



Australian
**Small Business and
Family Enterprise**
Ombudsman

**AGREEMENT
FOR APPOINTMENT OF A PROVIDER TO THE ADR LIST
between**

**COMMONWEALTH OF AUSTRALIA
as represented by the Australian Small Business and Family Enterprise
Ombudsman**

and

[insert full legal name of the Provider]

[insert the Provider's ABN]

This Agreement is made on the _____ day of _____ 20_____.

BETWEEN:

The Commonwealth of Australia (**Commonwealth**) as represented by the Australian Small Business and Family Enterprise Ombudsman (**Ombudsman**) of ANZ Building, Level 2, 15 Moore Street CANBERRA CITY ACT 2600

and

^Insert full legal name of the successful applicant^ ABN ^insert applicant's ABN^ of ^insert applicant's address^ (**Provider**)

(together, the **Parties**).

Background

Under section 72 of the Act, the Ombudsman may publish a list of persons who have the qualifications and experience to conduct ADR Processes to resolve disputes covered by the Act.

The Ombudsman wishes to appoint the Provider to the List, and the Provider agrees to be appointed to the List, on the terms and conditions set out in this Agreement.

Definitions

1. In this Agreement, the following terms have the following meaning:

Act means the *Australian Small Business and Family Enterprise Ombudsman Act 2015* (Cth) and the Rules, as amended from time to time.

ADR Agreement means the agreement that the Provider signs with the Parties to a Dispute regarding the Provider's conduct of their ADR Process.

ADR Processes has the same meaning as "alternative dispute resolution processes" in section 4 of the Act and includes all of the services specified in Item 2 of Attachment A.

"**ADR Process**" refers to one such process.

Agreement means this deed and any attachments and annexures to it, including Attachments A and B.

Authorised Person means a person who comes within the definition of a "person assisting small business/family enterprise" in section 81 of the Act.

List means the information about providers of ADR Processes that is published by the Ombudsman under section 72 of the Act.

List Member means a person (whether an individual or entity) during the period the person is appointed to the List by the Ombudsman.

Parties to a Dispute means the parties to a dispute that the Ombudsman has recommended be resolved by an ADR Process conducted by a List Member.

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth).

Protected Information has the meaning given in section 80 of the Act.

Rules means any requirements or rules prescribed by the Minister for the purpose of section 72 of the Act.

Commencement

2. This Agreement commences on the date it is signed by both parties and continues for a period of 3 years unless earlier terminated in accordance with clause 6.

No minimum number of ADR Processes

3. The Provider agrees that its appointment to the List does not guarantee that the Provider will conduct any, or any minimum number of, ADR Processes.

Provider requirements

4. While the Provider is a List Member, the Provider agrees:
 - a. to comply with the Act, any other relevant legislation (including the Privacy Act 1988) and this Agreement;
 - b. to maintain appropriate professional accreditation, including as specified in Item 5 of Attachment A;
 - c. to maintain the insurance specified in Item 1 of Attachment A and provide any new certificate of currency or equivalent to the Ombudsman within 20 days of obtaining it;
 - d. to enter into an ADR Agreement with the Parties to a Dispute which is consistent with the Act and this Agreement;
 - e. to ensure that each ADR Process it conducts is performed by an individual specified in Item 3 of Attachment A and in accordance with the terms of the relevant ADR Agreement and this Agreement;
 - f. to conduct ADR Processes anywhere within the geographic area specified in Item 4 of Attachment A;
 - g. to obtain full payment for each ADR Process before conducting it and to ensure that any amount it charges for an ADR Process does not exceed the amount set out in Item 2 of Attachment A;
 - h. that some or all of the details it provides to the Ombudsman (including Personal Information) may be published as part of the List and disclosed by the Ombudsman for other purposes associated with the Act;
 - i. to keep a copy of the ADR Agreement and financial records and information for each ADR Process it conducts for a period of two years after the completion of the ADR Process. An Authorised Person may inspect and make copies of this information the purpose of assessing the Provider's compliance with the Act and this Agreement;
 - j. to comply with any administrative arrangements that the Ombudsman implements for the effective and efficient management and operation of the List;
 - k. not to subcontract (or engage or permit a person who is not listed in Item 3 of Attachment A to conduct) any part of an ADR Process for which the Provider has been recommended by the Ombudsman without the prior written approval of the Ombudsman and the relevant Parties to a Dispute;
 - l. subject to clause 8 of this Agreement, to provide information about its compliance with this Agreement and its conduct of ADR Processes to the Ombudsman as the

Ombudsman reasonably requests (including notification of whether an ADR Process was conducted, the extent to which the Parties to a Dispute engaged with the ADR Process and the outcomes of the ADR Process); and

- m. to obtain feedback from the Parties to a Dispute regarding the Provider's services which may be used by the Ombudsman to assess the Provider's compliance with this Agreement (including its conduct of ADR Processes).

Notification requirements

- 5. The Provider agrees to promptly notify the Ombudsman and the relevant Parties to a Dispute if the Provider is unable to conduct an ADR Process for which it has been recommended by the Ombudsman and selected by those Parties to a Dispute.

Removal from the List

- 6. The Ombudsman may, by written notice, remove the Provider from the List where the Provider has breached a term of this Agreement or otherwise on the Ombudsman's initiative or where the Provider so requests. From the date the Provider is removed from the List, this Agreement will be immediately terminated and the Provider will no longer be eligible to, and must not, conduct any ADR Processes under the Act.

Indemnity

- 7. The Provider indemnifies the Commonwealth against any claim, expense, loss, damage or injury the Commonwealth incurs arising in connection with:
 - a. the Provider's failure to comply with the Act or this Agreement; or
 - b. any illegal, wilfully reckless or negligent act or omission of the Provider regarding its performance of this Agreement or its conduct of an ADR Process under the Act.

In this clause 7, "Commonwealth" and "Provider" include their respective personnel.

Confidentiality of Information

- 8. The Provider acknowledges that:
 - a. all information that it creates or obtains in relation to performance of this Agreement or the conduct of an ADR Process is Protected Information under the Act and agrees to keep all such information confidential and only use and disclose it as permitted under the Act; and
 - b. there are serious penalties for failing to comply with its obligations under Division 2 of Part 5 of the Act regarding the use and disclosure of Protected Information.

Warranty

- 9. The Provider warrants that:
 - a. it has not failed to comply with any judicial order against it (excluding a decision under appeal) relating to employee entitlements, work health and safety or workers compensation law; and
 - b. it (and its personnel) are not subject to any disciplinary investigations, proceedings orders by a law society or other professional body.

Relationship of the Parties

10. The Provider is not an employee, agent or partner of, and is not authorised to represent or bind, the Commonwealth or the Ombudsman.

Entire Agreement

11. This Agreement contains the parties' entire agreement in relation to its subject matter and may only be varied by the parties' signed written agreement.

Governing Law

12. This Agreement is governed by the laws of the Australian Capital Territory.

Act takes precedence

13. To the extent of any inconsistency between the Act and this Agreement, the Act takes precedence.

Intellectual Property Rights

14. The Provider grants the Commonwealth a perpetual, irrevocable, royalty-free and licence fee-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, adapt, communicate and publish any intellectual property rights in material that the Provider provides, or is required to provide, to the Ombudsman under this Agreement.

Continuation of effect

15. Clauses 4(h), 4(i), 4(l), 4(m), 7, 8 and 11 survive the expiry or termination of this Agreement.

Costs and expenses

16. The Provider acknowledges that each party bears its own costs and expenses relating to the preparation, negotiation and execution of this Agreement.

Severability

17. If any part of this Agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Agreement is not affected and this Agreement must be read as if that part had been severed.

ATTACHMENT B – FEEDBACK REQUEST FORM

Please provide feedback on your alternative dispute resolution (ADR) process. Your responses will be treated as confidential.

Name of ADR provider: _____

Date of ADR: _____

Nature of dispute (e.g. Business to Business, Business to Government): _____

Please rate your satisfaction with your ADR Provider

Very satisfied Satisfied Neutral Dissatisfied Very dissatisfied

Please rate your ADR Provider's skill and ability:

Very satisfied Satisfied Neutral Dissatisfied Very dissatisfied

Did you understand the mediation process?

Yes No

Were your issues resolved?

Yes Partially No

Were your issues refined through the process?

Yes Partially No

Did the ADR process benefit you in the short or long term?

Yes No

Did you receive value from the service?

Yes No

Would you recommend this ADR Provider?

Yes No

Were there any particular skills or abilities of this ADR Provider that made a difference?

Would you like to provide any other comments?

Your name (if you agree to provide it): _____

Thank you for completing this form.

EXECUTED AS A DEED

<p>SIGNED, SEALED AND DELIVERED by [insert name of the Ombudsman’s signatory] for and behalf of the Commonwealth of Australia, represented by the Australian Small Business and Family Enterprise Ombudsman / Ombudsman’s duly authorised delegate</p>	<p>..... Signature of Ombudsman / delegate - date</p>
<p>in the presence of:</p> <p>..... Name of Witness (print))</p>	<p>..... Signature of Witness – date</p>
<p>SIGNED, SEALED AND DELIVERED by [insert name of individual. If the Provider is an entity add “for and on behalf of [insert legal name of the Provider”] with ABN [Insert ABN]:</p>	<p>..... Signature of Provider and date</p>
<p>in the presence of:</p> <p>..... Name of Witness (print)</p>	<p>..... Signature of Witness and date</p>