



Australian Government

Department of Health

SHORT FORM CONSULTANCY CONTRACT

This Contract is made between the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth') for the purposes of this Contract represented by and acting through the Department of Health ('the Department') ABN 83 605 426 759

and

MICHAEL HOBDAY & ASSOCIATES, of P O Box 81, BANGALOW, NEW SOUTH WALES 2479 ABN 431627687729 ('the Consultant').

OPERATIVE PART

1. INTERPRETATION

In this Contract, unless the contrary intention appears:

'**Commonwealth**' means the Commonwealth of Australia as represented by any department or agency of the Commonwealth that is from time to time responsible for the administration of this Contract;

'**Confidential Information**' means information that:

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth as confidential; or
- (c) the Consultant knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;
- (e) is in the possession of the Consultant without restriction in relation to disclosure before the date of receipt from the Commonwealth; or
- (f) has been independently developed or acquired by the Consultant;

'**Conflict**' means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Consultant (or Consultant Personnel) engaging in any activity or obtaining any interest that is likely to

conflict with or restrict the Consultant in performing the Services fairly and independently;

'Consultant Personnel' means:

- (a) officers, employees, agents or subcontractors of the Consultant;
- (b) officers, employees, agents or subcontractors of the Consultant's subcontractors; and
- (c) includes those individuals (if any) engaged by the Consultant or its subcontractors on a voluntary basis;

engaged in the performance of the Services;

'Contract Material' means all Material:

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

'Existing Material' means all Material in existence prior to the commencement of this Contract that is:

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

the Contract Material;

'Intellectual Property' means 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 and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Item' means an Item of the Schedule to this Contract;

'Material' means documents, records, equipment, software (including source code and object code), goods, images, information and data stored by any means; and

'Services' means the services, described in Item 1, to be performed by the Consultant under this Contract.

2. PERFORMANCE OF THE SERVICES, FEES AND CONSULTANT WARRANTIES

2.1 The Consultant agrees to:

- (a) perform the Services in accordance with this Contract and with due care and skill;
- (b) ensure that the Services are fit for the purpose for which they are provided; and
- (c) comply with the time frame for performance of the Services specified in Item 2.

2.2 The Commonwealth agrees to:

- (a) pay the fees specified in Item 3;
- (b) pay the allowances specified in Item 4 (if any); and
- (c) provide the facilities and assistance specified in Item 6 (if any).

2.3 The Commonwealth will be entitled, in addition to any other right it may have, to withhold or reduce any payment of fees or allowances until the Consultant has completed to the satisfaction of the Commonwealth that part of the Services to which the payment relates.

2.4 Subject to clauses 7 and 8, no right or obligation in this Contract is to be read or understood as limiting the Consultant's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.

2.5 The Consultant represents, warrants and undertakes to the Commonwealth that:

- (a) it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened which could have an adverse effect on the Consultant's ability to perform any of its obligations under this Contract;
- (b) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Consultant which could have an adverse effect upon either the Consultant's capacity to perform its obligations under this Contract or the Consultant's reputation;
- (c) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid; and
- (d) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Commonwealth or any Commonwealth government agency.

3. SUBCONTRACTORS

- 3.1 The Consultant agrees not to subcontract the performance of any part of the Services without the prior written approval of the Commonwealth.
- 3.2 The Consultant agrees to ensure that the other party to any subcontract has consented to the public disclosure of its name in connection with the performance of the Services and that the subcontract contains all the relevant terms of this Contract including those relating to compliance with the law.

4. TAXES, DUTIES AND GOVERNMENT CHARGES

- 4.1 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be paid by the Consultant or as the Consultant might arrange.
- 4.2 The amounts payable under this Contract:
- (a) include an amount to cover any liability of the Consultant for Goods and Services Tax (GST) on any supplies made by the Consultant under this Contract which are taxable supplies within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act'); and
 - (b) must not include any amount representing GST paid by the Consultant for which the Consultant may claim an input tax credit within the meaning of the GST Act.
- 4.3 In relation to any taxable supplies made under this Contract, the Consultant agrees to issue the Commonwealth with a tax invoice in accordance with the GST Act together with, or as a part of, each invoice submitted for payment in accordance with Item 5.

4A. SMALL BUSINESS PAYMENTS

- 4A.1 The Commonwealth will pay the Consultant within 30 days after receipt of a correctly rendered invoice. If this period ends on a day that is not a business day, payment is due on the next business day.
- 4A.2 This clause only applies where:
- (a) the Consultant is a Small Business;
 - (b) the amount of the interest payable exceeds A\$10; and
 - (c) the fee will be paid by the Commonwealth from Departmental items.
- 4A.3 The Commonwealth will pay interest on late payments to the Consultant as follows:
- (a) for payments made by the Commonwealth 30 days and up to 60 days after the amount became due and payable, only where the Consultant issues a correctly rendered invoice for the interest; or
 - (b) for payments made by the Commonwealth more than 60 days after the amount became due and payable, the Commonwealth will pay the interest accrued together with the payment.
- 4A.4 Interest payable under this clause will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day

after the amount was due and payable, up to and including the day that the Commonwealth effects payment as represented by the following formula:

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

- 4A.5 In this clause "General Interest Charge Rate" means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.
- 4A.6 In this clause "Small Business" means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Contract is entered into. If the enterprise is an 'associated entity' as defined in section 50AAA of the *Corporations Act 2001*, this test is applied to the group of associated entities as a whole.
- 4A.7. For the purposes of this clause an invoice is correctly rendered if it:
- (a) is correctly addressed and calculated in accordance with this Contract; and
 - (b) relates only to supplies that have been delivered to the Commonwealth in accordance with this Contract; and
 - (c) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.

5. MATERIAL PROVIDED BY THE COMMONWEALTH

- 5.1 The Consultant agrees to ensure that any Material provided by the Commonwealth to the Consultant for the purposes of this Contract is used only for the purposes of performing the Services and strictly in accordance with any conditions, restrictions or directions given by the Commonwealth.
- 5.2 The Consultant will return to the Commonwealth all such Material on expiration or earlier termination of this Contract, or otherwise deal with such Material as directed by the Commonwealth.
- 5.3 This clause will survive the expiration or earlier termination of this Contract.

6. CONTRACT MATERIAL

- 6.1 Intellectual Property in all Contract Material, and ownership of all Material in which Contract Material is or will be embodied, vests or will vest in the Commonwealth. Upon the expiration or termination of this Contract the Consultant agrees to deliver to the Commonwealth or otherwise deal with all such Material as directed by the Commonwealth.
- 6.2 The Consultant 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.

6.3 Clause 6.1 does not affect the ownership of Intellectual Property in any Existing Material that is agreed in writing between the Consultant and the Commonwealth to be excepted from that clause, but the Consultant grants, or undertakes to arrange for a third party to grant, to the Commonwealth a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in any such Existing Material in conjunction with the other Contract Material.

6.4 This clause will survive the expiration or earlier termination of this Contract.

7. DISCLOSURE OF INFORMATION

7.1 The Consultant agrees not to disclose to any person other than the Commonwealth, any Confidential Information relating to this Contract or the Services without the prior written approval of the Commonwealth. This obligation will not be taken to have been breached where the information referred to is legally required to be disclosed.

7.2 This clause will survive the expiration or earlier termination of this Contract.

8. PROTECTION OF PERSONAL INFORMATION

8.1 The Consultant agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act. The Consultant will immediately notify the Commonwealth if it becomes aware of a breach or possible breach of any of its obligations under this clause.

9. ACCESS TO DOCUMENTS

9.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.

9.2 This clause only applies if this is a Contract which complies with the description of 'Commonwealth contract'.

9.3 Where the Commonwealth has received a request for access to a document created by or in the possession of, the Consultant or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), the Commonwealth may at any time by written notice require the Consultant to provide the document to the Commonwealth and the Consultant must, at no additional cost to the Commonwealth, promptly comply with the notice.

9.4 The Consultant must include in any subcontract relating to the performance of this Contract provisions that will enable the Consultant to comply with its obligations under this clause.

10. CONFLICT OF INTEREST

- 10.1 The Consultant warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Consultant or the Consultant Personnel.
- 10.2 If, during the term of this Contract a Conflict arises, the Consultant agrees to notify the Commonwealth immediately in writing of the Conflict, make a full disclosure of all relevant information relating to the Conflict, and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.

11. COMPLIANCE WITH LAWS AND POLICIES

- 11.1 The Consultant agrees, in carrying out this Contract, to comply with all laws and any relevant government policies, including:
- (a) the *Crimes Act 1914*;
 - (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Disability Discrimination Act 1992*;
 - (e) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;
 - (f) the *Archives Act 1983*;
 - (g) the *Privacy Act 1988*;
 - (h) the *Freedom of Information Act 1982*;
 - (i) the *Criminal Code Act 1995*;
 - (j) the *Workplace Gender Equality Act 2012*;
 - (k) any occupational health and safety legislation applicable to the Consultant;
 - (l) the Australian Government's *Lobbying Code of Conduct 2013*;
 - (m) the *Protective Security Policy Framework* which is available at: <http://www.protectivesecurity.gov.au/Pages/default.aspx>;
 - (n) the *Commonwealth Fraud Control Guidelines – March 2011*; and
 - (o) any other policies notified to the Consultant in writing.
- 11.2 The Consultant acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 11.3 The Consultant agrees, when using the Commonwealth's premises or facilities, to 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 Consultant or as might reasonably be inferred from the circumstances.

- 11.4 Without limiting the effect of clause 18.3, the Consultant must comply with and require Consultant Personnel engaged in the performance of the Services to comply with the behaviours set out in the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Consultant and those Consultant Personnel were APS employees as defined in that Act.

12. ACCESS TO CONSULTANT'S PREMISES

- 12.1 The Consultant agrees to give to the Liaison Officer named in Item 8 and any persons authorised in writing by the Commonwealth (including but not limited to, the Auditor-General, the Ombudsman, the persons appointed under the *Australian Information Commissioner Act 2010* as the Privacy Commissioner, the Information Commissioner and the FOI Commissioner or their respective delegates) (referred to in this clause collectively as 'those permitted') access to premises at which Material associated with this Contract is stored or where work associated with this Contract is undertaken, and the Consultant Personnel, in order for those permitted to be able to inspect and copy Material for purposes associated with this Contract or any review of performance under this Contract.

- 12.2 The Consultant agrees to provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning the Services or this Contract.

- 12.3 This clause will survive the expiration or earlier termination of this Contract.

13. INDEMNITY

- 13.1 To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Consultant or under or in connection with this Contract.

- 13.2 The Consultant indemnifies the Commonwealth, its officers, employees and agents from and against any:

- (a) loss or liability incurred by the Commonwealth;
- (b) loss of or damage to property of the Commonwealth; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against 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 Consultant or the Consultant Personnel in connection with this Contract, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or

- (e) any breach by the Consultant of its obligations or warranties under this Contract.
- 13.3 The Consultant's liability to indemnify the Commonwealth under clause 13.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage, or expense.
- 13.4 The right of the Commonwealth to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 13.5 This clause will survive the expiration or earlier termination of this Contract.

14. INSURANCE

- 14.1 The Consultant agrees, for so long as any obligations remain in connection with this Contract, to effect and maintain the insurances described in Item 7 for all the Consultant's obligations under this Contract, including those which survive its expiration or termination.
- 14.2 The Consultant further agrees, upon request, to provide proof of insurance acceptable to the Commonwealth.

15. TERMINATION AND REDUCTION FOR CONVENIENCE

- 15.1 The Commonwealth may, at any time by notice and at its sole discretion in writing, terminate this Contract in whole or reduce the scope of the Services immediately. To avoid doubt, the Commonwealth has an unfettered discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause.
- 15.2 Upon receipt of a notice of termination or reduction, the Consultant must stop or reduce work on this Contract as specified in the notice, take all available steps to minimise loss resulting from that termination and protect Contract Material.
- 15.3 Where there has been a termination under clause 15.1, the Commonwealth will be liable only for payments and assistance for Services properly rendered before the effective date of termination, and reasonable costs unavoidably incurred by the Consultant and directly attributable to the termination and which the Consultant fully substantiates.
- 15.4 The Commonwealth will not be liable to pay compensation under clause 15.3 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Consultant under this Contract, together exceed the fees set out in Item 3.
- 15.5 The Consultant will not be entitled to compensation for loss of prospective profits.

- 15.6 If there is a reduction in the Services, the Commonwealth's obligation to pay any fee will abate proportionately to the reduction in the Services.

16. TERMINATION FOR DEFAULT

- 16.1 Where a party fails to satisfy any of its obligations under this Contract, the other party may:
- (a) if it considers the failure is not capable of remedy, by notice in writing, terminate this Contract immediately; or
 - (b) if it considers the failure is capable of remedy, by notice in writing, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
 - (c) if the failure is not remedied in accordance with a notice issued under clause 16.1(b), by further notice in writing, terminate this Contract immediately.
- 16.2 The Commonwealth may also, by notice, terminate this Contract immediately if the Consultant:
- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, 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.
- 16.3 Termination under this clause is without prejudice to any common law right to terminate or claim damages.

17. DEEMED TERMINATION FOR CONVENIENCE

- 17.1 If a purported termination for cause by the Commonwealth under clause 16 is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 15 which termination has effect from the date of the notice of termination referred to in clause 16.

18. GENERAL

- 18.1 No variation of this Contract is binding unless it is agreed in writing between the parties.
- 18.2 This Contract forms the entire agreement between the parties for the provision of the Services.
- 18.3 The Consultant agrees not to represent itself, and to use its best endeavours to ensure that Consultant Personnel do not represent themselves, as being officers, employees, partners or agents of the Commonwealth, or otherwise able to bind or represent the Commonwealth.
- 18.4 If a party does not exercise (or delays in exercising) any of its rights under this Contract, that failure or delay does not operate as a waiver of those rights.
- 18.5 The Consultant must not assign or transfer its rights or obligations under this Contract without the prior written approval of the Commonwealth.
- 18.6 The Commonwealth and the Consultant must attempt to settle by negotiation any dispute in relation to this Contract before resorting to external legal proceedings.
- 18.7 The laws of the Australian Capital Territory apply to this Contract.

SCHEDULE

1. THE SERVICES

In performing the Services, the Consultant must undertake the following tasks:

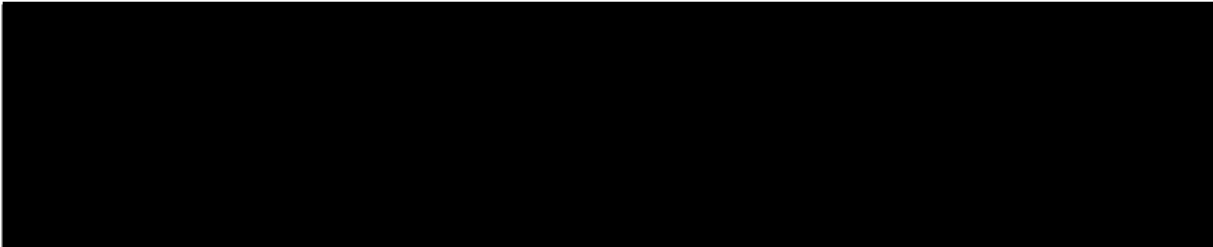
- A. provide advice to the Commonwealth Minister for Health (the Minister) on a range of policy matters;
- B. prepare Papers on the above for comment by the Minister as requested.

2. TIMING

The Services are to be performed in accordance with discussions with the Minister.

It is anticipated that the required work will be completed, or largely completed, in January 2014.

3. FEES



4. ALLOWANCES

Not applicable.

5. INVOICES

Invoices must be addressed to the Liaison Officer and include the following information:

- (a) the title of the Services or other identification of this Contract;
- (b) the name of a Commonwealth liaison officer;
- (c) the fees indicating hours spent, allowances and costs due; and
- (d) a written statement signed by the Consultant, or where the Consultant is a body corporate, by a representative of the Consultant authorised to sign on behalf of the body corporate, verifying that no wages are due and owing by the Consultant in respect of the performance of the Services at the time the claim for payment is made.

6. COMMONWEALTH ASSISTANCE

The Commonwealth will provide the Consultant with appropriate facilities when working at the Department's premises.

7. INSURANCE

The Consultant must effect and maintain the following insurance in accordance with the requirements specified in clause 14:

- (a) workers' compensation insurance as required by law;
- (b) public liability policy insurance to the value of at least ten million dollars (\$10, 000, 000) in respect of each claim; and
- (c) Professional Indemnity insurance for an amount of not less than one million dollars (\$1, 000, 000).

8. LIAISON OFFICER

The officer holding, occupying or performing the duties of Deputy Secretary, who will be Ms Janet Anderson until 19 January 2014 and Ms Kerry Flanagan from 20 January 2014, available at the address and on the phone number set out below:

The Department of Health
MDP 84
GPO Box 9848
Canberra ACT 2601
Phone: (02) 6289 3348

Consultant's Address for Notices:

~~Professor~~ Michael Hobday
Michael Hobday & Associates
P O Box 81
BANGALOW NSW 2479



