

SHORT FORM SERVICES CONTRACT

for the provision of Services for [insert Name of Services or Project]

Constituted by the following letter and attachments

[Insert Department Reference]

[Insert Date]

[Service Provider addressee]

Dear

The Commonwealth as represented by the Department of the Environment, Water, Heritage and the Arts is prepared to accept your proposal to provide Services in relation to [insert title of Services] on the terms and conditions set out below in Attachment A of this letter.

1. Provision of Services

Insert a full description of the Services and a detailed statement of work to be undertaken including all material that is required to be produced by the Service Provider (eg. reports, plans, models, specifications). This may be achieved by annexing correspondence between the parties including any proposals from the Service Provider. For example:

1.1 The Services to be provided are described below:

OR

1.1 The Services to be provided are described in the following documents:

- (a) a letter from the Department to the Service Provider dated and headed (attached to this letter and marked 'Attachment B'); and
- (b) a proposal from the Service Provider dated and entitled(attached to this letter and marked 'Attachment C']

1.2 The Service Provider must perform the Services to a high standard and in accordance with the relevant best practice.

2. Timing

2.1 The Service Provider must perform the Services in accordance with the following time frame:

Set out the timeframe for the Services, including delivery of reports etc, specifying all relevant dates: commencement, progress or interim stages and completion. If progressive delivery of material is required a precise timetable must be specified.

3. Specified Personnel

If the Department and Service Provider have agreed that some or all of the Services are to be provided by a particular person or persons, this should be specified as follows:

- 3.1 The Service Provider shall ensure that the following work, namely is undertaken by

4. Fees

Specify details of the GST-inclusive fees to be paid by the Commonwealth to the Service Provider. This obligation should be linked, as appropriate, to instalment payments against progressive delivery of the Services and observance of specified invoicing procedures. For example:

- 4.1 The total fee for the Services is \$..... (inclusive of GST). The fee is payable by the following instalments and subject to the Department's acceptance of the part of the Services to which the fee instalment(s) relate:

\$..... following delivery of the interim report;

\$..... following delivery of a revised version of that report; and

\$.... following delivery of a Final Report.

The Department shall pay the Service Provider within 30 days of delivery of a correctly rendered invoice to the Department. If this period ends on a day that is not a business day (being a day other than a weekend or public holiday in the Australian Capital Territory), payment is required on the next business day.

OR

- 4.1 The total fee for the Services is \$ (inclusive of GST) payable following delivery, and the Department's acceptance, of the final report and within 30 days of the delivery of a correctly rendered invoice to the Department. If this period ends on a day that is not a business day (being a day other than a weekend or public holiday in the Australian Capital Territory), payment is required on the next business day.

5. Allowances

Specify details of any allowances the Commonwealth will pay. For example:

- 5.1 No allowances are payable to the Service Provider.

OR

- 5.1 Subject to the Service Provider obtaining the prior written approval of the project officer for any travel, the Commonwealth will reimburse the Service Provider's travel and accommodation expenses to the extent these are reasonably incurred by the Service Provider in the course of performing the Services provided that all flights undertaken must be economy class and the Service Provider's accommodation expenses do not exceed the travel allowance payable to a Commonwealth public servant in the Department at the [insert SES or non/SES] level.
- 5.2 The Service Provider shall invoice the Department for reimbursement of the Service Provider's approved travel and accommodation expenses at the same time as it invoices the Department for payment of fees. The Service Provider shall be reimbursed within 30 days of the Service Provider delivering a correctly rendered invoice to the Department. If this period ends on a day that is not a business day (being a day other than a weekend or public holiday in the Australian Capital Territory), payment is required on the next business day.

5A. Interest

NOTE: The following clause implements the Commonwealth's payment policy for small business as set out in *Finance Circular No. 2008/10*. It should be included in all procurement contracts with a value of up to A\$1 million (GST inclusive) from a small business except where an exemption set out in *Finance Circular No. 2008/10* applies.

A 'small business' means an enterprise with less than 20 full-time equivalent employees at the date the written contract is entered into. This test applies to the entire business and not just discrete parts of a business group.

If this clause does not apply to your procurement, the title of this clause can be replaced with the word 'Reserved' and the rest of the clause deleted.

For more information on the application of *Finance Circular 2008/10* please contact the Procurement Policy and Reform Section.

- 5A.1 Subject to clause 5A.2, if the Department does not pay an amount payable to the Service Provider under this Contract by the date the amount is due, the Department must pay simple interest on the unpaid amount in accordance with the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = the general interest charge daily rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day the payment is due, expressed as a decimal rate per day; and

D = the number of days, from the day after payment was due up to and including the day that payment is made (being the day when the Department's system generates a payment request to the banking system for payment to the Service Provider).

5A.2 Interest is only payable by the Department if:

- (a) the amount of interest exceeds \$10; and
- (b) the Service Provider has issued a correctly rendered invoice in relation to the interest.

6. Invoice Procedure

If a specific procedure for invoicing and payment of accounts is to be observed by the Service Provider it should be included. For example:

6.1 Invoices forwarded by the Service Provider must be correctly addressed and shall include the following information:

- (a) the title of Services;
- (b) the name and/or position of the Department's project officer;
- (c) the contract number or purchase order number (if any).

6.2 If the Department accepts the Services described in the invoice, the Commonwealth will make the relevant payment specified in clause 4 of this letter within 30 days of the Service Provider delivering the Services and a correctly rendered invoice to the Department. If this period ends on a day that is not a business day (being a day other than a weekend or public holiday in the Australian Capital Territory), payment is required on the next business day.

7. Commonwealth Assistance

Details of any assistance to be provided by the Commonwealth should be set out eg. office accommodation or secretarial assistance (NB - the provision of assistance to the Service Provider may have GST implications) For example:

7.1 The Commonwealth shall provide the following facilities free of charge to the Service Provider for the performance of the Services:

- (a) office accommodation at the Department's premises for up to personnel of the Service Provider;

- (b) such normal office services and facilities as are reasonably required by the Service Provider's personnel for the performance of the Services;
- (c) all magnetic media and consumables, storage facilities and messenger services that the Service Provider reasonable requires; and
- (d) access to the Department's data processing system, word processing services and duplicating services for the recording and processing of information relating to the Services.

OR

7.1 If the Service Provider requests, the Department may provide it with Commonwealth facilities or assistance. However, any such provision is at the discretion of the project officer. The Department will only provide the Service Provider with Commonwealth facilities or assistance that the project officer has approved in writing.

8. Project Officer

The Department should appoint the occupant of a particular position as project officer. This person would have responsibility for supervising the performance of the contract, recommending payment of Service Provider's fees, recommending the provision of any Commonwealth assistance, and accepting and issuing any written notification under the Contract. For example:

- 8.1 The Project Officer is the person holding, occupying or performing the duties of [insert position], currently [insert name]. The Project Officer is responsible for general liaison with the Service Provider, supervising the Service Provider's performance of this Contract and accepting and issuing any written notification under this Contract on behalf of the Commonwealth.
- 8.2 The Service Provider must:
 - (a) liaise with the Project Officer;
 - (b) provide any information the Project Officer may reasonably require; and
 - (c) comply with any reasonable request made by the Project Officer.

9. General Conditions for Services

9.1 The attached conditions marked "**Attachment A**" and entitled "GENERAL CONDITIONS FOR SERVICES" shall form part of this Contract.

10. Confidential Information

The Department should state in this clause 10:

- **any information of the Service Provider that the Department has agreed to protect as Confidential Information and the period for which it must remain confidential; and**

- any Commonwealth information that it has agreed with the Service Provider is to be treated by the Service Provider as Confidential Information and the period for which that information must remain confidential.

Note that Confidential Information may include information that is not listed in this section if the parties have agreed to that information being Confidential Information after the Contract is signed.

11. Acceptance

11.1 A duplicate of the letter is enclosed with an endorsement that provides for notification of acceptance. If you, being the Service Provider or its lawful representative, agree to provide the Services as set out in this letter your acceptance must be notified by signing, dating and returning the enclosed duplicate letter to me within 20 business days of the date of this letter, after which the offer lapses. Once we receive your notification, this letter and its attachments will constitute the entire Contract between the parties for the provision of the Services.

Yours faithfully

[Insert Name and Position]

[Insert Contact Details]

NOTIFICATION OF ACCEPTANCE OF CONTRACT BY SERVICE PROVIDER

[Insert name of Service Provider (ABN.....)] agrees to provide the Services described in this letter in accordance with the terms and conditions set out in and attached to this letter.

Dated

[Include whichever of the following signature blocks is appropriate to the Service Provider]

Signed by the Service Provider

.....

(signature)

in the presence of: [name of witness]

.....

[signature of witness]

OR

Signed for and on behalf of [name of Service Provider] by [name and title of signatory] who warrants that he/she has authority to sign this Acceptance

.....

(Signature)

in the presence of: [name of witness]

.....

(Signature of Witness)

OR

THE COMMON SEAL of)

[name of company] was hereunto affixed)

.....

in accordance with its Articles of Association) (Director)

in the presence of: [name of witness])

.....

) (Director/Secretary)

.....

(Signature of Witness)

OR

EXECUTED by [name of company])

in accordance with Section 127(1) of the)

Corporations Act 2001 (Cth) by) (Signature of Director)

authority of its directors)

in the presence of)

.....

) (Name of

Director)

.....
(Signature of Director/Secretary)

.....
(Name of Director/Secretary)

GENERAL CONDITIONS FOR SERVICES

ATTACHMENT A to Letter of [Insert Date] with Reference Number [Insert Departmental Reference from Letter]

For [Insert Name of Services or Project]

Between

COMMONWEALTH OF AUSTRALIA ('the **Commonwealth**') as represented by and acting through the Department of the Environment, Water, Heritage and the Arts ABN 34 190 894 983 ('the **Department**')

And

[Insert Name, Address and ABN of Service Provider]

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

“Commonwealth” means the Commonwealth of Australia;

“Confidential Information” means:

- (a) the information described in this Contract; and
- (b) any information that is agreed between the parties, after the date on which they sign this Agreement, as constituting Confidential Information for the purposes of this Agreement.

“Contract” means the contract governing the Service Provider’s provision of the Services to the Commonwealth, and includes the letter dated **[insert date]** with reference number **[insert reference from letter]**, this Attachment A [General Conditions For Services] and any other attachments;

“Contract Material” means all Material:

- (a) created for the purposes of the Contract;
- (b) provided or required to be provided to the Commonwealth as part of the Services; or
- (c) derived at any time from the Material referred to in paragraphs (a) or (b);

“Department” means the Commonwealth Department of the Environment, Water, Heritage and the Arts or such other Department as may, from time to time, administer this Contract on behalf of the Commonwealth;

“Intellectual Property” includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include moral rights (being the rights of attribution and integrity of authorship and the right not to have authorship falsely attributed) or the rights of performers;

“Material” includes the subject matter of any category of Intellectual Property rights.

“Services” means the services to be performed under the Contract;

“Service Provider” means the party who undertakes to provide the Services in accordance with this Contract;

1.2 In this Contract, unless the contrary intention appears:

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

2. PERFORMANCE OF THE SERVICES

2.1 The Commonwealth will be entitled, in addition to any other rights it may have, to delay payment or any instalment of fees or allowances until the Service Provider has completed to the satisfaction of the Department that part of the Services to which the payment relates.

3. SUBCONTRACTORS

3.1 The Service Provider agrees not to subcontract the performance of any part of the Services without the Department’s prior written approval.

3.2 Despite any approval to sub-contract from the Department, the Service Provider remains fully responsible for the performance of its obligations under this Contract.

3.3 Any subcontract will contain provisions similar to clauses 4, 5, 6, 8, 10 and 12 of these conditions.

4. MATERIAL PROVIDED BY THE COMMONWEALTH

4.1 The Service Provider agrees to ensure that any Material provided by the

Department to the Service Provider for the purposes of the Services is used only for the purposes of the Services and in accordance with any conditions, restrictions or directions given by the Department.

5. CONTRACT MATERIAL

- 5.1 Intellectual Property in all Contract Material, and ownership of all Material in which Contract Material is or will be embodied ('copies'), vests or will vest in the Commonwealth. The Service Provider must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of performing the Services in accordance with this Contract.
- 5.2 Upon expiration or termination of this Contract the Service Provider must deliver all Contract Material and copies to the Department, or otherwise deal with all copies as directed by the Department.
- 5.3 Clause 5.1 does not affect the ownership of any Intellectual Property in any Material that exists prior to the date of this Contract that is agreed in writing between the Service Provider and the Department to be excepted from that clause ('Existing Material'), but the Service Provider grants to (or will procure for) the Commonwealth a permanent, irrevocable, royalty free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit such Existing Material in conjunction with the other Contract Material.
- 5.4 This clause will survive the expiration or termination of the Contract.

6. DISCLOSURE OF INFORMATION

- 6.1 A party must not disclose the Confidential Information of the other party to any third party without the prior written approval of that other party
- 6.2 A party may impose any conditions or restrictions that it considers appropriate when giving approval under this clause 6 and the other party must comply with any such conditions or restrictions.
- 6.3 The obligations on the parties under this clause 6 will not be taken to have been breached to the extent that the disclosure of Confidential Information is authorised or required by law.
- 6.4 The Service Provider acknowledges that the Department may disclose any information provided by the Service Provider and the terms of this Contract in accordance with the Commonwealth's reporting and accountability practices or obligations, including disclosure to:
 - (a) the Department's advisers or employees in order to comply with its obligations, or exercise its rights, under this Contract;
 - (b) the Department's internal management personnel to enable the effective management or auditing of Contract-related activities; or
 - (c) a Minister of the Commonwealth of Australia or in response to a

request by a House or a Committee of the Parliament of the Commonwealth of Australia.

6.5 If the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, that documentation is incorporated into, and becomes part of, this Contract on the date by which both parties sign that documentation.

6.6 This clause 6 will survive the expiration or termination of the Contract.

7. PROTECTION OF PERSONAL INFORMATION

[Note: If contracting with the following state or territory governments, Australian Capital Territory, Northern Territory, South Australia, Victoria, New South Wales, or Tasmania please contact the Legal Section on 6274 1575 or legal@environment.gov.au for alternative words for clause 7. Delete this note prior to forwarding to Service Provider.]

7.1 In relation to the *Privacy Act 1988* (Cth) (the Act) the Service Provider agrees:

- (a) to comply with the 'Information Privacy Principles' contained in the Act to the extent that the content of those principles applies to the Services, as if the Service Provider were an agency as defined in the Act;
- (b) to cooperate with any reasonable demands or inquiries made by the project officer on the basis of the exercise of the functions of the Privacy Commissioner under the Act including, but not limited to, a request from the project officer to comply with a guideline concerning the handling of Personal Information (as defined in the Act);
- (c) to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Service Provider has under this clause, including the requirement in relation to subcontracts.
- (d) to indemnify the Commonwealth in respect of any loss, liability, damage or expense suffered or incurred by the Commonwealth that arises directly or indirectly from a breach of any of the obligations of the Service Provider under this clause 7, or a subcontractor under the subcontract provisions referred to in clause 7.1(c).

7.2 In this clause 7, the terms 'agency', 'approved privacy code' (APC), 'Information Privacy Principles (IPPs)', and 'National Privacy Principles' (NPPs) and 'Personal Information' have the same meaning as they have in section 6 of the Act.

7.3 The provisions of this clause 7 survive the termination or expiration of this Contract.

8. CONFLICT OF INTEREST

8.1 The Service Provider warrants that, at the date of entering into this Contract,

no conflict with the interests of the Commonwealth exist or is likely to arise in the Service Provider's performance of the Services.

8.2 If, during the term of this Contract a conflict or risk of a conflict of interest arises the Service Provider must:

- (a) notify the Department immediately in writing of that conflict and fully disclose to the Department all relevant information relating to the conflict; and
- (b) take such steps as the Department may reasonably require to resolve or otherwise deal with the conflict.

9. CONDUCT AT COMMONWEALTH PREMISES

9.1 The Service Provider agrees that when using the Commonwealth's premises or facilities for the purposes of the Services, it will comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Commonwealth's smoke-free work-place policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred by the Service Provider from the circumstances.

10. INDEMNITY

10.1 The Service Provider agrees to indemnify the Commonwealth (and its officers, employees and agents) from and against any:

- (a) cost or 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 the Commonwealth, 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 either:

- (d) a breach by the Service Provider of this Contract; or
- (e) an act or omission involving fault on the part of the Service Provider in connection with this Contract.

10.2 The Service Provider's liability to indemnify the Commonwealth under clause 10.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Commonwealth contributed to the relevant cost, liability, loss, damage or expense.

10.3 The right of the Commonwealth to be indemnified under this clause 10 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 cost, liability, loss, damage or expense.

10.4 This clause 10 will survive the expiration or termination of the Contract.

11. INSURANCE

11.1 The Service Provider agrees:

- (a) to effect and maintain the following insurance for all the Service Provider's obligations under this Contract, including those which survive the expiration or termination of this Contract:
 - (i) workers compensation insurance for an amount required by the relevant State or Territory legislation; and
 - (ii) public liability insurance for an amount of not less than 5 million dollars; and
 - (iii) professional indemnity insurance for an amount of not less than 5 million dollars; and
- (b) upon request, provide proof of insurance acceptable to the Commonwealth.

12. TERMINATION AND REDUCTION FOR CONVENIENCE

12.1 The Commonwealth may, at any time by written notice, terminate the Contract or reduce the scope of the Services immediately. Upon receipt of such notice the Service Provider shall cease or reduce work as specified in the notice, take all available steps to minimise loss resulting from that termination or reduction and protect Contract Material, and continue work on any part of the Services not affected by the notice.

12.2 Where there has been a termination under clause 12.1, the Commonwealth will be liable only for:

- (a) payments and assistance under the Contract for Services rendered before the effective date of termination; and
- (b) reasonable costs incurred by the Service Provider and directly attributable to the termination.

12.3 Where there has been a reduction in the scope of the Services, the Commonwealth's liability to pay fees or allowances, meet costs or provide facilities and assistance under the Contract will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the scope of the Services.

12.4 The Commonwealth shall not be liable to pay any sum under clause 12.2 (b) which, in addition to any amounts paid or due, or becoming due to the Service

Provider under the Contract, would together exceed the full price of the Services ordinarily payable under the Contract.

12.5 The Service Provider will not be entitled to compensation for loss of prospective profits.

13. TERMINATION FOR DEFAULT

13.1 If:

- (a) the Service Provider defaults in the performance of the following obligations:
 - (i) to commence or proceed the Services at a rate of progress necessary to satisfy all of the requirements of this Contract; or
 - (ii) to perform or observe the terms and conditions of this Contract; and
- (b) the Service Provider fails to remedy any default in its performance within 14 days after receiving written notice to do so from the Department;

the Commonwealth may, by written notice, terminate the contract, from the date specified in the notice (which may be immediately).

13.2 If the Commonwealth terminates the Contract in accordance with clause 13.1, the termination will be without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

13.3 The Commonwealth may also, by written notice, terminate the Contract immediately (but without prejudice to any right of action or remedy which either party has or may have) if the Service Provider:

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

14. TAXES, DUTIES AND GOVERNMENT CHARGES

14.1 In this clause 14, the following terms have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'):

consideration

GST

input tax credit

supply

taxable supply; and

tax invoice.

- 14.2 The Service Provider warrants that it has an ABN that it has correctly quoted to the Department.
- 14.3 All consideration for any supply the Service Provider makes to the Commonwealth under this Contract includes an amount for any GST imposed on the supply.
- 14.4 The Service Provider must give the Department a tax invoice for any taxable supply the Service Provider makes under this Contract before the Commonwealth is liable to make any payment to the Service Provider for that supply.
- 14.5 The Service Provider may not claim from the Commonwealth any amount for which the Service Provider can obtain an input tax credit.

15. GENERAL

- 15.1 No variation of the Contract is binding unless it is agreed in writing between the Department and the Service Provider.
- 15.2 The Service Provider must not represent itself, and must ensure that persons engaged or employed by the Service Provider do not represent themselves, as being employees or agents of the Commonwealth. The Service Provider shall not, by virtue of this Contract or for any purpose, be deemed to be an employee or agent of the Commonwealth, nor shall the Service Provider have any power or authority to bind or represent the Commonwealth.
- 15.3 If a party does not exercise or delays in exercising any right or remedy it has under this Contract or at law ('right'), that failure or delay does not operate as a waiver of those rights. A single or partial exercise by a party of any right it holds under this Contract does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.
- 15.4 The Service Provider cannot assign its obligations, and must not assign in whole or part its rights, under the Contract without the prior written approval of the Department.
- 15.5 The Department and the Service Provider must attempt to settle by negotiation any dispute in relation to the Contract before resorting to external legal proceedings.

- 15.6 The Contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties submit to the jurisdiction of the courts of that Territory.
- 15.7 The Service Provider agrees, in carrying out this Contract, to comply with the laws from time to time in force in the Commonwealth or of any State or Territory in which the Services, or any part thereof, are to be carried out, and in particular:
- a. the *Crimes Act 1914* (Cth);
 - b. the *Racial Discrimination Act 1975* (Cth);
 - c. the *Sex Discrimination Act 1984* (Cth);
 - d. the *Disability Discrimination Act 1992* (Cth); and
 - e. the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).