

DRAFT



Australian Government

Department of Education, Science and Training

Our Ref : PRN/
Your Ref :

Click here to insert the contractor's full legal

Dear Click here to insert name of person acting on behalf of the contractor ,

CONTRACT for

[*You can personalise the introductory paragraphs to the letter as necessary. You can include a paragraph summarising the purpose of the contract. If you do so, you must ensure that it is consistent with the descriptions in Schedule 1.]

I enclose a contract (2 copies) which sets out details of the proposed Services. Please read the contract carefully.

If You are able to provide the Services on the terms and conditions set out in the contract, please sign on the last page of each copy of the contract and have Your signature witnessed by another person. You should also initial the bottom of each page of each copy as indicated. Both copies must be returned, marked for my attention.

The contract will commence when the Commonwealth signs and dates the documents. One copy of the contract will be returned to You for Your records. You must not make any commitments in anticipation of the contract until You have confirmation from Us that We have signed the contract.

I also enclose:

- a copy of the DEST Code of Conduct in Contracting which is a framework for relationships between DEST and people who do business with it. Please familiarise yourself with this document; and
- a copy of your Vendor Record Data as recorded on the DEST payment system. Please check the details (if any) printed on the form. Please amend or add details to the form as necessary and return it to me. The information on this form will be used to make payments to you.

Please contact me [***insert details**] if You have any questions.

Yours sincerely

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*signature block of person authorised to sign

Sender's full name

Sender's full title (eg Group Manager, Branch Manager, State Manager)

Sender's group or office name]

Initials: _____

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Australian Government

**Department of Education,
Science and Training**

Services Contract

PRN/

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Education, Science and Training
and

Click here to insert the contractor's full legal

regarding **Services** for

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Initials: _____

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Initials: _____

Parties

COMMONWEALTH OF AUSTRALIA ('Commonwealth', 'Us', 'We' or 'Our'), represented by and acting through the Department of Education, Science and Training [ABN 51 452 193 160] ('Department')

AND

Click here to insert the contractor's full legal [***describe the legal nature of the contractor—refer to instructions for guidance**] ('You', or 'Your').

Note: this contract uses a number of words which are defined in the glossary in clause 27.1. Defined terms start with a capital letter, eg, Conflict.

Purpose

- A. We require the provision of Services to Us for the purposes of [***describe Services, ensuring the what is here is consistent with item B of Schedule 1. You can also state here any important background to the contract, or what it is supposed to achieve, eg, details of relevant legislation, government or parliamentary statements or details of any related contracts**].
- B. You have fully informed Yourself on all aspects of the work required and have submitted [***a proposal and quotation / tender entitled {state title}and dated {state date of contractor's proposal}**].
- C. We agree to accept Your offer to provide the Services on the terms and conditions contained in this contract.

1 Term of Contract

- 1.1 This contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.

2 Services

- 2.1 You must carry out the Services:
 - (a) at the times and in the manner specified in item B of Schedule 1; and
 - (b) in accordance with this contract, diligently, effectively and to a high professional standard.

3 Fees, Allowances and Assistance

- 3.1 We will:
 - (a) pay You the fees set out in item AA of Schedule 2;
 - (b) pay You the allowances set out in item BB of Schedule 2; and
 - (c) provide assistance as specified in item CC of Schedule 2.
- 3.2 You must submit invoices for payment in the manner set out in item C of Schedule 1
- 3.3 Without limiting Our rights, We may withhold or suspend any payment in whole or in part, if:
 - (a) You have not performed Your obligations under this contract; or
 - (b) You have outstanding or unacquitted money under any arrangement (whether contractual or statutory) with Us.
- 3.4 If We exercise Our rights under clause 3.3, You must continue to perform any obligations under this contract, unless We agree otherwise in writing.

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- 3.5 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 paragraph (a), where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

4 Overpayments

- 4.1 If, at any time, an overpayment occurs for any reason (including where an invoice is found to have been incorrectly rendered after payment), then this amount must be repaid to Us within 20 business days of a written notice from Us, or dealt with as directed in writing by Us.
- 4.2 An overpayment may be recovered from You, including by offsetting that overpayment against any amount subsequently due to You under this contract or any other arrangement between the parties.
- 4.3 If an overpayment is not repaid to Us, Interest is payable on the amount after the expiry of the 20 business days notice referred to in clause 4.1, until the amount is paid in full.
- 4.4 Any amount owed to Us under clause 4.1 and any Interest owed under clause 4.3, is recoverable by Us as a debt due to Us by You without further proof of the debt by Us.
- 4.5 An adjustment note must be provided to Us if required by the GST Act, including where You repay some or all of the fees or allowances to Us.

5 Subcontracting

- 5.1 You must not, without Our prior written approval, subcontract the performance of any obligations under this contract. In giving approval, We may impose terms and conditions as We think fit.
- 5.2 The subcontractors We have approved at the Date of this Contract, and any terms and conditions relating to their use, are identified in item D of Schedule 1.
- 5.3 You are fully responsible for the performance of Your obligations under this contract, even if You subcontract some or all of them.
- 5.4 Despite any approval given by Us under clause 5.1, You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that the work meets the requirements of this contract.
- 5.5 We may revoke Our approval of a subcontractor on any reasonable ground by giving written notice to You. On receipt of the notice You must, at Your own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to Us.
- 5.6 If We withdraw Our approval of a subcontractor, You remain liable under this contract for the past acts or omissions of Your subcontractors as if they were current subcontractors.

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- 5.7 You must not enter into a subcontract under this contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

6 Specified Personnel

- 6.1 You must ensure that the Specified Personnel, if any, listed in item E of Schedule 1 undertake work on the Services in accordance with the terms of this contract.
- 6.2 Where Specified Personnel are unable to undertake work on the Services, You must notify Us immediately. You must, if requested by Us, provide replacement personnel acceptable to Us without additional payment and at the earliest reasonable opportunity.
- 6.3 We may give notice on reasonable grounds related to performance of the Services requiring You to remove personnel (including Specified Personnel) from work on the Services. You must, at Your own cost, promptly arrange for the removal of the personnel from work on the Services and their replacement with personnel acceptable to Us.
- 6.4 If You are unable to provide acceptable replacement personnel, We may terminate this contract under clause 22.

7 Insurance

- 7.1 You must, for as long as any obligations remain in connection with the Services, have insurance as specified in item F of Schedule 1.
- 7.2 When requested, You must provide Us, within 10 business days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.

8 Liaison

- 8.1 You must liaise with and provide information to the Project Delegate, or a person nominated by the Project Delegate, as reasonably required by the Project Delegate.

9 Commonwealth Material

- 9.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this contract and in accordance with any conditions or restrictions specified in item G of Schedule 1.
- 9.2 You must keep safely and maintain Commonwealth Material You have been given for the purposes of this contract.
- 9.3 You may retain or destroy all Commonwealth Material remaining in Your possession at the end of this contract, unless otherwise specified in item G or item J of Schedule 1.

10 Contract Material

- 10.1 Subject to this clause 10, ownership and Intellectual Property Rights in Contract Material vest immediately in Us.
- 10.2 This clause 10 does not affect the ownership of any Intellectual Property Rights in any Existing Material, that is specified in item H of Schedule 1. You, however, grant to Us or

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must arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose.

10.3 You must, if requested by Us to do so, bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 10.

10.4 You warrant that You:

- (a) are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Contract Material and the Existing Material in accordance with this clause 10;
- (b) have obtained valid written consents from all authors (including any authorised subcontractors under this contract) involved in creating Contract Material so that Our use of the Contract Material in any way will not infringe any author's moral rights under the *Copyright Act 1968*.

10.5 At the end of this contract, unless otherwise specified in item H of Schedule 1, You must deliver all Contract Material to Us.

10.6 You must use the Contract Material:

- (a) only for the purposes of this contract and any other purpose specified in item H of Schedule 1;
- (b) in accordance with the conditions or restrictions set out in item H of Schedule 1, or notified from time to time in writing by the Commonwealth.

11 Disclosure Of Information

11.1 Subject to clause 11.5,

- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- (b) We must not, without Your prior written approval, disclose any of Your 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 We may at any time require You 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 Us, relating to the non-disclosure of Our Confidential Information.

11.4 If You receive a request under clause 11.3, You must promptly arrange for all undertakings to be given.

11.5 The obligations on the parties under this clause 11 will not be breached if information:

- (a) is disclosed by Us to the responsible Minister;
- (b) is disclosed by Us, 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; or
- (d) is in the public domain otherwise than due to a breach of this clause 11.

11.6 Nothing in this clause 11 limits Your obligations under clause 12 or clause 13.

12 Protection Of Personal Information

12.1 You agree:

- (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 You were an agency as defined in the Privacy Act; and
- (b) to deal with Personal Information received, created or held by You for the purposes of this contract only to fulfil Your obligations under this contract and in accordance with any conditions or restrictions specified in item J of Schedule 1.

12.2 An act done or a practice engaged in by You or a subcontractor to meet (directly or indirectly) an obligation under this contract:

- (a) is authorised by this clause 12 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 You or the subcontractor; but
- (b) is subject to the other obligations in this contract including this clause 12.

12.3 In this clause 12, "received" includes "collected".

13 Access To Premises And Records

13.1 You must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Project Delegate, a member of the National Investigation Unit in the Department on production of photo identification, or any person authorised in writing by the Secretary:

- (a) reasonable access to:
 - (i) Your employees;
 - (ii) premises occupied by You;
 - (iii) Material; and
- (b) reasonable assistance to:
 - (i) inspect the performance of the Services;
 - (ii) to locate and inspect Material;
 - (iii) make copies of Material and remove those copies,

relevant to the Services.

13.2 The rights referred to in clause 13.1 are subject to:

- (a) the provision of reasonable prior notice to You; and
- (b) Your reasonable security procedures.

13.3 If a matter is being investigated which, in the opinion of an member of the National Investigations Unit in the Department, or any person authorised in writing by the Secretary, may involve an actual or apprehended breach of the law, clause 13.2(a) will not apply.

13.4 The requirement for access specified in clause 13.1 does not in any way reduce Your responsibility to perform Your obligations under this contract.

14 Indemnity

14.1 You agree to indemnify Us against any:

- (a) loss or liability incurred by Us;
- (b) loss of or damage to Our property; or

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

arising from:

- (i) any act or omission by You, or any of Your employees, agents, or subcontractors in connection with this contract, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (ii) any breach by You or any of Your employees, agents, or subcontractors of obligations or warranties under this contract;
- (iii) any use or disclosure by You, Your officers, employees, agents or subcontractors of Personal Information held or controlled in connection with this contract; or
- (iv) the use by Us of the Contract Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights) in Contract Material.

- 14.2 Your liability to indemnify Us under this clause 14 will be reduced proportionately to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 14.3 Our right to be indemnified under this clause 14 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.
- 14.4 In this clause 14, “fault” means any negligent or unlawful act or omission or wilful misconduct.

15 Conflict Of Interest

- 15.1 You warrant that, to the best of Your knowledge after making diligent inquiries, at the Date of this Contract no Conflict exists or is likely to arise in the performance of Your obligations under this contract.
- 15.2 If during the term of this contract, a Conflict arises, or is likely to arise, You must:
- (a) immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - (b) make full disclosure to Us of all relevant information relating to the Conflict; and
 - (c) take steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 15.3 If You fail to notify Us under this clause 15, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate this contract under clause 22.

16 Negation Of Employment, Partnership And Agency

- 16.1 You will not, by virtue of this contract, be or for any purpose be deemed to be Our employees, partners or agents.
- 16.2 You must not represent Yourself, and must ensure that Your employees, partners, agents or sub-contractors do not represent themselves, as being Our employees, partners or agents.

17 Entire Contract, Variation And Severance

- 17.1 This contract records the entire contract between the parties in relation to its subject matter.
- 17.2 Except for action We are expressly authorised to take elsewhere in this contract, no variation of this contract is binding unless it is agreed in writing and signed by the parties.
- 17.3 If a court or tribunal finds any provision of this contract has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

18 Waiver

- 18.1 If either party does not exercise (or delays in exercising) any rights under this contract, that failure or delay does not operate as a waiver of those rights.
- 18.2 A waiver by either party of any rights does not prevent the further exercise of any right.
- 18.3 Waiver of any provision of, or right under, this contract:
- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in the written waiver.
- 18.4 In this clause 18, 'rights' means rights or remedies provided by this contract or at law.

19 Assignment And Novation

- 19.1 You must not assign Your rights under this contract without prior written approval from Us.
- 19.2 You agree not to negotiate with any other person to enter into an arrangement that will require novation of this contract without first consulting Us.

20 Dispute Resolution

- 20.1 Subject to clause 20.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this contract, which cannot be resolved by informal discussion, until the procedure provided by this clause 20 has been used.
- 20.2 The parties agree that any dispute arising during the course of this contract is dealt with as follows:
- (a) the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute;
 - (c) the parties have 10 business days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- if:
- (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of

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the submission, or extended time as the parties may agree in writing before the expiration of the 15 business days;

then, either party may commence legal proceedings.

20.3 This clause 20 does not apply if:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by Us under clauses 4, 13, 21 or 22; or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.

20.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this contract.

21 Termination With Costs and Reduction

21.1 We may, at any time by written notice to You, terminate this contract in whole or reduce the scope of this contract without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination. If this contract is terminated or reduced in scope We will only be liable for:

- (a) payments under the payment provisions of this contract that were due before the effective date of termination; and
- (b) subject to clauses 21.3 and 21.4, any reasonable costs incurred by You and directly attributable to the termination or partial termination of this contract.

21.2 Upon receipt of a notice of termination or reduction in scope You must:

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

21.3 If there is a reduction in scope of the obligations under this contract, Our liability to pay any part of the fees or allowances set out in items AA and BB of Schedule 2 will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this contract.

21.4 We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 21 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

22 Termination For Default

22.1 We may immediately terminate this contract by giving written notice to You of the termination if:

- (a) We are satisfied that, prior to entering into this contract, You have engaged in misleading or deceptive conduct or omitted to provide information to Us,
 - (i) that is material to the performance of this contract; or
 - (ii) that may have affected the original decision to enter into this contract or the terms and conditions of this contract or action taken by Us under this contract;
- (b) You fail to fulfil, or are in breach of any of Your obligations under this contract (including but not limited to Your obligations under clauses 6 and 15), and You do not

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rectify the omission or breach within 10 business days of receiving a notice in writing from Us to do so;

- (c) You are unable to pay all Your debts when they become due;
- (d) if You are an incorporated body:
 - (i) You fail to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - (ii) proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
 - (iii) You come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
 - (iv) notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (e) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors; or
- (f) You cease to carry on a business relevant to the performance of the Services.

22.2 You may immediately terminate this contract by giving written notice to Us of the termination if We fail to fulfil, or are in breach of any of Our obligations under this contract and We do not rectify the omission or breach within 10 business days of receiving a notice in writing from You to do so.

23 Compliance With Laws And Our Policies

23.1 You must, in carrying out Your obligations under this contract, comply with:

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
- (b) any of Our policies notified by Us to You in writing, including those listed in item K of Schedule 1.

24 Applicable Law And Jurisdiction

24.1 The laws of the Australian Capital Territory apply to the interpretation of this contract.

24.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this contract.

25 Notices

25.1 A party giving notice under this contract must do so in writing or by Electronic Communication:

- (a) if given by You, marked for the attention of the Project Delegate specified in item DD of Schedule 2; or
- (b) if given by Us, marked for the attention of the person specified in item L of Schedule 1; and

hand delivered or sent by pre-paid post or Electronic Communication to the address specified in the schedule.

25.2 A notice given under clause 25.1 is taken to be received:

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- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 business days after the date of posting; or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

26 Survival of Clauses

- 26.1 These clauses survive the expiration or earlier termination of this contract: 4, 9, 10, 11, 12, 14, 20 and 24.
- 26.2 Clause 13 applies during this contract and for 7 years from the end of this contract.

27 Interpretation

- 27.1 In this contract, unless the contrary intention appears:

‘**ABN**’ has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

‘**Auditor-General**’ means the office established under the *Auditor-General Act 1997* and includes any other entity that may, from time to time, perform the functions of that office;

‘**Commonwealth Material**’ means any Material provided by Us to You for the purposes of this contract or which is copied or derived from that Material, except for Contract Material;

‘**Completion Date**’ means the date specified in item A of Schedule 1, or if no date is specified, the day after You have done all that You are required to do under this contract to Our satisfaction;

‘**Conflict**’ refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through You engaging in any activity or obtaining any interest that is likely to interfere with or restrict You in providing the Services to Us fairly and independently;

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

- (a) brought into existence for the purpose of performing this contract;
- (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);

‘**Date of this Contract**’ means the date written on the signature page of this contract, and if no date or more than one date is written there, then the date on which this contract is signed by the last party to do so;

‘**Electronic Communication**’ has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999*;

‘**Existing Material**’ means all Material in existence prior to the Date of this Contract:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of;

the Contract Material;

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'GST' has the same meaning as it has in section 195-1 of the GST Act;

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

'Information Privacy Principle' has the meaning given in the Privacy Act;

'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;

'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Tax Administration Act 1953*, on a daily compounding basis;

'Material' includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

'Our Confidential Information' means information that:

- (a) is described in item I of Schedule 1;
- (b) We identify, by notice in writing to You after the Date of this Contract, as confidential information for the purposes of this contract; or
- (c) You know or ought to know is confidential.

'Personal Information' has the same meaning as it has in section 6 of the Privacy Act;

'Privacy Act' means the *Privacy Act 1988*;

'Privacy Commissioner' means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

'Project Delegate' means the person for the time being performing the duties of the office of the Department specified in item DD of Schedule 2 or any other person specified by the Secretary and notified in writing to You

'Secretary' means a person for the time being performing the duties of the office of Secretary to the Department and includes a person designated in writing by the Secretary to exercise any of the Secretary's powers under this contract;

'Services' means the services described in item B of Schedule 1, and includes the provision of Contract Material specified in that item;

'Specified Personnel' means the personnel (whether Your employees or subcontractors), or people with specific skills, specified in item E of Schedule 1 as personnel required to undertake the Services or any part of the work constituting the Services;

'Us', 'We' and **'Our'** includes the Commonwealth's officers, delegates, employees and agents, and Our successors;

'You' and **'Your'** includes, where the context admits, Your officers, employees, agents and subcontractors and Your successors;

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'Your Confidential Information' means information that is described in item EE of Schedule 2;

27.2 In this contract, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include the other gender;
- (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (d) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
- (g) an uncertainty or ambiguity in the meaning of a provision of this contract will not be interpreted against a party just because that party prepared the provision; and
- (h) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.

27.3 The schedules (and annexures and documents incorporated by reference, if any) form part of this contract.

27.4 In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this contract;
- (b) the schedules
- (c) the annexures, if any;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraphs (a) to (d) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

Schedule 1 Your Obligations

A. Term of contract (clause 1)

A.1 The Completion Date for this contract is

B. Services (clause 2)

B.1 [***You must complete this item. See instructions for important information on how to complete this item.**]

C. Invoice Requirements (clause 3)

C.1 Invoices forwarded by You must be correctly addressed and include the:

- (a) title of Services;
- (b) Your name and ABN;
- (c) name of Project Delegate;
- (d) contract number or date of execution;
- (e) fees and expenses to be invoiced (including a description of the deliverables or milestones that the invoice relates to); and
- (f) bank account details for payment of the invoice by electronic funds transfer.

C.2 Where the invoice relates to a taxable supply made under this contract the invoice must comply with the requirements for a tax invoice, as defined in the GST Act.

C.3 The date for payment is 30 days after delivery of a correctly rendered invoice to the Commonwealth.

D. Subcontractors (clause 5)

D.1 [***You must complete this item. See instructions for important information on how to complete this item.**]

E. Specified Personnel (clause 6)

E.1 [***You must complete this item. See instructions for important information on how to complete this item.**]

F. Insurance (clause 7)

F.1 You must maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim;
- (c) [***list any other insurance policies which the contractor must maintain – see instructions**].

G. Commonwealth Material (clause 9)

G.1 [***You must complete this item. See instructions for important information on how to complete this item.**]

H. Contract Material (clause 10)

H.1 [***You must complete this item. See instructions for important information on how to**

complete this item.]

I. Our Confidential Information (clause 11)

- I.1 [*You must complete this item. See instructions for important information on how to complete this item.]

J. Protection of Personal Information (clause 12)

- J.1 [*You must complete this item. See instructions for important information on how to complete this item.]

K. Compliance with Laws and Policies (clause 23)

K.1 You acknowledge that:

- (a) You may have obligations under the *Equal Opportunity for Women in the Workplace Act 1999* and You must comply with those obligations;
- (b) 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;
- (c) giving false or misleading information is a serious offence under the *Criminal Code*;
- (d) 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 You are 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;
- (e) 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;
- (f) You are aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets;
- (g) You are aware of Your obligations under Part 4 of the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;

Note: more information about the Charter of United Nations Act and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations is available at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html.

- (h) You may be subject to the provisions of the *Trade Practices Act 1974* and the *Archives Act 1983*.
- (i) [*list any other laws which you wish to draw to the attention of the contractor – see instructions]

K.2 You must:

- (a) when using Our premises or facilities (including information systems), comply with Our reasonable directions and procedures relating to occupational health, safety and security;
- (b) ensure that any person who will have access to official secrets within the meaning of section 79 of the *Crimes Act 1914* signs an acknowledgment that he or she is aware of the provisions of that section;

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- (c) when dealing with Your employees, You must comply with Our policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws;
- (d) [***list any other policies which you wish to draw to the attention of the contractor – see instructions**].

L. Notices (clause 25)

L.1 The person who can accept notices for You is:

Name: [***insert – see instructions**]

Office Address: [***insert**]

Postal Address: [***insert**]

Fax: [***insert**]

Phone: [***insert**]

Email: [***insert**]

Schedule 2 Our Obligations

AA. Fees (clause 3)

AA.1 The total Fee payable for the Services is \$[*state total payable amount – see instructions] inclusive of GST payable by the following instalments [*delete all words after ‘GST’ and the table below if no instalments]:

Amount	Payable
\$[*amount]	[*provide date or link to delivery of milestone in item B of Schedule 1]
\$[*amount]	[*provide date or link to delivery of milestone in item B above of Schedule 1]

AA.2 The Fees include GST of \$[*state sum].

AA.3 Subject to acceptance by Us, the date for payment is 30 days after delivery of a correctly rendered invoice to Us and after delivery of the Services or part of the Services to which the payment relates.

BB. Allowances (clause 3)

BB.1 [*You must complete this item. See instructions for important information on how to complete this item.]

CC. Assistance (clause 3)

CC.1 [*You must complete this item. See instructions for important information on how to complete this item.]

DD. Project Delegate (clauses 8 and 25)

DD.1 The Project Delegate is:

Name: [*insert – see instructions]

Office Address: [*insert]

Postal Address: [*insert]

Fax: [*insert]

Phone: [*insert]

Email: [*insert]

EE. Your Confidential Information (see clause 11)

EE.1 [*You must complete this item. See instructions for important information on how to complete this item.]

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THIS CONTRACT is made on the [***leave blank – completed when the Commonwealth signs**]
day of [leave blank]

SIGNED for and on behalf of)
THE COMMONWEALTH OF AUSTRALIA)
by {***Official's Name**})
the {***Official's Title**})
of {***Official's Workplace**})
of the Department of Education, Science)
and Training)

In the Presence of:

.....
WITNESS

.....
Full name and occupation or profession of witness (Please print)

[*Chose the appropriate signature block for the contractor from the alternatives below and delete the others. See instructions {link}for important information about finalising the contract.

Where contractor is a Company use the following]

EXECUTED BY)
{***Company Name**})

.....
Signature

.....
Signature

.....
Full Name (Please print)

.....
Full Name (Please print)

.....
Position (insert Director or Secretary)
In the Presence of:

DIRECTOR
Position
In the Presence of:

.....
WITNESS

.....
WITNESS

.....
Please print full name and occupation or profession of witnesses above.

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.

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[*where contractor is a sole trader or partnership use the following]

SIGNED by _____)
{*contractor's full name, or if a partnership })
state the full names of all the partners})

In the Presence of:

.....
WITNESS

.....
Full name and occupation or profession of witness (Please print)

[*where contractor is an incorporated association use the following]

The COMMON SEAL of
{*insert full name of the incorporated association}
was affixed in accordance with its Articles of Association.

.....
Signature

.....
Full Name (Please print)

.....
Position
who by signing certifies that they have the authority to do so

In the Presence of:

.....
WITNESS

.....
Full name and occupation or profession of witness (Please print)



Australian Government

**Department of Education,
Science and Training**

**Code of Conduct
in Contracting**

DEST's Code of Conduct in Contracting

This Code provides a framework for relationships between DEST and people who do business with DEST ('business partners'). The Code complements the guide to DEST behaviours set out in Open for Business.

DEST expects that:

- its staff will observe this Code;
- its business partners will observe this Code; and
- anyone conducting business with DEST will maintain relationships based on trust which will stand up to public scrutiny.

This Code enables DEST's business partners to promote their interests knowing that they will be treated honestly and with integrity by DEST. DEST's business partners can expect a professional relationship with DEST. They can also expect prompt and proper handling of any business issues that may arise.

Businesses can be assured that DEST will expect their competitors and sub-contractors to behave according to the same rules.

If there is an apparent conflict between the operation of this Code and a formal arrangement such as a signed agreement, contract or request for tender then the terms of the formal arrangement will take precedence.

This Code recognises that all DEST staff must observe the Australian Public Service (APS) Code of Conduct and APS Values.

Issues with this Code of Conduct

DEST staff or business partners who have any issues with this code of conduct should contact:

Communication Branch
DEST
GPO Box 9880
Canberra City ACT 2601

Tel: (02) 6240 7975
Fax: (02) 6240 8571
Email: stakeholderviews@dest.gov.au

Code of Conduct in Contracting – Summary table

DEST Requires its Staff to:	DEST Expects that its Business Partners will:
<ul style="list-style-type: none"> • seek value for money for the taxpayer; • be open and fair in business dealings, subject to commercial-in-confidence, security and privacy considerations; • respond promptly to reasonable requests for advice and information; • avoid and/or declare situations where private interests conflict with public duty; • deal honestly with suppliers and be timely in paying accounts; • not solicit or accept money or other benefits from organisations seeking or having business relationship with DEST; and • comply with the APS Code of Conduct and apply the APS Values in the performance of their duties 	<ul style="list-style-type: none"> • deliver value for money; • avoid collusive practices; • protect Commonwealth material; • respond promptly to reasonable requests from DEST or its clients for advice and information; • disclose real or apparent conflicts of interests • deal honestly with DEST and comply with contractual conditions; • not make offers to DEST employees of money or other benefits; • in dealings with DEST’s clients, behave in a highly ethical manner; and • cooperate with DEST’s Post-Separation Employment guidelines.

Specific Guidance

Particular situations in which DEST and its business partners should exercise care include:

A. Gifts and Hospitality

Staff must not improperly use their position to gain a benefit, gift or hospitality.

Staff can only accept a benefit, gift or hospitality subject to complying with the Department’s procedures.

Hospitality can include presentations, demonstrations, briefings and discussions, accompanied by breakfast, lunch or dinner. Travel and accommodation are generally not included as part of hospitality and are covered at Section B of this Code.

DEST staff are usually not entitled to use Government funds for hospitality. Approval is handled on a case-by-case basis and must be obtained in advance in accordance with the Chief Executive’s Instructions.

Social contact with tenderers should be avoided during the period of a tender. Offers of hospitality and entertainment will not be accepted by DEST staff during these times.

B. Travel and Accommodation

Usually, DEST provides for the business travel and accommodation requirements of its staff. A business may only provide travel and accommodation for DEST staff in circumstances directly related to the joint business of the two parties and where the arrangement could not be seen as creating a conflict of interest for DEST staff.

Any offer by a business to pay for DEST staff to visit and view its products or services should only be accepted if there is approval by appropriate DEST senior management.

C. Conflicts of Interest

Sometimes DEST and its business partners will need to work out ways of identifying and resolving real or perceived conflicts of interest.

DEST staff should ensure that in all dealings with businesses their actions can be publicly scrutinised without the need for elaborate justification.

In such dealings a real or perceived conflict of interest may arise between an employee's private interests and that employee's duty to DEST.

Examples of such conflicts include the ownership by a DEST employee of shares in a company competing for DEST business, the unauthorised disclosure or personal use of any information which would result in insider trading, or a DEST employee engaging in dealings with the business partner that may benefit a member of the employee's family.

In cases like this, whether the conflict can be avoided or not, DEST staff should declare it promptly in writing to their supervisor. Normally, such a staff member would be excluded from any duty that could be seen to give rise to a conflict of interest.

D. Commercial-in-Confidence

Contracts with DEST provide specific guidance on the identification and treatment of confidential material, personal information and Freedom of Information requirements.

Information exchanged between DEST and its business partners is frequently given 'in-confidence'. As stated in the contracts, such information may be disclosed where there is a legal requirement to do so. For DEST this may include the requirement to disclose information to Parliament or its Committees.

DEST and businesses must not allow 'commercial-in-confidence' information to be made known to anyone who has no right to it.

Competing companies are never to be given another company's information in regard to performance specifications nor any aspects of pricing, quotation, tender, bid, nor any other commercial or proprietary information.

E. Post Separation Employment

A DEST business partner considering employing current or former DEST employees is expected to comply with DEST's Post Separation Employment guidelines.

These guidelines are intended to protect all three parties – DEST, the individual, and the prospective employer from any potential charge of impropriety or conflict of interest.

Business Partners and the Criminal Code

Anyone providing services for DEST is considered to be a Commonwealth officer for the purposes of the Criminal Code. This includes staff, agents or sub-contractors of DEST's business partners. To help prevent breaches of the Criminal Code our standard contracts warn about offences that can apply.

National Investigation Unit

DEST's staff and business partners must report suspected fraud to:

Director, National Investigations Unit
DEST
GPO Box 9880
Canberra ACT 2600

Tel: (02) 6240 8573
Fax: (02) 6240 9052