matter from, any Tenderer at any stage.

**22.2** The ABCB reserves the right, at its absolute discretion, to short-list tenders and seek further information from those Tenderers. In the event of a short-list being compiled by the ABCB, Tenderers not on the short-list shall be advised of that as soon as practicable.

## **23. Ownership of Proposal Documents**

**23.1** All proposal documents will become the property of the ABCB. The ABCB will not disclose your confidential information unless those details are already in the public domain, disclosure is required by law, or agreement is given for their release.

## **24. No Contract**

**24.1** The ABCB is not bound contractually or in any other way to any Tenderer to this RFT. The ABCB is not liable for any costs of compensation in relation to the consideration of this RFT or any Tender by the Tenderers to this RFT whether or not the ABCB terminates, varies or suspends the RFT process or takes any other action permitted under this RFT.

24.2 If the circumstances of this tendering process give rise to a pre-award contract, the Commonwealth's liability for breaching the pre-award contract shall be limited to expenditure reasonably incurred in tendering for this project.

## 25. Execution of Formal Agreement

25.1 Nothing in the Request for Tender or your proposal constitutes a contract with the ABCB. The ABCB intends that no contract will be formed until the ABCB signs a formal contract with the successful tenderer.

25.2 The ABCB will require the execution of a formal contract and the successful tenderer shall, within seven (7) days after being required in writing by the ABCB so to do, execute such a contract based on the Draft Form of Consultancy/Service Contract Agreement, appended at Part 4 of this document. This draft form of contract has been attached as a guide for tenderers only. The ABCB reserves the right to vary the terms and conditions.

25.3 The Commonwealth is required to enter into contract only with legal entities or legally recognised relationships eg. companies, partnerships.

## 26. Tender Responses

### 27. Consortium Tenders

27.1 A Consortium may submit a Tender on the basis that the prime Contractor will take full responsibility. The Tender must provide full details of proposed prime Contractor and sub-contractors.

### 28. Subcontracts

28.1 Tenderers are advised that the Conditions of Contract require that the Contractor does not subcontract the whole of its obligation under the Contract but may, with the prior consent of the ABCB subcontract part of its obligation.

28.2 Tenderers must provide names and addresses of proposed sub-contractors and details of their involvement in the project.

### 29. Preparation of Tenders

29.1 Tenders are made on the basis that each Tenderer acknowledges that:

- a. it has examined the RFT;
- b. the RFT specifies the ABCB's rights in respect of the RFT and the Tenderer agrees that the ABCB may exercise its rights set out in the RFT in respect of the RFT process;

- c. it sought and examined all necessary information which is obtainable by making reasonable enquires relevant to the ABCB's requirement including the risks and other circumstances which may affect a Tender;
- d. in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the ABCB other than any statement, warranty or representation contained in the RFT;
- e. it did not use the improper assistance of ABCB employees;
- f. it satisfied itself as to the correctness and sufficiency of its Tender;
- g. it is responsible for all expenses relating to its involvement in the RFT including;
  - i. preparation and lodgement of its Tender;
  - ii. any subsequent negotiations; and
  - iii. any other action or response in relation to this RFT;
- h. The ABCB is not responsible for any costs or expenses incurred by the Tenderer or any other person in responding to or taking any other action in relation to this RFT; and
- i. the Tenderer will comply with the rules set out in this RFT.

**29.2** Should a tenderer find any discrepancy, error or omission in the tender documents, the ABCB should be notified in writing thereof, on or before the date and time of closing of tenders.

### **30. Conflict Of Interest**

**30.1** A Tenderer must state any circumstances or relationships which constitute or may constitute a conflict or potential conflict of interest in respect of this RFT or the Tenderer's obligations under any resulting Contract if the Tenderer is ultimately awarded a Contract by the Department.

### **31. Confidentiality and Freedom of Information**

**31.1** Information forming part of a tender submitted in response to this RFT shall be treated as commercial in confidence to the extent requested by a Tenderer, and thus protected from disclosure subject to any legal obligations on the ABCB to disclose such information.

**31.2** Tenderers should be aware that the ABCB is subject to the operation of the *Freedom of Information Act 1982* which allows public access to government documents. If this is of

concern, the *Act* provides avenues for submissions to be made that particular information about the business, commercial or financial affairs of an entity or undertaking not be disclosed.

31.3 The ABCB is required by law to publish summary details of most of its contracts in the *Commonwealth of Australia Gazette - Purchasing and Disposals* and may publish other details in the public interest.

## 32. Government Guidelines and Legislation

32.1 The ABCB requires suppliers to comply with their obligations, if any, under the following guidelines and legislation:

- a. Affirmative Action
  - i. *Affirmative Action (Employment Opportunity for Women) Act 1986.*
  - ii. Information about the legislation can be obtained from the Affirmative Action Agency.
- b. Disability Discrimination
  - i. *Commonwealth Disability Discrimination Act 1992.*
  - ii. Information about the legislation can be obtained from the Publicity Officer, Human Rights and Equal Opportunity Commission.
- c. Occupational Health and Safety
  - i. *Occupational Health and Safety (Commonwealth Employment) Act 1991.*

In the preparation and submission of their tender responses, tenderers shall ensure that they comply with the relevant Commonwealth policies.

## 33. Assessment of Tenders

## 34. Evaluation and Selection

34.1 Tenderers are advised to provide detailed responses against each element contained in Part 2. Proposals will be assessed for overall best value for money for the Commonwealth. The ABCB does not have to accept the lowest-priced proposal.

34.2 The ABCB reserves the right to set priorities and weight the assessment criteria or vary those priorities or weighting at its absolute discretion.

34.3 The ABCB reserves the right to make available to advisers and third parties a copy of any Tenderer's proposals or part of the proposals for evaluation purposes only.

34.4 Tenderers may be shortlisted and inspections of samples sought.

34.5 The ABCB may conduct inspections of the short listed Tenderers' facilities during the Tender evaluation phase, or prior to appointment of the preferred Tenderer or shortlist of Tenderers.

34.6 Additionally, the ABCB may interview key personnel of the proposed contract team and customers for whom the Tenderer has previously carried out work, to assess the similarity of the work to the ABCB's requirements, and to obtain independent assessments of the Tenderers performance.

34.7 The ABCB may accept all, or part of a proposal, or may accept none of the proposals.

### **35. Clarification of Tenders**

35.1 During evaluation of the Tender process the ABCB reserves the right to seek clarification from and to enter into discussions with any or all of the Tenderers in relation to their Tender to provide the Services.

35.2 The ABCB may require a Tenderer to submit additional information to allow further consideration of its Tender before that Tender is further considered, despite any other requirements of the RFT.

### **36. Right to Conduct Security, Probity and Financial Checks**

36.1 The ABCB in its absolute discretion reserves the right to conduct such security, probity and financial checks, on Tenderers for the purpose of evaluating responses to this RFT or any other stage of Tendering process for the Services described in this RFT, as it deems necessary.

### **37. Probity Obligations**

37.1 If a Tenderer is found to have made false or misleading claims or statements, or obtains confidential information, or receives improper assistance, the ABCB reserves the right to reject at any time any Tender lodged by or on behalf of the Tenderer.

37.2 Each Tenderer and its officers, employees, agents and advisers must not engage in any collusive Tendering, anti-competitive conduct or other similar conduct with any other Tenderer or any other person in relation to the preparation or lodgement of Tenders.

### **38. Acceptance of Proposals**

### **39. Notification of the Preferred Tenderers**

39.1 A Tender will not be deemed to have been provisionally accepted unless and until notice in writing for and on behalf of the ABCB of such acceptance is given to the Tenderer. Provisional acceptance of a Tender does not give rise to a contract; a contract is only formed if and when the Commonwealth and the preferred Tenderer signs a formal contract.

### **40. Disclosure of Information**

40.1 No Tenderer shall furnish any information, make any statement or issue any document or other written or printed material concerning the acceptance of any proposal in response to this Request For Tender for publication in any of the media without the prior written approval of the ABCB.

**41. Advice to Unsuccessful Tenderers**

**41.1** The ABCB will notify each unsuccessful Tenderer that its Tender has not been accepted no later than a week after the signing of the Contract, or the end of the Tender process, whichever is the later.

**42. Debriefing for Unsuccessful Tenderers**

**42.1** Unsuccessful Tenderers will be offered the opportunity for a debriefing. Details for arranging the debriefing will be given to Tenderers in writing at the conclusion of the tender process.



## **Part 4     Draft Form of Consultancy/Service Contract**

Unless you expressly state otherwise, you are taken to agree or comply with the Conditions of Tender and Deed.

**See Attachment A for Standard Form of Contract**

## Part 5 Tenderer's Details

To be completed by all Tenderers and lodged with proposals.

Company Name: \_\_\_\_\_

ACN: \_\_\_\_\_

Or

If a Partnership, the Trading name (if any) and full name of the Partners:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or:

If a Sole Trader, Trading Name (if any) and the full name of the Trader:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Contact for Liaison and Notices:

Mr/Mrs/Ms/Dr \_\_\_\_\_

Postal Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone ( ) \_\_\_\_\_

Facsimile ( ) \_\_\_\_\_

E-Mail \_\_\_\_\_

**ATTACHMENT A - STANDARD CONSULTANCY CONTRACT**

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THIS CONTRACT is made on \_\_\_\_\_ 200x

## PARTIES

[insert name of Executive Director], Executive Director of the Australian Building Codes Board, an unincorporated body established by agreement between the Participating Governments (as this term is defined for the purposes of this Agreement) as agent for the Participating Governments (**the Executive Director**)

AND \_\_\_\_\_ [insert name, ABN or ACN and registered address] (**the Contractor**)

## PURPOSE

- A. By an agreement dated 1 March 1994 (the ABCB Agreement) the Commonwealth of Australia, the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania, and the Australian Capital Territory and Northern Territory (the Participating Governments) established the Australian Building Codes Board (ABCB).
- B. Part C of the Standing Orders made under the ABCB Agreement establishes the position of Executive Director. The Executive Director, at the direction of the ABCB, co-ordinates, manages and implements the functions of the ABCB and has responsibilities which include administration and operational support and any other matter determined by the ABCB.
- C. By a Deed dated 11 October 1996 (the Agency Deed) the Executive Director has been appointed as an agent of the Participating Governments for the purposes of entering into contracts and licences for the Exploitation of the ABCB Material, as directed by the ABCB.

Please note our comment in the commentary regarding this Recital E.

- D. The Executive Director, as agent for the Participating Governments, seeks the provision of various services related to [insert general description of services required] and specified in Item B of the Schedule [the Services].

### **OR where appropriate:**

- E. The Contractor has fully informed itself of all aspects of the work required to be performed and has submitted a proposal and quotation referred to Item A of the Schedule [Proposal and Quotation].
- F. The Executive Director has agreed to engage the Contractor to provide the Services on the terms and conditions of this Agreement.

## OPERATIVE PART

### 1. INTERPRETATION

1.1 In this Contract, unless the contrary intention appears:

ABCB means the Australian Building Codes Board.

ABCB Material	<p>means any Material:</p> <ul style="list-style-type: none"> <li>(a) provided by the Executive Director to the Contractor for the purposes of this Contract; or</li> <li>(b) copied or derived at any time from the Material referred to in paragraph (a);</li> </ul>
Business Day	<p>means any day on which banks are open for business in the Australian Capital Territory.</p>
Confidential Information	<p>means information that is provided by the Executive Director to the Contractor:</p> <ul style="list-style-type: none"> <li>(a) is by its nature confidential;</li> <li>(b) is designated by the Executive Director as confidential; or</li> <li>(c) the Contractor knows or ought to know is confidential;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>(d) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;</li> <li>(e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Commonwealth; or</li> <li>(f) has been independently developed or acquired by the Contractor.</li> </ul> <p>means information that: if provided by the Executive Director to the Contractor:</p> <ul style="list-style-type: none"> <li>(g) is listed in Item S of the Schedule;</li> <li>(h) is by its nature confidential;</li> <li>(i) is designated by the Executive Director as confidential; or</li> <li>(j) the Contractor knows or ought to know is confidential;</li> </ul> <p>or, if provided by the Contractor to the Commonwealth:</p> <ul style="list-style-type: none"> <li>(k) is listed in Item S of the Schedule;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>(l) is or becomes public knowledge other than by breach of this Contract;</li> <li>(m) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party; or</li> <li>(n) has been independently developed or acquired by the party in possession of the information.</li> </ul>
Option 1 [should use where it is possible to identify the CI]	
Contract Contractor	<p>means this contract including any Schedules and any attachments. includes the officers, employees, volunteers, bailees, agents and subcontractors of the Contractor.</p>

Contract Material	means any Material: <ul style="list-style-type: none"> <li>(o) created for the purposes of this Contract;</li> <li>(p) provided or required to be provided to the Executive Director as part of the Services; or</li> <li>(q) derived at any time from the Material referred to in paragraphs (a) or (b).</li> </ul>
Copies	any document, device, article or medium in which ABCB Material, Contract Material or Confidential Information is embodied.
Department	means the Department of Industry, Tourism and Resources and its successor(s).
Existing Material	means Material specified in Item N of the Schedule as existing prior to the execution of the Contract, or acquired or created after the execution of the Contract other than as a result of the performance of the Contract, and used in connection with the Services, including any copies or derivations of such Material;
Intellectual Property	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
Material	includes information and the subject matter of any category of Intellectual Property rights.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Project Officer	means the person specified by name or position in Item K of the Schedule [Project Officer] or any substitute notified in writing to the Contractor;
Services	means the services described in Item B of the Schedule. <b>or</b> means the services described in Item B of the Schedule and includes the provision to the Executive Director of the Material specified in Item C of the Schedule [Required Contract Material].
Specified Personnel	means the personnel specified in Item J of the Schedule [Specified Personnel] as personnel required to perform the work constituting the Services.
Writing	means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Contract, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;



- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) 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;
- (h) reference to an Item is to an Item in the Schedule;
- (i) the Schedule and any attachments form part of this Contract;
- (j) where any conflict arises between the terms and conditions contained in the clauses of this Contract and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- (k) where any conflict arises between any part of a Schedule and any part of an attachment, the Schedule prevails; and
- (l) reference to a Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Contract, including as amended or replaced from time to time by agreement in writing between the parties.

## **2. ENTIRE AGREEMENT AND VARIATION**

- 2.1 This Contract records the entire agreement between the parties and supersedes all communications, negotiations, arrangements, either oral or written, between the parties with respect to the subject matter of this Contract.
- 2.2 No variation of this Contract, including in particular the scope of the Services, is binding on either party unless it is agreed in writing and signed by both parties.
- 2.3 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.

## **3. PROVISION OF SERVICES**

- 3.1 The Contractor agrees:
  - (a) to perform the Services in accordance with relevant best practice, including any Commonwealth and industry standards and guidelines specified in Item D of the Schedule [Standards and Best Practice] [**or after the word 'including' insert 'industry standards and guidelines specified from time to time in writing by the Project Officer'**];
  - (b) to comply with the time frame for the performance of the Services specified in Item B of the Schedule [Time-frame];
  - (c) to liaise with the Project Officer, provide any information the Project Officer may reasonably require and comply with any reasonable request made by the Project Officer;
  - (d) to at no additional cost to the Executive Director, establish all necessary facilities for the effective conduct and management of its responsibilities under this Contract;

- (e) to ensure and warrant that its employees, volunteers, bailees, agents and subcontractors exercise the highest standards of skill, care and diligence in the performance of the Services that would be expected of a professional provider of any such Services;
- (f) that the Services will be fit for their intended purpose;
- (g) to at all times exercise the utmost good faith in the best interests of the Executive Director and keep the Executive Director regularly informed as to all matters affecting the performance of its obligations under the Contract;
- (h) to submit regular reports on its performance of the Services at times and in a format directed by the Executive Director.

#### **4. FEES, ALLOWANCES AND ASSISTANCE**

4.1 The Executive Director agrees to:

- (a) pay the fees specified in Item F of the Schedule [Fees];
- (b) pay the allowances and meet the costs specified in Item G of the Schedule [Allowances and Costs]; and
- (c) provide the facilities and assistance specified in Item G of the Schedule [Facilities and Assistance].

4.2 The Executive Director will be entitled, in addition to any other right it may have, to delay payment or any instalment of Fees or allowances until the Contractor has completed to the satisfaction of the Executive Director that part of the Services to which the payment relates.

#### **5. TAXES, DUTIES AND GOVERNMENT CHARGES**

- 5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract shall be borne by the Contractor and shall be included within the Fees.
- 5.2 The amount paid by the Executive Director as determined in accordance with clause 4 includes Goods and Services Tax (GST) for supplies made under this Contract which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). For the purposes of this clause 5, the expressions 'adjustment note', 'taxable supply' and 'tax invoice' have meanings as given to those expressions in the GST Act.
- 5.3 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract shall be borne by the Contractor and, with the exception of the GST, shall be included within the fees.
- 5.4 The Contractor agrees to submit invoices for payment in the manner specified in Item I of the Schedule [Invoice Procedures] and, in relation to taxable supplies made under this Contract, the Contractor agrees to issue the Executive Director with a tax invoice in accordance with the GST Act.
- 5.5 Where the Contractor incorrectly states the amount of GST payable, or paid, by the Executive Director on an otherwise valid tax invoice, the Contractor will issue to the Executive Director a valid adjustment note in accordance with the GST Act.

5.6 If the Executive Director or the Participating Governments make, or are assessed by the Australian Tax Office (ATO) as having made a taxable supply to the Contractor under or in connection with the Contract, the Executive Director shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Executive Director on behalf of the Participating Governments or the Participating Governments.

## **6. SPECIFIED PERSONNEL**

- 6.1 The Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this Contract and warrants that the Specified Personnel are properly qualified for the tasks they are to perform and will act, in all circumstances in a fit and proper manner.
- 6.2 Where Specified Personnel are unable to perform the work, the Contractor agrees to notify the Executive Director immediately.
- 6.3 The Executive Director may, at its absolute discretion, request the Contractor to remove Specified Personnel from work in relation to the Services.
- 6.4 Where clauses 6.2 or 6.3 apply, the Executive Director may request the Contractor to provide replacement personnel acceptable to the Executive Director at no additional cost and at the earliest opportunity.
- 6.5 If the Contractor does not comply with any request made under clause 6.4 the Executive Director may terminate this Contract in accordance with the provisions of clause 20 [Termination for Default].

## **7. RESPONSIBILITY OF CONTRACTOR**

- 7.1 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 Executive Director, Project Officer or the Participating Governments 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 Executive Director of Specified Personnel or replacement personnel.

## **8. ABCB MATERIAL**

- 8.1 The Executive Director agrees to provide Material to the Contractor as specified in Item L of the Schedule [Material to be Provided by Executive Director].
- 8.2 The Contractor does not obtain any interest, be it legal or equitable, whatsoever in any ABCB Material.
- 8.3 The Executive Director on behalf of the Participating Governments grants to the Contractor a royalty free, non-exclusive licence to use, reproduce and adapt the ABCB Material for the purposes of this Contract.

8.4 The Contractor shall ensure that the ABCB Material is used, reproduced or adapted only for the purposes of this Contract.

8.5 The Contractor agrees to ensure that all ABCB Material is used strictly in accordance with any conditions or restrictions set out in Item M of the Schedule [Use of ABCB Material], and any direction by the Executive Director.

## **9. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL**

9.1 The parties acknowledge that Intellectual Property in the Contract Material vests and shall remain vested in the Participating Governments.

9.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Existing Material, but the Contractor grants to the Participating Governments a permanent, irrevocable, royalty free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit any such Existing Material in conjunction with the other Contract Material.

9.3 If requested by the Executive Director, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 9.

9.4 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 9.

9.5 The Executive Director, on behalf of the Participating Governments, grants to the Contractor a royalty free, non-exclusive licence to use, reproduce and adapt the Contract Material for the purposes of this Contract.

9.6 The Contractor shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of performing its obligations under this Contract.

## **10. MORAL RIGHTS**

10.1 In this Contract 'moral rights' has the same meaning given in Part IX of the *Copyright Act 1968*.

10.2 For the purposes of this clause 'Specified Acts' in relation to particular Material, means the following classes or types of acts or omissions performed by or on behalf of the Participating Governments:

(a) those which would, but for this clause, infringe the author's right of attribution of authorship;

(b) those which would, but for this clause, infringe the author's right of integrity of authorship;

but does not include:

(c) those which would infringe the author's right not to have authorship falsely attributed.

10.3 Where the Contractor is a natural person and the author of any Contract Material, he or she consents to the Specified Acts (whether occurring before or after the consent is given).

10.4 In any other case, the Contractor warrants or undertakes that:

- (a) the author of the Contract Material has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Executive Director and the Participating Governments;
- (b) the author of any Existing Material has given or will give written consent to the Specified Acts (whether occurring before or after the consent is given) in relation to such Contract Material (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Executive Director and the Participating Governments in relation to such material used, reproduced, adapted and exploited in conjunction with the Contract Material.

## **11. DEALINGS WITH COPIES**

- 11.1 This clause 11 applies to Copies in which ABCB Material, Contract Material or Confidential Information is embodied.
- 11.2 Property in all Copies vests or will vest in the Participating Governments.
- 11.3 The Contractor agrees to establish and maintain procedures to secure the Copies against loss and unauthorised access, use, modification or disclosure.
- 11.4 Upon the expiration or termination of this Contract the Contractor agrees to deliver to the Executive Director or otherwise deal with all Copies as directed by the Executive Director.
- 11.5 This clause 11 applies subject to any provision to the contrary in Item O of the Schedule [Dealings with Copies].

## **12. DISCLOSURE OF INFORMATION**

- 12.1 The Contractor agrees not to disclose to any person other than Executive Director, ABCB Material, Contract Material or any Confidential Information relating to this Contract or the Services without prior approval in writing from the Executive Director.
- 12.2 The Executive Director may impose any conditions or restrictions it considers appropriate when giving its approval under clause 12.1.
- 12.3 The Executive Director may at any time require the Contractor to give, and to arrange for its officers, employees, agents and subcontractors engaged in the performance of the Services to give, undertakings in writing in a form required by the Executive Director, relating to the non-disclosure of Confidential Information.
- 12.4 If the Contractor receives a request under clause 12.3 it agrees to arrange promptly for all such undertakings to be given.
- 12.5 The obligations on the Contractor under this clause 12 will not be taken to have been breached where the information referred to is legally required to be disclosed.
- 12.6 The Executive Director on behalf of the Participating Governments may disclose the terms and conditions of this Contract and any information arising from the performance of this Contract:
  - (a) to the Executive Director's advisers who are advising on Contract-related issues, or internal management personnel, on a need to know basis;

- (b) to any Commonwealth Minister, or the Minister's advisers;
- (c) without limiting the application of this clause 12.6:
  - (i) in order to comply with the requirements of any regulatory body;
  - (ii) in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted by the Commonwealth Auditor-General or the Federal Privacy Commissioner pursuant to clause 18; or
  - (iii) in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia, for information;
- (d) is legally required to be disclosed;
- (e) is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, the Participating Government's under this Contract or otherwise;
- (f) is in the public domain otherwise than due to a breach of this clause 12;
- (g) has been independently developed or acquired by the Executive Director or the Participating Governments without reference to the Confidential Information of the Contractor; or
- (h) is in the possession of the Executive Director or Participating Governments without restriction in relation to disclosure before the date of receipt by those parties.

**OR** (where CI identified for both the Participating Governments and Contractor CI- reciprocal obligations)

- 12.1 Subject to clause 12.5, neither party will, without the prior written consent of the other party, use or disclose any Confidential Information of the other party.
- 12.2 In giving written consent to the use or disclosure of the Participating Government's Confidential Information, the Executive Director may impose such conditions as it thinks fit.
- 12.3 The Executive Director may at any time require:
  - (a) the Contractor to arrange for its Staff; or
  - (b) any person with a Third Party Interest;
 to give a written undertaking in a form reasonably required by the Executive Director relating to the use and non-disclosure of the Participating Government's Confidential Information.
- 12.4 If the Contractor receives a request under clause 12.3, it must promptly arrange for all such undertakings to be given.
- 12.5 The obligations on the parties under this clause 12 will not be taken to have been breached to the extent that Confidential Information:
  - (i) is disclosed by a party in order to comply with obligations, or exercise rights, under this Contract;
  - (j) is disclosed to a party's advisers who are advising on Contract-related issues, or internal management personnel, on a need to know basis;
  - (k) is disclosed to any Commonwealth Minister, or the Minister's advisers;
  - (l) without limiting the application of this clause 12.5, is disclosed:

- (i) in order to comply with the requirements of any regulatory body;
- (ii) in order to respond to a request that is made by a Royal Commission, a body undertaking an administrative or statutory review, or an audit or inquiry (whether within or external to the Commonwealth), including a review, audit or inquiry that is conducted by the Commonwealth Auditor-General or the Federal Privacy Commissioner pursuant to clause 18; or
- (iii) in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia, for information;
- (m) is legally required to be disclosed;
- (n) is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, the Participating Government's under this Contract or otherwise;
- (o) is in the public domain otherwise than due to a breach of this clause 12;
- (p) has been independently developed or acquired by a party without reference to the Confidential Information of the other party; or
- (q) is in the possession of a party without restriction in relation to disclosure before the date of receipt by that party.

12.6 Where a person discloses Confidential Information to another person pursuant to clauses 12.5 (a), (b), (c) or (d), the disclosing person must notify the receiving person of the existence and content of this clause 12 and the sensitivity of the information being disclosed.

12.7 The obligations under this clause 12 continue, in relation to the information described in the Item S of the Schedule, for the period, or the respective periods, set out in the Schedule, commencing on [the date of this Contract/Commencement Date], and the parties agree that these obligations survive for that period even if this Contract is terminated before the expiration of that period.

12.8 "Staff" means a party's employees, agents, contractors or advisers engaged in the performance or management of this Contract; "Third Party Interest" means any legal or equitable right, interest, power or remedy in favour of any person other than the Participating Governments, the Executive Director or the Contractor in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

### **13. PROTECTION OF PERSONAL INFORMATION**

13.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing Services under the Contract.

13.2 The parties acknowledge the Contractor is bound by the National Privacy Principles (NPP's) or an approved privacy code to the extent that compliance with the NPP's/approved privacy code are/is not inconsistent with a provision of the Contract.

13.3 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 under the Contract:

- (a) to use Personal Information held or controlled by it in connection with the Contract only for the purposes of fulfilling its obligations under this Contract;
- (b) to take all reasonable measures to ensure that Personal Information in its possession or control in connection with the Contract is protected against loss and unauthorised access, use, modification or disclosure;
- (c) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 13 of the Privacy Act, which if done or engaged in by an agency would amount to a breach of that IPP;
- (d) to carry out and discharge the obligations contained in the IPP's in section 13 of the Privacy Act as if it were an agency under that Act and, in particular, to comply with the requirements relating to collection, storage, access, alteration, use and disclosure of Personal Information;
- (e) not to engage in an act or practice that would breach the Privacy Act including but not limited to:
  - (i) engaging in an act or practice that would breach of an National Privacy Principle (NPP) in Schedule 3 of the Privacy Act where applicable (or an approved privacy code binding a party to this Contract), and in particular NPP's 7 to 10, except where that act or practice is authorised by this Contract; and
  - (ii) using or disclosing any Personal Information obtained in the performance of this contract for direct marketing purposes, unless that use or disclosure is necessary to meet an obligation under this Contract;
- (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 approved privacy code binding a party to this Contract;
- (g) to immediately notify the Executive Director or the Project Officer if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 13, whether by the Consultant or any subcontractor;
- (h) to cooperate with any reasonable demands or inquiries made by the Project Director on the basis of the exercise of the functions of the Privacy Commissioner under the Privacy Act 1988 including, but not limited to, a request from the Project Director to comply with a guideline concerning the handling of Personal Information;
- (i) to ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes, to observe the obligations of the Contractor set out in this clause 13.
- (j) comply in so far as is practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time-to-time relating to the handling of Personal Information;
- (k) comply with any reasonable direction by the Project Officer to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the



Sub-Contractor that the Privacy Commissioner considers a breach of any obligations under this clause 13.

- 13.4 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 a subcontractor does not do an act, or engage in a practice, that would breach an IPP if engaged in by the agency.
- 13.5 The Contractor agrees to indemnify the Executive Director and the Participating Governments in respect of any loss, liability or expense suffered or incurred by the Institute which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 13, or a subcontractor under the subcontract provisions referred to in subclause 13.4.
- 13.6 In this clause X, the terms 'agency', 'approved privacy code', 'Information Privacy Principles' (IPP's), and 'National Privacy Principles' (NPP's) have the same meaning as they have in section 6 of the Privacy Act.
- 13.7 The IPPs and the NPPs are set out in the Schedule at Item '?'.  
'?
- 13.8 This clause will survive the expiration or earlier termination of the Contract.

#### **14. APPLICABLE LAW**

- 14.1 This Contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.

#### **15. COMPLIANCE WITH LAW**

- 15.1 The Contractor agrees, in carrying out this Contract, to comply with:

- (a) all relevant statutes, regulations, by laws and requirements of the Commonwealth (particularly the Crimes Act 1914, Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992), or of any State, Territory, local authority or the Executive Director; and
- (b) any obligations it has under the Equal Opportunity for Women in the Workplace Act 1999 ("the Act") and must not enter into a subcontract under this contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace, as an employer currently not complying with that Act.

#### **16. CONFLICT OF INTEREST**

- 16.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict with the interests of the Executive Director or the Participating Governments exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its officers, employees, agents or subcontractors.
- 16.2 If, during the term of this Contract a conflict of interest arises, or appears likely to arise, the Contractor agrees to:
- (a) notify the Executive Director immediately in writing;
  - (b) make full disclosure of all relevant information relating to the conflict;
- and

- (c) take such steps as the Executive Director may reasonably require to resolve or otherwise deal with the conflict.
- 16.3 If the Contractor does not notify the Executive Director or is unable or unwilling to resolve or deal with the conflict as required, the Executive Director may terminate this Contract in accordance with the provisions of clause 25 [Termination for Default] of this Contract.
- 16.4 The Contractor agrees that it will not, and will use its best endeavours to ensure that any officer, 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 Executive Director and the Participating Governments fairly and independently.

## **17. SECURITY REQUIREMENTS**

- 17.1 The Contractor agrees that when using the Department's or ABCB's premises or facilities for the purposes of the Services, it will comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Department's or ABCB's smoke-free work-place policy) whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.
- 17.2 The Contractor must, and must ensure that its employees, officers, agents and subcontractors:
- (a) comply with all relevant security requirements:
    - (i) specified in the Commonwealth Protective Security Manual 2000 as amended from time to time; or
    - (ii) as specified by the Executive Director from time to time.
- 17.3 The Contractor agrees to, at the Executive Director's reasonable request, and at no additional cost to the Executive Director or the Participating Governments, supply written security reports to the Executive Director in a form as agreed from time to time.

## **18. ACCESS TO CONTRACTOR'S PREMISES**

- 18.1 The Contractor will grant access to the premises of the Contractor or premises occupied by the Contractor to the Executive Director, persons authorised by the Executive Director, the Auditor General (or the delegate of the Auditor General), or the Privacy Commissioner (or the delegate of the Privacy Commissioner), at all reasonable times to:
- (a) access, inspect and copy data, records, accounts and other financial material or other Material, including but not limited to, ABCB Material and Contract Material, which are related to the Contract, however stored;
  - (b) in the custody, possession or control of the Contractor, its officers, employees, agents or subcontractors, for purposes associated with the Contract including any security or performance reviews.
- 18.2 The Executive Director will have access to any Executive Director or Participating Government's assets located on the premises of the Contractor or the premises occupied by the Contractor which come into existence as a result of the Contract.

- 18.3 In any case of documents, records or information stored on a medium other than in writing, the Contractor will make available on request, and at no expense to the Executive Director, the Auditor General (or the delegate of the Auditor General), or the Privacy Commissioner (or the delegate of the Privacy Commissioner) such facilities as may be necessary to enable a legible reproduction to be created.
- 18.4 The requirement for access as specified in clause 18.1 does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- 18.5 In exercising the rights granted by this clause 18, the Executive Director and the Participating Governments shall use its reasonable endeavours to not interfere with the Contractor's performance under this Contract in any material respect. If, in the Contractor's reasonable opinion there is likely to be a significant delay in the Contractor discharging an obligation under this Contract because of a cause beyond the reasonable control of the Contractor and as a direct result of the Executive Director's action under this clause 19, the Contractor may request a reasonable extension of time.
- 18.6 The Executive Director shall not refuse a request for extension of time under this clause 18 without reasonable grounds for doing so.
- 18.7 The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause permitting the Executive Director, person authorised by the Executive Director, the Auditor General (or the delegate of the Auditor General), or the Privacy Commissioner (or the delegate of the Privacy Commissioner) to have access as specified in this clause 18.
- 18.8 Clause 18 applies for the term of the Contract and for a period of seven years from the date of expiration or termination.

## **19. INDEMNITY**

- 19.1 The Contractor agrees to indemnify the Executive Director, the Participating Governments, their officers, employees and agents (in this clause referred to as 'those indemnified') from and against any:
- (a) liability incurred by any of those indemnified;
  - (b) loss of or damage to property of the Executive Director or the Participating Governments; or
  - (c) loss or expense incurred by those indemnified 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, its officers, employees, agents or subcontractors in connection with this Contract;
    - (e) any breach by the Contractor of its obligations or warranties under this Contract;
    - (f) any use or disclosure by the Contractor, its officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Contract; or

- (g) the use by the Executive Director or the Participating Governments of the Contract Material,

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

19.2 The Contractor's liability to indemnify those indemnified under clause 19.1 will be reduced proportionately to the extent that any negligent act or omission of those indemnified contributed to the relevant liability, loss or damage, or loss or expense.

19.3 The right of those indemnified to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but those indemnified are not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

## **20. INSURANCE**

20.1 The Contractor agrees, for so long as any obligations remain in connection with this Contract:

- (a) to effect and maintain the insurance specified in Item P [Insurance], for all the Contractor's obligations under this Contract, including those which survive the expiration or termination of this Contract; and
- (b) upon request by the Executive Director, provide proof of insurance acceptable to the Executive Director.

## **21. DISPUTE RESOLUTION**

21.1 Subject to subclause 21.4, 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 persons who have authority to intervene and direct some form of resolution.

21.2 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.

21.3 Despite the existence of a dispute, each party will (unless requested not to do so) continue to perform its obligations under this Contract.

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

21.5 This clause 21 does not apply to:

- (a) action by either party under or purportedly under clause 23 [Termination For Default],
- (b) action by the Executive Director under or purportedly under clause 4 [Fees, Allowances and Assistance], or clause 22 [Termination and Reduction for Convenience]; or
- (c) either party commencing legal proceedings for urgent interlocutory relief.

## **22. TERMINATION AND REDUCTION FOR CONVENIENCE**

22.1 The Executive Director may, at any time by notice, terminate this Contract or reduce the scope of the Services. Termination or reduction will take effect on and from the date specified in the notice.

22.2 Upon receipt of a notice of termination or reduction the Contractor agrees to:

- (a) stop work as specified in the notice;

- (b) take all available steps to minimise loss resulting from that termination or reduction and to protect ABCB Material and Contract Material; and
- (c) continue work on any part of the Services not affected by the notice.

22.3 Where there has been a termination or reduction under clause 22.1, the Executive Director and the Participating Governments will be liable only for:

- (a) payments and assistance under clause 4 [Fees, Allowances and Assistance] for services rendered before the effective date of termination or reduction provided that the services have been carried out in accordance with the Contract and the Contractor is not otherwise in breach of the Contract; and
- (b) subject to subclause 22.5, reasonable costs incurred by the Contractor and directly attributable to the termination or reduction, provided the costs are fully substantiated to the satisfaction of the Executive Director.

22.4 Where there has been a reduction in the scope of the Services, the Executive Director and the Participating Government's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 4 [Fees, Allowances and Assistance] will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Services.

22.5 The Executive Director and the Participating Governments will not be liable to pay compensation under clause 22.3(b) 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 F of the Schedule [Fees].

22.6 The Contractor will not be entitled to compensation for loss of prospective profits.

### **23. TERMINATION FOR DEFAULT**

23.1 Where the Executive Director [a party] fails to satisfy any of its obligations under this Contract, the Executive Director [other party] if he [it] considers that the failure is:

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

23.2 The Executive Director may also, by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Contractor:

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

23.3 Upon receipt of a notice of termination either under 23.1 or 23.2 the Contractor shall:

- (a) stop work as specified in the notice;

- (b) take all available steps to minimise loss resulting from that termination and to protect ABCB Material and Contract Material; and
- (c) continue work on any part of the Services not affected by the notice.

## **24. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 24.1 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the ABCB, the Executive Director or the Participating Governments, or as otherwise able to bind or represent the ABCB, the Executive Director or the Participating Governments.
- 24.2 The Contractor is not by virtue of this Contract an officer, employee, partner or agent of the ABCB, the Executive Director or the Participating Governments, nor does the Contractor have any power or authority to bind or represent the ABCB, the Executive Director or the Participating Governments.

## **25. WAIVER**

- 25.1 A waiver by the Executive Director in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.
- 25.2 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 25.3 A provision or right created under this Contract cannot be waived except in writing signed by the party granting the waiver.
- 25.4 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 25.5 In this clause 26, 'rights' means rights or remedies provided by this Contract or at law.

## **26. SUBCONTRACTING, ASSIGNMENT & NOVATION**

- 26.1 The Contractor shall not, without the prior written approval of the Executive Director, subcontract the performance of any part of the Services. In giving written approval, the Executive Director may impose such terms and conditions as it thinks fit.
- 26.2 The Contractor shall be fully responsible for the performance of the Services notwithstanding that the Contractor has subcontracted the performance of any part of the Services.
- 26.3 The Contractor cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Executive Director.
- 26.4 The Contractor agrees not to consult with any other person or body other than a wholly owned subsidiary of the Contractor for the purposes of entering into an arrangement that will require novation of the Contract without first consulting the Executive Director.

## **27. NOTICES**

27.1 Any notice, request or other communication to be given under this Contract is to be in writing and dealt with as follows:

- (a) if given by the Contractor to the ABCB – marked for the attention of the Project Officer at the address indicated in Item Q [ABCB's Address for Notices] or as otherwise notified by the Executive Director; or
- (b) if given by the ABCB to the Contractor – signed by the Project Officer and marked with the address indicated in Item R [Contractor's Address for Notices] or as otherwise notified by the Contractor.

27.2 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.

27.3 A 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.

## **28. SURVIVAL OF CLAUSES**

28.1 Clauses 8, 9, 10, 12, 13, 14, 18, 19, 21 and 26 shall survive the expiration or earlier termination of this Contract.

## THE SCHEDULE

### 42.2 A. **Proposal and Quotation (see Purpose)**

The Purpose statement at the Contract's beginning refers in paragraph F to this Item. Describe here the documentation which formed the basis of the Contractor's proposal and quotation in the pre-contractual stages. This may have been a formal tender, with parts describing how the task will be approached and other parts setting out the expected quotation. This may, however, have been a letter (for which paragraphs might be mentioned by number) or even a file note made of a telephone conversation (for which perhaps refer to a file number). It might also be appropriate to refer to any background tender specification which the ABCB provided for the Contractor and other tenderers to prepare an offer.

Where the actual payment under the Contract differs from the Quotation, it is important to clarify that the Proposal does not supersede the agreement regarding Fees (etc) set out in Item F [Fees].

This Item could also be used to define the Proposal (or documents comprising the Proposal) for reference as necessary below, such as in Item B [Services].

Where the proposal and quotation cannot be attached easily then they might be incorporated by reference through precise description (eg date, author, date received etc).

A copy of the proposal and/or quotation might be an appropriate attachment to the Contract.

### 42.3 B. **'Services' (see clauses 1.1 and 3.1)**

The title of the Services and a complete and detailed statement of work to be undertaken should be included. This might be done by reference to the documentation referred to in Item A [Proposal and Quotation].

This Item should be completed by giving a full description of the Contractor's obligations, work to be performed, expected outcomes and clear performance measures by which standards can be tested. Ensure that particulars set out here are consistent with the body of the Contract, since paragraph 1.2(j) of the Contract provides that the Contract prevails over the Schedule Items to the extent of any inconsistency.

### 42.4 C. **Required Contract Material (see clauses 1.1 and 3.1)**

The nature and extent of the Contract Material that is required to be produced and delivered as part of the Services should be specified in detail (eg. a report, interim reports, plans, models, specifications etc.) including provisions as to the form (eg. documents, floppy disk, CD ROM or other media) in which the Material is to be produced as well as any equipment necessary to access the Material.

Note that Material not specified in advance, unless it is clearly created for the purposes of this Contract, may not become Contract Material until actual delivery. Specify also the manner and timing of delivery of intermediate and final stages if this is not specified elsewhere.

### 42.5 D. **Standards and Best Practice (see clause 3.1)**

This is an important provision for establishing some objective standards which the Contractor must meet in preparing quality work.

### 42.6 E. **Time-frame (see clause 2.1)**

The time-frame for provision of the Services, including the delivery of Contract Material, should be set out specifying all relevant dates: eg, commencement, progress or interim stages and completion. If progressive delivery of the Contract Material is required a timetable should be specified. In some cases it may be appropriate to specify dates in a relative way i.e., by reference to antecedent events.

### 42.7 F. **Fees (see clause 4)**

Specify details of fees to be paid by the Executive Director to the Contractor. This obligation should be linked, as appropriate, to instalment payments against progressive



delivery of the Services or the Contract Material, acceptance of the Services or Material, by the Project Officer and observance of specified invoicing procedures. For example: Fees are payable at the rate of \$ \_\_\_\_\_ per day within 30 days of receipt of a correctly rendered invoice to the Executive Director.

Payment before Services are delivered should only be made after any appropriate authority has been obtained in accordance with the relevant internal procedures. A preferable formulation is to tie the payment to specific results, rather than times (even though Item E [Time-frame] may specify when those results are expected):

The total fee for the Services is \$ \_\_\_\_\_ payable by the following instalments:  
\$ \_\_\_\_\_ upon delivery of an interim report (as described in Item C [Required Contract Material]);  
\$ \_\_\_\_\_ upon delivery of a Final Report (as described in Item C [Required Contract Material]).

The due date for payment is 30 days after delivery of a correctly rendered invoice to the Executive Director.

**42.8 G. Allowances and Costs (see clause 4)**

Specify details of other financial obligations the Executive Director will cover, eg. travelling allowances or printing and production costs (if applicable). The obligations should be clearly stated to prevent claims for excessive expenses.

Payments made upon the delivery of results, rather than the expiration of time, minimises the risk of paying the same hourly rate for a Contractor working as for the Consultancy merely travelling. For example, if a Contractor is being paid for the consultancy work on a daily rate, but is going to spend half a day travelling, then perhaps arrange for payment for work for half a day plus an agreed reasonable but lower travel allowance to cover the time and inconvenience of the travel.

Note too that the way in which a Contractor's allowances are structured also relates to any investigation of the Contractor's potential employee status at common law, so exercise caution in directly conferring employee benefits on an independent contractor.

**42.9 H. Facilities and Assistance (see clause 4)**

Specify details of other ABCB facilities and assistance. For example:

- (a) accommodation at ABCB premises for up to \_\_\_\_ personnel of the Contractor;
- (b) such normal office services and facilities which the Contractor satisfies the Project Officer are reasonable for the performance of the Services; and
- (c) magnetic media and consumables, storage facilities and messenger services which the Contractor satisfies the Project Officer are reasonable for the performance of the Services.

**42.10 I. Invoice Procedures (see clause 5.2)**

Specify the ABCB's invoicing requirements, eg:

Correctly addressed invoices must be forwarded by the Contractor each month including the following information:

- (a) title of Services;
- (b) name of Project Officer;
- (c) fees and expenses will be invoiced on a monthly basis.
- (d) contract number or purchase order number (if any);

The due date for payment by the Executive Director is 30 days after delivery of a correctly rendered invoice.

Note that stating "subject to acceptance of the Services" is unnecessary and could conflict with the right expressed in clause 8.1(b), whereby payment by the Executive Director for services is not to be an admission that the services were satisfactory.

- 42.11J. 'Specified Personnel' (see clauses 1.1 and 6)**  
Specify details of any particular individuals nominated to undertake and perform the Services, or specified portions of those Services, or provide particular Contract Material. For example:  
The Contractor agrees that the following work, namely \_\_\_\_\_ will be undertaken by \_\_\_\_\_
- 42.12K. 'Project Officer' (see clauses 1.1 and 3.1)**  
The Project Officer has responsibility under the Contract for general liaison with the Contractor, supervising performance, approving payment of the Contractor's fees, and accepting and issuing any written notification under the Contract. Subject to the terms of this Schedule, the Project Officer may also have responsibility for recommending any ABCB allowances or assistance. The Executive Director may wish to appoint the occupant of a particular position as Project Officer. Details should include name (or position) and location of the Project Officer. For example:  
The Project Officer shall be the person for the time-being holding, occupying or performing the duties of ^insert position^, currently ^insert name^, available on telephone number ^insert number^ or via the address and facsimile number set out in Item Q [Executive Director's Address for Notices].  
The ABCB may wish to appoint more than one Project Officer – each with responsibility for specific aspects of the Contract – but clarify strictly who is responsible for what.
- 42.13L. Material to be Provided by Executive Director (see clause 8.1)**  
Specify Material required to be provided to the Contractor by the Executive Director. Specify also the format, manner and timing of provision of such Material, unless this is more conveniently covered in Item E [Time-frame].  
The Contractor is permitted to use the Material specified, and any other ABCB Material actually provided, for the purposes of the Contract.
- 42.14M. Use of ABCB Material (see clause 8.5)**  
Specify any conditions or restrictions attaching to the Contractor's use of ABCB Material. Such restrictions may arise as a result of third party Intellectual Property in the Material, or because of confidentiality, privacy, archival or other restrictions.
- 42.15N. Existing Material (see clauses 1.1 and 9)**  
Specify any pre-existing Material for which Intellectual Property is not to vest in the Participating Governments. This would arise typically in relation to Material owned by the Contractor, although it may also arise in relation to Material owned by a third party. The Contractor must grant or procure the grant to the Executive Director and the Participating Governments a licence to use the Material in the terms set out in clause 10.  
Be careful when there is a time lapse between commencement of the work and the date of the Contract to ensure that Material produced in that period is not pre-existing Material, in respect of which the Intellectual Property does not vest in the Participating Governments.
- 42.16O. Dealings with Copies (see clause 11)**  
Specify whether the Contractor is entitled to retain any copies of ABCB Material, Contract Material or Confidential Information. For example: 'The Contractor may retain three copies of the final published Report'.
- 42.17P. Insurance (see clause 20)**  
Details of any insurance required to be provided by the Contractor, such as workers' compensation or other insurance relating to public liability and/or professional negligence. Workers' compensation should be included if employees of the Contractor will be working on the Consultancy. Other insurance required could relate to public liability and/or professional negligence. Potential exposure to risk, type of risk and availability of suitable insurance cover needs to be considered in each case. If in doubt about appropriate classes of insurance, seek professional insurance advice, such as from insurance brokers. (Ideally,

obtain information on insurance available for particular industries & Contractors through seeking and evaluating tenders.)

**42.18Q. Executive Director's Address for Notices (see clause 28.1)**

Clearly specify all relevant addresses/facsimile numbers for the Project Officer(s).

**42.19R. Contractor's Address for Notices (see clause 28.1)**

This address will often relate to the address given when describing the parties on page 1. It may be useful to state a registered business office, but a Contractor may need to be contacted in the field, so ensure that telephone (including mobile telephone) and facsimile numbers are included, including Email addresses.

**S. Confidential Information (see clause 1.1 and 12)**

Current Commonwealth policy requires the definition of CI not be so broad as to remove the possibility of oversight by the Parliament and the Government of contracts involving the Commonwealth. Instead as far as practicable CI should be specified (and a clear legal basis for characterising certain information as CI be provided). There are two new options in clause 1.1 which allow for the CI to be specified.

SIGNED as a Contract.

SIGNED FOR AND ON BEHALF OF )  
THE PARTICIPATING GOVERNMENTS )  
by ^insert signatory's name^ \_\_\_\_\_ )  
^insert signatory's position^ \_\_\_\_\_ ) \_\_\_\_\_

IN THE PRESENCE OF )  
^insert name of witness^ \_\_\_\_\_ ) \_\_\_\_\_

SIGNED by )  
^insert Contractor's full name^ \_\_\_\_\_ ) \_\_\_\_\_

IN THE PRESENCE OF )  
^insert name of witness^ \_\_\_\_\_ ) \_\_\_\_\_

OR use attestation prescribed in company Articles of Association, eg

THE COMMON SEAL OF )  
^name of Corporation^ \_\_\_\_\_ )  
was hereto duly affixed in the presence of )  
^name of director^ \_\_\_\_\_ ) \_\_\_\_\_

(Director)

^name of Director or Secretary^ \_\_\_\_\_ ) \_\_\_\_\_

(Director/Secretary)