

## **CONTRACTOR AGREEMENT "C"**

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

### **BETWEEN**

The person or company, whose name and address is set out in the Schedule to this Agreement ("the Contracting Party") of the one part,

### **AND**

**MONASH UNIVERSITY** of Wellington Road, Clayton in the State of Victoria ("MONASH") of the other part.

### **RECITALS**

- A. The Contracting Party wishes to engage MONASH to perform the Service set out in the Schedule to this Agreement ("the Service").
- B. MONASH agrees to perform the Service on the terms and conditions contained herein.

**NOW IT IS AGREED** as follows:

#### **1. PROVISION OF SERVICES**

- 1.1 MONASH shall from the Commencement Date to the Completion Date set out in the Schedule perform the Service through the Contractor named in the Schedule ("the Contractor") and the Contracting Party agrees to pay MONASH the Fee set out in the Schedule.
- 1.2 MONASH shall supply all personnel, equipment, materials and other things necessary to perform the Service excepting only those items expressed in the Schedule to be supplied by the Contracting Party. The Contracting Party shall cooperate with MONASH and shall not interfere with or obstruct the proper performance of the Service.
- 1.3 MONASH undertakes to submit to the Contracting Party a final written report within a time agreed by the parties or by the Completion Date as agreed hereunder, whichever is sooner.

#### **2. PAYMENT**

- 2.1 MONASH shall submit invoices for amounts payable according to the Schedule and the Contracting Party agrees and undertakes to pay such amounts within seven (7) days of receipt of the invoice.

- 2.2 For the purposes 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*.
- 2.3 Any amount payable by the Contracting Party for anything supplied under this Agreement is expressed exclusive of GST. The Contracting Party will on issue of a valid invoice (or other documentation required under GST laws to enable tax in-put credits to be claimed) pay MONASH an amount equal to the GST liability payable by MONASH on the supply within 7 days of invoice.

### 3. **CONFIDENTIALITY**

- 3.1 In this Agreement, Confidential Information is information, regardless of its form, disclosed to MONASH by the Contracting Party and treated by the Contracting Party as confidential but does not include information which MONASH creates or is public knowledge.
- 3.2 MONASH undertakes to keep the Confidential Information confidential and to disclose it to its employees and agents only on a need to know basis and under the same obligation of confidence.

### 4. **INTELLECTUAL PROPERTY**

- 4.1 Ownership of rights in any pre-existing intellectual property not created as part of the Service which is contributed by a party for the purpose of carrying out the Service, will remain with the contributing party. Where the pre-existing intellectual property is contributed by the Contracting Party, MONASH is licensed to use, modify or adapt that intellectual property for provision of the Service.
- 4.2 The intellectual property rights attaching to all material created or prepared by MONASH in connection with performance of the Service shall vest in MONASH. MONASH grants a non-exclusive perpetual licence to the Contracting Party for the Contracting Party to use such material for its own purposes provided that the Contracting Party shall not use such material in association with the name of MONASH or the Contractor without the written approval of MONASH.

### 5. **NO WARRANTY**

- 5.1 MONASH will exercise all reasonable care and diligence in carrying out the Service but specifically exclude any warranty either express or implied as to the standard of work or the accuracy of any answers supplied to questions and in particular shall not be liable for any damage direct or consequential and howsoever arising in respect of the work done pursuant to this Agreement, to the extent to which these warranties can be excluded by law.
- 5.2 To the fullest extent permitted by law, MONASH's liability under any condition or warranty which cannot legally be excluded is limited, at the option of MONASH to:
- (a) in the case of goods:

- (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services:
- (i) supplying the services again; or
  - (ii) paying the cost of having the services supplied again.

5.3 Notwithstanding any other clause in this Agreement and to the fullest extent permitted by law, MONASH's liability arising from or in connection with the performance or non-performance of any or all of its obligations under this Agreement or in any other manner related to this Agreement (and whether in tort, for breach of contract, breach of statute or otherwise) will not in the aggregate exceed the Fee in the Schedule.

## 6. **DEFAULT AND TERMINATION**

During the period of this Agreement, should either party commit any breach of any of the terms and conditions contained in this Agreement or any of its schedules then it shall be lawful for the aggrieved party, by notice in writing, to request the other party within fourteen (14) days of receipt of notice to remedy the default. Should the party fail to remedy the default then this Agreement may be terminated by the aggrieved party giving not less than fourteen (14) days' notice in writing of a termination date and this Agreement shall terminate on that date.

## 7. **COMMUNICATIONS**

Communications relating to the technical aspects of the Service shall be directed to the Contractor.

## 8. **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.

9. **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.

10. **DISPUTE DETERMINATION**

10.1 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 MONASH or a person independent of MONASH 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.

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

10.3 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.

11. **GOVERNING LAW**

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

12. **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;

as the case may be.

13. **ENTIRE AGREEMENT**

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

14. **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, that 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 hereto have executed this Agreement the day and year first hereinbefore mentioned.

SIGNED by the **CONTRACTING** )  
**PARTY** ) .....  
in the presence of:

**OR**

SIGNED for and on behalf of )  
**CONTRACTING PARTY** )  
by..... ) .....  
in the presence of

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

**SCHEDULE**

- (i) **CONTRACTING PARTY:** .....  
of.....  
. ACN.....  
/ ABN.....
  
- (ii) **COMMENCEMENT DATE:** .....
  
- (iii) **COMPLETION DATE:** .....
  
- (iv) **SERVICE:** [As set out in Appendix A]
  
- (v) **ITEMS SUPPLIED BY THE CONTRACTING PARTY:** .....
  
- (vi) **CONTRACTOR:** .....  
...[Name(s) of Monash  
researcher or supervisor  
conducting the  
Service].....  
....
  
- (viii) **FEE AND SCHEDULE OF RATES:** \$.....  
. payable.....  
..



## **APPENDIX A**

The Service (attach proposal)