

## Consultancy Contract

[2306]

between the

**COMMONWEALTH OF AUSTRALIA**

as represented by the

**Department of Education, Science and Training**

and

**Spring Consultancy**

regarding Consultancy Services for

A Work Program of:

- Australia's Future using education technologies
- Indigenous Programmes; and
- External Evaluation of Specific Programmes and Projects

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26 March, 2003

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## Parties and Recitals

THIS CONTRACT is made on the 4<sup>th</sup> day of April 2003

BETWEEN the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth'), as represented by the Department of Education, Science and Training (the 'Department') [ABN 51 452 193 160]

AND

Spring Consultancy Pty Ltd, ACN [104 160 296] a company incorporated under the Corporations Act 2001 having its registered office at 155 McCarr's Creek Road, Church Point, NSW 2105 ABN [52 104 160 296]

## WHEREAS:

- A. The Commonwealth requires the provision of certain consultancy services to the Department.
- B. The Consultant has fully informed itself on all aspects of the work required to be performed.
- C. The Commonwealth has agreed to accept the Consultant's offer to provide the Consultancy Services upon the terms and conditions contained in this Contract.

## NOW IT IS HEREBY AGREED as follows:

### 1. Interpretation

1.1 In this Contract, unless the contrary intention appears:

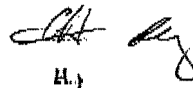
- 'ABN' has the meaning as given in section 41 of the A New Tax System (Australian Business Number) Act 1999;
- 'Adjustment Note' has the meaning as given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999;
- 'Commonwealth' means the Commonwealth of Australia, and includes, where the context allows, officers, employees, agents and contractors of the Commonwealth;
- 'Commonwealth Confidential Information' means information that
  - (a) is described in Item C of Schedule 1 [Commonwealth Confidential Information];
  - (b) the Commonwealth identifies, by notice in writing to the Consultant after the date of this Contract, as confidential information for the purposes of this Contract; or
  - (c) the Consultant knows or ought to know is confidential.

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- **'Commonwealth Material'** means any Material provided by the Commonwealth to the Consultant for the purposes of this Contract or which is copied or derived from Material so provided;
- **'Consultancy Services'** means the services described in Item A of Schedule 1 [Consultancy Services] and includes the provision of Contract Material;
- **'Consultant'** shall, where the context so admits, include the officers, employees, agents and subcontractors of the Consultant;
- **'Consultant Confidential Information'** means information that is described in Item CC of Schedule 2 [Consultant Confidential Information];
- **'Contract Material'** means, subject to clause 8 [Contract Material], all Material:
  - (a) brought into existence for the purpose of performing the Consultancy 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 [Contract Material];
- **'Department'** means the Commonwealth Department of Education, Science and Training or other government agency or department as may, from time to time, administer this Contract on behalf of the Commonwealth;
- **'GST'** has the meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*;
- **'Intellectual Property Rights'** 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, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- **'Liaison Officer'** means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item BB of Schedule 2 [Project Delegate & Liaison Officer] or any other person specified by the Project Delegate in writing and notified to the Consultant;
- **'Material'** includes documents, equipment, software, goods, information and data stored by any means;

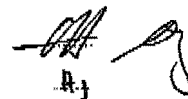
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- **'Project Delegate'** means the person for the time being holding, occupying or performing the duties of the office of the Department specified in Item BB of Schedule 2 [Project Delegate & Liaison Officer] or any other person specified by the Secretary in writing and notified to the Consultant;
- **'Rate of GST'** means 10% or such other amount of GST payable on Taxable Supplies as provided from time to time in the *A New Tax System (Goods and Services Tax) Act 1999* expressed as a percentage of the value of a Taxable Supply;
- **'Secretary'** means the person for the time being holding, occupying or performing the duties of the office of Secretary to the Department and includes any Branch Manager in the Department and any other person designated in writing by the Secretary to perform any function or to exercise any of his or her powers under this Contract;
- **'Specified Personnel'** means the personnel specified in Item F of Schedule 1 [Specified Personnel and Approved Subcontractors] as personnel required to undertake the Consultancy Services or part of the work constituting the Consultancy Services;
- **'Tax Invoice'** has the meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*; and
- **'Taxable Supply'** has the meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

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

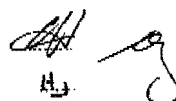
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- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.3 The Schedules (and annexures if any) form part of this Contract. If any part of this Contract conflicts with any other part, that part higher in the following list shall take precedence:
- (a) the terms and conditions contained in the clauses of the Contract;
  - (b) the Schedules;
  - (c) the annexures.

## 2. Provision of Consultancy Services

- 2.1 The Consultant shall perform the Consultancy Services (including the preparation of Contract Material) in accordance with Schedule 1 [Consultant's Obligations] to a standard recognised as a high professional standard by the industry to which the Consultant belongs.
- 2.2 The Consultant shall perform the Consultancy Services at the times specified in Item D of Schedule 1 [Time-frame] and in the manner specified in Schedule 1 [Consultant's Obligations].

## 3. Fees, Allowances and Assistance

- 3.1 The Commonwealth shall pay to the Consultant the reasonable and proper fees and allowances as specified in Item DD of Schedule 2 [Fees] and Item EE of Schedule 2 [Allowances] and shall meet and provide the reasonable and proper costs and assistance as specified in Item FF of Schedule 2 [Assistance]
- 3.2 Where Item DD of Schedule 2 [Fees] provides that the Consultant is to be paid by progressive instalments (or by a single payment), the Commonwealth shall be entitled, without derogating from any other right it may have, to defer payment of an instalment (or the single payment) until the Consultant has completed to the satisfaction of the Commonwealth that part of the Consultancy Services to which that instalment (or the single payment) relates.
- 3.3 The Consultant shall:
- (a) submit invoices for payment in the manner specified in Item E of Schedule 1 [Invoice Procedures]; and
  - (b) if required by the Commonwealth, accept payment of invoices by electronic funds transfer to a bank account nominated by the Consultant.

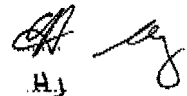
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- 3.4 If an invoice is found to have been incorrectly rendered after payment, any underpayment or overpayment shall be recoverable by or from the Consultant, as the case may be, and without limiting recourse to other available means, any overpayment may be offset against any amount subsequently due by the Commonwealth to the Consultant either under this Contract or any other contract between the Consultant and the Commonwealth.
- 3.5 If any monies due to the Commonwealth remain unpaid after the date on which they should have been paid, the Commonwealth is entitled to be compensated for the loss suffered by reason of the withholding of those monies.
- 3.6 For the purposes of clause 3.5, the recompense to the Commonwealth for the loss, caused by either the expense of borrowing other money in place of, or the loss of investment opportunity of, money unpaid, is to be interest on the amount of the money unpaid calculated at the general interest rate charge set in pursuant to section 8AAD of the *Taxation Administration Act 1953* on a daily compounding basis plus a margin of one per cent.
- 3.7 An Adjustment Note must be provided to the Department in the circumstances required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where Fees are repaid to the Department by the Consultant.
- 3.8 If one party is required to reimburse or pay to another party an amount calculated by reference to a cost, expense or an amount paid or incurred by that party [the 'reimbursement amount'];
- (a) the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the party being reimbursed is entitled in respect of that cost, expense or amount; and
  - (b) after making the adjustment under 3.8(a), where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the Rate of the GST.

#### 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 Consultancy Services in Item A of Schedule 1 [Consultancy Services], shall be legally binding upon either party unless in writing and signed by both parties.

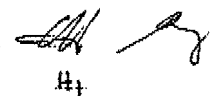
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**5. Subcontracting**

- 5.1 The Consultant shall not, without the prior written approval of the Commonwealth, subcontract the performance of any part of the Consultancy Services. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit. The approved subcontractors at the date of this Contract, and any terms and conditions relating to their use, are identified in Item F of Schedule 1 [Specified Personnel and Approved Subcontractors].
- 5.2 The Consultant shall be fully responsible for the performance of the Consultancy Services notwithstanding that the Consultant has subcontracted the performance of any part of those services.
- 5.3 Despite any approval given by the Commonwealth, the Consultant shall be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Contract.
- 5.4 The Consultant shall ensure that a subcontract legally binds the subcontractor to all terms and conditions of this Contract relevant to the subcontractor's part in the provision of the Consultancy Services; including (but not limited to):
  - (a) clause 11 [Confidential Information];
  - (b) clause 12 [Protection of Personal Information];
  - (c) clause 13 [Compliance with Commonwealth Policies];
  - (d) clause 15 [Insurance];
  - (e) clause 17 [Access to Premises and Records]; and
  - (f) clause 23 [Compliance with Law].
- 5.5 The Consultant shall pay the subcontractors in accordance with the terms of the relevant subcontract.

**6. Specified Personnel**

- 6.1 The Consultant shall ensure that the Specified Personnel set out in Item F of Schedule 1 [Specified Personnel and Approved Subcontractors] undertake work in respect of the Consultancy Services in accordance with the terms of this Contract.
- 6.2 Where Specified Personnel are unable to undertake work in respect of the Consultancy Services, the Consultant shall notify the Commonwealth immediately. The Consultant shall, if so requested by the Commonwealth, provide replacement personnel acceptable to the Commonwealth at no additional charge and at the earliest opportunity.

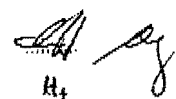
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- 6.3 The Commonwealth may, at its absolute discretion, give notice requiring the Consultant to remove personnel (including Specified Personnel) from work in respect of the Consultancy Services. The Consultant shall, at its own cost, promptly arrange for the removal of such personnel from work in respect of the Consultancy Services and their replacement with personnel acceptable to the Commonwealth.
- 6.4 If the Consultant is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of clause 21 [Default].

## 7. Liaison

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

## 8. Contract Material

- 8.1 Ownership of all Contract Material shall vest in the Commonwealth upon creation.
- 8.2 Subject to clause 8.3, on the expiration or earlier termination of this Contract, the Consultant shall deliver to the Department all Contract Material remaining in its possession save for one copy which shall be retained for the Consultant's file.
- 8.3 If the Contract Material contains Commonwealth Confidential Information or Personal Information, the Consultant must deliver all Contract Material remaining in its possession to the Department.
- 8.4 The preceding subclauses of this clause apply subject to any stipulation to the contrary in Item B1 of Schedule 1 [Consultant's Rights to Contract Material].
- 8.5 The Consultant shall use the Contract Material strictly in accordance with any conditions or restrictions set out in Item B2 of Schedule 1 [Use of Contract Material], or notified from time to time in writing by the Commonwealth.

## 9. Commonwealth Material

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

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- 9.2 Upon the expiration or earlier termination of this Contract, the Consultant shall return to the Department 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 B3 of Schedule 1 [Consultant's Rights to Commonwealth Material].
- 9.4 The Consultant shall ensure that the Commonwealth Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 9.5 The Consultant shall use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item B4 of Schedule 1 [Use of Commonwealth Material], or notified from time to time in writing by the Commonwealth.

## 10. Intellectual Property Rights

- 10.1 Subject to this clause, Intellectual Property in all Contract Material vests immediately in the Commonwealth.
- 10.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Material which is specified in Item B5 of Schedule 1 [Material not to vest in the Commonwealth]. However, the Consultant 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 shall not affect such ownership.
- 10.3 If requested by the Commonwealth to do so, the Consultant shall 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 Consultant warrants that it is entitled, or will be entitled or will ensure 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 The Consultant warrants in relation to the Contract Material that the Consultant has obtained valid written consents from all authors (including any authorised subcontractors under this Contract) involved in creating the Contract Material so that the Commonwealth's use of the Contract Material in any way will not infringe any author's moral rights under the *Copyright Act 1968*.
- 10.6 The Consultant shall 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 any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim,

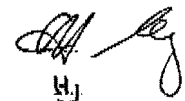
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suit, demand, action or proceeding by any person in respect of any infringement, or alleged infringement, of Intellectual Property rights (including moral rights) by the Consultant, its employees, agents or subcontractors in the course of, or incidental to, performing the Consultancy Services or the use by the Commonwealth of the Contract Material.

- 10.7 The indemnity referred to in clause 10.6 shall survive the expiration or termination of this Contract.

## 11. Confidential Information

- 11.1 Subject to clause 11.5,
- (a) the Consultant shall not, without the prior written approval of the Commonwealth, disclose any Commonwealth Confidential Information to a third party; and
  - (b) the Commonwealth shall not, without the prior written approval of the Consultant, disclose any Consultant Confidential Information to a third party.
- 11.2 In giving written approval to disclosure, a party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.
- 11.3 The Commonwealth may at any time require the Consultant to arrange for any person engaged in, or in relation to, the performance or management of this Contract to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Commonwealth Confidential Information.
- 11.4 If the Consultant receives a request under clause 11.3, it shall promptly arrange for all undertakings to be given.
- 11.5 The obligations on the parties under this clause will not be taken to have been breached if information:
- (a) is disclosed by the Commonwealth to the responsible Minister;
  - (b) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (c) is authorised or required by law to be disclosed; and
  - (d) is in the public domain otherwise than due to a breach of this clause.
- 11.6 This clause survives the expiration or earlier termination of this Contract.
- 11.7 Nothing in this clause limits the Consultant's obligations under clause 12 [Protection of Personal Information] or clause 17 [Access to Premises and Records].

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## 12. Protection of Personal Information

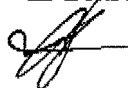
12.1 The Consultant agrees:

- (a) to comply with the Information Privacy Principles when doing any act or engaging in any practice in relation to Personal Information for the purposes of this Contract, as if it were an agency as defined in the Privacy Act;
- (b) to use Personal Information received, created or held by the Consultant for the purposes of this Contract only for the purposes of fulfilling its obligations under this Contract;
- (c) not to disclose Personal Information received, created or held by the Consultant for the purposes of this Contract without the prior written approval of the Project Delegate;
- (d) not to use or disclose Personal Information received, created or held by the Consultant for the purposes of this Contract to engage in a practice that would breach section 16F of the Privacy Act, unless the use or disclosure is necessary to meet (directly or indirectly) an obligation under this Contract;
- (e) not to transfer Personal Information received, created or held by the Consultant for the purposes of this Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Project Delegate;
- (f) to co-operate with reasonable demands or inquiries made by the Federal Privacy Commissioner or the Project Delegate in relation to the management of Personal Information by the Consultant in connection with this Contract;
- (g) to ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of this Contract is made aware of, and undertakes in writing, to observe the Information Privacy Principles;
- (h) to comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of Personal Information;
- (i) to ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of this Contract are, at the expiration or earlier termination of the Contract, either returned to the Department or deleted or destroyed in the presence of a person duly authorised by the Department to oversee such deletion or destruction;

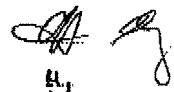
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- (j) to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
- (k) to ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subcontractor to comply with the obligations in this clause, as if the subcontractor were the Consultant;
- (l) to enforce the obligations referred to in paragraph (k), in accordance with such directions as the Project Delegate may give; and
- (m) to indemnify the Commonwealth in respect of loss, liability or expense suffered or incurred or assumed by the Commonwealth arising out of, or in connection with:
  - (i) a breach of the obligations of the Consultant under this clause; or
  - (ii) a breach of a subcontractor's obligations under a subcontract as contemplated by clause 12.1(k); or
  - (iii) the misuse of Personal Information held in connection with this Contract by the Consultant or a subcontractor; or
  - (iv) the disclosure of Personal Information held in connection with this Contract by the Consultant or a subcontractor in breach of an obligation of confidence whether arising under the Privacy Act or otherwise.

12.2 The Consultant shall immediately notify the Project Delegate if the Consultant:

- (a) becomes aware of a breach of its obligations under clause 12.1;
- (b) becomes aware of a breach of a subcontractor's obligations under a subcontract as contemplated by clause 12.1(k);
- (c) becomes aware that a disclosure of Personal Information may be required by law; or
- (d) is approached or contacted by, or becomes aware that a subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.

12.3 An act done or a practice engaged in by the Consultant or a subcontractor for the purposes of meeting (directly or indirectly) an obligation under this Contract:

- (a) is authorised by this clause for the purposes of sub-sections 6A(2) and 6B(2) of the Privacy Act even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code that applies to the Consultant or the subcontractor; but

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(b) is subject to the other obligations in this Contract including this clause.

12.4 For the purposes of this clause, "received" includes "collected".

12.5 This clause survives the expiration or earlier termination of this Contract.

Note: more information about the Privacy Act and the Information Privacy Principles is available at <http://www.privacy.gov.au/act/index.html>.

### 13. Compliance with Commonwealth Policies

- 13.1 The Consultant must, when using the Commonwealth's premises or facilities, comply with all reasonable directions and Departmental procedures relating to occupational health (including the Commonwealth's smoke free work place policy), 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.
- 13.2 The Consultant must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* and shall not enter into a subcontract with a subcontractor named by the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with that Act.
- 13.3 The Consultant shall, 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. Indemnity

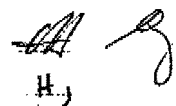
- 14.1 Subject to the provisions of this Contract, the Consultant shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Consultant, its employees, agents or subcontractors in connection with this Contract.
- 14.2 The Consultant's liability to indemnify the Commonwealth under clause 14.1 shall be reduced proportionally to the extent that any act or omission of the Commonwealth or its employees or agents contributed to the loss or liability.

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- 14.3 The indemnity referred to in clause 14.1 shall survive the expiration or termination of this Contract.

## 15. Insurance

- 15.1 The Consultant shall, for so long as any obligations remain in connection with this Contract, effect and maintain insurance as specified in Item G of Schedule 1 [Insurance].
- 15.2 Wherever requested, the Consultant shall provide the Commonwealth with a copy of any insurance policy effected in accordance with clause 15.1 and a certificate of currency.

## 16. Conflict of Interest

- 16.1 The Consultant 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.
- 16.2 If during the term of this Contract a conflict of interest arises, or appears likely to arise, the Consultant undertakes to notify the Commonwealth immediately in writing and to take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the Consultant fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate this Contract in accordance with the provisions of clause 21 [Default].
- 16.3 The Consultant shall not, and shall ensure that any employee, agent or subcontractor of the Consultant 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 Consultant in providing the Consultancy Services to the Commonwealth fairly and independently.

## 17. Access to Premises and Records

- 17.1 The Consultant shall at all reasonable times give to the Project Delegate, an officer of the Audit and Investigations Group in the Department on production of photo identification, or any person authorised in writing by the Secretary:
- (a) reasonable access to:
- (i) the Consultant's employees;
  - (ii) premises occupied by the Consultant; and
  - (iii) Material;

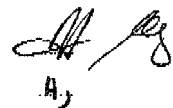
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- (b) reasonable assistance to:
- (i) inspect the performance of the Consultancy Services;
  - (ii) to locate and inspect Material;
  - (iii) make copies of Material and remove those copies, relevant to the Consultancy Services.
- 17.2 The access rights in clause 17.1 are subject to:
- (a) the provision of reasonable prior notice by the Department; and
  - (b) the Consultant's reasonable security procedures.
- 17.3 If a matter is being investigated which, in the opinion of the Project Delegate, an officer of the Audit and Investigations Group in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 17.2(a) will not apply.
- 17.4 Upon receipt of reasonable written notice from the Project Delegate, the Consultant shall provide any information required by the Commonwealth for monitoring and evaluation purposes.
- 17.5 Nothing in clause 17.1 to 17.4 inclusive affects the obligation of each party to continue to perform its obligations under this Contract unless otherwise agreed between them.
- 17.6 The Auditor-General, or a delegate of the Auditor-General, for the purpose of performing the Auditor-General's statutory functions, may, at reasonable times and on giving reasonable notice to the Consultant:
- (a) require the Consultant to provide records and information which are directly related to this Contract;
  - (b) have access to the premises of the Consultant for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Consultant which are directly related to this Contract; and
  - (c) where relevant, inspect any Commonwealth assets and Commonwealth Material held on the premises of the Consultant.
- 17.7 This clause shall survive the expiration or earlier termination of this Contract.

Note: see *Auditor-General Act 1997*

## 18. Negation of Employment, Partnership and Agency

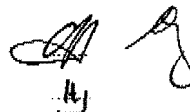
- 18.1 The Consultant shall not represent itself, and shall ensure that its employees do not represent themselves, as being an employee, partner or

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agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

- 18.2 The Consultant shall 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.

## 19. Termination and Reduction

- 19.1 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 shall be 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 19.3 and 19.4 any reasonable costs incurred by the Consultant and directly attributable to the termination or partial termination of this Contract.
- 19.2 Upon receipt of a notice of termination the Consultant shall:
- (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 Consultancy Services not affected by the notice.
- 19.3 In the event of partial termination the Commonwealth's liability to pay fees under Item DD of Schedule 2 [Fees] shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Consultancy Services.
- 19.4 The Commonwealth shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, together exceed the fees set out in Item DD of Schedule 2 [Fees]. The Consultant shall not be entitled to compensation for loss of prospective profits.

## 20. Non-disclosure and Misleading or Deceptive Conduct

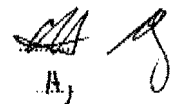
- 20.1 The Consultant acknowledges that the Commonwealth, in entering into this Contract, has relied on the Consultant's representations and conduct.

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20.2 If the Consultant has, prior to entering into the Contract, engaged in misleading or deceptive conduct or has omitted to provide information to the Commonwealth:

- (a) that is material to the performance of the Contract; or
- (b) which may have affected the Commonwealth's decision to enter into the Contract, the terms and conditions on which the Commonwealth entered into the Contract, or an action taken by the Commonwealth under the Contract,

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

## 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 shall 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 Consultant:

- (a) goes into liquidation or an administrator or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed; or
- (b) in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors,


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 shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of

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Initials



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

### 23. Compliance with Law

- 23.1 The Consultant shall 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.
- 23.2 The Consultant acknowledges that:
- (a) Chapter 7 of the *Criminal Code* provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
  - (b) it is aware that giving false or misleading information is a serious offence under the *Criminal Code*;
  - (c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Contract (other than a person to whom the Consultant is authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
  - (d) in respect of data, including personal information, held in connection with this Contract, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this Contract is an offence under Part 10.7 of the *Criminal Code* which may attract a substantial penalty, including imprisonment;
  - (e) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets; and
  - (f) the Consultant acknowledges that it is aware of its obligations under the *Charter of United Nations (Anti-Terrorism Measures) Regulations 2001*.

Note: more information about the *Charter of United Nations (Anti-Terrorism Measures) Regulations 2001* is available at [www.dfat.gov.au](http://www.dfat.gov.au)

- 23.3 The Consultant undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent and subcontractor will first be required by the Consultant to provide the Consultant with an

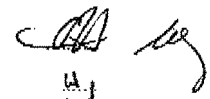
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acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

Note: Consultants should note also that they may be subject to the provisions and applications of the *Trade Practices Act 1974* and the *Archives Act 1983*.

## 24. Dispute Resolution

- 24.1 Subject to clause 24.4, before resorting to external dispute resolution mechanisms, the parties shall 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 shall 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 The Department is not subject to, and the Consultant is unable to invoke any part of clause 24, in relation to circumstances where the Department, its agents or another Commonwealth agency is investigating an apprehended or actual breach of the law by the Consultant, its agents, subcontractors or consortium members in relation to the performance of obligations under this Contract.
- 24.6 This clause shall survive the expiration or termination of this Contract.

## 25. Assignment and Novation

- 25.1 The Consultant shall not assign, in whole or in part, its benefits under this Contract without the prior written approval of the Commonwealth.
- 25.2 The Consultant shall not consult with any other person or body for the purposes of entering into an arrangement which will require novation of the Contract without first consulting the Commonwealth.

## 26. Severability

- 26.1 Each provision of this Contract and each part thereof shall, unless the context otherwise necessarily requires it, 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

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part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

## 27. Applicable Law

- 27.1 This Contract shall be governed by and construed in accordance with the laws in the State or Territory nominated in Item I of Schedule 1 [Applicable Law] and the parties agree, subject to this Contract that the Courts of that State or Territory shall 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 shall be in writing and dealt with as follows:
- (a) if given by the Consultant to the Commonwealth — marked for the attention of the Project Delegate at the address indicated in Item AA of Schedule 2 [Notices] or as otherwise notified by the Commonwealth; or
  - (b) if given by the Commonwealth to the Consultant — signed by the Project Delegate and marked with the address indicated in Item H of Schedule 1 [Liaison & Notices] or as otherwise notified by the Consultant under clause 7 [Liaison].
- 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, on the fifth business day after the date which, because of its placement on the letter or otherwise, purports to be the date on which the letter was prepared; and
  - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

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*HJ*

## SCHEDULE 1 — Consultant's Obligations

### A. Consultancy Services (see clause 1.1 and 2)

The Services set out below are to be provided by the Consultant in accordance with any applicable industry standards and using techniques and methodologies which are accepted as best practice in the profession.

#### 1. Australia's future using education technologies

The Consultant shall provide a Report on options for the Commonwealth in taking a leadership role to position Australian education, training and related businesses to gain the best possible advantage in using emerging technologies.

The review will:

- take stock of the current uses and providers of Information and Communications Technology (ICT) in education and training at the State and Commonwealth level
- identify emerging uses, providers and pedagogical approaches and infrastructure and expertise required for effective use of ICT giving particular attention to:
  - the education and training needs of Indigenous people
  - access for remote and regional Australians
  - positioning Australians to access international markets in education and training including through private/public partnerships and other consortia
- draw out policy issues that will require attention for Australia to obtain maximum benefits.

#### 2. Indigenous Programmes

The Consultant shall provide:

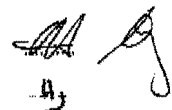
- Advice on the development of an Indigenous Education Action Plan
- External evaluation and facilitation of the programmes in Indigenous Group. This involves advice on Stage 1 and Stage 2 of the reviews of Indigenous programmes including on implementation, participation in the Steering Committee for the IHDA

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reviews, implications for State Offices and on "joined up" programmes with ATSIC and DEWR

- Development, facilitation and monitoring of the MOU between NT DEWT and DEST by 30 June 2004
- External evaluation and facilitation of DEST's contributions to COAG Task Force Pilots including Murdi Parki.

### 3. External Evaluation of other Specific Programs and Projects as required

- The Department will notify the Consultant when Services are required under this Item.

The Services set out in Items A1-3 are to be provided by the Consultant on the basis of three days per week. However this commitment is flexible to allow for periods of both intensive work and lower activity. For example the commitment could be adjusted to three weeks out of five or 3 months out of 5 in periods of intensive work. The detailed timetable is to be negotiated with and approved by the Project Delegate. The Project Delegate will have access to the diary maintained by the part-time personal assistant for this purpose.

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

The Contract Material includes:

(a) Project Reports being the Report produced under Item A1 of Schedule 1 and any other Report requested by the Department relating to a specific Project; and

(b) Progress Reports

The Consultant will provide a regular report to the Project Delegate detailing progress in relation to the Projects identified in Item A of Schedule 1. This Report will be in a form agreed with the Project Delegate.

Project Reports will be submitted in draft to the Project Delegate and the Consultant will be required to consider and take in to account any comments of the Department in finalising the Project Report.

A Project Report is not to be published or otherwise disclosed without the prior approval of the Department.

### B1. Consultant's Rights to Contract Material (see clause 8.4)

No contrary stipulation.

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*AM*  
*AS*

**B2. Use of Contract Material (see clause 8.5)**

The Consultant shall ensure that the Contract Material is used, disclosed, copied, supplied or reproduced only for the purposes of the Contract.

**B3. Consultant's Rights to Commonwealth Material (see clause 9.3)**

No contrary stipulation.

**B4. Use of Commonwealth Material (see clause 9.5)**

Not applicable

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

Not applicable

**C. Commonwealth Confidential Information (see clauses 1.1 and 11)**

Not applicable.

**D. Time-frame (see clause 2.2)**

*[Handwritten signature]* The Contract commences on 12 May 2003 and will be completed on ~~31~~ <sup>30 June</sup> December 2004. *[Handwritten signature]*

Project Reports are to be delivered within the time frames agreed by the Project Delegate.

Progress Reports are to be delivered by dates to be agreed with the Project Delegate.

**E. Invoice Procedures (see clause 3.3)**

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

- (a) title of Consultancy Services;
- (b) the name and ABN of the Consultant;
- (c) name of Project Delegate;
- (d) contract number or purchase order number (if any);
- (e) fees and expenses to be invoiced; and
- (f) bank account details for payment of the invoice by electronic funds transfer, if required.

Where the invoice relates to a Taxable Supply made under this Contract the invoice must comply with the requirements for a Tax Invoice.

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

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*[Handwritten signature]*

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**F. Specified Personnel & Approved Subcontractors (see clauses 1.1, 5 & 6)**

All work associated with the Consultancy Services is to be performed by Geoff Spring except as provided for in Item FF Assistance and for other administrative support provided by Spring Consultancy Pty Ltd.

**G. Insurance (see clause 15)**

- workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- public liability insurance (ie, insurance that covers a Consultant's liability arising out of negligent acts or omissions that cause personal injury to other people or damage to the property of another person or organisation) for an amount of not less than \$10,000,000 (ten million dollars).
- professional indemnity insurance (ie, insurance that covers a Consultant's liability arising out of performance of professional services or breach of professional duty) for an amount of not less than \$1,000,000 (one million dollars).

**H. Liaison & Notices (see clause 28)**

Geoff Spring

SPRING CONSULTANCY PTY LTD

155 McCarr's Creek Road, Church Point, NSW, 2105

Email [gspring@bigpond.com](mailto:gspring@bigpond.com) [SPRING CONSULTANCY Pty Ltd] or  
[geoff.spring@dest.gov.au](mailto:geoff.spring@dest.gov.au) [DEST Part-time address]

Phones: Sydney Company Office [pending]

Canberra Office [DEST] 0262405321

Mobiles: DEST 0412560111

Geoff [Private 0418831206]

Helen [Private 0414580212]

FAX : DEST Office 02 62408955

SPRING CONSULTANCY OFFICE [pending]

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

Australian Capital Territory

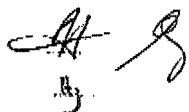
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## SCHEDULE 2 — Commonwealth Obligations

### AA. Notices (see clause 28)

Department of Education Science and Training  
14- 16 Mort St  
GPO Box 9880  
Canberra City ACT 2601  
Fax: 6240 8955

### BB. Project Delegate & Liaison Officer (see clauses 1.1, 7, 12, 17 and 28)

The Project Delegate shall be the person holding, occupying or performing the duties of Deputy Secretary.

Department of Education Science and Training  
16 Mort Street  
GPO Box 9880  
Canberra City 2601  
Tel: 6240 8952  
Fax: 6240 8955

This position is currently occupied by Wendy Jarvie.

The Liaison Officer shall be the person holding, occupying or performing the duties of Branch Manager, People Management Branch

Department of Education Science and Training  
16 Mort Street  
GPO Box 9880  
Canberra City 2601  
Tel: 6240 8451  
Fax: 6240 8826

This position is currently occupied by Ewen McDonald.

### CC. Consultant Confidential Information (see clauses 1.1 and 11)

Not applicable.

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

The fee payable by the Commonwealth for the Consultancy Services is \$125 400 per annum payable monthly inclusive of GST.

The fee will be payable in monthly instalments of \$10 450 (regardless of the work program that the Consultant has undertaken in the particular month.)

The fee payable includes GST of \$ 11400 per annum.

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

**EE. Allowances (see clauses 3.1)**

The Consultant may claim an allowance for meals and other travel incidentals, mileage and communication expenses. Any such allowance will be calculated on the basis of the policy applicable to DEST SES staff and is subject to the approval of the Project Delegate.

**FF. Assistance (see clause 3.1)**

The Commonwealth shall provide the following facilities and other assistance free of charge to the Consultant for the performance of the Consultancy Services:

- (a) accommodation at Departmental premises for the Consultant including occasional access to computer workspace in the Sydney Office of the Department by arrangement with the State Manager;
- (b) such normal office services and facilities as are reasonably required by the Consultant's personnel for the performance of the Consultancy Services including the services of a full time Executive Officer and a part-time personal assistant; and
- (c) use of a RAS machine and RAS access, diary and mobile phone;
- (d) all magnetic media and consumables, storage facilities and messenger services reasonably required by the Consultant; and
- (e) travel and accommodation expenses as approved by the Project Delegate and arranged by the Department.

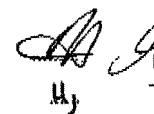
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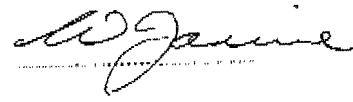


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IN WITNESS WHEREOF the parties have executed this Contract on the date first above written.

SIGNED for and on behalf of )  
THE COMMONWEALTH OF AUSTRALIA )  
by Wendy Jarvie )  
Deputy Secretary )  
Department of Education, Science and Training )

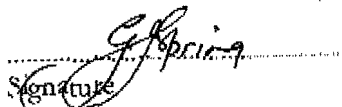


In the Presence of:

  
WITNESS

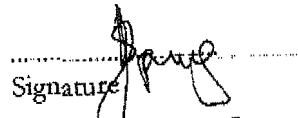
*Danuta Kershaw, Exec. Assistant*  
Full name and occupation or profession of witness (Please print)

EXECUTED BY )  
Spring Consultancy )  
ACN [104 160 296]

  
Signature  
*Geoffrey James Spring*  
Full Name (Please print)

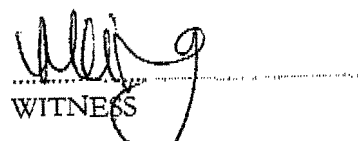
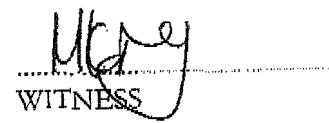
*DIRECTOR*  
Position (insert Director or Secretary)

In the Presence of:

  
Signature  
*Helen Venn Spring*  
Full Name (Please print)

*DIRECTOR*  
Position

In the Presence of:

  
WITNESS  
*MELISSA KING, EXECUTIVE OFFICER*  
Please print full name and occupation or profession of witnesses above.  
WITNESS  
*MELISSA KING, EXECUTIVE OFFICER*

Note: it is not necessary to affix the company seal if the contract is signed by a Director and the Company Secretary or 2 Directors.