

Made the day of 2011

PRIMARY VENDOR
and
SUBCONTRACTING VENDOR

**Provision of Outsourced Information Technology Services for
Human Resources Management System for
Customer X**

Back-to-Back Subcontractor Agreement

PRIMARY VENDOR
(Insert Address)

THIS BACK-TO-BACK SUBCONTRACTOR AGREEMENT

is made on the day of 2002

BETWEEN

PRIMARY VENDOR of *(insert address)* ("**PV**")

AND

SUBCONTRACTING VENDOR of *(insert address)* ("**SV**")

RECITALS

- A. PV has entered into an agreement with the Customer X for the provision of information technology services.
- B. PV requires SV to provide, and SV has agreed to provide, certain of the services to PV.
- C. SV has represented that it has the requisite experience and skills to provide the services.
- D. PV is willing to engage SV, subject to the terms and conditions set out below.

NOW THIS AGREEMENT WITNESSES as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the contrary intention appears:

"Agreement" means this Agreement and any Schedule and any Annexure to this Agreement.

"SV" includes the officers, employees, agents and subcontractors of SV.

"Charges" means the charges payable by PV to SV as specified in Schedule C.

"Customer" means the customer with whom PV has entered into an Outsourcing Services Contract, being the Customer X.

"Outsourcing Services Contract" means the agreement for the Provision of Outsourced Information Technology Services for Human Resources Management System between PV and the Customer, as amended from time to time throughout its term, a copy of which is annexed at Schedule D.

"SV Services" means the services to be provided by SV to PV as specified in Schedule B.

"Services" means the services to be provided by PV to Customer X in accordance with the outsourcing services contract.

"Term" means the period commencing from the date of this Agreement to the final date of the term of the Outsourcing Services Contract.

1.2 In this Agreement:

- (a) a reference to a person includes a reference to bodies corporate and unincorporated associations and partnerships;
- (b) where a word or phrase is given a specific meaning other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) monetary references are references to Australian currency; and
- (d) where the context requires, words in the singular include the plural and vice versa.

2. **Services & Charges**

2.1 SV shall provide the SV Services in accordance with any and all timetables for delivery set out in the Outsourcing Services Contract.

2.2 PV will pay the Charges for the SV Services in accordance with any and all payment terms set out in the Outsourcing Services Contract.

2.3 SV expressly acknowledges and accepts that PV is not obliged to make payment of Charges unless and until payment has been received by it from the customer in respect of the SV services.

2.4 Where the proper provision of the Services is dependent on or appreciably affected by the quality of any goods or services provided by PV under the Outsourcing Services Contract, then such services to be provided by PV will be to the reasonable satisfaction of SV insofar as they might affect the provision of the SV services. If the manner or type of performance by PV under the Outsourcing Services Contract is likely to lead to SV being unable, notwithstanding the use of reasonable endeavors, to perform its obligations or perform them in a timely manner under this Agreement, then SV will notify PV accordingly with full particulars and until such performance of PV is to the reasonable satisfaction of SV, SV will be excused from further performance under this Agreement insofar as performance under this Agreement is appreciably affected by the performance by PV under the Outsourcing Services Contract.

3. Back-To-Back Provisions

3.1 The provisions of the Outsourcing Services Contract listed in Schedule A shall have back-to-back application to this Agreement. For the avoidance of doubt "back-to-back application" means that:

- (a) the provisions will be deemed incorporated into this Agreement;
- (b) the provisions will be interpreted, in the context of this Agreement, as if any reference to the 'Customer' or such other term identifying the Customer were a reference to PV and any reference to PV or to 'Contractor' were a reference to SV;
- (c) any wording contained within the provisions which obviously has no application to this Agreement will not be deemed incorporated into this Agreement;
- (d) the provisions, once incorporated into this Agreement, shall be interpreted in the same context in which they are used in the Outsourcing Services Contract;
- (e) to the extent that interpretation of the provisions necessitates in turn a reference to the definitions or interpretative provisions of the Outsourcing Services Contract, the specified provisions will be interpreted accordingly.

4. Restraint Against "Poaching" staff

4.1 Throughout the Term of this Agreement and for a period of twelve (12) months after termination, however such termination may occur, neither party shall solicit for employment, either directly or indirectly (for example through any agent, subsidiary company or associated person, firm or entity) any person employed or contracted by the other party who carries out works connected with the Services hereunder or the Outsourcing Services Contract, and both parties shall be restrained for the same period from employing or directly contracting with any such person, except where the Outsourcing Services Contract has been terminated by the Customer as a result of the insolvency of the other party to this Agreement.

4.2 In the event of breach of the foregoing, the party in breach shall pay the non-breaching party, upon demand, the sum of \$ xxx,xxx.

4.3 Both parties represent to one another that the sum and period set out above are agreed and understood to be reasonable to restrain each of them from soliciting employees and/or contractors away and this Agreement has been entered into in reliance upon the foregoing representation.

5. Indemnity

5.1 Each party indemnifies the other, its servants and agents against all loss or damage in respect of actions, claims and demands (including the cost of defending or settling

any action, claim or demand) which may be instituted against the other arising out of a breach of this Agreement by it or its negligence or the negligence of its agents, employees or subcontractors or of any other person for whose acts or omissions it is vicariously liable ("persons for whom it is deemed to be legally liable") except to the extent that such loss or damage is contributed to by the breach by the first mentioned party of this Agreement or its negligence or the negligence of persons for whom it is deemed to be legally liable.

6. Termination

6.1 Subject to clause 23 of the Outsourcing Services Contract, either party may terminate this Agreement immediately on written notice to the other, while preserving to itself any rights which may have accrued to it, where the other party:

- (a) commits a material breach of this Agreement which is not capable of being remedied;
- (b) fails to remedy a breach capable of being remedied within a period stated by notice in writing (which period must be reasonable in the circumstances); or
- (c) commits an act of insolvency, comes under any form of insolvency administration, or assigns or purports to novate its rights otherwise than in accordance with the Agreement.

For the purposes of clause 6.1(a), the parties acknowledge that a series of minor breaches may constitute a 'material breach'.

6.2 If notice is given to SV to terminate this Agreement pursuant to subclauses 6.1, PV may, in addition to terminating the Agreement:

- (a) recover any of its property and that of the Customer and all related data, documentation and records retained by SV pursuant to this Agreement;
- (b) recover any sums paid to SV on any account or for SV Services which have not been fulfilled or performed together with interest on such sums calculated from the date those sums were paid until the date of refund;
- (c) recover from SV the amount of any loss or damage sustained as a result of the termination;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided by law.

6.3 This Agreement will terminate if for any reason the Outsourcing Services Contract is terminated and: