

**CORPORATE CONTRACTOR AGREEMENT
AGREEMENT A**

THIS AGREEMENT is made on the.....day of.....

BETWEEN

MONASH UNIVERSITY (ABN 12 377 614 012) of Wellington Road, Clayton, Victoria ("The University"), of the one part;

AND

the business named as the **CONTRACTOR** in item 1 of the Schedule to this Agreement ("The Contractor") of the other part.

IT IS AGREED

1. APPOINTMENT

- 1.1. The University appoints the Contractor to provide the Contract Services in relation to the Project as set out in item 3 of the Schedule to this Agreement.
- 1.2. The Contractor accepts the appointment.

2. PROVISION OF CONTRACT SERVICES

- 2.1. The Contractor shall provide and complete the Contract Services set out in item 4 of the Schedule in a proper and professional manner and with all due care skill and diligence and at the times or by the Completion Date specified in item 6 of the Schedule to the reasonable satisfaction of the University, commencing on the Commencement Date specified in item 5 of the Schedule.
- 2.2. The Contractor warrants that he or she is competent and has the necessary skills to carry out the Contract Services.
- 2.3. The parties acknowledge that in providing the Contract Services the Contractor acts as an independent Contractor and not as an employee, partner or agent of the University and the Contractor shall have no authority to act for or to bind the University in any manner whatsoever other than as expressly contemplated by this Agreement.
- 2.4. As a consequence of the independent contractor relationship, the Contractor agrees that the Contractor is:

- (a) not entitled to payment of salary, holiday pay, sick pay, severance pay, long service leave or any other entitlement which an employee has in respect of his or her employer;
- (b) solely responsible for all payments in relation to any taxes or any other payments imposed on an employer in respect of employees under the law of Australia and Victoria;
- (c) solely responsible for providing superannuation, sickness benefits and WorkCover in respect of its employees;
- (d) solely responsible for ensuring compliance with all relevant laws of Australia and Victoria with respect to its provision of the Contract Services.

3. FEES AND EXPENSES

- 3.1 The Contractor shall provide the Contract Services for the Total Fee set out in item 8 of the Schedule in accordance with the Fee Schedule specified in item 9 of the Schedule.
- 3.2 The Contractor shall submit invoices to the University in accordance with the procedure specified in item 10 of the Schedule.
- 3.3 The University shall pay the Contractor the invoiced charge within thirty (30) days from the month end of the invoice.

4. GOODS AND SERVICES TAX (GST)

- 4.1 For the purpose of this Agreement "GST" means a goods and services tax imposed on the supply of goods and services (including intellectual property) under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 4.2 The Total Fee payable by the University under this Agreement is expressed exclusive of GST. The University will on issue of a complying tax invoice pay the Contractor an amount equal to the GST liability payable by the Contractor.

5. PERSONNEL

- 5.1 The Contractor shall appoint the specified personnel set out in item 12 of the Schedule as having responsibility for the Contract Services.
- 5.2 The Contractor shall not substitute other personnel for the specified personnel without the University's written consent.
- 5.3 Wherever any of the specified personnel are unable to perform any of the Contract Services the Contractor shall immediately notify the University and arrange for replacement of that person with a person satisfactory to the University.
- 5.4 The University may at any time by notice in writing to the Contractor require that the Contractor should cease to permit any of the specified persons to be engaged in

carrying out the Contract Services and in such event the Contractor shall as soon as is practicable cease to provide the service of such person or persons in or about the University's business and shall provide the services of such alternative persons as may be acceptable to the University.

6. REPORTING

The Contractor shall report to the University in the manner and at the times or by the date specified in item 7 of the Schedule.

7. DEFINITION OF CONTRACT MATERIAL

"Contract Material" means all material including but not limited to documents, computer software, equipment, reports, information and data produced and stored by any means whatsoever which is created for the purpose of performing the Contract Services.

8. OWNERSHIP OF CONTRACT MATERIAL

- 8.1 All intellectual property rights in the Contract Material shall vest in the University.
- 8.2 On the expiration or earlier termination of this Agreement, the Contractor shall deliver to the University all Contract Material.

9. WARRANTIES AND INDEMNITIES

- 9.1 The Contractor warrants that
 - a) the Contract Material is or will be original and that use of the Contract Material by the University will not infringe the intellectual property rights of any person or other rights or laws;
 - b) the information provided in Appendix A is correct.
- 9.2 The Contractor indemnifies the University against any loss, liability or expense, (including solicitor and client costs) and any payment or fine arising from an audit by the Australian Taxation Office, State Revenue Office or Workcover authority, the University incurs if the statements in subclause 9.1 are incorrect. This indemnity is a continuous obligation and independent from other obligations of the Contractor and survives the termination, for whatever reason, of this Agreement.
- 9.3 In addition, the Contractor shall indemnify the University from and against any claim that may be made against the University or the employees of the University arising out of any negligent or wilful act or omission in the performance of The Contract Services by the Contractor its employees, servants or agents and also from any costs that may be incurred with any claim.

10. INSURANCE

- 10.1 The Contractor shall take out with a reputable first class insurer and shall maintain during the term of this Agreement the insurances set out in item 11 of the Schedule.
- 10.2 The Contractor shall if requested, provide confirmation of cover certificates issued by its broker or insurer evidencing the cover set out in subclause 10.1.

11. CONFIDENTIALITY

- 11.1 The Contractor acknowledges that all documents, data and information disclosed by the University is "Confidential Information" and shall be used only for the purposes of this Agreement. The Contractor shall keep the Confidential Information confidential and may disclose it only to its officers and employees who have a need to know for the purposes of this Agreement. Before disclosure, the Contractor shall direct that its officers and employees keep the information confidential.
- 11.2 If requested, the Contractor undertakes to hold in strict confidence the Contract Material.
- 11.3 The obligations of this clause 11 are continuing and shall not cease on termination of this Agreement.

12. PRIVACY

- 12.1 In this clause, "Personal Information" means personal information as defined in the Information Privacy Act 2000 (Vic) and health information as defined in the Health Records Act 2001 (Vic).
- 12.2 The privacy obligations in this clause apply to all Personal Information which the Contractor receives from the University (for any reason, and whether directly or indirectly) or which the Contractor receives, creates or holds in connection with this agreement.
- 12.3 The Contractor:
- (a) shall handle Personal Information to which this clause applies in accordance with all privacy principles which govern, or would govern, the handling of such information by the University including, without limitation, the Information Privacy Principles under the Information Privacy Act 2000 (Victoria) and the Health Privacy Principles under the Health Records Act 2001 (Victoria); and
 - (b) shall comply with all applicable guidelines, determinations, or recommendations made by a Commissioner or any other regulatory body which administers the applicable privacy principles and shall submit to investigations and enforcement procedures by those Commissioners and regulatory bodies.
- 12.4 The Contractor agrees to handle Personal Information to which this clause applies in accordance with any reasonable and lawful direction given by the University.

- 12.5 Where the Contractor discloses any Personal Information to which this clause applies to any third party (including any subcontractor under this agreement), the Contractor agrees to ensure that such a third party is subject to enforceable obligations requiring the third party to comply with the obligations in this clause, as if the third party were the Contractor, and to enforce these obligations against the third party in accordance with such directions as the University may give.

SAMPLE ONLY

- 12.6 The Contractor shall indemnify the University (and its officers, directors, employees, contractors and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses, and costs (including, without limitation, legal costs) that arise out of or relate to any breach of these privacy obligations by the Contractor or by any third party under subclause 12.5.
- 12.7 This clause applies regardless of whether the Personal Information, the Contractor or any third party to whom the Contractor discloses Personal Information to which this clause applies are located in or outside Victoria.
- 12.8 This clause shall survive the termination of this agreement.

13. DEFAULT AND TERMINATION

- 13.1 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party breaches any provision of this Agreement and fails to take reasonable steps to remedy the breach within fourteen (14) days after receiving notice to do so.
- 13.2 The University may terminate this Agreement without notice if the Contractor:
- (a) becomes insolvent or bankrupt; or
 - (b) a receiver or receiver and manager, a trustee in bankruptcy, a provisional liquidator/liquidator or other like person, is appointed for part or all of the Contractor's assets or business; or
 - (c) is charged with any serious criminal offence.
- 13.3 The Contractor must notify the University immediately if any of the events in 13.2 occur.
- 13.4 Notwithstanding 13.1 and 13.2, the University may terminate this Agreement without cause at any time by giving one month's written notice of termination to the Contractor. Where the Contractor receives such notice it shall stop work as specified in the notice and take all available steps to minimise loss arising from the termination. The University will be liable only to pay the Contractor for work done up to the date of the termination notice and any reasonable costs directly related to the termination. The University shall not be liable to the Contractor in respect of any compensation arising from the termination of this Agreement.

14. UNAVOIDABLE DELAY

A party to this Agreement shall not be entitled to exercise its rights and remedies upon the default of the other party if that default:

- (a) is caused by an act or event that is beyond the reasonable control of that other party;
- (b) continues for less than one (1) month; and

(c) was not reasonably foreseeable at the time this Agreement was entered into.

15. VARIATION OF AGREEMENT

No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

16. DISPUTE DETERMINATION

16.1 If any dispute arises between the parties in relation to the effect of this Agreement and that dispute is not mutually resolved within one (1) calendar month, the parties may appoint a person who may be a senior member of the University or a person independent of the University to resolve the dispute, failing which the dispute may be referred to arbitration in accordance with the laws relating to arbitration in force in the State of Victoria.

16.2 At such arbitration each of the parties may be represented by a duly qualified legal practitioner.

16.3 The costs of the arbitration shall be dealt with as follows:

- (a) the costs of each of the parties shall be borne by the party that incurred them and not by any other party; and
- (b) the fees and expenses of the arbitrator and any costs of the arbitration shall be borne equally by the parties.

17. GOVERNING LAW

17.1 This Agreement is governed by and shall be construed in accordance with the laws of the State of Victoria.

17.2 The Contractor shall ensure that the Contract Services comply with the laws of any State or Territory in which the Contract Services, or any part thereof, are to be carried out.

18. NOTICES

Notices under this Agreement may be delivered by prepaid postage, by hand or by facsimile transmission to each of the parties at the address set out in the Schedule or such other address as either party may specify by notice in writing to the other. Notices will be deemed to be given:

- (a) two (2) days after deposit in the mail with postage prepaid;
- (b) when delivered by hand; or

- (c) if sent by facsimile transmission, upon an apparently successful transmission being noted by the sender's facsimile machine.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties in relation to its subject matter.

20. SEVERABILITY

The terms and conditions of this Agreement and each and every part thereof shall be so construed as not to infringe the provisions of any Act whether State or Federal, but if any such term or condition on its true interpretation does infringe any such provision, the term or condition shall be read down to such extent as may be necessary to ensure that it does not infringe, and in the event that the offending term or condition cannot be so read down it shall be deemed to be void and severable without in any way diminishing the enforceability of the remaining terms and conditions and each of them.

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first hereinbefore written.

SIGNED for and on behalf of)
MONASH UNIVERSITY by)
(Name))
(Title))
in the presence of:)
.....)

SIGNED for and on behalf of)
the **CONTRACTOR** by)
.....)
in the presence of:)
.....)
date:)
.....)

SCHEDULE

1. **THE CONTRACTOR:**of
(Recital)
ACN.....
ABN.....

2. **ADDRESS FOR SERVICE OF NOTICE:**
(clause 18)
(Monash University)

(Contractor)

3. **THE PROJECT:** [set out brief description]
(clause 1.1)

4. **THE CONTRACT SERVICES:** [If contained in a separate document
(clause 2.1) such as a work proposal, attach same to this Agreement].

5. **COMMENCEMENT DATE:**
(clause 2.1)

6. **COMPLETION DATE:**
(clause 2.1)

7. **REPORTING REQUIREMENTS:**
(clause 6)

8. **TOTAL FEE:** \$.....
(clause 3.1) (exclusive of GST)

9. **FEE SCHEDULE:** [state time of payment if in instalments]
(clause 3.1)

10. **INVOICING PROCEDURE:**
(clause 3.2)

11. **INSURANCE:** (a) Public risk insurance for an amount of at
(clause 10.1) least \$5 million any one occurrence.
The policy shall include a cross liability

clause and the interests of the University shall be noted on the policy.

- (b) Professional indemnity insurance for an amount of at least \$5 million.
- (c) Workers Compensation Insurance for an amount required by the relevant State or Territory legislation.

12. SPECIFIED PERSONNEL:
(clause 5.1)

.....
.....

SAMPLE ONLY

APPENDIX A

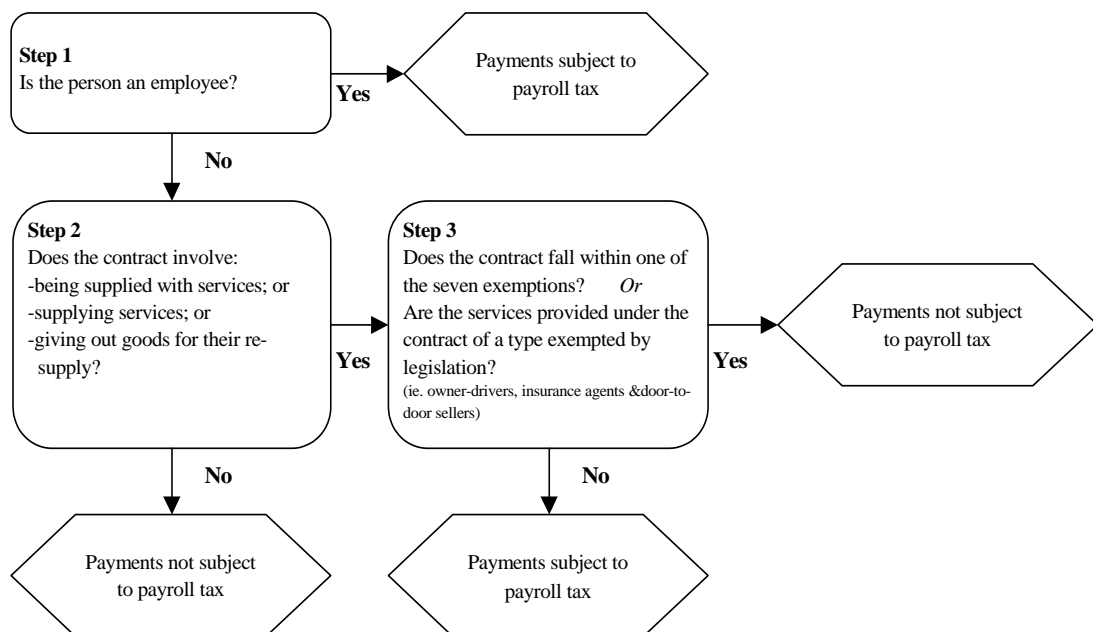
Additional Taxation & WorkCover Information

Monash University is required to determine its Victorian Payroll Tax and Workcover obligations in respect of each Contractor agreement that is principally for the provision of personal services.

As such the University must obtain some understanding of the Contractor's operations to discharge these obligations.

These obligations can be understood more clearly by reviewing the diagram below.

Victorian Payroll Tax

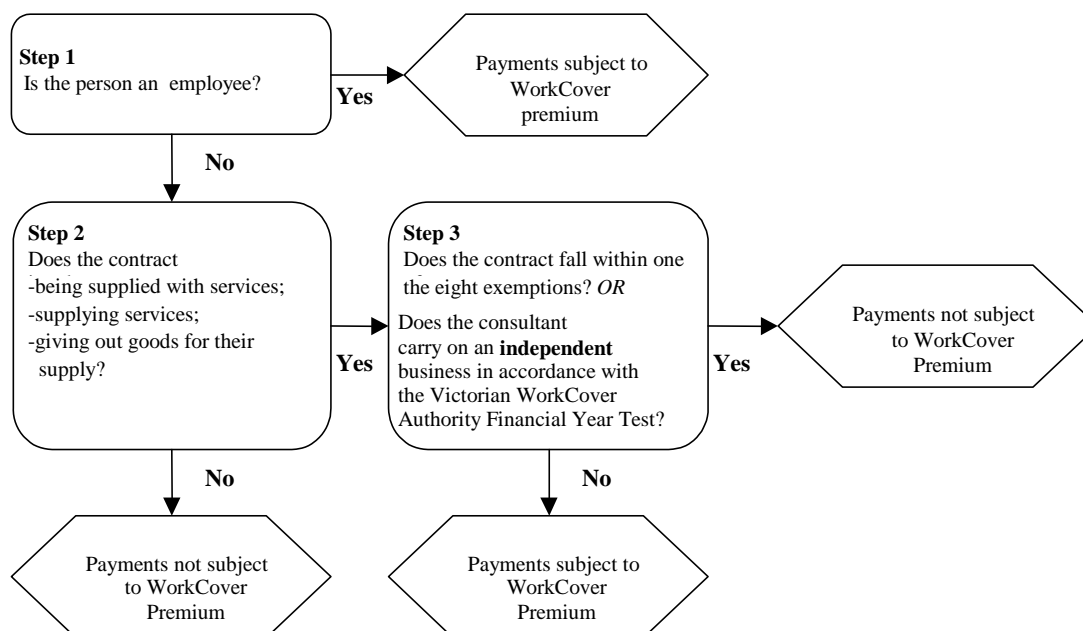


The Victorian Payroll Tax Act (PRTA) deems a contract for the provision of services to be a “relevant contract” and subject to payroll tax, unless one of the following exemptions applies: -

1. The services are of a type ordinarily required by Monash University for less than 180 days in a financial year.
2. The Contractor provides services to Monash University on no more than 90 days in a financial year.
3. The Contractor ordinarily renders services of the type under the contract to the public generally.
4. The Contractor engages others to do all or part of the work pursuant to the contract. (Subject to certain conditions being met.)
5. The services provided under the contract are of a type not ordinarily required in Monash University's business and the Contractor usually provides those services to a range of clients.
6. The provision of labour is secondary to the supply of materials and/or equipment by the Contractor.
7. Payments under a relevant contract exceed \$800,000 per annum.

Workcover

These obligations can be understood more clearly by reviewing the diagram below.



WorkCover Exemptions:

The Accident Compensation Act deems a contract for the provision of services to be a “relevant contract” and subject to WorkCover premium, unless one of the following eight exemptions applies: -

1. The services are of a type ordinarily required by Monash University for less than 180 days in a financial year.
2. The Contractor provides services to Monash University on no more than 90 days in a financial year.
3. The Contractor ordinarily renders services of the type under the contract to the public generally in that financial year.
4. The Contractor engages others to do all or part of the work pursuant to the contract. (Subject to certain conditions being met.)
5. The services provided under the contract are of a type not ordinarily required in Monash University’s business and the Contractor usually provides those services to a range of clients.
6. The provision of labour is secondary to the supply of materials and/or equipment by the Contractor.
7. Payments under a relevant contract exceed \$500,000 per annum.
8. The contract is in relation to the provision of services for or in relation to door-to-door sale of goods.

Contractor Declaration

I have reviewed the abovementioned Payroll Tax and Workcover information and have acknowledged below the liability of the University to the payment of those taxes below.

The Contractor must sign either acknowledging that Payroll tax/WorkCover is or is not applicable to the payment.

Subject to Payroll Tax and WorkCover Declaration

I acknowledge that the payment subject to this agreement is subject to payroll tax and WorkCover.

SIGNED for and on behalf of)
the **CONTRACTOR** by)
.....)
in the presence of:)
.....)

OR

Not Subject to Payroll Tax and WorkCover Declaration

I acknowledge that the payment subject to this agreement is not subject to payroll tax as exclusion(the Contractor must indicate which one of the 7 exclusions apply) applies to the payment.

I acknowledge that the payment subject to this agreement is not subject to a WorkCover premium.

As such in the event that the Contractor makes an incorrect declaration and the University is subsequently liable for payroll tax and workcover, the university will be indemnified under Clause 9 of the Agreement.

SIGNED for and on behalf of)
the **CONTRACTOR** by)
.....)
in the presence of:)
.....)



Appendix B

Contractor Checklist

Checklist items must be completed for all contractors engaged by the University.

This checklist will assist the University to comply with its PAYG, Payroll tax, WorkCover and Superannuation obligations in respect of the Contractor. No one single criterion is determinative of these obligations, however if more of the shaded boxes have been selected by the department, it is more likely that the Contractor should be engaged as an employee. For further information see - www.adm.monash.edu.au/sss/pc/idc/pc_cont.htm.

Circle Yes or No as appropriate. An answer must be given for each question.

The only exception to the requirement to answer all questions is for one-off payments less than \$400 to contractors with an ABN. In these cases questions 16 to 19 do not need to be completed. However, questions 21 and 22 must also be completed for these Contractors.

1.	What is the Contractors Name? _____ What is the Contractors ACN? _____ What is the Contractors ABN? _____ / _____ If no ABN, why? _____ Is the Contractor registered for GST? Yes / No <i>Where the Contractor has no ABN, generally payment should be made to an individual through the payroll. See - www.adm.monash.edu.au/sss/pc/idc/pc_cont.htm</i>		
2.	Is the Contractor - a company (Circle appropriate - partnership description) - individual - other _____		
3.	Is the work performed by the Contractor a core activity of the University? <i>(Core activity examples – teaching, research, tutoring, duties usually performed by general staff members)</i>	Yes	No
4.	Is the Contractor, or its management an employee (past / present) of the University?	Yes	No
5.	Does the University direct or supervise or have the right to direct or supervise the manner in which the Contractor performs the required tasks?	Yes	No
6.	Is the Contractor free to set own hours, not at the direction of the University?	Yes	No
7.	Will the Contractor be integrated into the business of the University and work as part of a team with other University employees?	Yes	No
8.	Will the Contractor supply all of his/her own transport, assets, tools, equipment and office space in the performance of the work?	Yes	No
9.	Is the payment in the form of a fixed fee for the work to be performed?	Yes	No
10.	Is the payment in the form of an hourly rate for each hour worked?	Yes	No
11.	Can the Contractor delegate work to achieve the result?	Yes	No
12.	Does the Contractor offer these services to a range of clients? Or the public?	Yes	No
13.	Is the University responsible for the standard of work performed by the Contractor and for losses due to sub-standard work?	Yes	No
14.	Is the Contract for more than 90 days (where any time worked on a day is counted as one day) in the calendar year?	Yes	No
15.	Does the department or University have employees who also do the work that the Contractor is engaged to do?	Yes	No
16.	Does the Contractor have public liability insurance? Limit \$.....	Yes	No

17.	Does the Contractor have professional indemnity insurance? Limit \$..... <i>If the answer to question 16 or 17 is 'No', please read information and complete required documentation - www.adm.monash.edu.au/sss/pc/idc/pc_cont.htm#ins</i>	Yes	No
18.	Is the Contractor registered for Workcover? Policy Number: _____ If not registered, why? _____ <i>If yes, provide the Contractor's Certificate of Currency. If Contractor is exempt provide a copy of exempt employer certificate. Details may be requested by WorkCover.</i>	Yes	No
19.	Is the payment for service over \$450 in any one calendar month to an individual on Contractor Agreement B? If the Agreement is for goods and labour, please indicate the labour percentage _____ % Is the contractor between 18 and 70 years of age? <i>If the Contractor is paid under Contractor Agreement B for an amount over \$450 in a calendar month and is between the ages of 18 and 70, your Cost Centre is likely to incur a Superannuation Guarantee Charge of 9% of the payment made to ensure the University complies with Superannuation legislation.</i> Is there a reason why the University should not be subject to superannuation on this contract? If yes, please present reason below; otherwise complete the Fund details below. Reasonable justification must be provided as this will be subject to scrutiny by the Australian Taxation Office in the event of an audit. _____ _____ _____ _____ <i>Please complete the following details for all service providers under Contractor Agreement B. Payment must be made to a registered superannuation fund.</i> Contractors Super Fund Name: _____ Contractor Super Fund Address: _____ Fund Number / SPIN Number: _____ Members Account Number: _____ Contractors Date of Birth: _____	Yes Yes Yes	No No No
20.	For questions 3 - 15, please calculate how many shaded and unshaded boxes you have selected. Write the number of shaded items in the shaded box and the number of unshaded items in the unshaded box opposite. The total of both boxes should be 13. If more shaded than non-shaded boxes have been selected, please contact Amanda Birmingham on 9905 6043 for direction.		
Question 21 and 22 - Additional information to be completed for one-off payments for services less than \$400 where the Contractor has an ABN and no Contractor Agreement is completed.			
21.	Project Description _____ <i>(attach brochure or other document to form if appropriate)</i>		
22.	Commencement Date _____ / _____ / _____ Completion Date _____ / _____ / _____ Total Project Fee \$ _____ <i>(exclusive of GST)</i>		

I confirm that the above assessment of the Contractor is true and accurate (to the best of my knowledge) based on the information supplied to me by the Contractor. I acknowledge that based on the above information if the Contractor is more appropriately classified as an employee, I will contact SSSD to arrange engagement. I acknowledge that my department may incur the Superannuation Guarantee Charge (9%), Payroll Tax and Workcover premium on the payment of this Contractor. **I confirm that I am authorised to incur these costs and engage this contractor on behalf of the department named below.**

Signature:	Department:	
Print Name:	Date:	Phone:

SAMPLE ONLY