



Australian Government

**Department of Families, Housing,
Community Services and Indigenous Affairs**

CONTRACT

Number: **XXXXXXXXXX**

Between: **COMMONWEALTH OF AUSTRALIA**
represented by the Department of Families, Housing,
Community Services and Indigenous Affairs

and ***Jacqueline Margaret Roberts***
ABN 54601667004

for: **the provision of professional advice in relation to the
Review of Eligible Therapies for Children with Autism
Spectrum Disorder (ASD).**

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This Contract is dated **1 June 2012**

Parties

This Contract is made between and binds the following parties:

COMMONWEALTH OF AUSTRALIA (the Commonwealth) represented by and acting through the Department of Families, Housing, Community Services and Indigenous Affairs ABN 36 342 015 855 (the Department)

AND

Jacqueline Margaret Roberts, ABN 54601667004, of^{s47F - personal privacy}
(the Service Provider)

Context

This Contract is made in the following context:

- A. The Department wishes to engage the Service Provider to provide the Services.
- B. The Service Provider was previously engaged to undertake a Review of Eligible Therapies for Children with Autism Spectrum Disorder.
- C. This contract is for the Service provider to provide ongoing advice to address complex issues that are being raised by service providers about the therapies which have now been deemed ineligible for children with ASD under the Helping Children with Autism Package.

Operative Provisions

In consideration of the mutual promises contained in this document, the parties to this Contract agree as follows:

1. INTERPRETATION

1.1 Definitions

1.1.1 In this Contract, unless the context otherwise indicates:

Business Day means a weekday other than a public holiday in the Australian Capital Territory;

Commencement Date means the date on which this Contract is signed by the last party to do so, unless otherwise specified in Item C [Commencement and Timeframe];

Commonwealth Material means any Material:

- a. provided by the Department to the Service Provider for the purposes of this Contract; or
- b. copied or derived at any time from the Material referred to in paragraph a;

Completion Date means the date by which all Services are completed;

Conflict means a conflict of interest, risk of a conflict of interest, or an apparent conflict of interest arising through the Service Provider (including its Personnel) or the Service Provider's immediate family, relatives, business partners, associates or friends, engaging in any activity or obtaining any interest that is likely to or may appear to impair, interfere with or restrict the Service Provider in providing the Services to the Department diligently, fairly and independently;

Contact Officer means a person specified (by name or position) in Item Q [Contact Officers], or any substitute notified by a party from time to time;

Contract means this agreement including the Schedule and any attachment(s);

Contract Material means any Material:

- a. created for the purposes of this Contract;
- b. provided or required to be provided to the Department as part of the Services; or
- c. copied or 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 administering this Contract;

Department Confidential Information means information that:

- a. is described in Item L [Confidential Information] as being Department Confidential Information;
- b. the Department identifies, by notice in writing after the Commencement Date, as confidential information for the purposes of this Contract;
- c. is protected information as defined in section 23(1) of the *Social Security Act 1991*, under Division 2 of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999*, under the *Social Security (Administration) Act 1999*, under sections 16 and 16AA of the *Child Support (Registration and Collection) Act 1988*, under sections 150 and 150AA of the *Child Support (Assessment) Act 1989*, or other Commonwealth legislation; or
- d. the Service Provider knows, or ought to know, is confidential;

Existing Material means any Material in existence prior to the Commencement Date, which 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, and includes Material identified as Existing Material in Item G [Existing Material] and Material notified to the Department under clause 4.2.3;

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

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

Instalment means an instalment of fees payable under clause 3 in relation to part of the Services;

Intellectual Property includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs and circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

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

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

Personal Information has the same meaning as it has in section 6 of the *Privacy Act 1988*;

Personnel means a party's officers, employees, agents or professional advisers engaged in, or in relation to, the performance or management of this Contract;

Security Classified Information means information which contains Personal Information or is classified by the Department as 'Top Secret', 'Secret', 'Confidential', 'Restricted', 'Highly Protected', 'Protected' or 'In-Confidence';

Service Provider includes (where the context permits) the Personnel, volunteers and bailees of the Services Provider;

Services means the services described in Item A [Services and Subcontractors] and includes the provision to the Department of the Material specified in Item B [Contract Material];

Small Business means an enterprise which, at the Commencement Date, employed less than the full time equivalent of 20 persons ('full time equivalent' is as defined by the Australian Bureau of Statistics);

Subcontractor means a subcontractor engaged by the Service Provider in accordance with clause 2.5; and

Specified Personnel means the Personnel (including Subcontractors) specified in Item O [Specified Personnel] as required to perform all or part of the work constituting the Services.

1.2 Interpretation

In this Contract, unless the contrary intention appears:

- a. words importing a gender include the other gender;
- b. words in the singular include the plural and vice versa;
- c. clause headings or words in bold format are for convenient reference only and have no effect in limiting or extending the language of provisions;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian Dollars;
- f. unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, and includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an item in the Schedule; and
- i. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3 Guidance on construction of this Contract

- 1.3.1 This Contract records the entire agreement between the parties in relation to its subject matter, and supersedes any prior negotiations and communications whether written or oral.
- 1.3.2 A variation of this Contract is binding only if agreed in writing and signed by authorised representatives of both parties.
- 1.3.3 This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory, and the parties submit to the jurisdiction of the courts of the Australian Capital Territory.

2. PROVISION OF SERVICES

2.1 Commencement

The terms of this Contract apply on and from the Commencement Date and, unless terminated earlier, expire on the Completion Date.

2.2 Obligations of the Service Provider

The Service Provider must:

- a. perform the Services as specified in Item A [Services and Subcontractors];
- b. provide to the Department the Material specified in Item B [Contract Material];
- c. perform the Services to a high standard;
- d. comply with the timeframe for the performance of the Services specified in Item C [Commencement and Timeframe]; and
- e. submit invoices, and any required supporting documents, in the manner specified in Item F [Invoices].

2.3 Conduct at Department premises

The Service Provider must, when using the Department's premises or facilities, comply with all reasonable directions and Departmental procedures relating to workplace harassment, occupational health (including the Department's smoke free work place policy), section 13 of the *Public Service Act 1999*, the Department's Codes of Conduct, safety and security, including the Department's Internet access and usage guidelines in effect at those premises or in regard to those facilities, as notified by the Department or as might reasonably be inferred from the use to which the premises are being put. These obligations are in addition to those detailed at clause 7.

2.4 Specified Personnel

- 2.4.1 The Service Provider must ensure that the Specified Personnel perform the Services, or part thereof, in accordance with this Contract.
- 2.4.2 The Department may, at its absolute discretion, request the Service Provider to remove Personnel (including Specified Personnel) from undertaking the Services or any part of the Services. The Service Provider must provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.

2.5 Subcontracting

- 2.5.1 The Service Provider may only subcontract the performance of any obligations under this Contract to a Subcontractor:
 - a. listed in Item A [Services and Subcontractors]; or
 - b. for whom the Department has given its prior written approval.
- 2.5.2 In giving its approval for the engagement of a Subcontractor pursuant to clause 2.5.1.b, the Department may impose any terms and conditions it thinks fit.
- 2.5.3 The Service Provider must ensure that any subcontract for the performance of any obligations under this Contract is in writing and contains provisions equivalent to clauses 2.3, 2.4, 2.5, 4, 5, 6, 7, 8, 10, 11 and 15, and is responsible for ensuring that the Subcontractor complies with those terms.
- 2.5.4 The Service Provider must, within five (5) Business Days of entering into a subcontract approved by the Department in accordance with clause 2.5, provide the Department with written notice of the legal name of the Subcontractor and identifying details of the Subcontract.
- 2.5.5 The Service Provider must obtain the express consent of the Subcontractor to the disclosure of the Subcontractor's identity (including their Personal Information if the

Subcontractor is an individual) to the Department. The consent obtained must extend to allow the Department to use and disclose the Subcontractor's identity, the existence and nature of the Subcontract for reporting purposes.

- 2.5.6 The Department may revoke its approval of a Subcontractor by giving written notice to the Service Provider. On receipt of the notice the Service Provider must, at its own cost, promptly cease using that Subcontractor and arrange their replacement with Personnel or another subcontractor acceptable to the Department.
- 2.5.7 The Service Provider must not enter into a subcontract under this Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

2.6 Responsibility of the Service Provider

The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:

- a. involvement by the Department in the performance of the Services, unless such involvement materially impacts on the Service Provider's ability to perform the Services in accordance with this Contract;
- b. payment made to the Service Provider on account of the Services;
- c. subcontracting of the Services;
- d. acceptance by the Department of replacement Personnel.

3. FEES, EXPENSES AND ASSISTANCE

3.1 Fees, expenses and assistance

3.1.1 The Department will:

- a. pay the Service Provider the fees in the Instalments (if any) specified in Item D [Fees];
- b. pay the expenses and meet the costs specified in Item E [Expenses and Costs];
- c. make all the payments in the manner specified in Item F [Invoices]; and
- d. provide the facilities and assistance specified in Item K [Facilities and Assistance].

3.1.2 The Service Provider must submit invoices for payment in the manner specified in Item F [Invoices].

3.1.3 Subject to clauses 3.1.4 and 3.2, if:

- a. the Service Provider is a Small Business; and
- b. the amount of fees payable is less than \$1 million (GST inclusive); and
- c. the Department does not pay an Instalment within 30 days of receipt by the Department of a correctly rendered tax invoice in the manner specified in Item F [Invoices],

the Department will pay Interest to the Service Provider for each day from the day after payment was due up to and including the day that payment of the Instalment was made by the Department.

- 3.1.4 The Department will not be required to make a payment of Interest pursuant to clause 3.1.3 if:
- a. the amount of Interest calculated in accordance with clause 3.1.3 is less than ten dollars (\$10); or
 - b. the Service Provider has not issued the Department a correctly rendered tax invoice in the manner specified in Item F [Invoices] for the Interest payment.

3.2 Department's right to defer payment

- 3.2.1 The Department will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any payment (including an Instalment) if and for so long as the Service Provider has not completed, to the satisfaction of the Department, that part of the Services to which the payment relates.
- 3.2.2 If the Department exercises its rights under clause 3.2.1, the Service Provider must continue to perform any obligations under this Contract unless the Department directs otherwise in writing.

3.3 Overpayments

- 3.3.1 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Department may issue the Service Provider with a written notice requiring repayment of the full amount of the overpayment.
- 3.3.2 The Service Provider must pay to the Department the full amount of the overpayment specified in the notice referred to in clause 3.3.1 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.
- 3.3.3 The Department may, at its sole and absolute discretion, recover the overpayment from the Service Provider by offsetting that overpayment against any amount subsequently due to the Service Provider under this Contract.
- 3.3.4 If the Service Provider fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3.1, the Department may (at its sole discretion) require that Interest be paid on the amount after the expiry of the twenty (20) Business Days notice referred to in clause 3.3.2, until the amount is paid to the Department in full.
- 3.3.5 The Service Provider must provide the Department with an adjustment note if required by the GST Act, including where the Service Provider repays to the Department some or all of the fees or expenses.

3.4 Taxes, duties and government charges

- 3.4.1 Except as provided by this clause 3.4, the Service Provider must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- 3.4.2 The following terms have the meanings respectively given to them in the GST Act:
- consideration;
 - input tax credit;
 - supply;
 - tax invoice; and
 - taxable supply.
- 3.4.3 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract include any GST imposed on the supply.
- 3.4.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient must pay without setoff, subject to the terms of this Contract, the full amount inclusive of GST.

- 3.4.5 No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.
- 3.4.6 If one party is required to reimburse or pay to the other party an amount calculated by reference to a cost, expense or an amount paid or incurred by that party (the reimbursement amount):
- a. the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the party being reimbursed is entitled in respect of that cost, expense or amount; and
 - b. after making the adjustment under clause 3.4.6.a, where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

3.5 Survival

This clause 3 survives the expiration or earlier termination of this Contract.

4 USE OF MATERIAL AND INTELLECTUAL PROPERTY

4.1 Commonwealth Material

- 4.1.1 The Department will provide the Service Provider with the Commonwealth Material specified in Item I [Commonwealth Material], and may provide additional Commonwealth Material to the Service Provider during the operation of this Contract.
- 4.1.2 The Commonwealth grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use and reproduce the Commonwealth Material for the purposes of this Contract.
- 4.1.3 The Service Provider must ensure that the Commonwealth Material is used and held strictly in accordance with any conditions or restrictions set out in Item J [Use of Commonwealth Material] and any direction from the Department.
- 4.1.4 The Service Provider must, on or before the Completion Date, destroy or return to the Department all Commonwealth Material in its possession, unless otherwise specified in Item J [Use of Commonwealth Material] or otherwise directed by the Department's Contact Officer.

4.2 Contract Material and Existing Material

- 4.2.1 Subject to this clause 4.2, Intellectual Property in all Contract Material vests or will vest on creation in the Commonwealth.
- 4.2.2 Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; and
 - b. Existing Material.
- 4.2.3 The Service Provider must notify the Department in writing of the identifying details of any Existing Material which has not been identified in Item G [Existing Material] as soon as practicable after it has identified such Material as Existing Material.
- 4.2.4 Prior to the date specified in Item C [Commencement and Timeframe] by which Contract Material is required, the Service Provider grants to, or will procure for, the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, broadcast, publish, adapt, modify and exploit any Existing Material in conjunction with the Contract Material.
- 4.2.5 The Service Provider agrees, on request by the Department, to promptly create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 4.2.

- 4.2.6 The Service Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and the Existing Material in the manner provided for in this clause 4.2.
- 4.2.7 The Service Provider must deliver all Contract Material to the Department by the Completion Date, unless otherwise specified in Item B [Contract Material] or otherwise directed by the Department's Contact Officer.
- 4.2.8 The Service Provider must use the Contract Material:
- a. only for the purposes of this Contract; and
 - b. in accordance with any conditions or restrictions specified in Item B [Contract Material] or as notified by the Department from time to time.

4.3 Moral rights

- 4.3.1 In this clause 4.3, 'Permitted Acts' means any of the following classes or types of acts or omissions:
- a. using, reproducing, communicating, adapting, modifying, publishing or exploiting all or any part of the Contract Material, with or without attribution of authorship;
 - b. supplementing the Contract Material with any other Material;
 - c. materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material; and
 - d. using the Contract Material in a different context to that originally envisaged,
- but does not include false attribution of authorship.
- 4.3.2 Where the Service Provider is a natural person and the author of the Contract Material or any Existing Material, he or she consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department.
- 4.3.3 If clause 4.3.2 does not apply, the Service Provider must:
- a. obtain from each author of Contract Material and Existing Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given); and
 - b. on request, provide the executed original of any such consent to the Department.

4.4 Dealing with Copies

Property in each document, device, article or medium in which Commonwealth Material, Contract Material or Department Confidential Information is embodied vests or will vest in the Commonwealth

4.5 Survival

This clause 4 survives the expiration or earlier termination of this Contract.

5. CONFIDENTIAL INFORMATION

5.1 Department Confidential Information

- 5.1.1 Subject to clause 5.1.2, the Service Provider must not, without the prior written consent of the Department, disclose any Department Confidential Information to a third party.
- 5.1.2 The Service Provider will not be taken to have breached its obligations under this clause 5.1 to the extent that the Department Confidential Information is:
- a. disclosed by the Service Provider to its Personnel or Subcontractors solely in order to comply with obligations, or to exercise rights, under this Contract;
 - b. disclosed by the Service Provider to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
 - c. authorised or required by law to be disclosed;
 - d. in the possession of the Service Provider without restriction in relation to the disclosure before the date of receipt by the Department; or
 - e. in the public domain otherwise than due to a breach of this clause 5.

5.2 Period of confidentiality

The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Contract:

- a. in relation to an item of information described in Item L [Confidential Information] – for the period set out in Item L [Confidential Information] in respect of that item; and
- b. in relation to any item of information that is protected information as defined in section 23(1) of the *Social Security Act 1991*, under Division 2 of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999*, under the *Social Security (Administration) Act 1999*, under sections 16 and 16AA of the *Child Support (Registration and Collection) Act 1988*, under sections 150 and 150AA of the *Child Support (Assessment) Act 1989*, or other Commonwealth legislation – for as long as required or provided for by the legislation.

6. PROTECTION OF PERSONAL INFORMATION

6.1 Application of this clause

This clause 6 applies only to the extent that the Service Provider deals with Personal Information in providing the Services under this Contract.

6.2 Obligations of Service Provider in relation to Personal Information

The Service Provider acknowledges that it is a contracted service provider and agrees, in providing Services under this Contract:

- a. to comply with the Information Privacy Principles contained in section 14, National Privacy Principles seven (7) to ten (10) and the requirements of section 16F of the *Privacy Act 1988*, as if it were an agency under that Act; and
- b. to comply with any directions, guidelines, determinations or recommendations notified to the Service Provider by the Department.

7. SECURITY

7.1 Security Requirements

- 7.1.1 The Service Provider must, and must ensure that all Service Provider Personnel and Subcontractors, comply with all security requirements specified in Item M [Security Requirements] and any additional reasonable security requirements notified to the Service Provider by the Department from time to time.
- 7.1.2 The Service Provider must ensure that all Service Provider Personnel and Subcontractors safeguard any keys or passes that are provided to the Service Provider for the purposes of this Contract.
- 7.1.3 The Service Provider must ensure that access to Contract Material and other Material related to the Services is restricted to those Personnel and Subcontractors who require access to perform their functions.

7.2 Third party access to Security Classified Information

- 7.2.1 The Service Provider must ensure that, in circumstances where a third party holds legal rights that may allow access to the Department's Security Classified Information, the Service Provider immediately notifies the Department of the risk and takes such steps as the Department may reasonably require to deal with the risk.
- 7.2.2 If the Service Provider is unwilling or unable to comply with the Department's requirements under clause 7.2.1, the Department may immediately terminate this Contract pursuant to clause 15.2.

7.3 Notification

The Service Provider must notify the Department immediately if it becomes aware or has reason to suspect that a breach of the Service Provider's security obligations under the Contract has occurred.

7.4 Unauthorised disclosure

The Service Provider acknowledges that unauthorised disclosure of information held by the Commonwealth is subject to the sanction of criminal law under sections 70 and 79 of the *Crimes Act 1914* and section 91.1 of the *Criminal Code Act 1995*.

7.5 Termination for breach of this clause

The Department may immediately terminate this Contract pursuant to clause 15.2 if the Service Provider breaches this clause 7.

8. AUDIT AND ACCESS

8.1 Audit and access

- 8.1.1 The Service Provider agrees that:

- a. the Department, including any persons authorised in writing by the Department;
- b. the Department's Contact Officer, or any person authorised in writing by the Department's Contact Officer;
- c. the Department's auditors;
- d. the Auditor-General or a delegate of the Auditor-General (for the purposes of performing the Auditor-General's statutory functions);
- e. the Federal Privacy Commissioner; and
- f. the Commonwealth Ombudsman,

have the right of access to the premises of the Service Provider at all reasonable times, to:

- g. require the provision by the Service Provider (including its Personnel and Subcontractors) of records and information in a data format and storage medium accessible by the Department by use of the Department's existing computer hardware and software;
- h. inspect and copy Material, including Contract Material, documentation, records, accounts and financial Material, however and wherever stored, in the custody or under the control of the Service Provider (including its Personnel and Subcontractors) for purposes associated with this Contract or any review of performance under this Contract;
- i. require assistance from the Service Provider in respect of any inquiry into or concerning the Services or this Contract; and
- j. inspect any Department assets located on the premises of the Service Provider which:
 - i. come into existence as a result of the Contract; or
 - ii. are provided to the Service Provider as a result of the Contract.

8.1.2 In exercising the rights granted by this clause 8, the Department will provide reasonable prior notice (except where it believes that there is an actual or apprehended breach of the law), use reasonable endeavours to not interfere with the Service Provider's performance of the Services under the Contract in any material respect and will endeavour to comply with the Service Provider's reasonable security procedures.

8.2 Costs

Each party must bear its own costs of any audit or access as a result of clause 8.1.

8.3 No reduction or restriction

- 8.3.1 The requirement for access as specified in clause 8.1.1 does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with the Contract.
- 8.3.2 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Department, Auditor-General and Privacy Commissioner under this Contract are in addition to any other power, right or entitlement of the Auditor-General or the Privacy Commissioner or a delegate of the Auditor-General or Privacy Commissioner.

8.4 Survival

This clause applies for the life of this Contract and for a period of seven years from the termination or expiry of this Contract.

9. INSURANCE

9.1 The Service Provider must:

- a. effect and maintain, or cause to be effected and maintained, the insurance specified in clause 9.2 from the Commencement Date until:
 - i. the Service Provider no longer has any obligations to perform Services in connection with the Contract if the relevant insurance policy is an occurrence policy; and
 - ii. seven years after the Service Provider no longer has any obligations to perform Services in connection with the Contract if the relevant insurance policy is a claims made policy; and
- b. on request, provide proof of insurance acceptable to the Department, which may (at the Department's sole discretion) include a certificate of currency issued by the insurer, copy of the insurance policy or right to inspect the insurance policy.

- 9.2 The Service Provider must effect and maintain, or cause to be effected and maintained:
- professional indemnity insurance for an amount of not less than ten (10) million dollars each claim and in the aggregate for all claims with one right of reinstatement;
 - public liability insurance for an amount of not less than ten (10) million dollars each and every occurrence;
 - workers' compensation as required by law and, in jurisdictions which permit common law workers' compensation claims outside the statutory workers' compensation scheme, top-up workers' compensation insurance for an amount of not less than fifty (50) million dollars per claim; and
 - the additional insurances specified in Item P [Insurance], if any.
- 9.3 The Service Provider must promptly notify the Commonwealth if, in relation to the insurance policy referred to in clause 9.2.a:
- the limit of the insurance policy is materially depleted during the term of this Contract, by claims unrelated to this Contract;
 - any material claims are made under the insurance policy; and
 - any claims are made under the insurance policy which could involve the Commonwealth.
- 9.4 If directed to do so by the Commonwealth, the Service Provider agrees to exercise the right of reinstatement referred to in clause 9.2.a, at its own cost.
- 9.5 The Service Provider must require all Subcontractors to effect and maintain, or cause to be effected and maintained, the insurances required by this clause 9 as appropriate given the nature of the Services to be provided by the Subcontractor.
- 9.6 For the avoidance of doubt, this clause 9 does not relieve the Service Provider of its obligations under any other provisions of this Contract.
- 9.7 This clause 9 applies for the life of this Contract and for a period of seven years from the termination or expiry of this Contract.

10. INDEMNITY

- 10.1 The Service Provider indemnifies the Commonwealth, its officers, employees and agents (those indemnified) from and against any:
- loss or liability incurred by those indemnified;
 - loss of or damage to the property of those indemnified; or
 - loss or expense incurred by those indemnified in dealing with any claim against them, including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used, or disbursements paid by those indemnified,
- arising from:
- any act or omission by the Service Provider or its Personnel or Subcontractors in connection with this Contract where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - any breach by the Service Provider or its Personnel or Subcontractors of obligations or warranties under this Contract;
 - any use or disclosure by the Service Provider or its Personnel or Subcontractors of Personal Information held or controlled in connection with this Contract; or
 - the use by those indemnified of the Contract Material, including any claims by third parties about the ownership or right to use Intellectual Property rights in Contract Material.

- 10.2 The Service Provider agrees that the Commonwealth will be taken to be acting as agent or trustee for or on behalf of those indemnified from time to time.
- 10.3 The Service Provider's liability to indemnify the Commonwealth under this clause 10 will be reduced proportionately to the extent that any fault on the part of those indemnified contributed to the relevant loss, damage, expense or liability.
- 10.4 The right of the Commonwealth to be indemnified under this clause 10 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, loss, damage, expense or liability.
- 10.5 This clause survives the expiration or earlier termination of this Contract.

11. CONFLICT OF INTEREST

- 11.1 The Service Provider warrants that, to the best of its knowledge and having made diligent inquiries, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.
- 11.2 If, during the period of this Contract, a Conflict arises or appears likely to arise, the Service Provider agrees to:
- a. notify the Department immediately;
 - b. make full disclosure of all relevant information relating to the Conflict;
 - c. propose steps to take for managing, resolving or otherwise dealing with the Conflict; and
 - d. take any steps the Department reasonably requires, which may include those proposed by the Service Provider pursuant to clause 11.2.c, to resolve or otherwise deal with the Conflict.
- 11.3 If the Service Provider fails to notify the Department of a Conflict under this clause 11, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Contract pursuant to clause 15.2.

12. DISCLOSURE BY THE SERVICE PROVIDER

- 12.1 The Service Provider warrants that, as at the date of this Contract and having made reasonable inquiries of its Personnel and Subcontractors, it is not aware of any:
- a. matter relating to the commercial, financial or legal capacity or status of the Service Provider that has not been disclosed to the Department and may affect the ability of the Service Provider to perform the Services;
 - b. litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, actual or threatened, and whether admitted or contested, by another person or body (including regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Service Provider or any settlement in respect of any such matter;
 - c. proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Service Provider;
 - d. judicial decision against the Service Provider (not including decisions under appeal) relating to employee entitlements, for which the Service Provider has not paid the claim; or

- e. any criminal or other act or any other behaviour, conduct or activity of the Service Provider which may:
 - i. materially and adversely affect the Service Provider's credit worthiness, integrity, character or reputation; or
 - ii. attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia,

and which was not disclosed to the Department prior to execution of this Contract.

- 12.2 The Service Provider acknowledges that the Commonwealth in entering into this Contract is relying on the information or representations provided by the Service Provider in the proposal and quotation or tender referred to in Context paragraph B of this Contract.

13. COMPLIANCE WITH LAWS

- 13.1 The Service Provider agrees, in carrying out this Contract, to comply with all relevant legislation of the Commonwealth and any State, Territory or local authority.
- 13.2 The Service Provider acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995*.

14. ASSIGNMENT

The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Contract without the Department's prior written approval.

15. TERMINATION

15.1 Termination for convenience

- 15.1.1 The Department may, at any time by notice and at its sole discretion, terminate this Contract in whole or reduce the scope of this Contract without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination.
- 15.1.2 The Service Provider must, on receipt of a notice of termination or reduction:
- a. stop or reduce work as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material; and
 - c. continue work on any part of the Services not affected by the notice.
- 15.1.3 In the event of termination under clause 15.1.1, the Department will only be liable to:
- a. pay any Instalment relating to Services completed before the effective date of termination;
 - b. reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a, which the Service Provider fully substantiates;
 - c. pay any allowances and meet any costs unavoidably incurred under Item E [Allowances and Costs] before the effective date of termination; and
 - d. provide the facilities and assistance necessarily required under Item K [Facilities and Assistance] before the effective date of termination.
- 15.1.4 The Department will not be liable to pay compensation under clause 15.1.3.a and 15.1.3.b in an amount which would, added to any fees already paid to the Service Provider under this Contract, together exceed the fees set out in Item D [Fees].
- 15.1.5 If there is a reduction in scope of the obligations under this Contract, the Commonwealth's liability to pay any Instalment or allowances set out in Item D [Fees] and Item E [Allowances and Costs] will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Contract.

15.1.6 The Department will not be liable to pay any compensation for loss of prospective profits for a termination or reduction in scope under this clause 15, or loss of any benefits that would have been conferred on the Service Provider had the termination or reduction not occurred.

15.2 Termination for breach

15.2.1 The Department may immediately terminate this Contract by giving written notice to the Service Provider of the termination, if:

- a. the Department is satisfied that, prior to entering into this Contract, the Service Provider engaged in misleading or deceptive conduct or omitted to provide information to the Department that:
 - i. is material to the performance of the Contract; or
 - ii. may have affected the:
 - A. original decision to enter into the Contract;
 - B. terms and conditions of the Contract; or
 - C. action taken by the Department under this Contract, where that action was taken in reliance on the Service Provider's representations, warranties or information provided.
- b. the Service Provider fails to fulfil, or is in breach of, any of its obligations under this Contract, and does not rectify the omission or breach within twenty (20) Business Days (or such other timeframe the Department determines is reasonable in the circumstances) of receiving a notice in writing from the Department requiring the Service Provider to do so;
- c. the Service Provider is unable to pay all its debts as and when they become due;
- d. if the Service Provider is an incorporated body and:
 - i. it fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;
 - ii. proceedings are initiated to obtain an order for its winding up or any shareholder, member or director convenes a meeting to consider a resolution for its winding up;
 - iii. it comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place it under external administration; or
 - iv. notice is served on it or proceedings are taken to cancel its incorporation or registration or to dissolve it as a legal entity;
- e. if the Service Provider is an individual, and he or she becomes bankrupt or enters into a scheme of arrangement with creditors; or
- f. the Service Provider ceases to carry on a business relevant to the performance of the Services.

15.2.2 The Service Provider may immediately terminate this Contract by giving the Department written notice of the termination if:

- a. the Department fails to fulfil, or is in breach of, any of its obligations under this Contract; and
- b. the Department does not rectify the omission or breach within twenty (20) Business Days (or such other timeframe that is reasonable in the circumstances) of receiving a notice in writing from the Service Provider to do so.

16. NOTICES

- 16.1 A party giving notice under this Contract must do so in writing, and that notice must be:
- a. if given by the Service Provider to the Department – addressed to the person specified in Item R [Addresses for Notices], or as otherwise notified by the Department; or
 - b. if given by the Department to the Service Provider – addressed to the person specified in Item R [Addresses for Notices], or as otherwise notified by the Service Provider.
- 16.2 A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.
- 16.3 A notice is deemed to be effected:
- a. if delivered by hand – upon delivery to the relevant address;
 - b. if sent by post – upon delivery to the relevant address;
 - c. if transmitted electronically – upon actual receipt by the addressee.

SCHEDULE – STATEMENT OF WORK

Item A [Services and Subcontractors]

Outcomes

The Service Provider will:

- A. Review the *Early Intervention for Children with Autism Spectrum Disorders: Guidelines for Best Practice* Booklet (2006) to bring it up to date with the results of the Review of the Research to Identify the Most Effective Models of Practice in Early Intervention for Children with Autism Spectrum Disorders (2011) conducted by the Australasian Autism Research Collaboration.
- B. Update information on evidence of effectiveness and best practice, intervention services available across Australia and key contacts for Autism Spectrum Disorder.
- C. Update the design and format of the booklet.

Item B [Contract Material]

The Service Provider will provide the draft Booklet to the Department for the Department's comment in accordance with the timeframe at Item C. The Department may provide the Service Provider with comments or suggestions on the draft Booklet.

The Service Provider must incorporate the Department's comments and reasonable suggestions in all subsequent versions of the Booklet if so required by the Department.

The final report to be submitted electronically in high resolution print ready artwork and also a Word version of the document (text only, to allow for HTML conversion if the document is to go on the website).

Item C [Commencement and Timeframe]

Commencement Date

The Commencement Date is **21 November 2011**

Completion Date

The Completion Date is **16 March 2012**

Timeframe

Deliverable	Timeframe
Draft content list for booklet	December 2011
Draft Booklet submitted to FaHCSIA	17 February 2012
Final Booklet submitted to FaHCSIA	16 March 2012

Item D [Fees]

The total fees payable to the Service Provider by the Department is **\$6,350.00** (GST inclusive), payable by the following Instalments:

Instalment amount (GST inclusive)	Deliverable	Due Date
Payment 1 \$3,000	Delivery of draft content list for Booklet	14 December 2011
Payment 2 \$3,350	Delivery of final document	16 March 2012
The Department will make payment within thirty (30) days of receipt of a correctly rendered tax invoice. A correctly rendered tax invoice is one which complies with the requirements of Item F.		

Item E [Expenses and Costs]

Not Applicable

Item F [Invoices]

The Service Provider must submit correctly rendered tax invoices to the Department. A correctly rendered tax invoice is one which:

- a. includes the Contract / Purchase Order number;
- b. includes the title of the Services;
- c. includes the name of the Department's Contact Officer;
- d. details the fees payable;
- e. details expenses and costs payable, and attaches original receipts;
- f. contains written certification in a form acceptable to the Department that the Service Provider has paid all remuneration, fees or other amounts payable to an employee, agent or Subcontractor performing Services under this Contract; and
- g. is a tax invoice.

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

Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Service Provider:

Item G [Existing Material]

None specified

Item H [Not Used]

None specified

Item I [Commonwealth Material]

None specified

Item J [Use of Commonwealth Material]

None specified

Item K [Facilities and Assistance]

None specified

Item L [Confidential Information]

Department Confidential Information:

DESCRIPTION	PERIOD OF CONFIDENTIALITY
Not applicable	

Service Provider Confidential Information:

DESCRIPTION	PERIOD OF CONFIDENTIALITY
Not applicable	

Item M [Security Requirements]

None specified

Item N [Not Used]

None specified

Item O [Specified Personnel]

The following specified people were involved in the Review of Eligible Therapies for Children with ASD and will be involved in reviewing complex issues that arise in months following the public release of the final Review Report.

Professor Jacqueline Roberts, Autism Centre of Excellence, Griffith University

Professor Margot Prior, University of Melbourne

Professor Sylvia Rodger

Professor Katrina Williams

Rebecca Sutherland

Item P [Insurance]

None specified

Item Q [Contact Officers]

The Department's Contact Officer is the person holding the position of **Policy Officer, Autism Section**, currently:

Carolyn Wilkes

PO Box 7576, Canberra Business Centre, ACT 2610

TOP CW1 Cnr Athlon and Soward Way, Tuggeranong ACT 2900

The Service Provider's Contact Officer is the person holding the position of ***Contract Manager***, currently:

Dr Jacqueline Roberts

Item R [Addresses for Notices]

The Department's and the Service Provider's addresses for notices are:

Same as Item Q

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA as represented by the Department of Families, Housing,
Community Services and Indigenous Affairs, by:

Jennifer Reynolds

[Signature]

Autism Section Manager, FaHCSIA

On:

[date]

In the presence of:

Carolyn Wilkes

Policy Officer, FaHCSIA

SIGNED for and on behalf of **Jacqueline Margaret Roberts ABN 54601667004** by:

Jacqueline Roberts

[Signature]

On:

[date]

In the presence of

[Witness]

[Signature]

On:

[Insert date]