

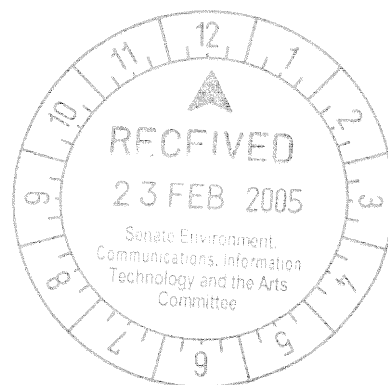


**Australian Government**

**Department of Communications,  
Information Technology and the Arts**

our reference

Ms Louise Gell  
Committee Secretary  
Senate Environment, Communications,  
Information Technology and the Arts Committee  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600



Dear Ms Gell

Thank you for the opportunity to appear before the Environment, Communications, Information Technology and the Arts References Committee at the 11 February 2005 hearings for the Inquiry into the Australian Communications and Media Authority (ACMA) Bills.

During our appearance at the hearings we agreed to provide the Committee with a copy of the relevant request for tender documents for the compilation of a shortlist of candidates for the position of Chair of the ACMA, as well as the advertisement for this tender. I have attached the relevant documents.

I would like to clarify the answers provided by Ms Holthuyzen and myself in regard to the selection criteria for the position of Chair of the ACMA. While currently there are no specific selection criteria, the Department has undertaken to develop a set of criteria that will assist the successful tenderer in its compilation of a shortlist of candidates for the position of Chair of the ACMA. This is reflected in the attached documentation.

As indicated in the tender documentation, the role of the successful tenderer will be to advise on possible candidates. Final decisions on the Chair and membership of the ACMA will be a matter for the Government, and would not be limited to consideration of persons those identified by the executive search agency.

Yours sincerely

Dr Simon Pelling  
General Manager  
Digital Broadcasting and Spectrum Management  
21 February 2005



**Australian Government**

**Department of Communications,  
Information Technology and the Arts**

**REQUEST FOR TENDER NO.DCON/05/3**

**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE POSITION OF  
CHAIR OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**

The Department of Communications, Information Technology and the Arts invites suitably qualified consultants to submit a proposal for the compilation of a shortlist of candidates for the position of Chair of the Australian Communications and Media Authority. The successful tenderer will be required to undertake an executive search for candidates for the Chair, and to identify a short list of candidates for further consideration by the Australian Government.

It would be an advantage for the consultant to have experience in senior executive recruitment for government and the communications/media sector. The contact for this tender is Lachlann Paterson, Radiocommunications Section, email: [Lachlann.Paterson@dcita.gov.au](mailto:Lachlann.Paterson@dcita.gov.au)

The tender will close at 2.00 pm (local time in the ACT) on  
**Monday, 7 February 2005.**

Tender documentation is available from Austender at  
<https://www.tenders.gov.au>

Tenders may be lodged through the Austender site. Physical lodgement is available. Details within the Conditions of Participation.

Any clarification regarding contractual matters should be sought from the Contracts Unit at [contracts@dcita.gov.au](mailto:contracts@dcita.gov.au) quoting the Tender identification number DCON/05/3.

hnaC024614



**Australian Government**

**Department of Communications,  
Information Technology and the Arts**

**REQUEST FOR TENDER NO.DCON/05/3**

**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE POSITION  
OF CHAIR OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY**

The Department of Communications, Information Technology and the Arts invites suitably qualified consultants to submit a proposal for the compilation of a shortlist of candidates for the position of Chair of the Australian Communications and Media Authority

The successful tenderer will be required to undertake an executive search for candidates for the Chair, and to identify a short list of candidates for further consideration by the Australian Government. The list should be accompanied by sufficiently detailed supporting information to enable the Government to fully consider the merits of the persons identified. Final selection of the successful candidate will be entirely the prerogative of the Australian Government. The process may include public advertisement, at the discretion of the tenderer, it would be expected that the successful tenderer would not rely solely on advertising but would use its own knowledge base and networks in the executive search.

It would be an advantage for the consultant to have experience in senior executive recruitment for government and the communications / media sector. The contact for this tender is Lachlann Paterson, Radiocommunications Section, email:

[Lachlann.Paterson@dcita.gov.au](mailto:Lachlann.Paterson@dcita.gov.au)

**Tenders may be submitted electronically via Austender or as a hard copy via the Department Tender Box”.**

The tender will close at 2.00pm (local time in the ACT) on

**Monday, 7 February 2005**

Tender documentation is available from Austender at  
<https://www.tenders.gov.au>

Tenders may be lodged through the Austender site. Physical lodgement is available. Details within the Conditions of Offer.

Any clarification regarding contractual matters should be sought from the Contracts Unit at [contracts@dcita.gov.au](mailto:contracts@dcita.gov.au) quoting the Tender identification number DCON/05/3.



Australian Government  
Department of Communications,  
Information Technology and the Arts

**REQUEST FOR OFFER  
CONDITIONS OF PARTICIPATION**

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**DOCUMENTS COMPRISING THIS REQUEST FOR SUBMISSION ARE:**

1. Cover Letter.
2. Conditions of Participation.
3. Tender Brief.
4. Standard Form Agreement
5. Deed(s) of Non-Disclosure/Privacy Act (if applicable).

**Please ensure that you include the following with your Submission:**

1. Organisation Information Page (see **Conditions of Participation section 4.4**); and
2. Statutory Declaration (see **Conditions of Participation section 6.1.1**)

<b>TIME BOX</b>	
<b>Please complete this section if your organisation has less than 20 employees</b>	
<b>GOVERNMENT FORM</b>	<b>COMPLETION TIME</b>
Statutory Declaration	
Organisation Information Page	
AusTender Registration	
<b>TOTAL COMPLETION TIME</b>	

## IMPORTANT NOTICE

The Commonwealth is subject to a number of specific requirements, which support internal and external scrutiny of its tendering and contracting processes. These include:

- (a) the requirement to publish details of agency agreements, Commonwealth contracts and standing offers with an estimated liability of **\$2,000** or more in the Purchasing and Disposals Gazette; and
- (b) the requirement to report a list of contracts valued at **\$100,000** or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts.

Tenderers should also note that the Parliament and its committees have the power to require the disclosure of Commonwealth contracts and contract information to enable them to carry out their functions.

The Commonwealth will treat as confidential any information provided by tenderers/prospective Suppliers prior to the award of a contract. Once a contract has been awarded, the Commonwealth will not keep such information confidential if it was provided by the successful tenderer/Supplier unless:

- (a) the Supplier requests that specific information should be kept confidential;
- (b) the specific information is by its nature confidential; and
- (c) the Commonwealth agrees to that request.

In considering a request for confidentiality, the Commonwealth will consider whether disclosure would cause detriment to the contractor or other third party and the circumstances under which the information was disclosed. The Commonwealth will also consider whether confidentiality is supported by the underpinning principles of Commonwealth procurement such as Value for Money, Accountability and Transparency. Tenderers should note that the Commonwealth assesses any claims for confidentiality in accordance with the "Guidance on Confidentiality of Contractors' Commercial Information" issued by the Department of Finance and Administration in February 2003.

The Commonwealth cannot provide an absolute guarantee of confidentiality because certain confidential information may be required to be disclosed by law or to the Parliament or the Auditor-General.

## **1. PRELIMINARY**

### **1.1 Interpretation**

1.1.1 In these Conditions of Participation:

‘Closing Time’ means the time on the date specified in section 2.8.1 at which the ability to lodge a Submission ends;

‘Brief’ refers to the document specifying the Department’s requirements;

‘Conditions of Participation’ refers to the conditions applicable to Suppliers wishing to participate in the procurement activity;

‘Submission’ refers to a Submission or proposal made in response to a call to Suppliers to respond to a particular requirement;

‘Supplier’ refers to a potential Supplier of services to the Department that lodges a Submission in response for a Request for Offer;

‘Request for Offer’ means these Conditions of Participation.

1.1.2 These Conditions of Participation apply to any form of request for a Supplier to provide services to the Department.

## **2. MATTERS CONCERNING SUBMISSION LODGEMENT**

### **2.1 Disclaimers**

2.1.1 This Request for Offer should be regarded as no more than a request to submit a bid, and is not intended to give rise to contractual obligations.

2.1.2 To ensure that the Commonwealth obtains value for money, all Submissions will be evaluated in accordance with the Selection Criteria specified in the Brief.

2.1.3 The Department does not accept responsibility for any failures arising from Suppliers lodging their bids electronically through the AusTender System.

2.1.4 All alterations, corrections and notices will be available on AusTender.

2.1.5 Only Suppliers that have registered their interest on AusTender will be directly advised of any alteration, correction or notice in relation to this Request for Offer. The Commonwealth accepts no responsibility if a Supplier fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the AusTender website ([www.tenders.gov.au](http://www.tenders.gov.au)).

## **2.2 Suppliers to Inform Themselves**

2.2.1 Suppliers will be taken to have:

- (a) examined the Brief, the Request for Offer, any documents referred to herein and any other information made available by the Department for the purpose of preparing a Submission;
- (b) made their own enquiries in relation to other information which would be obtainable by making reasonable enquires relevant to the risks, contingencies, and other circumstances having an effect on their offer;
- (c) satisfied themselves as to the correctness and sufficiency of their responses including offered prices; and
- (d) examined the AusTender Conditions of Use which are on the website at [www.tenders.gov.au](http://www.tenders.gov.au).

## **2.3 Variations to Selection Criteria or technical specifications**

2.3.1 If the Department amends or modifies the evaluation criteria or technical requirements it will transmit all modifications or amended or re-issued documents:

- (a) to all known potential Suppliers that are participating at the time the information is amended;
- (b) in the same manner as the original information; and
- (c) allow adequate time to allow potential Suppliers to modify and re-lodge their initial Submissions.

## **2.4 Contact Officer for Enquiries**

2.4.1 Suppliers should direct any questions arising about this Request for Offer to:

**Contracts Unit**

**Email:** [Contracts@dcita.gov.au](mailto:Contracts@dcita.gov.au)

**Fax:** (02) 6271 1965

2.4.2 Suppliers should direct any questions arising on matters relating to the lodgement of offers to:

AusTender Help Desk

Telephone: 02 6271 1558

Email: [tenders@agimo.gov.au](mailto:tenders@agimo.gov.au)

The AusTender Help Desk is available between 9am and 5pm, Monday to Friday (excluding ACT and national public holidays)

## **2.5 Part Offers**

2.5.1 The Department will not consider an offer for part of the services unless this is specifically indicated in the Brief.



## 2.6 Treatment of Submissions

- 2.6.1 The Department will only give further consideration to a Submission where, at the time of opening, the Submission includes the minimum content and format of Submissions as stated in all notices and documentation issued during the course of the procurement.
- 2.6.2 The Department may provide potential Suppliers with an opportunity to correct unintentional errors of form between the opening and evaluating the Submissions, however if it does so it will give all Suppliers the same opportunity.

## 2.7 Hard Copies of Offers

- 2.7.1 When lodging hard copies of Submissions in the Tender Box specified in section 2.8.1, one original hard copy and one electronic copy of the offer and any supporting material are to be lodged. The original is to be marked as the original. In the event of any discrepancy between any copy and the original, the original will take precedence.
- 2.7.2 Submissions lodged on the AusTender System must be in Microsoft Word for Windows 97 (or later) format.
- 2.7.3 AusTender will accept a maximum of five files up to 1 megabyte in any one upload. If a potential upload exceeds 1 megabyte, the Supplier should either:
- (a) lodge the Submission in multiple uploads, ensuring that each upload does not exceed 1 megabyte and ensuring that each upload is clearly identified as part of the Submission; or
  - (b) transmit the Submission as a compressed (zip) file not exceeding 1 megabyte.
- 2.7.4 If a Submission consists of multiple uploads, due to the number of files or file size, the complete Submission must be completely lodged before the Closing Time.
- 2.7.5 The Department may make such copies of the Submissions as it requires for the purposes of evaluating the Submissions.

## 2.8 Lodgement of Submissions

### Physical lodgement

- 2.8.1 The Closing Time for lodgement of Electronic (via Austender) and Physical Submissions is **2.00pm (Local Time in the ACT) on 7 February 2005.**
- 2.8.2 The official place for lodgement of hard copies of Submissions is the following address:

**The Tender Box**  
**Department of Communications Information Technology and the Arts**  
**Ground Floor,**  
**38 Sydney Avenue**  
**FORREST ACT 2603**

- 2.8.2 Oral, facsimile and E-mail Submissions will not be accepted.
- 2.8.3 Submissions lodged in the physical tender box must be enclosed in a sealed envelope or other sealed container endorsed with:
- (a) the number DCON/05/3 and Closing Time; and
  - (b) the title of the requirement.
- 2.8.4 Submissions **MUST** be lodged by the Closing Time specified in section 2.8.1. The Closing Time for the Tender Box is determined by Telstra's recorded time service. The Closing Time for electronic lodgement is determined by the time displayed on the AusTender System. Lodgement on AusTender after the Closing Time is not possible.
- 2.8.5 Suppliers intending to lodge their Submissions electronically should note that there may be considerable demand for the AusTender lodgement facilities prior to the Closing Time and should allow sufficient time to lodge the Submission.
- 2.8.6 Suppliers lodging their Submissions electronically through AusTender may lodge the signed Statutory Declaration and Organisational Information pages electronically and these will be accepted as original copies. If Suppliers are unable to lodge these documents electronically, faxed copies will be accepted as original copies. Suppliers may fax **these two documents only** to fax number 02 6271 1965.

## Electronic lodgement

### **2.9 AusTender**

- 2.9.1 AusTender allows Suppliers to download request documentation and upload Submissions. Suppliers must register with AusTender to be able to do this.
- 2.9.2 On screen guidance on uploading Submissions is provided on the AusTender website.
- 2.9.3 When an electronic Submission is lodged an acknowledgment is provided on-screen and Suppliers should print and save this acknowledgment. A separate e-mail confirming receipt of the Submission will also be automatically dispatched to the Supplier. The on-screen acknowledgment and e-mail confirmation will record the date and time the Submission was received by AusTender and will, in the absence of a manifest error, be conclusive evidence of the date and time of Submission of a Submission.
- 2.9.4 At Closing Time the electronic tender box will disappear from AusTender and no further Submissions may be lodged. Accordingly Suppliers should ensure that they sufficient time to upload their Submission and also allow for any time discrepancy between local time and the time displayed on AusTender.
- 2.9.5 The Commonwealth has implemented the security procedures described at the AusTender website (that is, Secure Sockets Layer session at 128-bits for initial encryption of tenders), however, the Commonwealth can not ensure that unauthorised access to information and data transmitted via the internet will not occur.
- 2.9.6 The AusTender website may be affected by system failure and that the Commonwealth can not ensure that it will be possible to successfully upload (lodge) the Submission onto AusTender.
- 2.9.7 The Commonwealth will assume that Submissions lodged through AusTender have been authorised by the Supplier.

## **2.10 Extension of Deadline**

- 2.10.1 The Closing Time will be extended only by written notice from the Department.
- 2.10.2 Any extension notice will be given the same distribution as the original request for Submission.

## **2.11. Requirements of Submissions**

- 2.11.1 Suppliers should ensure that Submissions contain the following information:
- (a) date of the offer;
  - (b) identity of Supplier, including name, ACN, (ARBN if applicable), ABN, physical and postal addresses, telephone and facsimile contact numbers and email address (if applicable);
  - (c) description of services offered;
  - (d) total cost;
  - (e) completion times;
  - (f) offer validity period;
  - (g) a Statutory Declaration identifying the extent to which the offer complies with conditions of contract proposed in this request for Submission;
  - (h) a completed Organisation Information page detailing business information of the organisation;
  - (i) technical particulars of each item or service offered, sufficient to enable evaluation in accordance with the Selection Criteria;
  - (j) details of insurance arrangements and copies of policies, or certificates of currency;
  - (k) Suppliers status under the *Superannuation Guarantee (Administration) Act 1992*;
  - (l) any work to be subcontracted; and
  - (m) complete responses to all questions raised in this Request for Offer.

## **3. LATE SUBMISSION POLICY**

### **3.1 Late Submissions**

- 3.1.1 Any Submission which is lodged at after the Closing Time will be a Late Offer and will not be considered unless the delay in receiving the Submission is due solely to mishandling by the Department.

## **4. MATTERS CONCERNING SUBMISSIONS**

### **4.1 Period the Submission remains open**

- 4.1.1 The Department requires that Submissions in response to this Request for Offer remain open for acceptance for a period of not less than three months after the Closing Time.

## **4.2 Language of Offers**

- 4.2.1 The offer, including all attachments and supporting material, is to be written in English. Unless otherwise specified, measurement is to be expressed in Australian legal units of measurement.

## **4.3 Evaluation of Submissions**

- 4.3.1 The Department must be satisfied that Suppliers have the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement. In evaluating Submissions, the Department will evaluate Submissions in relation to the financial, commercial and technical abilities of a Supplier. Suppliers should ensure that they address the Selection Criteria in the Brief when preparing Submissions.

## **4.4 Information on Supplier's Organisation**

- 4.4.1 **Suppliers must complete and attach, as the front cover page of their Submission, the Organisation Information Page (provided with this document) detailing their organisation's business information. Failure to do this will result in the Submission being non-compliant.**

## **4.5 Superannuation**

- 4.5.1 Suppliers must provide information in relation to their status under the *Superannuation Guarantee (Administration) Act 1992*.

## **4.6 Employed Persons (including public servants)**

- 4.6.1 Offerers proposing to engage on the project persons who currently have other employment should arrange such engagements through the employers of those persons. Evidence may be required that these arrangements have been made.
- 4.6.2 Where a serving Commonwealth or State employee is engaged, the employee may be reimbursed for out of pocket expenses, if appropriate.
- 4.6.3 There is no objection to engagement of retired Commonwealth or State officers. However, if separation from Commonwealth or State employment was on grounds other than age retirement, consideration will be given to the circumstances and period of that separation. The Commonwealth will assess these cases on their merits.
- 4.6.4 The Commonwealth reserves the right to reject any of the specified personnel.
- 4.6.5 Whilst the Department does not wish to restrict the type of employment that can be undertaken by a former officer of the Australian Public Service, it is important to avoid situations where a conflict of interest could arise, or could be perceived, in relation to work being undertaken for the Commonwealth. To address this situation, the Department will not exclude any organisation from submitting an Offer, but may reject the use of a particular person to carry out work where that person has been employed by the Department within the previous twelve months. The Commonwealth will assess these cases on their merits.

## **4.7 Access - Australian National Audit Office**

- 4.7.1 The Auditor-General has statutory powers to obtain information. The *Auditor-General Act 1997* provides the Auditor-General or an authorised person with a right to have, at all reasonable times, and access to information, documents and records.
- 4.7.2 In addition to the Auditor-General's statutory powers, and in recognition of the need for the Auditor-General's functions to be conducted in an efficient and cooperative

manner, if an Offerer is chosen to enter into an agreement, that Offerer will be required to provide to the Auditor-General, or a delegate of the Auditor-General, access to information, documents, records and Commonwealth assets, including those on the Offerer's premises. This access will be required at reasonable times on giving reasonable notice, for the purpose of carrying out the Auditor-General's functions and will be restricted to information, however stored, and assets which are in the custody or control of the Offerer, its employees, agents or subcontractors, and which are directly related to the Agreement. Such access will apply for the term of any Agreement entered into and for a period of five years from the date of expiration or termination.

#### **4.8 Freedom of Information**

- 4.8.1 The *Freedom of Information Act 1982* (FOI Act) gives members of the public rights of access to documents held by the Commonwealth Government and its Agencies, subject to certain exceptions.

#### **4.9 Disclosure of Certain Information**

- 4.9.1 The Commonwealth will keep confidential any Confidential Information provided to the Commonwealth by Suppliers prior to the award of a contract and, in respect of unsuccessful tenderers, after the contract is awarded.
- 4.9.2 The obligation of confidentiality in section 4.9.1 does not apply if the Confidential Information:
- (a) is disclosed by the Commonwealth to its advisers or employees solely in order to consider the tender responses;
  - (b) is disclosed by the Commonwealth to the responsible Minister;
  - (c) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (d) is authorised or required by law to be disclosed; or
  - (e) is in the public domain otherwise than due to a breach of section 4.9.1.
- 4.9.3 The Commonwealth will agree to keep confidential any specific information provided under, or in connection with, the contract where it is appropriate to do so having regard to the tests contained in the Commonwealth's *Guidance on Confidentiality of Contractors' Commercial Information*.
- 4.9.4 To enable the Commonwealth to consider whether to agree to keep specific information confidential, Suppliers must include in their Submission any request that information is to be treated as confidential following the award of a contract to it, specifying the information and giving reasons why it is appropriate to keep the information confidential.
- 4.9.5 The Commonwealth will consider any request made under section 4.9.4 and will inform the Suppliers whether or not the Commonwealth, in its sole discretion, agrees to the request and the terms under which it agrees.
- 4.9.6 The terms of any agreement will form part of the contract to be awarded at the completion of the tender process.
- 4.9.7 The Department is required to:
- (a) publish details of agency agreements, Commonwealth contracts and standing offers with an estimated liability of \$2,000 or more in the Purchasing and Disposals Gazette;

- (b) report a list of contracts valued at \$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
- (c) disclose to the public such details additional to those published about a contract as is considered appropriate.

4.9.8 For the purposes of this Request for Offer (and consistent with the definition used in the contract:

‘Confidential Information’ means:

- (a) information that is by its nature confidential and is designated by a party as confidential and described in the agreement between the parties;
- (b) information in Commonwealth Material or Contract Material that the Consultant knows or ought to know is confidential information;

but does not include information which is, or becomes, public knowledge other than by breach of the Agreement or any other confidentiality obligation.

#### **4.10 Affirmative Action**

4.10.1 The Commonwealth is unable to contract with Suppliers that are named as not meeting their obligations under the *Equal Opportunity for Women in the Workplace Act 1999* (in this section 4.10 referred to as ‘the Act’). Enquiries about the legislation should be directed to the Equal Opportunity for Women in the Workplace Department on (02) 8255 6300.

4.10.3 It will be a term of the contract with the successful Supplier that it complies with any obligations it has under the Act and that it does not enter under a subcontract with a non-complying Supplier.

4.10.4 If you are currently named as non-compliant under the Act you must obtain a letter of compliance from the Director of the Equal Opportunity for Women in the Workplace Department and attach it to your Submission.

#### **4.11 Employment Opportunities for Aboriginals or Torres Strait Islanders**

4.11.1 Your attention is drawn to the Federal Government policy to maximise employment opportunities for Aboriginal and Torres Strait Islander people through Commonwealth purchasing. If you intend to provide employment opportunities for Aboriginal or Torres Strait Islander people, you should indicate the nature and duration of the employment you propose to provide and the number of Aboriginal or Torres Strait Islander people who would be involved.

#### **4.12 Competitive Neutrality**

4.12.1 Competitive Neutrality is the principle that Government businesses should not enjoy any net competitive advantage as a result of their public sector ownership. The objective of the competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of organisations engaged in significant business activities. Submissions by government businesses should indicate whether they comply with the competitive neutrality policy.

#### **4.13 Financial Viability of Suppliers**

4.13.1 The Supplier, in providing a Submission, authorises the Department, in its absolute discretion and at any time during the evaluation and selection process, to examine

the financial records of the Supplier and any other relevant information needed to assess the Supplier's financial viability.

- 4.13.2 The Supplier acknowledges that in some cases the Commonwealth may require a successful Supplier to provide a financial guarantee or a performance bond.

#### **4.14 Security clearance**

- 4.14.1 The Supplier should note that the Department may require the successful Supplier (including employees, subcontractors and agents of the Supplier) to obtain a security clearance before gaining access to the Department. In that event, the clearance will be arranged through the Department's Security Adviser. The successful Supplier will be responsible for any costs associated with obtaining a security clearance.

### **5 MATTERS AFFECTING PRICE OFFERED**

#### **5.1 Offer Prices**

- 5.1.1 Prices for goods and services offered are to be stated in Australian dollars including any portion of the services to be imported from overseas. The Department will make payments in Australian dollars.
- 5.1.2 Suppliers must provide a fixed total price, including the professional fees, disbursements and associated costs for the fixed elements of the required services.
- 5.1.3 Suppliers may also provide a schedule of daily rates relating to specified personnel and these will be applied to any variable elements of the services that are outside the scope of the original Request for Offer.

#### **5.2 Insurance**

- 5.2.1 Suppliers must include in their response their status in relation to the insurance requirements of the contract. If the Supplier considers the insurance provisions to be inappropriate, the Supplier's Submission and Statutory Declaration should provide further details.
- 5.2.2 If Suppliers are not insured, they must identify the policy cover and the insurance provider(s) with which they are negotiating. The Department will not enter into a contract until proof of the relevant insurance is provided.
- 5.2.3 Suppliers should attach certificates of currency of relevant policies of insurance to their Submission.

#### **5.3 Payment**

- 5.3.1 Commonwealth policy precludes payment in advance of the supply of goods and services. Payment will be made by the Department 30 days after the satisfactory completion of the work/supply of goods and services, provided a correctly rendered invoice has been submitted to the Department.

### **6 ACCEPTANCE OF OFFER**

#### **6.1 Offer Assessment/Evaluation**

- 6.1.1 **Suppliers should indicate an acceptance of the terms and conditions of the Standard Form Agreement or specify the terms and conditions that it does not accept, by completing the attached Statutory Declaration. The Statutory Declaration must be signed for and on behalf of the Supplier's organisation by a person authorised to agree to the terms and conditions of the contract.**

- 6.1.2 The Commonwealth will rely on any representations you make in the Statutory Declaration. However, the Commonwealth will not be obliged to negotiate on any matter raised. The Commonwealth will not enter later negotiations on any aspects of the contract that are not identified in the Statutory Declaration.
- 6.1.4 A Supplier's offer will not be accepted until it has entered into a written agreement with the Commonwealth.
- 6.1.5 **The Commonwealth will not be liable for any work commenced prior to the signing of a contract by both parties.**

## **6.2 Notification of the Offer Outcome**

- 6.2.1 All Suppliers will be informed, in writing, of the outcome of the Request for Offer process.

## **6.3 Ownership of Submissions**

- 6.3.1 All Submissions received in response to a Request for Offer become the property of the Commonwealth.
- 6.3.2 Intellectual Property rights in the Submissions remain with the Suppliers. In providing a Submission, the Supplier licenses the Department, its officers and employees to copy, adapt, modify, disclose or do anything else necessary to all material contained in the Submission for purposes related to the Request for Offer.
- 6.3.3 The Department retains Intellectual Property rights in this Request for Offer, however, the Supplier may use it for the purpose of compiling its Submission.





**Australian Government**

**Department of Communications,  
Information Technology and the Arts**

**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE POSITION  
OF CHAIR OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY**

**BRIEF**

**1. AIM**

To determine a shortlist of appropriate candidates for the position of Chair of the Australian Communications and Media Authority (ACMA) for further consideration by the Australian Government.

**2. BACKGROUND**

*The Australian Communications and Media Authority (ACMA)*

The ACMA will be formed by merging the Australian Broadcasting Authority (ABA) and the Australian Communications Authority (ACA). Legislation for the formation of the ACMA was introduced into Parliament on 2 December 2004. This legislation provides for the formation of the ACMA by 1 July 2005 or an earlier date set by proclamation.

The ACMA will have the combined responsibilities of both the ABA and the ACA. The ACMA will regulate telecommunications, broadcasting, radiocommunications, online content and other functions as determined by the Government. These regulatory functions are set out in a range of legislation including the *Telecommunications Act 1997*, the *Radiocommunications Act 1992* and the *Broadcasting Services Act 1992*, together with the Australian Communications and Media Bill 2004.

The ACMA board will comprise a Chair, a Deputy Chair, both of whom will be full time, and between one and seven other members who will be either full or part time. The Chair will have a term of up to five years and may be reappointed, although the total term (of any member) cannot exceed 10 years. Previous time served as Chair, Deputy Chair or a member of the ABA, the ACA or the ACMA will count towards the 10 year term.

Each member of the ACMA, including the Chair, will be appointed by the Governor General on the recommendation of the Government and will therefore hold office independently.

In the interests of sound financial accountability and in recognition of the fact that the ACMA will be a publicly funded body which collects taxes on behalf of the Commonwealth, the Chair, members and staff of the ACMA will constitute a 'prescribed agency' for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act) and the Chair of the ACMA will be Chief Executive of the agency for the purposes of that Act. The Chair will also be head of the agency for the purpose of the *Public Service Act 1999*.

There will be separate processes for the appointment of the Deputy Chair and other members.

### *Role of the Chair*

The position of Chair will be particularly important given the significant responsibilities of the new authority. It is an Executive Chair role acting as both Chair and CEO. The person selected to fill this position will be a very senior manager with the demonstrated experience and ability to ensure that the merger proceeds effectively, and that the ACMA functions as an effective regulator across a broad range of areas in communications and broadcasting. The Chair should have the high level leadership skills to manage and strategically direct an organisation in the vicinity of 600 staff, as well as maintain effective high level linkages with major Australian and multinational media and communications organisations, governments and international bodies. In addition, the Chair will be required to manage effectively the contribution of the independently appointed board members – both the contribution of the board as a group and the workload of the full time members. Considerable communication skills with, and appreciation of, the broad stakeholder range of the ACMA will be essential.

The ACMA will have an annual operating budget of approximately \$70 million and collect approximately \$450 million in taxes and charges per annum. As a Chief Executive under the FMA Act, the Chair will be directly accountable to the Minister with responsibility for Communications (currently the Minister for Communications, Information Technology and the Arts) for the management of these resources. The ACMA will also have three central locations in Sydney, Melbourne and Canberra, together with a number of regional offices and operational centres.

The formation of the ACMA is due in part to the convergence of communications technologies. It is therefore important that the Chair has a sound understanding of relevant technological issues and their potential impact on the regulatory environment. The Chair should also have a sound understanding of the role of an independent regulator in the politically-sensitive areas of broadcasting and telecommunications. There would also be advantage in the Chair having experience in broadcasting and/or telecommunications regulatory issues.

The remuneration for the Chair is to be determined by the Remuneration Tribunal once the enabling legislation is passed. The Remuneration Tribunal has been requested to provide an indication of the level of remuneration prior to passage of the legislation.

### **3. OBJECTIVES**

The successful tenderer will be required to undertake an executive search for candidates for the Chair, and to identify a short list of candidates for further consideration by the Australian Government. The list should be accompanied by sufficiently detailed supporting information to enable the Government to fully consider the merits of the persons identified. Final selection of the successful candidate for recommendation to the Governor-General will be entirely the prerogative of the Australian Government. The process may include public advertisement, at the discretion of the tenderer. The successful tenderer will not rely solely on advertising but will make extensive use its own knowledge base and networks in the executive search.

### **4. DEPARTMENT'S ROLE**

The Department will be responsible for:

- developing selection criteria and a duty statement for the position; and
- orally briefing and liaising with the contractor on an ongoing basis.

### **5. SERVICE PROVIDER'S ROLE**

The consultant will be required to complete the following tasks:

- undertake a national and/or international executive search;
- compile preliminary list of candidates from the executive search, including a list of all applications received (if the position is advertised) and summaries of the suitability of each candidate;
- refine the preliminary list to develop an unranked short-list for consideration;
- prepare individual reports on the short-listed candidates. Such individual reports must be based on a sufficient degree of independent inquiry and must address the relevant selection criteria; and
- brief the Department and Minister on the short-listed candidates.

The performance of these tasks will be assessed against the following Performance Measures:

- whether all aspects of the task were addressed in a professional manner, with appropriate confidentiality;
- the quality and comprehensiveness of the draft reports;
- degree of adoption of the service provider's recommendations; and
- adherence to the timeframe and milestones specified in the contract.

### **6. TIMEFRAME AND MILESTONES**

The successful tenderer will be selected by 15 February 2005 and the contract will be prepared by 21 February 2005. The process will need to be completed by Wednesday 23 March 2005.

These timeframes will be the mechanism by which periodic payment is triggered, as outlined below:

- one-half following presentation of preliminary list of candidates; and
- one-half following receipt of the finalised short list of candidates and individual reports on short listed candidates and briefing of the Department and Minister.

## 7. REPORTING

The consultant will provide four hard copies of their tender, together with an electronic copy on a CD Rom in Microsoft Word for Windows format.

The reporting requirements will be determined in consultation with the successful tenderer.

## 8. FACILITIES TO BE PROVIDED BY THE DEPARTMENT

The Department will not provide office facilities.

## 9. SPECIFIED PERSONNEL

The service provider shall detail the names, expertise, qualifications and experience of proposed personnel.

All the Specified Personnel, including subcontractors, would be required to sign and provide to the Department:

- a Deed of Non-Disclosure together with a signed copy of Section 79 of the *Crimes Act 1914* dealing with Official Secrets; and
- a Deed for Contractor's Employees and Subcontractor's Employees Having Access to Personal Information, together with a signed copy of Section 70 of the *Crimes Act 1914* dealing with Disclosure of Information by Commonwealth Officers.

## 10. PROCUREMENT PLAN

It is expected that the following timetable shall apply.

Stage	Task	Approximate date
1.	• Invite tenders	22 January 2005
2.	• Closing date for questions by 5:30pm	27 January 2005
3.	• Answers supplied by 5:30pm	2 February 2005
4.	• Closing date for tender	7 February 2005
5.	• Evaluation completed	14 February 2005
6.	• Arrange a contract	21 February 2005
7.	• Notify unsuccessful tenderers	1 March 2005

## **11. COST**

Detailed costs are to be provided for:

- the total cost of the executive search; and
- advertising, travel and accommodation expenses (if applicable).

All costs are to be quoted inclusive of GST and should be accompanied by an explanatory note.

Please Note: If the contractor enters into this Agreement in an individual capacity such that employer superannuation contributions become payable, then, for the duration of this Agreement, the Commonwealth shall contribute superannuation for the contractor in the manner specified in the *Superannuation (Productivity Benefit) Act 1988*. Superannuation payments will be deducted from the total fee payable to the contractor under this Agreement.

## **12. TOTAL COST**

It is expected that the total cost of the consultancy would fall in the range of \$50,000 to \$70,000 (including GST). This represents 15 – 20% of the estimated package of the ACMA Chair. However, the contract will be for a fixed amount and the service provider will not be eligible for further fees should the Government appoint a person named on the preliminary list or the shortlist to a position on the ACMA other than the inaugural Chair.

## **13. PAYMENT**

Payment shall be made no later than 30 days after the satisfactory completion of the consultancy service invoiced for, or the date of receipt of a correctly rendered invoice, whichever is the later.

## **14. REFEREES' COMMENTS**

Details of two contactable referees within client organisations are to be provided.

## **15. CONFLICT OF INTEREST**

The service provider shall notify the Department of any known potential for real or apparent conflict of interest (an apparent conflict of interest is one in which a reasonable person would think that the person's judgment is likely to be compromised).

**16. CODE OF PROFESSIONAL BEHAVIOUR**

The service provider shall indicate whether or not they adhere to all standards of conduct as indicated by the relevant professional association.

**17. COMPETITIVE NEUTRALITY**

Competitive neutrality is the principle that Government businesses should not enjoy any net competitive advantage as a result of their public sector ownership. The objective of the competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of organisations engaged in significant business activities. Proposals submitted by government businesses shall indicate if they comply with the competitive neutrality policy.

**18. FINANCIAL VIABILITY OF TENDERERS**

The Department reserves the right, in its absolute discretion at any time in the evaluation and selection process, to examine the financial records of the service provider and any other relevant information needed to assess the service provider's financial viability.

**19. SECURITY CLEARANCE**

Should a security clearance be required for the consultant (including employees or subcontractors and agents of the consultant), the clearance will be arranged through the Department's Security Adviser. The consultant shall be responsible for any costs associated with obtaining the security clearance.

**20. CONFIDENTIAL INFORMATION**

Suppliers should note the Commonwealth's position in relation to requests to treat information as Confidential Information will be assessed in accordance with the Guidance on Confidentiality of Contractors' Commercial Information issued by the Department of Finance and Administration in February 2003 (see section 4.9 of the Conditions of Participation). Please review this document which can be found on the Department of Finance and Administration website at [http://www.finance.gov.au/ctc/confidentiality\\_of\\_contractors.html](http://www.finance.gov.au/ctc/confidentiality_of_contractors.html) prior to making any requests for confidentiality.

Suppliers should note that details of successful offers are listed in the Gazette and on the Internet.

## **21. SELECTION CRITERIA**

### **(a) Background**

Commonwealth Government policy requires the Department to obtain value for money in procuring goods and services. It is not an attribute or criterion in itself but is a basis for comparing submissions and is the essential test against which the Department justifies any procurement.

Price alone is not a reliable indicator of value for money. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

### **(b) Preparation of submission**

When preparing their proposals consultants shall address each of the selection criteria listed below. Each proposal will be assessed against the selection criteria. The selection criteria are not necessarily in order of importance. Unless a weighting is indicated, suppliers should assume that all Selection Criteria are of equal importance:

- Demonstrated experience in senior executive searches;
- The extent to which the proposal establishes that the objectives will be met;
- Expertise, qualifications and experience of the personnel undertaking the task;
- The ability to complete the consultancy services within the time frame stated;
- The ability to comply with the Department's "Standard Form Services Contract" including the insurance provisions;
- Value for money;
- Potential for conflict of interest.
- Overall compliance with the brief, tender conditions and any attachments including providing completed Organisation Information Page and Statutory Declaration's;
- Compliance with competitive neutrality (Government Businesses only); and
- Referees' comments.

## **22. ENQUIRIES**

If you require further information please contact Lachlann Paterson on email [lachlann.paterson@dcita.gov.au](mailto:lachlann.paterson@dcita.gov.au).

# ORGANISATION INFORMATION PAGE

## Request No. DCON/05/3

Title

**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE POSITION  
OF CHAIR OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA  
AUTHORITY**

Lodgement

**by 2:00pm (AEDST) on Monday 7 February 2005**

Tender Box (DCON/05/3) Department of Communications, Information Technology and the Arts 38 Sydney Avenue CANBERRA CITY ACT 2601  Fax (02) 6271 1965	OFFICE USE ONLY  Date Opened:    /    /2005  Signature:
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Requirement Summary

The Department of Communications, Information Technology and the Arts invites suitably qualified consultants to submit a proposal for the compilation of a shortlist of candidates for the position of Chair of the Australian Communications and Media Authority.

Declaration by Offerer

The undersigned hereby offers the quoted products and/or services at the prices and charging rates detailed, and upon and subject to the terms and conditions to be negotiated between the Commonwealth and the Offerer.

Signature	Print Name & Official Position Held (ie. Director etc.)  ..... / .... / .....
Duly authorised to sign offers for and on behalf of (state full legal name of organisation/individual)	
Registered Business Address and ACN and ABN	
Postal Address	
Refer Enquiries to: (Block Letters)	Telephone No. (    ) Facsimile No. (    )
Offerer's Reference:	Email Address.



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COMMONWEALTH OF AUSTRALIA

Statutory Declaration

I, (1)

do solemnly and sincerely declare:

1. That I have read the documentation in relation to Department of Communications, Information Technology and the Arts (DCITA) Request for Tender DCON/05/3 including the Standard Form Services Agreement.
2. I unreservedly agree to accept the terms and conditions of the Standard Form Agreement except for the matters detailed in the Schedule below.

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

SCHEDULE

(2)

Declared at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 2005

Before me,

(3)

(4)

- (1) Here insert name, address and occupation of person making the declaration.
- (2) Signature of person making the declaration.
- (3) Signature of person before whom the declaration is made.
- (4) Here insert title of person before whom the declaration is made.

## PERSONS BEFORE WHOM A STATUTORY DECLARATION MAY BE MADE

### PART 1 - MEMBERS OF CERTAIN PROFESSIONS

Chiropractor  
Dentist  
Legal practitioner  
Medical practitioner  
Nurse  
Patent attorney  
Pharmacist  
Veterinary surgeon

### PART 2 - OTHER PERSONS

- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
- Australian Consular Officer, or Australian Diplomatic Officer, (within the meaning of the *Consular Fees Act 1985*)
- Bailiff
- Bank officer with 5 or more years of continuous service
- Chief executive officer of a Commonwealth Court
- Civil marriage celebrant
- Clerk of a court
- Commissioner for Affidavits
- Commissioner for Declarations
- Credit union officer with 5 or more years of continuous service
- Holder of a statutory office not specified in another item in this Part
- Judge of a court
- Justice of the Peace
- Magistrate
- Master of a court
- Member of the Australian Defence Force who is:
  - (a) an officer; or
  - (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
  - (c) warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the national Institute of Accountants
- Member of the Institute of Corporate Managers, Secretaries and Administrators
- Member of the Institution of Engineers, Australia, other than at the grade of student
- Member of:
  - (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) a Territory legislature; or
  - (d) a local government authority of a State or Territory
- Minister of religion registered under Division 1 of Part IV of the *Marriage Act 1961*
- Notary public
- Permanent employee of:
  - (a) the Commonwealth or of a Commonwealth authority; or
  - (b) a State or Territory or of a State or Territory authority; or
  - (c) a local government authority;with 5 or more years of continuous service who is not specified in another item in this part;
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public;
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made;
- Police officer;
- Registrar, or Deputy Registrar, of a Court;
- Senior Executive Service officer of the Commonwealth, or of a State or Territory, or of a Commonwealth, State or Territory authority;
- Sheriff;
- Sheriff's officer;
- Teacher employed on a full-time basis at a school or tertiary education institution.



**Australian Government**  

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**Department of Communications,  
Information Technology and the Arts**

**STANDARD FORM SERVICES AGREEMENT**

**between**

**COMMONWEALTH OF AUSTRALIA**

**and**

**<INSERT NAME OF SERVICE CONTRACTOR>  
ABN XXXXXXXXX**

**in relation to Services for**

**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE  
POSITION OF CHAIR OF THE AUSTRALIAN COMMUNICATIONS  
AND MEDIA AUTHORITY**

**SERVICES COMMISSION NO. DCON/05/3**

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THIS AGREEMENT is made on this \_\_\_\_\_ day of \_\_\_\_\_ 200 .

## PARTIES

**THE COMMONWEALTH OF AUSTRALIA** ('the Commonwealth') for the purposes of this Agreement represented by and acting through

**THE DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS** ('the Department')

AND

<INSERT FULL NAME OF SERVICE CONTRACTOR> ('the Service Contractor')

## PURPOSE

- A. The Commonwealth requires the provision of certain services ('the Services') to the Department as specified in the Schedule.
- B. The Service Contractor has fully informed itself on all aspects of the work required to be performed and has submitted the proposal and quotation referred to in Item A of the Schedule [*Proposal and Quotation*].
- C. The Commonwealth has agreed to engage the Service Contractor to provide the Services upon the terms and conditions contained in this Agreement.
- D. The Service Contractor agrees to provide the Services upon the terms and conditions contained in this Agreement.

## OPERATIVE PART

### 1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

**'Commonwealth Material'** means any Material:

- (a) provided by the Commonwealth to the Service Contractor for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a);

**'Confidential Information'** means:

- (a) information that is by its nature confidential and is designated by a party as confidential and described in Item C [*Confidential Information*]; and
- (b) information in Commonwealth Material or Contract Material that the Service Contractor

knows or ought to know is confidential information;

but does not include information which is, or becomes, public knowledge other than by breach of the Agreement or any other confidentiality obligation;

**‘Contract Material’**

means all Material:

- (a) created for the purposes of this Agreement;
- (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’**

includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this Agreement;

**‘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 trade marks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**‘Material’**

includes information and the subject matter of any category of Intellectual Property rights;

**‘Project Officer’**

means the person specified by name or position in Item D [*Project Officer*] or any substitute notified in writing to the Service Contractor;

**‘Services’**

means the services described in Item B [*Services*] and includes the provision to the Commonwealth of the Material specified in Item E [*Required Contract Material*];

**‘Service Contractor’**

includes the officers, employees, subcontractors and agents of the Service Contractor;

**‘Specified Personnel’**

means the personnel specified in Item F [*Specified Personnel*] as personnel required to perform all or part of the work constituting the Services; and

**‘Writing’**

means any representation of words, figures or symbols capable of being rendered in a visible form.



- 1.2 In this Agreement, 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;
  - (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
  - (d) words importing persons include a partnership and a body whether corporate or otherwise;
  - (e) all references to dollars are to Australian dollars;
  - (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
  - (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - (h) reference to an Item is to an Item in the Schedule;
  - (i) the Schedule and any attachments form part of this Agreement;
  - (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
  - (k) where any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and
  - (l) reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties.
- 1.3 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

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

- 2.1 This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.
- 2.2 No agreement or understanding varying or extending this Agreement, including in particular the scope of the Services in the Schedule, shall be legally binding upon either party unless in writing and signed by both parties.

### **3. PROVISION OF SERVICES**

3.1 The Service Contractor agrees to:

- (a) perform the Services in accordance with relevant best practice, including any Commonwealth and industry standards and guidelines specified in Item G [*Standards and Best Practice*];
- (b) comply with the time frame for the performance of the Services specified in Item H [*Time frame*]; and
- (c) liaise with the Project Officer, provide any information the Project Officer may reasonably require and comply with any reasonable request made by the Project Officer.

3.2 The Service Contractor acknowledges that the Commonwealth is subject to a number of specific requirements, including requirements:

- (a) to publish details of agency agreements, Commonwealth contracts and standing offers with an estimated liability of \$2,000 or more in the Purchasing and Disposals Gazette; and
- (b) to report a list of contracts valued at \$100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts.

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

4.1 The Commonwealth agrees to:

- (a) pay the fees specified in Item J [*Fees*];
- (b) pay the allowances and meet the costs specified in Item K [*Allowances and Costs*]; and
- (c) provide the facilities and assistance specified in Item L [*Facilities and Assistance*] free of charge to the Service Contractor.

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

4.3 The Service Contractor agrees to submit invoices for payment in the manner specified in Item M [*Invoice Procedures*].

4.4 For the avoidance of doubt, the amount referred to under Item I [*Total Cost*] is the total of the amounts referred to in paragraphs 4.1(a) and 4.1(b).

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

5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Services will be borne by the Service Contractor.

- 5.2 The amounts paid by the Commonwealth under this Agreement include Goods and Services Tax (GST) for supplies which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act').
- 5.3 In relation to taxable supplies made under this Agreement, the Service Contractor 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 by the Australian Tax Office to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

## **6. SUPERANNUATION AND INCOME TAX**

- 6.1 If the Service Contractor enters into this Agreement in an individual capacity such that employer superannuation contributions become payable, then, for the duration of this Agreement, the Commonwealth shall contribute superannuation for the Service Contractor in the manner specified in the *Superannuation (Productivity Benefit) Act 1988*. Superannuation payments will be deducted from the total fee payable to the Service Contractor under this Agreement.
- 6.2 If superannuation is payable and, under this Agreement the Service Contractor earns more than \$113 per week or the total benefit payable by the Commonwealth will be \$500 or more, the Service Contractor will, within fourteen (14) days of the execution of this Agreement, inform the Project Officer of the fund into which the Commonwealth is to pay the superannuation entitlements. This fund must be an approved superannuation fund within the meaning set out in the *Superannuation (Productivity Benefit) Act 1988*.
- 6.3 If superannuation is payable and, under this Agreement, the Service Contractor earns \$113 per week or less, the Service Contractor may elect in writing not to have the employer superannuation contributions paid into a superannuation fund. In those circumstances, where the total superannuation benefit payable to the Service Contractor is less than \$500 the Service Contractor may take the benefit in cash at the end of the period of employment.
- 6.4 Where payable, the Commonwealth shall deduct income tax from fee payments to the Service Contractor in the manner specified in the *Income Tax Assessment Act 1936*.

## **7. SUBCONTRACTORS**

- 7.1 The Service Contractor agrees not to subcontract the performance of any part of the Services without prior approval in writing from the Commonwealth.
- 7.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its approval under subclause 7.1

- 7.3 The Service Contractor shall be fully responsible for the performance of the Services notwithstanding that the Service Contractor has subcontracted the performance of parts of the Services approved in accordance with this clause 7.
- 7.4 Where the Commonwealth has given the Service Contractor approval to subcontract part of the Services under subclause 7.1, the Service Contractor agrees that it will ensure that in any subcontract placed with a subcontractor for the purposes of carrying out the Services, it reserves a right of termination to take account of the Commonwealth's right of termination under this Agreement, and the Service Contractor further agrees that it will, where appropriate, make use of those rights to mitigate losses in the event of termination by the Commonwealth under clause 23 or 24.
- 7.5 The Commonwealth may, at its absolute discretion, direct the Service Contractor to require a subcontractor to remove certain personnel from work in relation to the Services.

## **8. COMPLIANCE WITH EMPLOYMENT POLICIES**

- 8.1 The Service Contractor must, in its dealings with its employees, have due regard to Commonwealth policies on employment, including the *Workplace Relations Act 1996*, and obligations under relevant occupational health and safety laws.
- 8.2 If requested by the Commonwealth before any payment of fees or any costs is made, the Service Contractor must provide a written statement verifying that all remuneration payable to its employees has been paid for work done relating to this Agreement during the period to which the payment relates.
- 8.3 The form of the statement under subclause 8.2 may be required by the Commonwealth in a particular form, including a:
- (a) statutory declaration; or
  - (b) form specified under any relevant legislation, including regulations relating to section 127 of the *Industrial Relations Act 1996* (NSW) or any similar State or Territory laws as amended or replaced from time to time.
- 8.4 The Service Contractor acknowledges that the Commonwealth may withhold any payment due to the Service Contractor under this Agreement until the Service Contractor gives a written statement under clause 8, for any period up to the date of the statement, and that any rights pertaining to late payment under this Agreement do not apply to any payment withheld under this subclause 8.4.
- 8.5 The parties agree that a notice from the Commonwealth regarding any State or Territory legislation that applies to this Agreement, such as referred to in paragraph 8.3(b), will be conclusive for the purposes of this Agreement.
- 8.6 The Service Contractor must keep a copy of any written statement provided under this clause for any reasonable period notified by the Commonwealth or as prescribed under the legislation referred to in paragraph 8.3(b) (being at least 6 years for the

purposes of the *Industrial Relations Act 1996* (NSW), sub section 127(4), whichever is longer).

## **9. SPECIFIED PERSONNEL**

- 9.1 The Service Contractor agrees that the Specified Personnel will perform work in relation to the Services in accordance with this Agreement.
- 9.2 Where Specified Personnel are unable to perform the work, the Service Contractor agrees to notify the Commonwealth immediately.
- 9.3 The Commonwealth may, at its absolute discretion, request the Service Contractor to remove personnel (including Specified Personnel) from work in relation to the Services.
- 9.4 Where subclauses 9.2 or 9.3 apply, the Commonwealth may request the Service Contractor to provide replacement personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 9.5 If the Service Contractor does not comply with any request made under subclause 9.4 the Commonwealth may terminate this Agreement in accordance with the provisions of clause 24 [*Termination for Default*].

## **10. RESPONSIBILITY OF SERVICE CONTRACTOR**

- 10.1 The Service Contractor agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- (a) involvement by the Commonwealth in the performance of the Services;
  - (b) payment made to the Service Contractor on account of the Services;
  - (c) subcontracting of any part of the Services; or
  - (d) acceptance by the Commonwealth of replacement personnel.

## **11. COMMONWEALTH MATERIAL**

- 11.1 The Service Contractor shall use any Commonwealth Material provided by the Project Officer or the Department exclusively for the purposes of carrying out the Services under this Agreement.
- 11.2 The Service Contractor shall return all Commonwealth Material to the Commonwealth when requested or on completion of the Services.
- 11.3 The Commonwealth agrees to provide Material to the Service Contractor as specified in Item P [*Material to be Provided by Commonwealth*].
- 11.4 The Commonwealth grants to the Service Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt the Commonwealth Material for the purposes of this Agreement.

11.5 The Service Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Item Q [*Use of Commonwealth Material*], and any direction by the Commonwealth.

## 12. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

12.1 Intellectual Property in all Contract Material vests or will vest in the Commonwealth.

12.2 Subclause 12.1 does not affect the ownership of Intellectual Property in any existing Material which is specified in Item R [*Existing Material*], but the Service Contractor grants to the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any such existing Material in conjunction with the other Contract Material.

12.3 If requested by the Commonwealth, the Service Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12.

12.4 The Service Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 12.

12.5 The Service Contractor:

- (a) where a natural person who is the author of the Contract Material - consents to the Specified Acts; and
- (b) in any other case - warrants that it has obtained or will obtain from the author of the Contract Material or any Material that forms part of the Contract Material, a written consent to the Specified Acts.

12.6 For the purposes of this clause 12:

‘Existing Material’ is any Material which is already in existence and in which the Service Contractor holds the intellectual property at the date on which this Agreement is signed and which was not developed for the purposes of this Agreement;

‘Specified Acts’ means the following types or classes of acts or omissions done by or on behalf of the Commonwealth in relation to the Contract Material:

- (a) those which would, but for subclause 12.5, infringe the author’s right of attribution of authorship;
- (b) those which would, but for subclause 12.5, infringe the author’s right of integrity of authorship;

but does not include:

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

### **13. DEALINGS WITH COPIES**

- 13.1 This clause 13 applies to any document, device, article or medium ('copies') in which Commonwealth Material, Contract Material or Confidential Information is embodied.
- 13.2 Property in all copies vests or will vest in the Commonwealth.
- 13.3 The Service Contractor agrees to establish and maintain procedures to secure the copies against loss and unauthorised access, use, modification or disclosure.
- 13.4 Upon the expiration or termination of this Agreement the Service Contractor agrees to deliver to the Commonwealth or otherwise deal with all copies as directed by the Commonwealth.

### **14. DISCLOSURE OF INFORMATION**

- 14.1 Subject to subclause 14.5, a party to this Agreement must not, without the prior written consent of the other party, use or disclose any Confidential Information of the other party to a third party.
- 14.2 In giving written consent to the use or disclosure of the Confidential Information, a party may impose such conditions as it thinks fit and the other party agrees to comply with these conditions.
- 14.3 A party may at any time require the other party to arrange for:
- (a) its advisers; or
  - (b) any other third party, other than a Commonwealth employee, to whom information may be disclosed pursuant to paragraph 14.5 (a) or (e);
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first party's Confidential Information.
- 14.4 If the other party receives a request under subclause 14.3 it agrees to arrange promptly for all such undertakings to be given.
- 14.5 The obligations of the parties under this clause 14 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
  - (c) is disclosed by the Commonwealth to the responsible Minister;
  - (d) is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (e) is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
  - (f) is authorised or required by law, including under this Agreement, under a licence or otherwise, to be disclosed; or
  - (g) is in the public domain otherwise than due to a breach of this clause 14.
- 14.6 Where a party discloses Confidential Information to another person:
- (a) pursuant to paragraphs 14.5 (a), (b) or (e), the disclosing party must:
    - (i) notify the receiving person that the information is Confidential Information; and
    - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
  - (b) pursuant to paragraphs 14.5 (c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.
- 14.7 The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- 14.8 Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of, this Agreement, on the date by which both parties have signed this documentation.
- 14.9 The obligations under this clause 14 continue, notwithstanding the expiry or termination of this Agreement:
- (a) in relation to an item of information described in Item C [*Confidential Information*], for the period set out in respect of that item; and
  - (b) in relation to any information which the parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.
- 14.10 Nothing in this clause 14 derogates from any obligation which either party may have either under the *Privacy Act 1988* as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

**15. PROTECTION OF PERSONAL INFORMATION**

- 15.1 This clause 15 applies only where the Service Contractor deals with personal information when, and for the purpose of, providing the Services under this Agreement.



15.2 The Service Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services under this Agreement:

- (a) to use personal information obtained during the course of providing the Services only for the purposes for which it is collected and for fulfilling its obligations under this Agreement;
- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose personal information the Service Contractor holds, that complains about acts or practices of the Service Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Service Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing), an NPP (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to the Service Contractor, unless:
  - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Agreement; or
  - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Agreement, and the activity or practice which is authorised by this Agreement is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding a party to this Agreement;
- (g) to immediately notify the agency if the Service Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 15, whether by the Service Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of this clause 15; and
- (i) to ensure that any employee of the Service Contractor who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Service Contractor set out in this clause 15.

15.3 The Service Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to

ensure that the subcontractor has the same awareness and obligations as the Service Contractor has under this clause 15, including the requirement in relation to subcontracts.

15.4 The Service Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Service Contractor under this clause 15, or a subcontractor under the subcontract provisions referred to in subclause 15.3.

15.5 In this clause 15, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, also has the meaning it has in section 6 of the Privacy Act being:

“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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion”.

15.6 The provisions of this clause 15 survive expiration or termination of this Agreement.

## **16. CONFLICT OF INTEREST**

16.1 The Service Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict with the interests of the Commonwealth exists or is likely to arise in the performance of the Services.

16.2 If, during the performance of the Services a conflict of interest arises, or appears to have arisen, the Service Contractor agrees to:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict.

16.3 If the Service Contractor does not notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate this Agreement in accordance with the provisions of clause 24 [*Termination for Default*].

16.4 The Service Contractor agrees that it will not, and will use its best endeavours to ensure that any officer, employee, agent or subcontractor of the Service Contractor does not, engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Service Contractor in providing the Services to the Commonwealth fairly and independently.

**17. CONDUCT AT COMMONWEALTH PREMISES**

17.1 The Service Contractor 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 Contractor or as might reasonably be inferred from the circumstances.

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

18.1 The Service Contractor agrees to give to the Project Officer, or to any persons authorised in writing by the Project Officer, access, at all reasonable times, to premises occupied by the Service Contractor where the Services are being performed and to permit those persons:

- (a) to inspect and copy Material, however stored, in the Service Contractor's possession or control for purposes associated with the Agreement or any review of performance under the Agreement; and
- (b) to access Commonwealth assets which have come into existence as a result of the Agreement.

18.2 The rights referred to in subclause 18.1 are subject to:

- (a) the provision of reasonable prior notice by the Commonwealth; and
- (b) the Service Contractor's reasonable security procedures.

18.3 The Service Contractor must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause permitting the Project Officer, and any other persons authorised in writing by the Project Officer, to have rights of access to the subcontractor's premises as specified in this clause 18.

18.4 This clause 18 applies for the term of the Agreement and for a period of five years from the date of expiration or termination.

**19. INDEMNITY**

19.1 The Service Contractor 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 Service Contractor, its officers, employees, agents or subcontractors in connection with this Agreement;
- (e) any breach by the Service Contractor of its obligations or warranties under this Agreement;
- (f) any use or disclosure by the Service Contractor, 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 Contract Material for the purposes of this Agreement;

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

- 19.2 The Service Contractor's liability to indemnify the Commonwealth under subclause 19.1 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.
- 19.3 The right of the Commonwealth to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 19.4 In this clause 19, 'Commonwealth' includes officers, employees and agents of the Commonwealth.
- 19.5 This clause 19 will survive the expiration or termination of this Agreement.

## **20. INSURANCE**

- 20.1 The Service Contractor agrees, for so long as any obligations remain in connection with this Agreement:
  - (a) to effect and maintain insurance acceptable to the Commonwealth, for all the Service Contractor's obligations under this Agreement, including those which survive the expiration or termination of this Agreement as follows:
    - (i) Workers' Compensation as required by law;
    - (ii) Public Liability to an amount of not less than \$10,000,000; and
    - (iii) Professional Negligence to an amount of not less than \$10,000,000; and
  - (b) to provide proof of currency of these insurance policies as and when requested.

## 21. DISPUTE RESOLUTION

21.1 The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) firstly, the party claiming that there is a dispute will send to the other party a notice setting out the nature of the dispute;
- (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
  - (i) there is no resolution or agreement; or
  - (ii) 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 the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days;

then, either party may commence legal proceedings.

21.2 Despite the existence of a dispute, the Service Contractor will (unless requested in writing not to do so) continue to perform the Services to the extent that it is reasonable to do so considering the nature of the dispute.

21.3 This clause 21 does not apply to:

- (a) action by either party under or purportedly under clause 24 [*Termination For Default*]; or
- (b) action by the Commonwealth under or purportedly under subclause 4.2 [*Fees, Allowances & Assistance*], or clause 23 [*Termination and Reduction*];

nor does it preclude either party from commencing legal proceedings for urgent interlocutory relief.

## 22. UNAVOIDABLE DELAY

22.1 A party to this Agreement shall not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or under clause 24) if that default:

- (a) is caused by an act or event that is beyond the reasonable control of that other party; and
- (b) was not reasonably foreseeable at the time this Agreement was entered into.

## **23. TERMINATION AND REDUCTION**

- 23.1 The Commonwealth may, at any time by notice, terminate this Agreement or reduce the scope of the Services.
- 23.2 Upon receipt of a notice of termination or reduction the Service Contractor agrees to:
- (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.
- 23.3 Where there has been a termination under subclause 23.1, the Commonwealth will be liable only for:
- (a) payments and assistance under clause 4 [*Fees, Allowances & Assistance*] for services rendered before the effective date of termination; and
  - (b) reasonable costs incurred by the Service Contractor and directly attributable to the termination.
- 23.4 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 clause 4 [*Fees, Allowances & Assistance*] will, unless there is agreement in writing to the contrary, abate in accordance with the reduction in the Services.
- 23.5 The Commonwealth will not be liable to pay compensation under subclause 23.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Contractor under this Agreement, together exceed the fees set out in Item J [*Fees*].
- 23.6 The Service Contractor will not be entitled to compensation for loss of prospective profits.

## **24. TERMINATION FOR DEFAULT**

- 24.1 Where a party fails to satisfy any of its obligations under this Agreement, the other party if it considers that the failure is:
- (a) not capable of remedy, may, by notice, terminate this Agreement immediately; or
  - (b) capable of remedy, may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 24.2 The Commonwealth may also, by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Contractor:

- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the Corporations Law, 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.

## **25. NEGATION OF EMPLOYMENT PARTNERSHIP AND AGENCY**

- 25.1 The Service Contractor agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 25.2 The Service Contractor is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Service Contractor have any power or authority to bind or represent the Commonwealth.

## **26. WAIVER**

- 26.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 26.2 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 26.3 In this clause 26, 'rights' means rights or remedies provided by this Agreement or at law.

## **27. ASSIGNMENT AND NOVATION**

- 27.1 The Service Contractor cannot assign its obligations, and agrees not to assign its rights, under this Agreement without, in either case, obtaining prior approval in writing from the Commonwealth.
- 27.2 The Service Contractor agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of the Agreement without first consulting the Commonwealth.

## **28. APPLICABLE LAW**

- 28.1 The laws in the Australian Capital Territory apply to this Agreement.

## **29. COMPLIANCE WITH LAWS**

- 29.1 In addition to the requirements of clause 30, the Service Contractor agrees, in carrying out this Agreement, to comply with all relevant legislation of the Commonwealth, or of any State, Territory or local authority, particularly:
  - (a) the *Crimes Act 1914*;
  - (b) the *Disability Discrimination Act 1975*;

- (c) the *Racial Discrimination Act 1975*;
- (d) the *Sex Discrimination Act 1984*;
- (e) the *Age Discrimination Act 2004* and the *Age Discrimination (Consequential Provisions) Act 2004*; and
- (f) any obligations it has under the *National Occupational Health and Safety Commission Act 1985*.

29.2 The Service Contractor acknowledges that the Commonwealth is subject to, and is required to act in accordance with, the provisions of the *Freedom of Information Act 1982*.

### **30. AFFIRMATIVE ACTION**

30.1 The Service Contractor must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* (in this clause 30, referred to as 'the Act'). Information about the legislation can be obtained from the Equal Opportunity for Women in the Workplace Agency on (02) 9448 8500.

30.2 The Service Contractor must not enter into a subcontract under this Agreement 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 Act.

### **31. ACCESS - AUSTRALIAN NATIONAL AUDIT OFFICE**

31.1 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 Contractor:

- (a) require the provision by the Contractor, its employees, agents or subcontractors, of records and information which are directly related to the Agreement;
- (b) have access to the premises of the Contractor for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors which are directly related to the Agreement; and
- (c) where relevant, inspect any Commonwealth assets held on the premises of the Contractor.

31.2 The Contractor shall ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 31.

31.3 This clause 31 applies for the term of the Agreement and for a period of five years from the date of expiration or termination.



## **32. NOTICES**

- 32.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with (as appropriate) as follows:
- (a) if given by the Contractor to the Commonwealth – addressed as indicated in paragraph (a) of Item S [*Commonwealth's Address for Notices*] or as otherwise notified by the Commonwealth; or
  - (b) if given by the Commonwealth to the Contractor - addressed as indicated in Item T [*Service Contractor's Address for Notices*] or as otherwise notified by the Service Contractor.
- 32.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.
- 32.3 A notice, request or other communication will be deemed to be received:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 business days after the date on which it was sent; and
  - (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

## **33 SECURITY REQUIREMENTS**

- 33.1 The Commonwealth may require the Service Contractor to obtain a security clearance at the Service Contractor's expense.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF** the parties have executed this Agreement as at the day and year first above written.

**SIGNED** on behalf of the )  
**COMMONWEALTH OF AUSTRALIA** )  
by: <Insert NAME> ) .....  
<Insert TITLE> )  
Department of Communications, )  
Information Technology and the Arts )  
in the presence of: )  
..... ) .....  
(Print Name) ) (Signature of Witness)

**SIGNED** on behalf of )  
<insert name of **COMPANY** and **A.B.N.**> )  
by: )  
..... ) .....  
(Print name of Director) ) (Signature of Director/person who  
) states that he/she is authorised to sign  
) on behalf of <insert name of  
) Company and A.B.N.>  
and: )  
)  
)  
..... ) .....  
(Print name of Secretary/Other Director) ) (Signature of Secretary/Other  
) Director (if applicable))

**OR USE MODE OF ATTESTATION REQUIRED BY COMPANY CONSTITUTION**

Use this attestation **ONLY** for partnerships

**SIGNED** for and on behalf of )  
<<insert name of **PARTNERSHIP**>> )  
by <<Partner XY>>, who warrants ) (Signature)  
that he has the authority to sign this )  
Agreement on behalf of all the partners )  
specified in Attachment X )  
in the presence of: )  
)  
)  
..... ) .....  
(Print Name) ) (Signature of Witness)

**THE SCHEDULE**

**SERVICES COMMISSION NO. DCON/05/3**

**SERVICES FOR COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE POSITION OF CHAIR OF THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**

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

The documentation forming the basis of this Agreement is:

- (a) The Department’s Project Specification detailed at Attachment A to this Schedule.
- (b) The Service Contractor’s proposal/quotation dated <insert date> detailed at Attachment B to this Schedule.

**B. Services (see Purpose and subclauses 1.1 and 3.1)**

The Services to be delivered by the Service Contractor are those services specified in the documentation referred to in Item A [*Proposal and Quotation*] of this Schedule.

**C. Confidential Information (see subclause 1.1, subclause 13.1 and clause 14)**

All the Specified Personnel, including subcontractors, will be required to sign and provide to the Department a Deed of Non-Disclosure together with a signed copy of Section 79 of the *Crimes Act 1914* dealing with Official Secrets.

*Or*

All the Specified Personnel, including subcontractors, will be required to provide to the Department a Deed for Contractor’s Employees and Subcontractor’s Employees Having Access to Personal Information together with a signed copy of Section 70 of the *Crimes Act 1914* dealing with Disclosure of information by Commonwealth Officers.

**CONFIDENTIAL INFORMATION OF THE PARTIES**

**COMMONWEALTH’S CONFIDENTIAL INFORMATION**

1. Agreement provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Agreement-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information, without revealing content]</i>	

### CONTRACTORS CONFIDENTIAL INFORMATION

The Service Contractor should note that any claim it makes in relation to confidentiality of information will be assessed in accordance with the Department of Finance’s “Guidance on Confidentiality of Contractors’ Commercial Information” (Finance Confidentiality Guidelines).

If no Confidential Information is identified in this Item C then any future request that information be treated as Confidential Information will be assessed on the basis of the Finance Confidentiality Guidelines and will only be treated as Confidential Information if the Commonwealth agrees in writing that this information is Confidential Information in accordance with these Guidelines

#### 1. Agreement provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

#### 2. Agreement-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information without revealing content]</i>	

#### **D. Project Officer (see subclauses 1.1, 3.1, 6.2, 15.1 and clause 18)**

The Project Officer shall be the person for the time-being holding, occupying or performing the duties of <Position>, <Section>, <Division>, currently <Name>, available on telephone number (02) 6271 XXXX, or via the address set out in Item M [*Invoice Procedures*].

**E. Required Contract Material (see subclause 1.1, clause 12 and subclauses 13.1, 19.1 and 23.2)**

**F. Specified Personnel (see subclause 1.1 and clause 9)**

The Services shall be undertaken by the following Specified Personnel employed by

The Service Contractor must obtain written permission from the Department for the inclusion of other personnel.

**G. Standards and Best Practice (see subclause 3.1)**

The Service Contractor shall be required to meet the following standards when carrying out this task:

- *The Style Manual*, J Wiley & Sons Australia, (6th edition);
- *Policy on the use of non-discriminatory language and images in Government advertising and information material*, Ministerial Committee on Government Information and Advertising, Office of Government Information and Advertising, 1996;
- Privacy Advisory Committee, *Outsourcing and Privacy: Advice for Commonwealth agencies considering contracting out (outsourcing) information technology and other functions*, Privacy Commissioner, August, 1994 (a stand-alone document which can also be found in: Privacy Commissioner, *Federal Privacy Handbook: A Guide to Federal Privacy Law and Practice*, Redfern Legal Centre Publishing, Sydney, Release 4, January 1995);
- *Australian Standards for Document Management (AS4390)*;
- Management Advisory Board's *Ethical Standards and Values in the Australian Public Service*, 1996;
- AusInfo's *Guidelines for Commonwealth Information Published in Electronic Formats*;
- the World Wide Web Consortium's *Web Content Accessibility Guidelines*, as amended from time to time; and
- the APS Values and Code of Conduct to the extent that they can be applied to the Service Contractor.

**H. Time frame (see subclause 3.1)**

The Services shall commence on the signing by both parties of this Agreement and be completed by <insert date>.

**I. Total Cost (see subclause 4.1)**

The total cost payable under this Agreement shall not exceed \$<insert amount> which is the sum of the total fees payable under Item J [*Fees*] and Item K [*Allowances and Costs*] of this Schedule.

**J. Fees (see clause 4, subclause 21.3 and clause 23)**

The total fees payable under this Agreement, excludes Allowances and Costs at Item K [*Allowances and Costs*] where applicable. This amount shall not exceed \$<insert amount> without the prior written approval of the Department.

Payment shall be made no later than 30 days after the satisfactory completion of the Services, provided a correctly rendered invoice has been submitted.

**K. Allowances and Costs (see subclause 4.1, 21.3 and clause 23)**

The Department will reimburse to the Service Contractor all reasonable travel, accommodation and incidental expenses upon provision of original receipts where practicable.

Reimbursement for allowances and costs shall not exceed \$<insert amount> without the prior written approval of the Department.

**L. Facilities and Assistance (see subclauses 4.1, 17.1, 21.3 and clause 23)**

**M. Invoice Procedures (see subclause 4.3 and 5.3)**

Tax Invoices quoting the Service Contractor's Australian Business Number (ABN), the Department's Agreement number, the title of the Services and the name of the Project Officer should be forwarded on the completion of the project to:

<Insert Name>

<Insert Section etc>

Department of Communications, Information Technology and the Arts

GPO Box 2154

CANBERRA ACT 2601

The Commonwealth makes payment by direct credit rather than by cheque. Where possible, invoices must include the necessary financial institution and account number details to facilitate payment of amounts due under this Agreement by this mode of settlement.

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

**N. Superannuation (see clause 6)**

On commissioning the Service Contractor is to provide to the Project Officer details of the fund into which the Commonwealth is to pay the superannuation entitlements. This fund must be an approved superannuation fund within the meaning set out in the *Superannuation (Productivity Benefit) Act 1988*.

**O. Subcontractors (see clause 7 and subclauses 10.1, 18.3, 30.2 and 31.2)**

In accordance with clause 7 of this Agreement, the Department gives approval for the following subcontractors to perform part of the Services:

<<list subcontractors full name (legal entity including A.B.N. and A.C.N.)>>

The Service Contractor agrees that the subcontract(s) with the above subcontractor(s) will contain all relevant terms and conditions applicable to this Agreement.

AND/OR

The Service Contractor will obtain from the subcontractor prior to the commencement of the subcontract, a signed deed(s) of non-disclosure and/or a Privacy Act deed(s) as specified in Item C [*Confidential Information*] of this Schedule.

AND/OR

The Service Contractor shall provide to the Commonwealth, prior to the commencement of the Services, copies of certificates of currency for insurances held by the subcontractor(s) as specified in as specified in clause 20.1(a).

**P. Material to be Provided by Commonwealth (see subclause 11.1)**

**Q. Use of Commonwealth Material (see subclause 11.5)**

**R. Existing Material (see subclause 12.2)**

**S. Commonwealth's Address for Notices (see subclause 32.1(a))**

Name of General Manager or above  
Department of Communications, Information Technology and the Arts  
GPO Box XXX  
CANBERRA ACT 2601

Telephone Number: (02) XXXX XXXX

Facsimile Number: (02) XXXX XXXX

**T. Service Contractor's Address for Notices (see subclause 32.1(b))**

<Insert Name>

<Insert Title>

<Insert Name of Organisation>

<Insert Address>

<Insert Address>

Telephone Number: (0X) XXXX XXXX

Facsimile Number: (0X) XXXX XXXX

**DEED OF NON-DISCLOSURE**

This Deed is made this \_\_\_\_\_ day of \_\_\_\_\_ 2005

**BETWEEN:**

..... The Promisor, (Employee)  
(Print name)

**AND THE COMMONWEALTH OF AUSTRALIA** ('the Commonwealth') represented by and acting through the **DEPARTMENT OF COMMUNICATIONS INFORMATION TECHNOLOGY AND THE ARTS** in the Australian Capital Territory of the other part.

**WHEREAS:**

- (1) the Commonwealth has entered into, or proposes to enter into, an Agreement ('the Agreement') '(.....the Contractor') Company ABN.....for the provision of certain services ('the Services');
- (2) ..... is employed by the Contractor.
- (3) The Commonwealth has provided or will provide certain information of a confidential nature to the Promisor; and
- (4) The Commonwealth is concerned to protect the confidentiality of information provided by it to the Promisor, and also information arising out of the performance of the Agreement (all of which information is collectively referred to in this Deed as "the Confidential Information").

**NOW THIS DEED WITNESSES AS FOLLOWS:**

- 1. For the purposes of this Deed, "information" includes material in any written or printed form, charts, graphs or tabulated material, information on computer media, and information conveyed by means of the spoken word.
- 2. The Promisor undertakes to treat the Confidential Information as confidential.
- 3. The Promisor undertakes not to disclose the Confidential Information to any person, other than as required by his/her employment by the Contractor for the purposes of the provision of the Services, without the express written approval of the Commonwealth unless the disclosure of the information referred to is legally required to be disclosed.
- 4. The Promisor undertakes not to copy the Confidential Information or reduce it to writing except as may be reasonably necessary for the performance of the Services.
- 5. The Promisor agrees that this Deed remains binding on him/her after completion or earlier determination of the Agreement.
- 6. The Promisor acknowledges that he/she is aware of section 79 of the *Crimes Act 1914*, a copy of which is attached to this Deed and has been signed by the Promisor for identification.



**IN WITNESS WHEREOF** the parties have set their hands and seals on the day and year first above written.

**SIGNED, SEALED AND DELIVERED** by)

..... )  
(The Promisor) )

in the presence of:

..... )  
(signature of witness) )

**SIGNED, SEALED AND DELIVERED** )

for and on behalf of the )  
Commonwealth of Australia by )

..... )  
(Print name) )

in the presence of:

..... )  
(signature of witness) )

*CRIMES ACT 1914*

79. OFFICIAL SECRETS

- (1) For the purposes of this section, a sketch, plan, photograph, model, cipher, note, document, or article is a prescribed sketch, plan, photograph, model, cipher, note, document or article in relation to a person, and information is prescribed information in relation to a person, if the person has it in his possession or control and:
  - (a) it has been made or obtained in contravention of this Part;
  - (b) it has been entrusted to the person by a Commonwealth officer or a person holding office under the Queen or he has made or obtained it owing to his position as a person:
    - (i) who is or has been a Commonwealth officer;
    - (ii) who holds or has held office under the Queen;
    - (iii) who holds or has held a contract made on behalf of the Queen or the Commonwealth;
    - (iv) who is or has been employed by or under a person to whom a preceding subparagraph applies; or
    - (v) acting with the permission of a Minister; and, by reason of its nature or the circumstances under which it was entrusted to him or it was made or obtained by him or for any other reason, it is his duty to treat it as secret; or
  - (c) it relates to a prohibited place or anything in a prohibited place and:
    - (i) he knows; or
    - (ii) by reason of its nature or the circumstances under which it came into his possession or control or for any other reason, he ought to know; that it should not be communicated to a person not authorised to receive it.
- (2) If a person for a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen's dominions:
  - (a) communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:
    - (i) a person to whom he is authorised to communicate it; or
    - (ii) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his duty to communicate it; or permits a person, other than a person referred to in subparagraph (i) or (ii), to have access to it;
  - (b) retains a prescribed sketch, plan, photograph, model, cipher, note, document or article in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it; or
  - (c) fails to comply with a direction given by lawful authority with respect to the retention or disposal of a prescribed sketch, plan, photograph, model, cipher, note, document or article, he shall be guilty of an indictable offence.

Penalty: Imprisonment for 7 years.

- (3) If a person communicates a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than:
  - (a) a person to whom he is authorised to communicate it; or

- (b) a person to whom it is, in the interest of the Commonwealth or a part of the Queen's dominions, his duty to communicate it; or permits a person, other than a person referred to in paragraph (a) or (b), to have access to it, he shall be guilty of an offence.

Penalty: Imprisonment for 2 years.

- (4) If a person:
  - (a) retains a prescribed sketch, plan, photograph, model, cipher, note, document or article in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it;
  - (b) fails to comply with a direction given by lawful authority with respect to the retention or disposal of a prescribed sketch, plan, photograph, model, cipher, note, document or article; or
  - (c) fails to take reasonable care of a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, or to ensure that it is not communicated to a person not authorised to receive it or so conducts himself as to endanger its safety; he shall be guilty of an offence.

Penalty: Imprisonment for 6 months.

- (5) If a person receives any sketch, plan, photograph, model, cipher, note, document, article or information, knowing or having reasonable ground to believe, at the time when he receives it, that it is communicated to him in contravention of section 78 or subsection (2) of this section, he shall be guilty of an indictable offence unless he proves that the communication was contrary to his desire.

Penalty: Imprisonment for 7 years.

- (6) If a person receives any sketch, plan, photograph, model, cipher, note, document, article or information, knowing, or having reasonable ground to believe, at the time when he receives it, that it is communicated to him in contravention of subsection (3), he shall be guilty of an offence unless he proves that the communication was contrary to his desire.

Penalty: Imprisonment for 2 years.

- (7) On a prosecution under subsection (2) it is not necessary to show that the accused person was guilty of a particular act tending to show a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen's dominions and, notwithstanding that such an act is not proved against him, he may be convicted if, from the circumstances of the case, from his conduct or from his known character as proved, it appears that his purpose was a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen's dominions.
- (8) On a prosecution under this section, evidence is not admissible by virtue of subsection (7) if the magistrate exercising jurisdiction with respect to the examination and commitment for trial of the defendant, or the judge presiding at the trial, as the case may be, is of the opinion that that evidence, if admitted:
  - (a) would not tend to show that the purpose of the defendant was a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen's dominions; or
  - (b) would, having regard to all the circumstances of the case and notwithstanding subsection (9), prejudice the fair trial of the defendant.

- (9) If evidence referred to in subsection (8) is admitted at the trial, the judge shall direct the jury that the evidence may be taken into account by the jury only on the question whether the purpose of the defendant was a purpose intended to be prejudicial to the safety or defence of the Commonwealth or a part of the Queen's dominions and must be disregarded by the jury in relation to any other question.
- (10) A person charged with an offence against subsection (2) may be found guilty of an offence against subsection (3) or (4) and a person charged with an offence against subsection (5) may be found guilty of an offence against subsection (6).

3B. Arrangements with States, Australian Capital Territory, Northern Territory and Norfolk Island

- (1) The Governor-General may make arrangements with the Governor of a State, the Australian Capital Territory Executive, the Administrator of the Northern Territory or the Administrator of Norfolk Island for the exercise of powers and the performance of functions by officers of the State or Territory, and for the making available of facilities of the State or Territory, for and in relation to the carrying out of sentences passed, and orders made, under this Act.
- (2) In sections 18A and 20AB:
  - (a) a reference to a participating State is a reference to a State in relation to which an arrangement is in force under subsection (1) of this section; and
  - (b) a reference to a participating Territory:
    - (i) is a reference to a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island; and
    - (ii) if an arrangement is in force under subsection (1) of this section in relation to the Australian Capital Territory - includes a reference to the Australian Capital Territory; and
    - (iii) if an arrangement is in force under subsection (1) of this section in relation to the Northern Territory - includes a reference to the Northern Territory; and
    - (iv) if an arrangement is in force under subsection (1) of this section in relation to Norfolk Island - includes a reference to Norfolk Island.

- (3) In this section:

"State" does not include the Australian Capital Territory or the Northern Territory.

Promisor: .....  
(Print name) (Signature)

**DEED FOR CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTOR'S EMPLOYEES  
HAVING ACCESS TO PERSONAL INFORMATION**

This Deed is made on this ..... day of ..... 2005

Between

..... (The Promisor/Employee)

(Print name)

of: ..... (address)

and

**The Commonwealth of Australia** (the Commonwealth) represented by and acting through the Department of Communications Information Technology and the Arts (the Agency)

**RECITALS**

**A:** ..... is the Contractor

(Print company name and ACN)

**B:** The Contractor has entered into an Agreement with the Agency for the

.....

.....(Print title of service to be provided)

Services Agreement No xxxx/..... ("the Services")

(Print Agreement Number)

**C:** ..... is employed by the Contractor

(Print name)

**D:** In the course of providing Services the Promisor/Employee may have access to personal information held in connection with the Agreement for the provision of Services.

**E:** "Personal information" collected and recorded by a Commonwealth agency is subject to the Information Privacy Principles contained in the *Privacy Act 1988*.

**F:** The Contractor has undertaken that in the performance of the Agreement with the Agency it will assist the Commonwealth to comply with the applicable Information Privacy Principles and has made other undertakings in relation to personal information.

**G:** The Contractor has also agreed to obtain from its employees an undertaking to assist the Commonwealth to observe the requirements of the *Privacy Act 1988* and an undertaking to observe the clauses relating to the protection of personal information contained in that Agreement and to inform the Promisor/ Employee that failure to comply with such an undertaking may be a criminal offence.

**OPERATIVE PROVISIONS**

**1. Definition of personal information.**

The Promisor/Employee acknowledges that personal information is for the purposes of the *Privacy Act 1988* and this Deed:

"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."

**2. Promisor/Employee undertaking as to unauthorised access, use, modification, disclosure retention and security of personal information.**

The Promisor/Employee undertakes:

- (a) not to access, use, modify, disclose or retain any personal information of the Agency he or she has acquired through the performance of his/her duties of employment with the Contractor or as an employee of the Contractor, except for the purpose of fulfilling those duties of employment; and
- (b) assist the Contractor to take all reasonable measures to ensure that any personal information held in connection with the Agreement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

**3. Criminal sanctions for a breach of Promisor/Employee undertaking - offences under the *Crimes Act 1914 (Commonwealth)*.**

The Promisor/Employee acknowledges that:

- (a) Part VIA of the *Crimes Act 1914* provides *inter alia* that any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any computer in the course of performing a contract with the Commonwealth is an offence; and
- (b) Section 70 of the *Crimes Act 1914* provides as follows:
  - (1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he is authorized to publish or communicate it, any fact or document which comes to his knowledge, or into his possession, by virtue of being a Commonwealth officer, and which it is his duty not to disclose, shall be guilty of an offence.
  - (2) A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him), any fact or document which came to his knowledge, or into his possession, by virtue of having been a Commonwealth officer, and which, at the time when he ceased to be a Commonwealth officer, it was his duty not to disclose, shall be guilty of an offence.

Penalty: Imprisonment for 2 years.

**4. Undertakings to have effect after the Promisor/Employee ceases employment.**

The undertakings made in this Deed will survive both the termination or expiration of the Agreement between the Contractor and the Commonwealth and the termination or expiration of the Promisor/Employee's employment with the Contractor.

**5. Undertaking to have effect after the Promisor ceases Services.**

The undertakings made in this Deed will survive both the termination or expiration of the Agreement between the Department and the Promisor.

**6. Summary of Promisors undertakings.**

The Promisor undertakes that in signing this Deed:

- (a) he/she understands his responsibilities in relation to privacy;

- (b) he/she will not access, use, disclose or retain personal information except in carrying out the terms of reference under this Agreement; and
- (c) that he/she understands the possible consequences of a breach of this undertaking.

**NOTE**

- (1) Section 70 of the *Crimes Act 1914* does not expressly apply to employees of Contractors, but it is arguable that it also extends to employees (and subcontractors) of Contractors who perform services on behalf of the Commonwealth. Employees of Contractors and subcontractors should be made aware that the provisions of section 70 may apply.

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IN WITNESS WHEREOF the parties have set their hands and seals on the day and year first above written.

**SIGNED, SEALED AND DELIVERED** by )  
..... ).....  
(Print name)  
(The Promisor/Employee) )  
in the presence of )  
..... )  
(signature of witness) )

**SIGNED, SEALED AND DELIVERED** )  
for and on behalf of the )  
Commonwealth of Australia by )  
..... ).....  
(Print name)  
in the presence of: )  
..... )  
(signature of witness) )



## PART VI - OFFENCES BY AND AGAINST PUBLIC OFFICERS

### 70. Disclosure of information by Commonwealth officers

- (1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he is authorised to publish or communicate it, any fact or document which comes to his knowledge, or into his possession, by virtue of being a Commonwealth officer, and which it is his duty not to disclose, shall be guilty of an offence.
- (2) A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him), any fact or document which came to his knowledge, or into his possession, by virtue of having been a Commonwealth officer, and which, at the time when he ceased to be a Commonwealth officer, it was his duty not to disclose, shall be guilty of an offence.

Penalty: Imprisonment for 2 years.

## **INFORMATION PRIVACY PRINCIPLES**

### **Principle 1 - Manner and purpose of collection of personal information**

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
  - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
  - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

### **Principle 2 - Solicitation of personal information from individual concerned**

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned; the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:
  - (c) the purpose for which the information is being collected;
  - (d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
  - (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of the first-mentioned person, body or agency to pass on that information.

### **Principle 3 - Solicitation of personal information generally**

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector; the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:
- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

### **Principle 4 - Storage and security of personal information**

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the provision of a service to the record-keeper, everything reasonably within the power of the record-

keeper is done to prevent unauthorised use or disclosure of the information contained in the record.

#### **Principle 5 - Information relating to records kept by record-keeper**

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
  - (a) whether the record-keeper has possession or control of any records that contain personal information; and
  - (b) if the record-keeper has possession or control of a record that contains such information:
    - (i) the nature of that information;
    - (ii) the main purposes for which that information is used; and
    - (iii) the steps that the person should take if the person wishes to obtain access to the record.
2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.
3. A record-keeper shall maintain a record setting out:
  - (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
  - (b) the purpose for which each type of record is kept;
  - (c) the classes of individuals about whom records are kept;
  - (d) the period for which each type of record is kept;
  - (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
  - (f) the steps that should be taken by persons wishing to obtain access to that information.
4. A record-keeper shall:
  - (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
  - (b) give the Commissioner, in the month of June each year, a copy of the record so maintained.

#### **Principle 6 - Access to records containing personal information**

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

#### **Principle 7 Alteration of records containing personal information**

1. A record-keeper who has possession or control of a record that contains personal information, shall take such steps (if any) , by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
  - (a) is accurate; and
  - (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.

The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.

2. Where:
  - (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
  - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth; the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

#### **Principle 8 - Record-keeper to check accuracy etc. of personal information before use**

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

#### **Principle 9 - Personal information to be used only for relevant purposes**

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

#### **Principle 10 - Limits on use of personal information**

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
  - (a) the individual concerned has consented to use of the information for that other purpose;
  - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
  - (c) use of the information for that other purpose is required or authorised by or under law;
  - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
  - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.

2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

**Principle 11 - Limits on disclosure of personal information**

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency ( other than the individual concerned ) unless:
  - (a) the individual concerned is reasonably likely to have been aware, or made under Principle 2, that information of that kind is usually passed to that person, body or agency;
  - (b) the individual concerned has consented to the disclosure;
  - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
  - (d) the disclosure is required or authorised by or under law; or
  - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.



Australian Government

Department of Communications,  
Information Technology and the Arts

**REQUEST FOR TENDER NO. DCON/05/3**  
**COMPILATION OF A SHORTLIST OF CANDIDATES FOR THE**  
**POSITION OF CHAIR OF THE AUSTRALIAN**  
**COMMUNICATIONS AND MEDIA AUTHORITY**

**ADDENDUM NUMBER 1**  
**Questions and Answers as of 2 February 2005**

**Lodgement reminder:**

**Electronic:** Electronic tender system (is only AusTender) at [www.tenders.gov.au](http://www.tenders.gov.au).  
Tender identification number is DCON/05/3  
Prospective tenderers MUST upload their Tender documents to  
AusTender prior  
to the Closing Time (see below).  
All documentation must be in Microsoft Word for Windows 97 (or later)  
format.

**Physical lodgement:** please forward one hardcopy and one electronic copy (on CD  
ROM in Microsoft Word for Windows 97 or later format) including any supporting  
material (if any) of your proposal to:

Tender Box (DCON/05/3)  
Department of Communications, Information Technology and the Arts  
Ground Floor  
38 Sydney Avenue  
FORREST ACT 2603

**CLOSING TIME: 2.00 P.M. (Local time in the ACT) 7 February 2005**

**Question 1** In the opening statement in the Brief on role, it is stated that  
remuneration will be decided by the Remuneration Tribunal. Will the  
package include relocation expenses including interstate or  
international relocation for a successful international candidate?

**Answer 1** The package determined by the Remuneration Tribunal will not  
specifically include relocation expenses. However, a successful  
candidate will be eligible for relocation expenses in accordance with  
the Remuneration Tribunal "Guidelines on Geographic Relocation of  
Full Time Office Holders"  
<http://www.remtribunal.gov.au/conditions/geographicRelocations/geographicRelocationGuidelines.pdf>.

- Question 2** In clause 11 of the Brief any required advertising costs need to be outlined. Does the Department have any special advertising arrangements with National papers/press that can be leveraged during the search or does the service provider need to provide standard advertising costs?
- Answer 2** All tenderers will need to supply their standard advertising costs. If using Government advertising contracts could result in savings, this option will be discussed with the successful tenderer.
- Question 3** In clause 4 of the Brief the Department accepts the responsibility for developing the duty statement and selection criteria. Is it envisaged that the service provider will be involved in this process and is there a scheduled date that it will be finalized and available?
- Answer 3** It is not envisaged that the successful tenderer will be involved in the development of the duty statement and selection criteria, although the Department will retain the option of accepting any revisions that the successful tenderer may suggest. The duty statement and selection criteria will be made available only to the successful tenderer following completion of the tender evaluation (approximate date 14 February 2005).
- Question 4** In clause 7 the Department seeks four hard copies and a CD version of the tender. This seems inconsistent with the AusTender approach of seeking electronic submission. Could this be clarified please?
- Question 5** Could you please clarify the difference between the information for lodgement of tenders on the first page of the Request for Tender Document and the information contained at page 4 Section 7 REPORTING contained in the document headed BRIEF.
- Answer 4 and 5** The Department will accept tenders either in hard copy or submitted electronically to AusTender. The Brief details the requirements for submitting a hard copy (page 4 Section 7 Reporting). The alternative option of submitting via AusTender was omitted from this section in error.
- Question 6** In Clause 5 of the Brief, the Service Provider is required to brief the Department. Who specifically in the Department will require briefing and will it be done individually or as a group?
- Answer 6** Briefing will be part of the reporting requirements which will be determined in consultation with the successful tenderer (Brief, page 4 Section 7 Reporting). Exact details are yet to be determined.