

COMMONWEALTH OF AUSTRALIA

represented by

**DEPARTMENT OF EMPLOYMENT, WORKPLACE RELATIONS AND
SMALL BUSINESS**

and

...

represented by

...

PROVISION OF SERVICES

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THIS DEED OF AGREEMENT made the day of 200..

**BETWEEN: COMMONWEALTH OF AUSTRALIA represented by the
Department of Employment, Workplace Relations and Small
Business (“DEWRSB”) of Canberra in the Australian Capital Territory**

(‘Commonwealth’)

AND:

- A. Under the *Workplace Relations Act 1996* (the Act) the Commonwealth Government established a framework of federal industrial regulation including instruments known as Federal Awards and Certified Agreements.
- B. Pursuant to the Act, DEWRSB employees located in State and Territory Offices (known as ‘regional offices’) provide advice and assistance that is not exclusive to but includes advice on Federal Awards and Certified Agreements and advice on alleged breaches of Awards. Advice is also provided about minimum entitlements under Part VIA of the Act.
- C. Pursuant to section 84 of the Act officers are appointed as inspectors to exercise powers under section 86(1) and regulation 9(3).
- D. The Commonwealth and the State of ...agree that the functions of advice and assistance and compliance referred to in B and C (“the Services”) will be passed to the ... for it to carry out those functions on behalf of the Commonwealth.
- E. The objectives of this Agreement are to record the agreed operational and administrative arrangements for the provision of the Services by the State of
- F. The Parties have agreed to be bound by all the terms and conditions of this Agreement.

WHAT IS AGREED

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“**ACS**” means the Advisory Complaints System.

“**the Act**” means the *Workplace Relations Act 1996* and associated regulations.

“**Agreement**” means this Agreement and includes any Schedules to this Agreement.

“**AIRC**” means the Australian Industrial Relations Commission.

“**AWA**” is an Australian Workplace Agreement approved under Part VID of the Act.

“**Breach**” means the failure to comply with a provision of a Federal Award, or a certified agreement in the context of Federal Compliance.

“**Breach matter**” means a possible breach or an offence under the Act.

“**Business day**” means a day including a Saturday but not a Sunday on which businesses are open for general business in the State of ...

“**Certified Agreement**” means an agreement certified under Division 4 of Part VIB of the Act and agreements (including enterprise flexibility agreements) certified or approved under the *Industrial Relations Act 1988*.

“**Client**” means a person or body seeking information, advice or assistance from DEWRSB and those to whom DEWRSB seeks to provide a service (e.g. employees and employers who are the subject of a Compliance Case and those who form part of the target audience of educative and information activities).

“**Commencement Date**” means the

“**Commonwealth’s Representative**” means the person holding the position of Assistant Secretary Office of Workplace Services in DEWRSB.

“**Complaint**” means formal written contact from a Client expressing dissatisfaction with the service they have received or the manner in which they have been dealt with by an officer of

“**Compliance Case**” means a formal enquiry which, after a Preliminary Assessment, will require further investigation.

“**Confidential Information**” means any information relating to the delivery of the services under the terms of this Agreement which:

- (a) is by its nature confidential;

- (b) is designated by the Commonwealth as confidential; or
- (c) the Parties know or ought to know is confidential;

but does not include information which is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means.

“Correspondence” means a written request for information, advice or assistance about the provisions of a Federal Award, a Certified Agreement or the Act.

“Counter enquiry” means information, advice or assistance provided to a Client at the reception counter or in an interview room about the provisions of a Federal Award, a Certified Agreement or the Act.

“DEWRSB” means the Commonwealth Department of Employment, Workplace Relations and Small Business.

....

“Employee litigation” means Court action under s.178 or s.179 of the Act taken by an employee in order to seek a penalty or recover payments due under a Federal Award, or a certified agreement including any small claims procedure.

“Federal Advice and Assistance” means the provision to the general public (mainly employers and employees) of advice and assistance in relation to their rights and obligations under the Act as detailed in Schedule 1.

“Federal Award” means an award or order issued in writing by the AIRC under s.143(1) of the Act.

“Federal Compliance” means the investigation, resolution and where necessary prosecution of alleged breaches of Federal Awards, Certified Agreements, time and wages records and pay slip regulations as detailed in Schedule 1.

“Finalised Compliance Case” means a Compliance Case is regarded as finalised when it has reached one of the following resolutions:

- Not Sustained;
- Not Proceeded With
- Sustained as an outcome of:
 - Voluntary Compliance; or
 - the employee has been advised of their right to litigate their claim; or
 - Litigation by the Department has been determined; or

- NFA (No Further Action) (e.g. employer goes into liquidation; the Department withdraws the case).

The State of ... ACS codes for closing formal enquiry files are listed in Part 3 of Schedule 1.

“Inspector” means a person appointed under s.84 of the Act, including State public servants who are given powers to exercise the functions of inspectors under s.84(3).

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

“Investigation” means the process of assessing a Compliance Case in order to determine whether a Breach Matter is supported by the available evidence (see also preliminary assessment below).

“Joint Management Committee” means the Committee established in accordance with Clause 9.1.

“Litigation by the Department” means court action initiated by an inspector in order to seek a penalty in relation to a Breach Matter. The ACS code for this definition is TROS.

“Material” includes documents, equipment, software, goods, information and data stored by any means.

“Ministerial Directions” means directions made by the Secretary of DEWRSB (under delegation from the Minister) under s.84(5) of the Act which specify how the powers or functions of Inspectors are to be carried out, exercised or performed.

“Not Proceeded With” means a compliance case is withdrawn by the employee or the case is transferred to another DEWRSB regional office or determined to be outside the ambit of the Act. The ACS codes for this definition are WITH; VLC; VLR.

“Not Sustained” means a Compliance Case is regarded as Not Sustained where the facts do not indicate that there has been a breach by the employer. The ACS code for this definition is NAC; NICIE; and NVCPD.

“OEA” means the Office of the Employment Advocate.

“OWS” means the Office of Workplace Services (OWS) which is the Office responsible for the information, advisory and compliance functions carried out by DEWRSB in Canberra and in Regional and District Offices.

“Parties” means the Commonwealth and the State of

“Preliminary Assessment” means the process of deciding whether, on the information provided, a breach matter requires further investigation.

“Routine Quarterly Report” means the report in the form contained in Part I of Schedule 3, to be provided by the State of ..., pursuant to Clause 10.

“Schedule” means any schedule to this Agreement.

“Service Fees” means the fees payable by the Commonwealth to the State of ... for the delivery of the Services and are those referred to in Schedule 2.

“Services Material” means all Material:

(a) provided or required to be provided by the Parties as part of the Services or;

(b) derived at any time from the Material referred to in paragraph (a);

and includes any files, records or documentation created for the purposes of performing the services.

“Service Standards” means the service standards listed in Part 2 of Schedule 1.

“Services” means the services to be delivered by the State of ... under this Agreement and which are detailed in Schedule 1.

“Small Claims Procedure” means court action under s.179 of the Act (using the S.179D procedure) taken by an employee against an employer in order to recover payments due under a Federal Award or a Certified Agreement, which do not exceed \$10,000.

“Special Reports” means a report in the form contained in Part 2 of Schedule 3.

“State of ... Representative” means the person holding the position of ...

“State Inspector” means a person appointed under ...

“Sustained” means an officer is satisfied that at least one Breach has occurred.

“Telephone Enquiry” means a straightforward request received by telephone from a client for information that can be easily obtained from Federal Awards, Certified Agreements or the Act.

“Term” means from the Commencement Date for a period of 3 years.

“Unclaimed Monies” means any money paid to the Commonwealth to reflect underpayment of entitlements in accordance with section 180 of the Act which the Commonwealth holds in trust for the former employee.

“Voluntary Compliance” means an outcome of a sustained case where the employer has voluntarily paid the agreed amount to the employee(s). (For payment by instalments, payment is not required in order to finalise the case, a written agreement to an arrangement is sufficient.) The ACS Code for this definition is FCR; INSLV; PRIV; ULC.

2. INTERPRETATIONS

2.1 Unless the contrary intention appears:

- (a) the singular includes the plural and vice-versa;
- (b) words importing a gender include any other gender;
- (c) a reference to a schedule is a reference to a Schedule to this Agreement and a reference to this Agreement includes a Purpose or Schedule;
- (d) a reference to a clause is a reference to a Clause of this Agreement and all its sub-clauses;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them from time to time;
- (f) the word “person” includes a person, firm, body politic, unincorporated association or an authority;
- (g) a reference to month shall be construed as a reference to a calendar month;
- (h) if a period of time is specified as a date from a given day or the day of an act or event, the period is to be calculated exclusive of that day;
- (i) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

2.2 Headings are included for convenience only and do not affect the interpretation of this Agreement.

2.3 No amendment of or addition to the provisions of this Agreement including the Schedules will be valid and binding, unless it is in writing and signed by both Parties.

2.4 If there is an inconsistency between:

- (a) the clauses of this Agreement and the Schedules or the content of any other document the clauses of this Agreement will prevail;

- (b) the Schedules and the content of a document or provision expressly incorporated as part of this Agreement the content of the Schedules will prevail.

2.5 Any reference to any entity, body or group shall in the event that any of them ceases to exist or is reconstituted, renamed or replaced or that the powers or functions of any of them are transferred to any other entity, body or group refer respectively to any such entity, body or group established or constituted in lieu thereof or succeeding to similar powers or functions.

3. SCOPE OF THE AGREEMENT

3.1 In consideration of payment of the Service Fees, the State of ... will perform the Services in accordance with the terms and conditions of this Agreement as may be varied in accordance with Clause 2.3 from time to time from the Commencement Date for a period of 3 years and will continue to perform those Services until the expiration or earlier termination of the Agreement.

3.2 This Agreement 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 Agreement.

3.3 Excluded from the scope of this Agreement is the conduct by the State of ... of targeted federal educational compliance and promotional campaigns, but the Parties agree to work cooperatively in undertaking such campaigns, including the exchange of details and Materials. If the Parties agree that the State of ... will have a specific role in the conduct of a targeted federal campaign, then the responsibilities and financial considerations will be set out in a separate agreement between the Parties.

THE SERVICES

4. COMMONWEALTH OBJECTIVES AND SERVICE STANDARDS

4.1 The Parties agree and acknowledge that the Commonwealth objectives are as set out in Item E of the Purposes to this Agreement and that they will co-operate to fulfill those objectives.

4.2 The Parties agree and acknowledge that the Service Standards are as set out in Part 2 of Schedule 1 of this Agreement.

4.3 The State of ... shall deliver the Services in accordance with this Agreement and with the provisions of the Act and with the procedures and standards set out in the State of ... Guidelines, or under the Service Standards set out in this Agreement. Should the Service Standards be different between the State of ... Guidelines and the Service Standards set out in this Agreement then the higher Service Standard will apply to meet the standards required by the Commonwealth for public accountability purposes.

5. BASIS FOR THE DELIVERY OF THE SERVICES AND ACCOUNTABILITY

5.1 While the State of ... as the provider of the Services is responsible and accountable to DEWRSB for effective delivery of the Services, DEWRSB remains ultimately accountable to the Minister for Employment, Workplace Relations and Small Business, and through the Minister to the Federal Parliament and the electorate. DEWRSB's accountability is reinforced by procedures and processes for scrutinising the legality, integrity and efficiency of Government through Parliamentary Question Time, debates, Parliamentary Committees and Inquiries, the preparation of annual reports by agencies and specific legislation such as those pieces of legislation which form the Administrative Law Package.

5.2 The State of ... undertakes:

- (a) to perform the Services in a forthright and efficient manner which displays a commitment to the provision of practical, cost effective and accessible enquiry and compliance services that assist employers and employees to understand their employment rights and responsibilities and opportunities under the Act, Federal Awards and Certified Agreements;
- (b) not to act in a manner which would give priority to the State of ...'s own transactions or information services to the detriment of those provided on behalf of the Commonwealth;
- (c) to be responsible for ensuring the uninterrupted delivery of the services; and
- (d) to provide the Services free of charge to the public. Should circumstances arise where the State of ... consider introducing fees for the Services under this Agreement it will submit its proposal in regard to such fees to the Commonwealth's Representative who must agree to all of the proposal before it is implemented and any charge made to the Public.

5.3 Where services are requested by members of the public which are not covered by this Agreement the State of ... agrees to refer the person requesting the services to the appropriate agency for assistance.

5.4 The Commonwealth's assistance in the performance of any of the State of ...'s obligations under this Agreement, including the granting of any approvals, shall not vary or limit in any way the State of ...'s obligations under this Agreement.

6. IMPROVEMENT OF DELIVERY OF SERVICES

6.1 The State of ... undertakes to continually improve the delivery of Services by:

- (a) promoting the Services in the local community;

- (b) participating in federal and State government benchmarking activity and cooperating in implementing OWS's client service charter where appropriate;
 - (c) implementating and promoting in the local community a process for handling Complaints about the provision of Services- Brief details on each Complaint to be included in Routine Quarterly Reports;and
 - (d) conducting an annual survey of Federal Clients, the methodology of which would need to be agreed with the Commonwealth, that provides data on the Client satisfaction with the Services;
- 6.2 It is acknowledged that the outcomes agreed between the parties as a result of Clause 6.1(d) may require a variation of the Service Standards specified in Clause 4.2.

7. CONDUCT OF AGREEMENT

- 7.1 The State of ... will establish within the agreed fee arrangement, all necessary facilities for the effective conduct and management of all aspects of this Agreement which may, if specified in this Agreement, include the use of existing State of ... facilities.
- 7.2 Unless otherwise specified in this Agreement, the State of ... must provide all management, human resources, furniture, equipment, software, supplies, materials and other facilities necessary to provide the Services.
- 7.3 The State of ... will provide immediate advice to the Commonwealth's Representative of any actual or potential problems in the provision of the Services, and of the State of ...'s suggested method of resolution.
- 7.4 The State of ... (including any subcontractors if any) will perform its obligations under this Agreement to the highest professional standards.
- 7.5 The State of ... will carry out any reasonable direction or instruction that is issued by the Commonwealth's Representative provided that such direction or instruction is within the scope of this Agreement.
- 7.6 The Commonwealth will inform the State of ..., and where necessary provide timely training to relevant staff employed by the staff of the State of ..., about changes to federal workplace relations policy and legislation. Access by the State of ... to other DEWRSB support will be made available in the terms set out in Part 1 of Schedule 1. Such training will be provided in accordance with a format recommended by the Commonwealth when such information is provided across the OWS network.

MANAGING THE RELATIONSHIP

8. STAFF AND STAFF MANAGEMENT

- 8.1 The State of ... will be responsible for the employment of staff for the delivery of the Services and shall ensure that staff delivering the Services meet the competencies required for the provision of equivalent State services and shall deliver the Services in accordance with the terms of this Agreement.
- 8.2 Only those staff employed by the State of ... who hold a current appointment as a State Inspector can be appointed as an Inspector under s84 of the Act.
- 8.3 The State of ... will request the Commonwealth to appoint State of ... staff as Inspectors under the Act in accordance with the arrangement outlined in Part 1 of Schedule 1.
- 8.4 The State of ... will make the staff available to the Commonwealth for specific training programs when new federal policy and/or legislative provisions are introduced
- 8.5 The State of ... will provide any facilities required for any training required by the Commonwealth of the staff.
- 8.6 The State of ... will be responsible for the training of any new staff to enable them to fulfill the terms and conditions of this Agreement.

9. MANAGEMENT

- 9.1 The Parties must establish a Joint Management Committee no later than 5 Business days following the Commencement Date.
- 9.2 The Joint Management Committee will comprise:
 - (a) the Commonwealth's Representative;
 - (b) the State of ...'s Representative;
 - (c) and such other persons as are agreed by the Parties from time to time.
- 9.3 The persons referred to in Clause 9.2, or other authorised representatives, must each attend the meetings of the Joint Management Committee unless otherwise agreed between the Parties.
- 9.4 The Joint Management Committee will:
 - (a) review and monitor progress under the Agreement and report thereon in writing to the Parties; and
 - (b) carry out such other functions as are required of it in the Agreement or otherwise agreed in writing between the Parties.

In assessing the States performance in delivering Services the Management Committee will have regard to the level of achievement against performance standards of other providers and OWS national aggregate performance levels.

- 9.5 Meetings of the Joint Management Committee will be held quarterly during the Term or at such other intervals as are agreed between the Parties, at premises and at the time agreed between the Parties.
- 9.6 A representative of either Party will take minutes of the Joint Management Committee Meetings (which minutes must include confirmation or correction of the minutes of the previous Joint Management Committee Meeting) and must promptly provide a record of those minutes to the other Party.
- 9.7 Each Party will promptly attend to any matters arising from the Joint Management Committee Meetings which require its attention.
- 9.8 Each Party will bear its own costs in respect of the Joint Management Committee Meetings and of attending to the matters arising which require their action or attention. It is anticipated that one Joint Management Committee meeting per year will be held in Canberra.

10. REPORTING REQUIREMENTS

- 10.1 The State of ... shall provide to the Commonwealth the following reports detailing the Services provided:
- (a) a Routine Quarterly Report outlining activities undertaken, issues, and achievements against Service Standards;
 - (b) Special Reports from time to time;
- and
- (c) any other reports which may be reasonably requested by the Commonwealth from time to time.
- 10.2 The State of ... agrees to adhere to and set up proper systems for the reporting requirements specified under this Agreement.

11. EVALUATION AND MONITORING

- 11.1 The State of ... agrees to participate in the processes for monitoring the Services, the Service Standards and the cost effectiveness of providing the Services.
- 11.2 The State of ... agrees to regularly monitor and review the Services to ensure that Service Standards and outcomes are being achieved and will establish management systems to ensure that staff are providing the Services and achieving the Service Standards and outcomes specified in this Agreement.
- 11.3. The State of ... will participate, in conjunction with the Commonwealth, in the evaluation of the Services by means of a range of strategies including but not limited to:
- (a) collection of data by the State of ... regarding the Services delivered and customer satisfaction;

- (b) reports and information provided by the State of ... on the Services offered and achievements; and
 - (c) surveys of stakeholders including employees and employers.
- 11.4 The State of ... agrees to participate in all Commonwealth Government Monitoring Arrangements. Audit arrangements are specified in Clause 20.

FEES

12. SERVICE FEES

- 12.1 The Parties agree that the annual Service Fees for the first year of the Term have been calculated on the basis set out in Part 1 of Schedule 2 and are ... inclusive of GST.
- 12.2 The Service Fees for the second and each subsequent financial year of the Agreement shall be negotiated annually. The agreed forecast activity levels for the Services for each year will provide the basis for the negotiations which will commence three months before the end of the relevant financial year. The agreed second and subsequent year forecast Service activity levels and the annual Service Fees will be specified in an exchange of letters between the Parties. Where agreement is not reached in negotiations at officer level the dispute resolution procedure in clause 31 will be followed to determine the relevant Service Fee.
- 12.3 The Commonwealth will retain an amount equal to 10% of the amount of the annual Service Fees at the commencement of each year as a performance guarantee. The amount retained will be paid to the State of ... at the end of each year provided the Agreement is not terminated by the State of ... under Clause 32.1 or the Commonwealth under Clause 32.3.
- 12.4 The annual Service Fees will be paid in the manner specified in Part 2 of Schedule 2. In the event that the Commonwealth fails to make payment of the Service Fees in accordance with this clause the State of ... may give notice requiring the Commonwealth to make payment within 7 days. In the event that the Commonwealth fails to make the required payment within this 7 day period the State of ... may without limiting any other rights it may otherwise have at law terminate this Agreement.
- 12.5 Where Service activity levels (specified in Part 1 of Schedule 2 of this Agreement for the first year) vary significantly during the course of a year the fee may be renegotiated and varied.
- 12.6 The State of ... agrees to issue the Commonwealth with either:
 - (a) a tax invoice in accordance with the GST Act; or
 - (b) a document satisfying the minimum information requirements set out in GSTR 2000/3 to entitle a recipient of a Taxable Supply to claim an input tax credit without holding a tax invoice;

in relation to Taxable Supplies made by the State of ... under this Contract.

12.7 The Commonwealth is notionally liable to pay GST.

13. UNCLAIMED MONIES

13.1 The State of ... agrees to be responsible for the collection of Unclaimed Monies on behalf of the Commonwealth.

13.2 After collection the Unclaimed Monies will be forwarded to the Collector of Public Monies DEWRSB with details of the employer from whom the money is collected and the employee for whom the money is to be held in trust.

14. COURT IMPOSED PENALTIES

14.1 Where a court imposes a monetary penalty under the Act and orders that the penalty or part of the penalty be paid to the Commonwealth, that penalty is to be collected by the State of ... and paid into the Commonwealth Consolidated Revenue Fund.

INFORMATION MANAGEMENT

15. SERVICES MATERIAL

15.1 Ownership of all Services Material shall vest in the Commonwealth upon creation.

15.2 Upon the expiration or earlier termination of this Agreement the State of ... shall deliver to the Commonwealth all Services Material remaining in its possession save for one copy which shall be retained for the State of ...'s file.

16. INTELLECTUAL PROPERTY

16.1 Intellectual Property in all Services Material vests or will vest in the Commonwealth.

16.2 The Commonwealth grants to the State of ... during the Term a royalty-free, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit any such existing Material in conjunction with the other Services Material.

16.3 If requested by the State of ... the Commonwealth 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.

17. CONFIDENTIALITY

- 17.1 The Parties agree to disclose to each other so much of the Confidential Information as may be necessary in connection with this Agreement.
- 17.2 Subject to Clause 17.3, the Parties agree and acknowledge that:
- (a) they will not disclose Confidential Information to any person without the prior written consent of the party who has given Confidential Information;
 - (b) they will take reasonable steps to ensure that Confidential Information in their possession is kept confidential and protected against unauthorised use and access.
- 17.3 The Parties acknowledge and agree that they may make any disclosures in relation to Confidential Information in the following circumstances:
- (a) in order to comply with any applicable law, audit requirements or requirement of any regulatory body or any organ of Parliament; or
 - (b) to any of their employees to whom it is necessary to disclose Confidential Information if the employee undertakes to keep the terms confidential; or
 - (c) to its legal advisers to obtain advice on the operation of the Agreement, which will not be considered to be a breach of Clause 17.2.
- 17.4 The obligations of confidentiality under this clause do not extend to information Parties agree and acknowledge that:
- (a) is public knowledge other than as a result of the breach of this clause; or
 - (b) is required to be disclosed by law or Parliamentary Resolutions.
- 17.5 The State of ... agrees to take all reasonable steps to ensure that its employees, or any subcontractors engaged by it for the purposes of this Agreement, do not make public or disclose information referred to in Clause 17.1.
- 17.6 The Commonwealth may at any time require the State of ... to give, and arrange for its employees, agents or any subcontractors engaged in the performance of this Agreement to give, written undertakings to abide by the principles embodied in this clause 17. The State of ... agrees to arrange for all such undertakings to be given promptly, and agrees to enforce such undertakings in accordance with the Commonwealth's direction. The State of ... will ensure that its employees are aware of their obligations under this clause.

18. PERSONAL INFORMATION

- 18.1 In this Clause '**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.

18.2 The State of ... agrees that with respect to the Services performed under this Agreement it shall:

- (a) use personal information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
- (c) comply with those Information Privacy Principles which concern the security, use and disclosure of personal information to the extent that the content of those principles apply to the types of activities the State of ... is undertaking under this Agreement, as if the State were a record-keeper as defined in the *Privacy Act 1988*;
- (d) cooperate with any reasonable demands or inquiries made by the Commonwealth 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 Commonwealth to comply with a guideline concerning the handling of personal information;
- (e) 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 in writing, to observe the Information Privacy Principles and other obligations referred to in this clause;
- (f) 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;
- (g) comply as far as practicable with any reasonable direction of the Commonwealth to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the State of ... that the Privacy Commissioner considers breaches the obligations in this clause; and
- (h) indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the State of ... under this clause or any misuse of personal information by the State of ... or any disclosure by the State of ... in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise.

18.3 The State of ... will comply with all of the requirements of any other Act of the Commonwealth Parliament which requires the Commonwealth to protect

personal information to the extent that such requirements are consistent with the requirements of this Agreement.

19. CUSTODY OF RECORDS

- 19.1 The Parties will not arrange for, nor effect, a transfer of custody or the ownership of any Commonwealth record without the prior written approval of the Australian Archives, nor will the Parties remove any such record except in accordance with arrangements agreed to by the Australian Archives.
- 19.2 Where Archives authorises the transfer of custody of Commonwealth records to the State of ..., the State of ... must comply in every respect with the requirements of the *Archives Act 1983*.
- 19.3 The State of ... will comply with any direction given by the Commonwealth for the purpose of transferring Commonwealth records to the Australian Archives or providing the Australian Archives with full and free access to those records.

20. AUDIT

- 20.1 The Commonwealth or its independent auditors may at reasonable times and on the giving of reasonable notice to the State of ... audit the delivery of Services to ensure:
- (a) effective administration of this Agreement by the State of ...;
 - (b) the accuracy of the performance information provided to the Commonwealth;
 - (c) that appropriate quality control checks are being applied to the Services delivered; and
 - (d) to ensure that any recommendations of the Commonwealth Ombudsman are implemented.
- 20.2 The requirement for, and the process of, reviews of the administration of the Agreement and audits does not in any way reduce the State of ...'s responsibility to provide the Services in accordance with this Agreement.
- 20.3 The Parties shall each bear their own costs in respect of any review or audit of this Agreement and the Services under this Agreement.

21. ACCESS TO PREMISES AND INFORMATION

- 21.1 The State of ... will upon receipt of reasonable notice given by the Commonwealth's Representative or to any persons authorised by the Commonwealth, grant access at all reasonable times to the premises occupied by the State of ... where the Services are being performed and will permit those persons to inspect the performance of the Services and any Service Material or other Material relevant to the provision of the Services. The Commonwealth will

indicate in its notice the reason for the request to enable the State of ... to cooperate fully in the granting of access.

22. AUDITOR-GENERAL

- 22.1 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 State of ...:
- (a) require the provision by the State of ..., its employees or subcontractors, of records and information which are directly related to the Agreement;
 - (b) have access to the premises of the State of ... for the purposes of inspecting and copying documentation and records however stored in the custody or under the control of the State of ... its employees or subcontractors which are directly related to this Agreement; and where relevant
 - (c) inspect Commonwealth records or assets held on the premises of the State of
- 22.2 The State of ... will ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause pursuant to which the subcontractor grants the right specified in Clause 22.1.
- 22.3 This clause applies during the Term and for a period of five years from the date of expiration or earlier termination of the Term.

GENERAL

23. INDEMNITY

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

arising from:

- (d) any act or omission by the State of ..., its officers, employees, agents or subcontractors in connection with this Agreement;
- (e) any breach by the State of ... of its obligations or warranties under this Agreement;

- (f) any use or disclosure by the State of ..., its officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this Agreement; or
- (g) the use by the Commonwealth of the Services Material,

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

23.2 The State of ...’s liability to indemnify the Commonwealth under Clause 23.1 will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.

23.3 The right of the Commonwealth to be indemnified under this Clause 23 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

23.4 In this Clause 23, “Commonwealth” includes officers, employees and agents of the Commonwealth.

23.5 This clause 23 will survive the expiration or termination of this Agreement.

24. NEGATION OF EMPLOYMENT

24.1 Neither Party must represent itself and shall ensure that its employees do not represent themselves as being an employee of the other Party.

25. SUB-CONTRACTORS

25.1 The State of ... may not subcontract the Services to be delivered under this agreement in whole or in part unless:

- (a) the written consent of the Commonwealth’s Representative is obtained; and
- (b) will be on such conditions as the Commonwealth thinks fit, excluding payment conditions.

25.2 The consent of the Commonwealth’s Representative to subcontract will not relieve the State of ... from any liability or obligation under this Agreement.

25.3 Despite any consent given by the Commonwealth’s Representative, the State of ... is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work performed by the subcontractor meets the requirements of this Agreement.

26. WAIVER

- 26.1 Any waiver by either party of a breach of this Agreement must be in writing and signed by the Commonwealth's representative or the State of ...'s Representative and will not be construed as a waiver of any further breach of the same or any other provision.

27. ASSIGNMENT

- 27.1 Subject to Clause 2.5, each party agrees not to assign the Agreement.

28. SEVERABILITY

- 28.1 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

29. GOVERNING LAW

- 29.1 This Agreement will be governed and construed in accordance with the laws of the State of

30. COMPLIANCE WITH LAWS

- 30.1 The State of ... agrees, in carrying out this Agreement to comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of the Commonwealth (particularly of the Crimes Act 1914, Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992) or of any State, Territory or local authority as they apply to the State of

31. DISPUTE RESOLUTION

- 31.1 If a dispute of any kind arises out of or relating to this Agreement the Parties must endeavour in good faith to resolve the dispute expeditiously and amicably.
- 31.2 In the event that any dispute is not resolved in accordance with Clause 31.1 the dispute will be referred in writing for resolution by the State of ...'s Representative and the Commonwealth's Representative. If those officers of the Parties have not been able to resolve the dispute within a reasonable time after the dispute is referred to them for resolution, but in any event no later than 3 weeks, those officers will jointly refer the dispute, after the expiration of that reasonable time, to the Chief Executive Officers of the Parties for resolution of the dispute.

32. TERMINATION

- 32.1 The parties are fully committed to the effective performance of this Agreement during the Term. However, the Parties recognise that where significant differences in policy emerge between the Governments of the Commonwealth and the State of ... in respect of the Services then either Party may terminate this Agreement by giving six months prior written notice to the other Party.

- 32.2 If the State of ... is in default under this Agreement, and where the default is capable of being remedied by subsequent performance, the Commonwealth shall, without prejudice to any right of action or remedy which has accrued or may accrue in favour of either Party:
- (a) raise the default for discussion at the earliest possible Joint Management Committee meeting and if unresolved through this process
 - (b) by notice in writing to the State of ..., specify the relevant default and where such default is capable of being remedied, require the State of ... within a reasonable period specified in the notice to remedy or commence appropriate action to remedy the default promptly.
- 32.3 The Commonwealth may, by notice in writing to the State of ..., immediately terminate this Agreement 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 where the State of ... has failed to comply with a notice under Clause 32.2.
- 32.4 If the Agreement is terminated under the provisions of Clause 32.3 or if the State of ... proceeds to early termination under the provision of Clause 32.1 the amount of moneys held by the Commonwealth as at the date of termination under the provisions of Clause 12.3 shall be forfeited by the State of ... and used by the Commonwealth to establish replacement facilities.
- 32.5 Upon termination of this Agreement the State of ... will deliver to the Commonwealth all Services Material remaining in the possession of the State of ... except for one copy which may be retained by the State of ... for its records.

33. TRANSITION OUT

- 33.1 Upon expiration or termination of this Agreement for any reason and subject to the provisions of this clause:
- (a) the State of ... will take all necessary steps to transfer to the Commonwealth or to a sub-contractor or service provider nominated by the Commonwealth, effective on the date of expiration or termination, any software licences and software support and or other information technology, intellectual property used in the provision of the services that was provided by the Commonwealth and used by the State of ...;
 - (b) the State of ... will deliver to the Commonwealth all records and information, Service Material or any Material used during the Term;
 - (c) the State of ... must supply the Commonwealth with all information including training reasonably necessary for the Commonwealth or an alternative service provider to assume the provision of the Services; and
 - (d) the State of ... will provide all necessary cooperation to the Commonwealth in the event that the Commonwealth seeks another

service provider for provision of the Services to totally or partially replace the Services provided by the State of ... under this Agreement.

- 33.2 The ... Government will assist in the development of a plan for transition of the Services from the State of ... to the Commonwealth or an alternative service provider nominated by the Commonwealth and shall make available to the new provider a sufficient number of appropriately trained staff to maintain continuity of delivery of the Services while replacement arrangements are established.
- 33.3 Where this Agreement is terminated by the Commonwealth, other than for breach of this agreement by the State of ..., additional costs incurred in the transitional arrangements by the State of ... not already covered by this Agreement shall be referred to the Commonwealth for consideration. Justified costs will be reimbursed to the State of

34. NOTICES

- 34.1 All notices issued under this Agreement will be sent to the addresses indicated below or such other address as may from time to time be notified in writing by the parties to each other. Notices will be deemed to be received:
- (a) in the case of delivery by post, four business days after the date of posting; or
 - (b) in the case of a facsimile, upon receipt by the sender of a transmission report from the dispatching machine showing the relevant number of pages and the correct destination facsimile machine number and indicating that the transmission has been made without error, unless the recipient notifies the sender within twenty-four hours of the facsimile being sent that the facsimile was not received in its entirety in legible form.

Notices to Commonwealth

Assistant Secretary
Office of Workplace Services
Department of Employment, Workplace Relations and Small Business
GPO Box 9879
CANBERRA ACT 2601
OR

by fax to (02) 6121 7007

Notices to the State of ...

...

35. OPTION TO RENEW

- 35.1 If either Party wishes to extendi this Agreement for further terms of up to a total of two years it shall give notice to the other party of that desire not less than four months prior to the expiration of the Term. Unless the party desiring the extension is in breach of any of the conditions of the Agreement, the Agreement will continue for further periods of up to two years as agreed on the same terms and conditions as varied in accordance with Clause 2.3 except for this clause and for the amount of the Service Fees which will be determined in accordance with Clause 12.

EXECUTED as an Agreement.

SIGNED for and on behalf of the)
Commonwealth by Dr Peter Shergold,)
Secretary for the Department)
of Employment, Workplace Relations and)
Small Business)

.....)

but not so as to incur any personal)
liability in the presence of:)

.....)

SIGNED for and on behalf of the)

...)

.....)

but not so as to incur any personal)
liability in the presence of:)

.....)

SCHEDULE 1

SERVICES

PART 1 - SCOPE OF SERVICES (see Clause 3)

The Services to be provided under the provisions of this Agreement are:

- (i) Federal Advice and Assistance; and
- (ii) Federal Compliance.

Details of these are as follows: -

- (i) "Federal Advice and Assistance" means the provision to the general public (mainly employers and employees) of advice and assistance (telephone, replies to written correspondence, printed facts sheets and publication, fax back services, etc.) about their rights and obligations under the Act, including application of compliance issues relating to:
 - Federal Awards and Certified Agreements;
 - time and wages records and pay slip requirements (except those relating to AWAs); and
 - minimum entitlements under the Act (e.g. termination provisions).
- (ii) "Federal Compliance" means the investigation, resolution and where necessary prosecution of alleged Breaches of Federal Awards, Certified Agreements, time and wages records and pay slip regulations:
 - officers appointed under s84 have wide investigation powers as outlined in s86 in relation to whether the requirements of the Act, awards, certified agreements and orders of the AIRC are being observed;
 - under s178 inspectors have the power to sue for penalties for breaches of an award, certified agreements or order of the AIRC; and
 - under, regulation 9(3) and subject to Ministerial Directions issued under section 84(5) inspectors have the power to initiate proceedings or conduct prosecutions in respect of breaches of awards and certified agreements or contravention of the Act or Regulations.

Activities not forming part of the Services to be delivered by the State of ... under this Agreement include: -

- those areas where prime responsibility for providing advice, assistance and enforcement rests with the OEA AWA issues, freedom of association, coercion in agreement making, right of entry, strike pay, industrial relations aspects of the National Code of Practice for the Construction Industry;
- those areas where prime responsibility for dealing with unfair dismissal and unlawful termination inquiries lies with the Australian Industrial Registry; and
- targeted federal educational compliance and promotional campaigns referred to in Clause 3.3.

APPOINTMENT OF INSPECTORS (see Clause 2 and 8.3)

ARRANGEMENTS FOR APPOINTING STATE STAFF AS INSPECTORS UNDER THE *WORKPLACE RELATIONS ACT 1996*

Requests for appointments of State staff as inspectors under section 84 of the Act will be considered by the Commonwealth's Representative. The Commonwealth's Representative is required to be satisfied that officers seeking appointment are qualified to carry out the powers and functions under section 86 of the Act.

Identity Cards

State staff appointed as federal inspectors will be issued with identity cards which should be carried at all times when exercising powers or performing functions as a federal inspector. Identity cards should be produced for inspection only upon request, for example, where an employer or other person requests evidence of the identity of the officer. Where a State employee appointed as a federal inspector changes jobs or resigns, he or she must return their identity card to the Commonwealth's Representative before he or she leaves. The loss of an identity card should be reported immediately to the Commonwealth's Representative.

Powers of Inspectors

Section 86 and Regulation 9 of the Act provide for the powers and functions of inspectors, Section 305 provides for certain offences for obstructing an inspector.

Ministerial Directions

The provisions of section 86 and regulation 9 should be read in conjunction with Directions made under subsection 84(5) of the Act. The Directions specify inter alia that every reasonable endeavour should be made to achieve voluntary compliance with the relevant legal requirements and that the consent of a designated office is required before the inspector can commence litigation action.

ACCESS TO DEWRSB SUPPORT (see Clause 7.6)

Provision of Technical and Operational Information

DEWRSB's "Register of Technical Advice" and "Policy Guidelines" will be provided to the State of ... by the Commonwealth as they become available. They will be provided in hard copy and where possible in electronic form and updated at appropriate intervals.

In the absence of the "Register of Technical Advice" a State Inspector may seek the assistance of a nominated DEWRSB officer.

Legal Advice

State staff appointed as a federal inspectors can, with the approval of the most senior State inspector, request legal advice on matters which involve provisions of Federal Awards or Certified Agreements or interpretation of provisions of the Act. A formal request should be directed to the Commonwealth's Representative who will determine if the matter should be referred to DEWRSB's Legislation Policy and Services, the Australian Government Solicitor or if other action is to be undertaken. The Commonwealth's Representative will notify the State of ...'s Representative when AGS advice is not to be funded by DEWRSB.

Before formal requests are sent to the Commonwealth's Representative every reasonable attempt should be made to resolve the issue within the State. This could include:

- checking if the matter has been dealt with previously (e.g. check the Register of Technical Advice)
- consideration by local ... Manager
- through consideration by the nominated DEWRSB officer in consultation with other areas of DEWRSB
- examination of relevant Court/AIRC decisions.

PART 2 - STANDARDS OF SERVICE

OPERATIONAL PERFORMANCE STANDARDS

Type of Service	Performance Standard
Telephone Enquiries (operator assisted)	• 90% of telephone calls are responded to within 3 minutes. • enquiries are completed within an average of 4.5 minutes. • abandonment rate is less than 10%.
Correspondence	• 90% of replies are dispatched within one week of receipt of enquiry.
Compliance Cases	• 80% of cases finalised within 3 months of date of receipt. • 75% of cases investigated are sustained.
Client Satisfaction (annual survey)	• % trends over time of clients who rate: – information is useful; – information is accurate; – information is timely; – staff are helpful; – staff are a credible source of advice; – services are accessible.

REPORTING PERFORMANCE STANDARDS

Type of Report	Performance Standard
Ministerial representation	Information supplied within two business days of request being received from OWS.
Routine Quarterly Reports- see Part 1 of Schedule 3	Report submitted within 10 working days of the end of each quarter.
FOI Request	Information/files to be supplied within seven working days of request being received from OWS.
Advice to Commonwealth Ombudsman	Information/files to be supplied within seven working days of request being received from OWS.
Other Special Reports	Performance standard to be agreed when the request is made by OWS.

PART 3 - ACS CODES FOR CLOSING FORMAL ENQUIRY FILES

Code	Description	Relationship to Federal Codes
FCR	Full claim recovered (all the money that is due to C has been recovered)	sustained
INSLV	Insolvent (R has declared bankruptcy or liquidation)	sustained
NAC	No award coverage (C is not covered by an award and has been paid all entitlements under State Registration)	not sustained
NVCIE	No valid claim insufficient evidence (There is not enough evidence to prove the claim eg. No records)	not sustained
NVCPD	No valid claim paid all entitlements (All entitlements have been paid)	not sustained
PRIV	Private Settlement (C and R have made an agreement to settle the matter for less than the total amount owed)	sustained
ULC	Unable to locate complainant (C is not able to be contacted - usually moved house and not told Dept)	sustained or not sustained depending on the circumstances

ULR	Unable to locate respondent (R is not able to be contacted - shifted premises for example)	sustained or not sustained depending on the circumstances
WITH	Formal enquiry withdrawn (C has decided that they do not want the matter to be continued and they withdraw their enquiry)	not sustained
RGTU	Records given to union (related to access to time and wages records provisions in all awards)	sustained
PROS	Prosecution action initiated (Investigation complete however no voluntary rectification so prosecution file has been created)	sustained
PWIN	Prosecution action successful (Breaches are provided in court - some or all)	sustained
PLOSE	Prosecution action unsuccessful (Breaches are not sustained in court)	not sustained
PSBR	Pre Strike Ballots resolved (relates to WA legislation only)	sustained or not sustained depending on the circumstances

C = Complainant

R = Respondent

SCHEDULE 2

FEES (Clause 12)

PART 1 - Amount of Service Fees

The Service Fee for the first year of this Agreement is ...

The amount has been calculated on forecast Service activity levels for the first year that is:

Enquiries

Telephone - Operator assisted ...

Counters/Correspondence received ...

Compliance cases ...

PART 2 - Method of Payment

The Commonwealth will make annual Service Fee payments by electronic funds transfer within 7 days of receipt of each Routine Quarterly Report submitted by the State of ... (see Part 1 of Schedule 3).

Payment of fees will be made in advance in accordance with the following Schedule:

<u>Month payment expected</u>	<u>Percentage of annual fee</u>
July	...
October	...
January	...
April	...
June (performance guarantee)	...

SCHEDULE 3

REPORTS

PART 1 - ROUTINE QUARTERLY REPORTS

Routine Quarterly Reports will be provided to the Commonwealth's Representative at the end of the September, December, March and June quarters during the Term and will detail:

- (a) Services provided - activity levels (see Schedule 4);
- (b) Services provided - commentary on achievements and issues dealt with during the quarter, trends and a status report on each compliance case over six months old;
- (c) Outcomes against Performance Standards - (see Part 2 of Schedule 1);
- (d) Any other comments - achievements/issues; and
- (e) Brief details on each Complaint received during the period (see Clause 6.1).

PART 2 - SPECIAL REPORTS

Special Reports will be required by the Commonwealth from time to time to assist with:

- preparation of responses to representations made directly to the Federal Minister;
- preparation of responses to ad hoc requests for advice from Senate Committee hearings or other Parliamentary inquiries;
- preparation of responses to requests made under the *Freedom of Information Act 1982*, including section 8 and 9 statements;
- preparation of advice to Commonwealth Ombudsman in respect of cases handled under the *Ombudsman Act 1976*;
- preparation of DEWRSB annual reports in respect of the above Acts;
- an annual statement identifying the ten federal awards most commonly cited as the basis of enquiries and compliance cases and the actual number of enquiries and compliance cases under each award.

- other ad hoc requests covering federal workplace relations issues in the State.

DEWRSB will be notified immediately of any representations made directly to the ... Labour Relations Minister in relation to any matters relevant to the provision of the Services referred to in this Agreement.

The Reports in both Parts 1 and 2 of this Schedule should be sent to the Commonwealth's Representative at either GPO Box 9879 Canberra ACT 2601 or by fax to (02) 6121 7007.

SCHEDULE 4

QUARTERLY ACTIVITY REPORT

Item	Sept qtr	Dec qtr	March qtr	June qtr	Year to date
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Correspondence

Outstanding					
Received					
Finalised					
Total outstanding					

Compliance Cases

(a) to be dealt with					
Outstanding					
Received					
Total to be dealt with					
(b) Finalised					
(i) Not Proceeded With					
Total Not Proceeded With					
(ii) Sustained					
State litigation					
Employee litigation					
Voluntary compliance					
No further action					
Total sustained					

(iii) Other than sustained					
Total other than sustained					
(iv) Total cases finalised					
Total finalised					
(c) Outstanding					
Received but investigation not started.					
Under investigation					
Sustained awaiting investigation					
Total Outstanding					
(d) Age profile of o/standing					
Less than 3 months					
3 - 6 months					
More than 6 months					

Investigation

(a) Breaches					
Monetary					
Sustained (payment)					
(b) Results of Investigation finished					
Employers making payments					

Employees receiving payments					
monies recovered (\$)					

Telephone and counter enquiries

(a) Enquiries handled (Enquiry line MIS and manual stats)					
(i) Telephone					
TEC, operator assisted					
Voice response unit					
Other telephone assisted					
Total telephone					
(ii) Counter					
Total counter					
Total telephone and counter					
(b) Enquiry service telephone call not answered (TES)					
Not connected					
Abandoned					
Total not answered					

Other

Ministerial Representations - State					
Ministerial Representations - Federal					

Ombudsman Enquiries					
FOI Requests					