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Australian Government

AUSTRAC

AUSTRAC  
Contract No.  
A592

# CONTRACT

between

**Commonwealth of Australia**  
represented by

**the Australian Transaction Reports and Analysis  
Centre**

ABN 32 770 513 371

and

**Launch Recruitment Pty Ltd**

ABN 54 119 140 840

**January 2010**

Released by AUSTRAC under the FOI Act 1982 on 19 August 2020

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THIS CONTRACT is made on the 21st day of December 2009

BETWEEN

COMMONWEALTH OF AUSTRALIA (*'the Commonwealth'*) - represented by the AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE ABN 32 770 513 371 established under the *Financial Transaction Reports Act 1988* (Cth) and continued in existence under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

AND

Launch Recruitment Pty Ltd (*'the Contractor'*) ABN 54 119 140 840  
Level 10, 1 Castlereagh St  
Sydney NSW 2000

WHEREAS:

- A. The Commonwealth requires the provision of certain contracted services to AUSTRAC for the purposes of collection, analysis and dissemination of financial transaction reports information.
- B. The Contractor has fully informed itself about the Contracted Services.
- C. The Commonwealth has agreed to accept the Contractor's offer to provide the Contracted Services upon the terms and conditions contained in this Contract.

NOW IT IS HEREBY AGREED as follows:

## 1. Interpretation

### 1.1 In this Contract:

'AUSTRAC' means the Australian Transaction Reports and Analysis Centre established under the *Financial Transaction Reports Act 1988* (Cth) and continued in existence under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or such other agency or Department as may, from time to time, administer this Contract on behalf of the Commonwealth;

'Chief Executive Officer' or 'CEO' means the person for the time being holding, occupying or performing the duties of the office of the Chief Executive Officer of AUSTRAC;

'Commonwealth Material' means any Material provided by the Commonwealth to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided;

'Confidential Information' means the information described in Item H of Schedule 1 and any other information that the parties agree in writing is confidential, together with any other information that:

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

but does not include information which:

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

**'Contracted Services'** means the services described in Item A of Schedule 1 and includes the provision to AUSTRAC of the Contract Material specified in Item B1 of Schedule 1;

**'Contractor'** shall, where the context so admits, include its Personnel;

**'Contract Material'** means all Material:

- (a) brought into existence for the purpose of performing the Contracted Services;
- (b) incorporated in, supplied or required to be supplied along with Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

**'GST'** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*;

**'Intellectual Property'** includes:

- (a) all copyright and neighbouring rights,
- (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;

but does not include:

- (d) Moral Rights; or
- (e) rights in relation to Confidential Information;

**'Material'** includes documents, equipment, software, goods, information and data stored by any means;

**'Moral Rights'** include the following rights of an author of any copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and

- (c) the right not to have authorship falsely attributed;

**'Official Information'** means any information developed, received or collected by or on behalf of the Commonwealth, through its agencies and contracted providers

**'Official Resources'** includes Official Information, people who work for or with the Commonwealth, and assets belonging to or in the possession of the Commonwealth. Official Resources include resources belonging to the Commonwealth but in the possession of Contractors

**'Personal Information'** has the meaning as the term 'personal information' the *Privacy Act* 1988 (Cth), that is: information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**'Personnel'** means a party's officers, employees, agents, contractors or professional advisers engaged in, or in relation to, the performance or management of this Contract and, in the case of the Contractor, includes Specified Personnel;

**'Project Officer'** means the person for the time being holding, occupying or performing the duties of the office of the Agency specified in Schedule 1 or any other person specified by that person or by the CEO from time to time and notified to the Contractor;

**'Specified Personnel'** means the personnel specified in Item G of Schedule 1 as personnel required to undertake the Contracted Services or part of the work constituting the Contracted Services;

1.2 In this Contract, unless the contrary intention appears:

- (a) words importing a gender include any other gender
- (b) words in the singular number include the plural and words in the plural number include the singular.
- (c) clause headings in this Contract are for the convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- (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) a reference to any legislation or legislative provision 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 writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (i) Schedules 1 and 2 (and annexures if any) form part of this Contract
- (j) in the event of any conflict between the terms and conditions contained in:
- (i) the clauses of the Contract

(ii) any part of the Schedules; and

(iii) any annexures (if any),

then the terms and conditions of the higher ranked document will take precedence;

(k) a reference to a Schedule is a reference to a Schedule to this Contract and includes such Schedule as amended or replaced from time to time by agreement in writing between the parties.

- 1.3 This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Contract.
- 1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.5 A provision of this Contract is not to be construed to the disadvantage of a party solely on the basis that it proposed that provision.
- 1.6 No agreement or understanding varying or extending this Contract, including in particular the scope of the Contracted Services in Schedule 1 shall be legally binding upon either party unless in writing and signed by both parties.

## 2. Provision of the Contracted Services

- 2.1 The Contractor shall perform the Contracted Services (including the preparation of Contract Material) in accordance with Schedule 1.
- 2.2 The Contractor shall perform the Contracted Services:
- (a) at the times and in the manner specified in Schedule 1; and
  - (b) in accordance the standards and policies specified in Item A of Schedule 1 and otherwise in accordance with relevant best industry practice.
- 2.3 The Contractor is fully responsible for the performance of the Contracted 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 AUSTRAC or Commonwealth Personnel in the performance of the Contracted Services;
  - (b) payment made to the Contract on account of the Contracted Services;
  - (c) subcontracting of the Contracted Services;
  - (d) acceptance by the Commonwealth of any Specified Personnel; or
  - (e) acceptance by the Commonwealth of replacement Personnel.
- 2.4 The Contractor shall not by virtue of this Contract be, and shall not represent itself, and shall ensure that its Personnel do not represent themselves, as being, an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

### **3. Fees, allowances and assistance**

- 3.1 The Commonwealth shall pay to the Contractor the fees and any allowances, meet costs and provide assistance as specified in Item E of Schedule 1.
- 3.2 Except as provided in this clause, the Contractor must pay all statutory duties, taxes (including GST) and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract. The Contractor may not claim from the Commonwealth under this Contract any amount for which the Contractor may claim an input tax credit.
- 3.3 Where Item E of Schedule 1 provides that the Contractor is to be paid by progressive instalments, the Commonwealth shall be entitled, without derogating from any other right it may have, to defer payment of an instalment until the Contractor has completed to the satisfaction of the Commonwealth that part of the Contracted Services to which that instalment relates.
- 3.4 The Contractor shall submit invoices for payment in the manner specified in Item F of Schedule 1.
- 3.5 Income taxes and superannuation charges are the responsibility of the Contractor and will be paid by the Contractor. The Commonwealth will not deduct tax from the fees, allowances and assistance and will not pay any superannuation shortfalls unless the Commonwealth forms the view that it has a legal obligation to do so in respect of the Contractor or Personnel performing the Contracted Services. If the Commonwealth forms this view, it may deduct and pay tax and superannuation from the fees, allowances and assistance otherwise payable under this Contract.
- 3.6 If the Commonwealth makes a payment or deduction of the type referred to in clause 3.5, (whether from fees, allowances and assistance otherwise payable under this Contract or otherwise), the Contractor will indemnify the Commonwealth from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of the Commonwealth arising from any claim, suit, demand, action or proceeding by any person against the Commonwealth in respect of such payment or deduction.

### **4. Sub-contracting**

- 4.1 The Contractor shall not, without the prior written approval of the Commonwealth, subcontract the performance of any part of the Contracted Services. In giving written approval, the Commonwealth may impose such terms and conditions as it thinks fit.
- 4.2 The Contractor will ensure that any subcontract for the performance of any part of the Contracted Services contains provisions equivalent to clauses 9, 10, 11, 15 and 17 of this Contract.
- 4.3 The Contractor shall be fully responsible for the performance of the Contracted Services notwithstanding that the Contractor has sub-contracted the performance of any part of those services.

- 4.4 Despite any approval given by the Commonwealth, the Contractor shall be responsible for ensuring the suitability of a sub-contractor for the work proposed to be carried out and for ensuring that such work meets the requirements of the Contract.

## 5. Specified Personnel

- 5.1 Prior to commencing the provision of any Contracted Services, the Contractor will provide the Commonwealth with details of its Personnel that it proposes will undertake the Contracted Services. The Commonwealth will advise the Contractor which of the Contractor's Personnel are accepted as Specified Personnel for the purpose of providing the Contracted Services under this Contract.
- 5.2 The Contractor shall ensure that only the Specified Personnel (referred to in schedule 1) undertake work in respect of the Contracted Services in accordance with the terms of this Contract.
- 5.3 Where Specified Personnel are unable to undertake work in respect of the Contracted Services, the Contractor shall notify the Commonwealth immediately. The Contractor shall, if so requested by the Commonwealth, provide replacement personnel acceptable to the Commonwealth at no additional charge and at the earliest opportunity.
- 5.4 The Commonwealth may, at its absolute discretion, give notice requiring the Contractor to remove Personnel (including Specified Personnel) from work in respect of the Contracted Services. The Contractor shall, at its own cost, promptly arrange for the removal of such Personnel from work in respect of the Contracted Services and their replacement with personnel acceptable to the Commonwealth.
- 5.5 If the Contractor is unable to provide acceptable replacement personnel the Commonwealth may terminate this Contract in accordance with the provisions of clause 18.
- 5.6 The Contractor shall ensure that any Specified Personnel or replacement Personnel sign and provide to the Commonwealth a Confidentiality Deed in the form set out in Schedule 2 prior to commencing work in respect of the Contracted Services.

## 6. Liaison

- 6.1 The Contractor shall liaise with and provide progress reports to the Project Officer as reasonably required by the Project Officer during this period of this Contract.
- 6.2 The Contractor shall, and shall ensure that its Personnel, in performing the Contracted Services, comply with all reasonable directions of the Project Officer.

## 7. Intellectual property rights

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



- 7.2 Clause 7.1 does not affect the ownership of Intellectual Property in any Commonwealth Material incorporated in the Contract Material and any existing Material which is specified in Item B3 of Schedule 1 ("Existing Material"). The Contractor grants to the Commonwealth a permanent, irrevocable royalty-free, non-exclusive worldwide licence (including a right of sub-licence) to use, reproduce, adapt and exploit any Existing Material subject to any restrictions note in Item B3 of Schedule 1. Notwithstanding Part VII of the *Copyright Act 1968*, publication of the Material in accordance with this licence shall not affect such ownership.
- 7.3 If requested by the Commonwealth to do so, the Contractor shall bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 7.
- 7.4 The Contractor warrants that it is entitled, or will be entitled or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause.
- 7.5 The Commonwealth grants (or will procure) a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the Commonwealth Material and Contract Material for the purposes of performing the Contracted Services under this Contract.
- 7.6 For the purposes of clauses 7.7 and 7.8, 'Permitted Acts' means any of the following classes or types of acts or omissions:
- (a) using, reproducing, adapting 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) using the Contract Material in a different context to that originally envisaged; and
  - (d) does not include false attribution of authorship.
- 7.7 Where the Contractor is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth.
- 7.8 In any other case, the Contractor agrees:
- (a) to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Commonwealth or any person claiming under or through the Commonwealth (whether occurring before or after the consent is given); and
  - (b) upon request, to provide the executed original of any such consent to the Commonwealth.
- 7.9 Clauses 7.7 to 7.8 do not apply to any Commonwealth Material incorporated in the Contract Material.

## 8. Dealing with Material

- 8.1 In this clause 8, 'Copies' means any Material in which Commonwealth Material, Contract Material or any Confidential Information of the Commonwealth is embodied.
- 8.2 Ownership of all Copies vests or shall vest in the Commonwealth upon creation.
- 8.3 The Contractor will establish and maintain procedures to secure all Copies against loss and unauthorised access, use, modification or disclosure.
- 8.4 Upon the expiration or earlier termination of this Contract the Contractor shall deliver to the Commonwealth all Copies remaining in its possession or otherwise deal with such Material as the Commonwealth directs, subject to any requirement of law binding on the Contractor relating to such Copies.
- 8.5 The Commonwealth will provide the Commonwealth Material specified in Item B2 of Schedule 1.
- 8.6 The Contractor shall use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item B2 of Schedule 1, or notified from time to time in writing by the Commonwealth.
- 8.7 The Contractor shall ensure that the Commonwealth Material or Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

## 9. Disclosure of information

- 9.1 The Contractor shall not, without prior written approval of the Commonwealth, disclose to any person other than the Commonwealth, any Confidential Information of the Commonwealth contained in Commonwealth Material or Contract Material. In giving written approval the Commonwealth may impose such terms and conditions as it thinks fit and the Contractor must comply with these conditions.
- 9.2 The obligations on the Contractor under clause 9.1 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by it to its Specified Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
  - (b) is disclosed to its internal management personnel, solely to enable effective management or auditing of Contract-related activities;
- provided all requirements of this Contract are complied with.
- 9.3 Where the Contractor discloses Confidential Information to another person pursuant to clause 9.2, it must:
- (a) notify the receiving person that the information is Confidential Information;
  - (b) not provide the information unless the receiving person agrees to keep the information confidential; and

- (c) if required by the Commonwealth, arrange for the receiving person to give a written undertaking, in a form approved by the Commonwealth, relating to the non-disclosure of such confidential information - an approved form is included in Schedule 2.

9.4 The Contractor shall take all reasonable steps to ensure that its Personnel maintain the confidentiality of all Confidential Information and only use that information for the purposes of the Contract.

9.5 The Commonwealth may at any time require the Contractor to give and to arrange for its Personnel to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of such confidential information. The Contractor shall promptly arrange for all such undertakings to be given.

9.6 The obligation on the Contractor under this clause shall not be taken to have been breached where the information referred to is legally required to be disclosed.

9.7 The obligations under this clause shall survive the expiration or termination of this Contract:

- (a) for Confidential Information described in Item H of Schedule 1 and for which a period is specified - for the period specified; and
- (b) for all other Confidential Information - for a period of [15 years].

## 10. Privacy

10.1 In this clause 10, the terms 'agency', 'approved privacy code' (APC), 'contracted services provider', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act 1988 (the Privacy Act).

10.2 The Contractor acknowledges that it is a contracted services provider and agrees in respect of the provision of the Contracted Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing the Contracted Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would, if done or engaged in by the Commonwealth, would be a breach an Information Privacy Principle (IPP);
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:

- (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
  - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
  - (g) to notify the Commonwealth immediately if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any subcontractor;
  - (h) to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters, set out in Item I of Schedule 1, to the extent that they are not inconsistent with the requirements of this clause 12; and
  - (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 10.
- 10.3 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

## 11. Security

- 11.1 The Contractor agrees to, and must ensure that its Personnel, comply with:
- (a) all relevant security requirements specified in the Commonwealth Protective Security Manual 2005 which have been notified by the Commonwealth;
  - (b) the security requirements specified in Item J of Schedule 1; and
  - (c) any variations, or additions, to these security requirements that the Commonwealth, in its absolute discretion, notifies the Contractor in writing, from the date specified in the notice, or within 7 days after it receives the notice if no date is specified.
- 11.2 If security requirements varied pursuant to clause 11.1(c) have cost implications for the Contractor which the Contractor can substantiate, the Contractor may apply to the Commonwealth for a variation in the fees payable as specified in Item E of Schedule 1.
- 11.3 The Contractor acknowledges that in performing the Contract, it may become subject to certain statutory provisions relating to security and security issues, and it undertakes to ensure that any of its Personnel involved in providing the Contracted Services are aware of, and comply, with those statutory provisions.

- 11.4 All persons (in this clause 11 referred to as 'Designated Persons') whom the Contractor proposes to carry out work or perform duties under this Contract and who will be required, while carrying out some or all of that work or performing some or all of those duties, to:
- (a) enter secure areas in the Commonwealth's buildings or places;
  - (b) work with the Commonwealth's Personnel for extended periods;
  - (c) have access to Security Classified Information or valuable assets; or
  - (d) hold a particular kind of security clearance, the details of which have been notified to the Contractor by the Commonwealth,

must be authorised in writing by the Commonwealth under this clause to carry out that work or perform those duties, such authorisation not to be unreasonably withheld.

- 11.5 The Contractor must provide to the Commonwealth, in the form required by the Commonwealth, such information as the Commonwealth from time to time reasonably requests for the purpose of allowing the Commonwealth to undertake security investigations, including obtaining consent from Designated Persons to undertake such investigations.

- 11.6 The Contractor must ensure that only persons who:

- (a) are of good fame and character;
- (b) are properly qualified for the tasks they are to perform; and
- (c) will act, in all the circumstances, in a fit and proper manner while they are carrying out work or performing duties under this Contract,

are nominated by the Contractor to the Commonwealth as Designated Persons.

- 11.7 The Commonwealth will notify the Contractor in writing of:

- (a) the names of the Designated Persons it authorises to carry out work or perform duties under this Contract (in this clause 11 referred to as an 'Authorised Person');
- (b) the type and level of clearance given in respect of each of those persons; and
- (c) the date from which, or the period during which, those clearances will be effective; and
- (d) the names of the Designated Persons it refuses to authorise to carry out such work or perform such duties,

and the Contractor must sign a copy of that notice, and return it to the Commonwealth as soon as possible as acknowledgment of the receipt of the document.

- 11.8 The Contractor must advise the Commonwealth promptly in writing of any change in the circumstances of an Authorised Person that, in the Contractor's reasonable opinion, is likely to affect the Commonwealth's authorisation of that person.

- 11.9 The Commonwealth may, at any time, on reasonable grounds, without any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular Authorised Person and, in such event, must notify the Contractor accordingly. Upon receipt of such a notice, the Contractor must, if required by the Commonwealth and without inconvenience or cost to the Commonwealth, propose and make available another person for authorisation by the Commonwealth under this clause within a reasonable time.

- 11.10 The Contractor must not permit any of its Personnel to have any access to Security Classified Information unless:
- (a) the relevant person has been cleared to the appropriate security level;
  - (b) the Commonwealth has given written authority under this clause 11;
  - (c) the relevant person has undergone the training specified in Item J of Schedule 1 relating to access and use of Security Classified Information,
- and must immediately inform the Commonwealth on becoming aware that any unauthorised person has had access to Security Classified Information.
- 11.11 The Contractor must not perform the Contracted Services or transfer Security Classified Information outside of Australia, without the prior written approval of the Commonwealth.
- 11.12 The Contractor may only access the Commonwealth's premises if authorised in writing by the Commonwealth and so long as the Contractor complies with the requirements of the Commonwealth set out in this Contract, or notified to the Contractor in writing during the period of the Contract.
- 11.13 The Contractor must, and must ensure that its Personnel, safeguard:
- (a) any keys or passes; or
  - (b) any materials detailing access arrangements,
- that are provided to the Contractor for the purposes of this Contract.
- 11.14 The Contractor must protect any Official Resources that are in its possession or under its control to the same extent as if it were the Commonwealth, including by ensuring that any Official Information is not accessible by unauthorised persons.
- 11.15 The Contractor agrees to supply written security reports to the Commonwealth in a form and at the times specified Item J of Schedule 1, or as otherwise agreed between the parties, which reports must include the following security information:
- (a) all Security Incidents, including steps taken by the Contractor to address these:
  - (b) perceived security problems;
  - (c) where appropriate, recommendations for security improvements;
  - (d) proposed and actual personnel changes; and
  - (e) any other security information reasonably required by the Commonwealth from time to time.
- 11.16 The Contractor must, and must ensure that any Personnel, undertake the training specified in Item J of Schedule 1, or as specified in written advice to the Contractor during the period of the Contract.

## 12. Indemnity

- 12.1 The Contractor indemnifies the Commonwealth and its Personnel from and against any
- (a) cost or liability incurred by those indemnified;
  - (b) loss of or damage to property of those indemnified; or
  - (c) loss or expense (including legal costs and expenses on a solicitor/own client basis) incurred or suffered by any of them

arising from:

- (d) any breach of this Contract; or
  - (e) any wilful, unlawful or negligent act or omission of the Contractor or its Personnel in connection with this Contract.
- 12.2 The Contractor's liability to indemnify the Commonwealth and its Personnel under clause 12.1 shall be reduced proportionally to the extent that any act or omission involving fault on the part of the Commonwealth or its Personnel contributed to the cost, loss or liability.
- 12.3 The right of the Commonwealth and its Personnel to be indemnified under clause 12.1 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 or liability.
- 12.4 The indemnity referred to in clause 12.1 shall survive the expiration or termination of this Contract.
- 12.5 To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Contract.

## 13. Insurance

- 13.1 Without limiting the Contractor's obligations or liability under the Contract the Contractor shall, for so long as any obligations remain in connection with this Contract, effect and maintain insurance in the name of the Contractor as specified in Item K of Schedule 1.
- 13.2 Wherever requested, the Contractor shall provide the Commonwealth with satisfactory evidence of insurance effected in accordance with clause 13.1.

## 14. Conflict of interest

14.1 In this clause 14:

'Conflict' means any matter, circumstance, interest or activity affecting the Contractor or any of its Personnel which may or may appear to impair their ability to perform the obligations under this Contract diligently and independently

14.2 The Contractor 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 the Contracted Services.

14.3 If during the term of this Contract a Conflict arises, or appears likely to arise, the Contractor undertakes to:

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

If the Contractor fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate this Contract in accordance with the provisions of clause 18.2.

14.4 The Contractor shall not, and shall ensure that any officer, employee, agent or subcontractor of the Contractor does not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Contracted Services to the Commonwealth fairly and independently.

## 15. Books and records

15.1 The Contractor must:

- (a) keep and must require its subcontractors to keep adequate books and records, in accordance with Australian accounting standard, in sufficient detail to enable the amounts payable by the Commonwealth under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Contracted Services.

15.2 The Contractor must bear its own costs of complying with this clause.

15.3 This clause survives for a period of seven years from the termination or expiry of this Contract.



## 16. Access to Contractor's premises

- 16.1 The Commonwealth or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:
- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
  - (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Contracted Services;
  - (c) the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
  - (d) material (including books and records) in the possession of the Contractor relevant to the Contracted Services or the Contract; and
  - (e) any other matters determined by the Commonwealth to be relevant to the Contracted Services or the Contract.
- 16.2 The Commonwealth may, at reasonable times and on giving reasonable notice to the Contractor:
- (a) access the premises of the Contractor to the extent relevant to the performance of this Contract;
  - (b) require the provision, by the Contractor or its Personnel, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
  - (c) inspect and copy documentation, books and records, however stored, in the custody or under control of the Contractor or its Personnel; and
  - (d) require assistance in respect of any inquiry into or concerning the Contracted Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry, any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- 16.3 The Contractor must provide access to the Contractor's computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under clause 16.2, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.
- 16.4 The Commonwealth must use reasonable endeavours to ensure that:
- (a) audits performed pursuant to clause 16.1; and
  - (b) the exercise of the general rights granted by clause 16.2 to the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.
- 16.5 Except as set out in clause 16.6, each party must bear its own costs of any reviews and/or audits.

- 16.6 If the Contractor is able to substantiate that it has incurred direct expenses in the Commonwealth's exercise of the rights granted under clause 16.1 or clause 16.2 which, having regard to the value of this Contract, are substantial, the Commonwealth and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.
- 16.7 The rights of the Commonwealth under clause 16.2(a) to 16.2(c) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.
- 16.8 The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.
- 16.9 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.
- 16.10 The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 16.
- 16.11 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 Commonwealth under this Contract are in addition to any other 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.
- 16.12 This clause survives for a period of seven years from the termination or expiry of this Contract.

## 17. Termination for convenience

- 17.1 The Commonwealth may, in its absolute discretion and at any time by written notice, terminate or reduce the scope of this Contract.
- 17.2 Upon receipt of a notice of termination or reduction under clause 17.1, the Contractor shall;
- (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and,
  - (c) continue work on any part of the Contracted Services not affected by the notice.
- 17.3 In the event of termination under clause 17.1, the Commonwealth will be liable only:
- (a) to pay any fees or allowances relating to Contracted Services completed before the date of termination; and

- (b) to reimburse any expenses or costs unavoidably incurred by the Contractor as a result of the Commonwealth terminating the Contract under clause 17.1 not covered by clause 17.3(a).

17.4 The Commonwealth shall not be liable to pay compensation in any amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the Fees set out in Item E of Schedule 1. The Contractor shall not be entitled to compensation for loss of prospective profits.

17.5 In the event of a reduction in scope of the Contract under clause 17.1, the Commonwealth's liability to pay fees or allowances or provide facilities or assistance under Item E of Schedule 1 shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Contracted Services.

## 18. Default

18.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may, if it considers that:

- (a) the default is not capable of being remedied - by notice in writing to the other party, immediately terminate this Contract or reduce the scope of the Contract; or
- (b) the default is capable of being remedied - by notice in writing specifying the default, require the other party to remedy the default within the time (being not less than 14 days) specified in the notice and if the default is not remedied within the time allowed, immediately terminate this Contract or reduce the scope of the Contract by giving a second notice,

without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

18.2 If the Contractor:

- (a) being a corporation - goes into liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed or,
- (b) being an individual, becomes bankrupt or enters into a scheme or arrangement with creditors,

the Commonwealth may, by notice in writing, terminate this Contract immediately without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

## 19. Dispute resolution

19.1 The parties agree that a dispute arising under this Contract will be dealt with as follows:

- (a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;

(b) within 7 days, each part will nominate a representative with authority to resolve the dispute who, where practicable, has not had prior involvement in the matters giving rise to the dispute

(c) the representatives shall attempt to settle by the dispute by negotiation.

If a dispute is not settled by the parties within 21 days of 19.1(a), either party may commence legal proceedings.

19.2 Each party will bear its own costs of complying with clause 19.1.

19.3 Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under this Contract.

19.4 This clause 19 does not apply to:

(a) action taken by the Commonwealth under or purportedly under clause 17;

(b) action taken by either party under clause 18; or

(c) legal proceedings by either party seeking urgent interlocutory relief.

## 20. Waiver

20.1 A waiver by either party in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

## 21. Compliance with laws and policy

21.1 The Contractor shall, and shall ensure that its Personnel, in carrying out this Contract comply with the provisions of any relevant statutes, regulations, by-laws, requirements of any Commonwealth, State, Territory or local authority, including in particular:-

(a) the *Crimes Act 1914* (Cth);

(b) the *Racial Discrimination Act 1975* (Cth);

(c) the *Sex Discrimination Act 1984* (Cth);

(d) the *Disability Discrimination Act 1992* (Cth);

(e) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

21.2 The Contractor:

(a) acknowledges that it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets; and

- (b) undertakes with respect to any of its Personnel who will have access to documents, materials or information within the meaning of the section that prior to having such access the said Personnel will first be required by the Contractor to provide the Contractor with an acknowledgment that such Personnel is aware of the provisions of the section.

21.3 The Contractor shall, and shall ensure that its Personnel, in performing the Contracted Services comply with:

- (a) the Protective Security Manual 2005;
- (b) the Chief Executive Instructions of AUSTRAC, issued under the *Financial Management and Accountability Act 1997* (Cth);
- (c) the APS Code of Conduct; and
- (d) any other policy advised by the Project Officer from time to time.

21.4 The Contractor must, and must ensure that its Personnel, when using the Commonwealth's premises or facilities, comply with all reasonable directions and Commonwealth procedures relating to occupational health (including the Commonwealth's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

## 22. Assignment and novation

22.1 The Contractor shall not assign, in whole or in part, its benefits under this Contract without the prior written approval of the Commonwealth.

22.2 The Contractor shall not consult with any other person or body for the purposes of entering into an arrangement which will require novation of the Contract without first consulting the Commonwealth.

## 23. Severability

23.1 Each provision of this Contract and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

## 24. Applicable law

24.1 This Contract shall be governed by and construed in accordance with the laws of the State of New South Wales and the parties agree, subject to the Contract, that the courts of the State of

New South Wales shall have non-exclusive jurisdiction to entertain any action in respect of, or arising out of, this Contract.

## 25. Notices

- 25.1 Any notice, request or other communication to be given or served pursuant to this Contract shall be in writing and dealt with as follows:
- (a) if given by the Contractor to the Commonwealth - addressed and forwarded to the Commonwealth for the attention of the Project Officer at the address noted in Item L1 of Schedule 1 or as otherwise notified by the Project Officer,
  - (b) if given by the Commonwealth to the Contractor - signed by the Project Officer and forwarded to the Contractor at the address noted in Item L2 of Schedule 1 or as otherwise notified by the Contractor.
- 25.2 Any such notice, request or other communication shall be delivered by hand or sent by prepaid security post, facsimile or telex, to the address of the party to which it is sent.
- 25.3 Any notice, request or other communication will be deemed to be received:
- (a) if delivered personally, on the date of delivery;
  - (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and,
  - (c) if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible.

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## Schedule 1 Contract Details

### Item A Contracted Services (see clause 2)

The Contracted Services will be the provision of the Specified Personnel, who will work under the day to day direction and supervision of AUSTRAC and who will provide the following (Services):

IT Administrator

- Controlling all IT documents
- Maintaining all IT Work Requests
- Budget analysis
- Timesheet coordination and analysis
- Raising and coordinating IT purchase orders
- Co-ordinate and control Work Request procedures
- Typing of correspondence, documentation and reports
- Co-ordinate IT recruitment
- Other duties as required by the Project Officer

### Item B Material (see clauses 2, 7 and 8)

#### Item B1 Contract Material

Contract material associated with the performance of the role and functions of the IT Administrator

#### Item B2 Commonwealth Material

Restrictions as per the Contract terms.

#### Item B3 Existing Material of the Contractor

None

### Item C Time-frame (see clause 2.2)

The period of the contract will begin from 11 January 2010 to 11 July 2010. Up to 40 hours per week, Monday to Friday -- actual hours and days as nominated by the Project Officer and agreed to by the Contractor. Additional billable work, if agreed by the Project Officer and the Contractor, may occur after normal AUSTRAC business hours or at weekends. Additional billable work will be at the rate specified under Item E1 of Schedule 1.

**Item D Project Officer (see clause 6)**

The Project Officer shall be the person holding, occupying or performing the duties of the Chief Information Officer.

**Item E Fees, allowances and assistance (see clause 3)**

**Item E1 Fees**

The fee payable by the Commonwealth for the Contract Services is \$49.50 per hour, to be invoiced fortnightly, non inclusive of NSW payroll tax and inclusive of Goods and Services Tax.

All fees are payable, subject to acceptance, 14 days after delivery of a correctly rendered invoice to the Commonwealth and following delivery of the Contracted Services to the satisfaction of the Project Officer.

Fees payable are further subject to the proviso that the total number of hours charged on this contract will be limited to 40 hours per week, unless otherwise agreed in writing between the Project Officer and the Contractor.

**Item E2 Allowances**

Where prior written approval has been given by the Project Officer for travel the Commonwealth shall pay the Contractor reasonable and actual expenses associated with and necessarily incurred in carrying out the Contracted Services. Invoices in respect thereof must be supported by evidence of expenditure. For the avoidance of doubt actual expenses which do not exceed non SES Australian Public Service rates shall be regarded as reasonable.

**Item E3 Assistance**

AUSTRAC will allow Contracted Services to be performed on Commonwealth premises.

The Contractor's Specified Personnel shall be given the usual office facilities provided to AUSTRAC staff performing similar work.

**Item F Invoice Procedures (see clause 3.4)**

Invoices forwarded by the Contractor must be correctly addressed and shall include the following information:

- (a) title of Contracted Services;
- (b) contract number or purchase order number (if any);
- (c) a summary of the fees and allowances covered by the invoice; and
- (d) any additional information required by this Contract.

Invoices must fully comply with the requirements of the *A New Tax System (Goods and Services Tax) Act 1999*.



Subject to acceptance of the Contracted Services by the Commonwealth, the due date for payment shall be 14 days after delivery of a correctly rendered invoice to the Commonwealth and following delivery of the Contracted Services.

**Item G Specified Personnel (see clause 5)**

The Contractor shall ensure that the Contracted Services shall be undertaken by **s22**  
**s22**

**Item H Confidential Information (see clause 9)**

Description of Confidential Information	Period of Confidentiality
Protective Security Manual 2005	Indefinite

**Item I Privacy Directions, Guidelines, Determinations or Recommendations (see clause 10.2(h))**

Nil

**Item J Security Requirements (see clauses 11.1 and 11.10)**

The Specified Personnel must have and maintain an AUSTRAC issued security clearance at the security classification level designated by the Project Officer as required to perform the Contracted Services under this Contract.

**Item K Insurance (see clause 13)**

The Contractor is to obtain and maintain the following insurance policies:

- (a) public liability insurance to the value of \$10,000,000.00;
- (b) professional indemnity insurance to a value of \$10,000,000.00; and
- (c) workers' compensation insurance in accordance with applicable legislation.

**Item L Address for Notices (see clause 25)**

**Item L1 Commonwealth's address for notices**

Senior Manager, Finance and Corporate  
AUSTRAC  
PO Box 5516  
WEST CHATSWOOD NSW 1515

**Item L2 Contractor's address for notices**

Launch Recruitment Pty Ltd  
Level 10, 1 Castlereagh St  
Sydney NSW 2000

## Schedule 2 Confidentiality Deed

### Date

This Deed is dated 23rd December 2009

### Parties

This Deed is made between the following parties:

1. COMMONWEALTH OF AUSTRALIA (*the Commonwealth*) - represented by the Chief Executive Officer of AUSTRAC ABN 32 770 513 371 established under the *Financial Transaction Reports Act 1988* (Cth) and continued in existence under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)

and

2. s22 of s22

### Context

- A. The Commonwealth has entered into a contract with Launch Recruitment Pty Ltd on \_\_\_\_\_ (the 'Contract') for the provision of certain services (the 'Contracted Services').
- B. The Confidant will be involved in undertaking work in respect of the Contracted Services. In the course of undertaking this work, the Confidant may be provided with access to certain confidential information and other sensitive material.
- C. The Confidant has agreed to comply with the requirements set out in this Deed.

### Operative provisions

#### 1. Interpretation

- 1.1 Unless the context otherwise requires, words in this Deed have the same meaning as in the Contract.

#### 2. Non-disclosure and confidentiality

- 2.1 The Confidant agrees to treat as secret and confidential all Confidential Information to which the Confidant has access or which is disclosed to the Confidant.

- 2.2 The confidentiality obligations under this clause continue for the period of fifteen (15) years from the date of this Deed (notwithstanding its expiry or termination) except in relation to an item of Confidential Information described in Item H of Schedule 1 of the Contract which has a period of confidentiality set out in that Item, in which circumstances the period of confidentiality is the length of time set out in that Item.
- 2.3 The Confidant's obligations under this Deed will not be taken to have been breached where:
- (a) the Confidant is required by law to disclose the Confidential Information;
  - (b) the Confidential Information is in the public domain otherwise than due to a breach of this Deed or any other obligation of confidence.
- 2.4 The Confidant may use the Confidential Information only for the purpose of undertaking work in relation to the Contracted Services.
- 2.5 The Confidant must not copy or reproduce the Confidential Information without the written approval of the Commonwealth, and must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information.
- 2.6 The Confidant must notify the Agency immediately if Confidential Information is used or disclosed in any way other than as permitted under this Deed. The Confidant must provide full details of the relevant use and/or disclosure.
- 2.7 Immediately upon request by the Commonwealth, the Confidant must deliver to the Commonwealth all Material in the Confidant's possession or control containing Confidential Information.

### **3. Other obligations**

- 3.1 The Confidant acknowledges that s/he is aware of the provisions and effect of the Contract.
- 3.2 The Confidant undertakes that:
- (a) when undertaking work in respect of the Contracted Services; or
  - (b) when on Commonwealth premises or interacting with Commonwealth Personnel,
- s/he will not do any act or fail to do any act which, if that act or failure to act was done by the Contractor, would result in a breach of the Contract by the Contractor.
- 3.3 Without limiting the Confidant's obligations under clause 2 or 3.2, the Confidant agrees to comply with the requirements of clauses 6 to 11 inclusive, 14 and 20 of the Contract as though the Confidant were the Contractor under the Contract.

### **4. General**

- 4.1 The obligations arising out of this Deed are in addition to any obligations of confidence at common law or equity or any statutory obligations.

4.2 The Confidant's obligations under this Deed will survive the termination or expiry of the Contract.

4.3 This Deed will be governed in accordance with the law in the State of New South Wales.

EXECUTED as a Deed

SIGNED, SEALED AND DELIVERED by:  
s22

s22

Signature of Confidant

in the presence of:

s22

Name of Witness

s22

Signature of Witness

SIGNED on behalf of the  
COMMONWEALTH OF AUSTRALIA by

in the presence of:

AIF MANNING

s22

Name of Witness



Signature

22/12/09  
Date

s22

Signature of Witness

23/12/09  
Date

Released by AUSTRAC under the FOI Act 1982 on 19 August 2020

**Signature Page**

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

SIGNED for and on behalf of the Commonwealth of Australia by:

*Aif Maw 22/12/09*

Name of Delegate

Signature



Date

*23/12/09*

In the presence of

**s22**

Name of Witness

Signature

**s22**

Date

*23/12/09*

Execution by affixing the company seal

The seal of Launch Recruitment Pty Ltd is hereby affixed in accordance with its constitution by:

Name of Director

Signature

Name of Director/Secretary

Signature

Execution by signatures of company officers

SIGNED for and on behalf of Launch Recruitment Pty Ltd by:

**s22**

Name of Director

**s22**

Signature

Name of Witness

**s22**

*Kim...*  
**s22**

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