

User Guidance

The Commonwealth Contracting Suite (CCS) streamlines and simplifies procurement processes. It was designed to be consistent with the [Treasury Legislation Amendment \(Small Business and Unfair Contract Terms\) Act 2015](#), and creates uniformity across Commonwealth contracts to reduce the burden on businesses contracting with the Commonwealth Government.

The CCS is mandatory **under \$200,000** for all non-corporate Commonwealth entities except for specific situations as outlined in [Resource Management Guide No. 420 – Mandatory use of the Commonwealth Contracting Suite for procurement under \\$200,000](#). Corporate Commonwealth entities are encouraged to use best endeavours to apply the policy.

The **mandatory** components of the CCS are:

- the Approach to Market (ATM) (incorporating the Glossary, the Commonwealth ATM Terms and the Response to the ATM); and
- the Commonwealth Contract (incorporating the Glossary, and the Commonwealth Contract Terms).

The ATM and the Commonwealth Contract documentation are available via [online smart-forms](#) on the Department of Finance website.

To ensure official documentation is tailored to your specific procurement it is important to generate new documents by use of the smart-forms for each new procurement activity undertaken.

This document is provided as a sample of a Commonwealth Contract document generated by the CCS after using the smart form. It is indicative only and is not intended to be a template for contract documentation. The smart form provides many option and considerations which will vary the final document produced. This presents one version of those considerations.

Within this document colour coding is used to highlight parts that offer a choice of input.

<< These sections allow free input of text, dates or numbers >>

Topic Heading – This indicates that a selection of options is available and the associated text shown here is only one of those selections.

User Guidance

This is advisory text and is not part of a standard Contract document.

Information in this document was current at the time of publication but may have changed since. For current Contract documentation please use the CCS smart form at:

<https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>

NOT TO BE USED AS A TEMPLATE



Australian Government

Commonwealth Contract – Goods and Services

Reference ID: << insert entity reference here >>

Customer

Customer Name: << insert entity legal name here >>
Customer ABN: << insert entity ABN here >>
Address: << insert address here >>

Supplier

Full Name of the Legal Entity: << insert supplier name here >>
Supplier ABN: << insert supplier ABN here >>
Address: << insert address here >>

Statement of Work

C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date or the date this Contract is executed, whichever is the latter, and continues for the Contract Term unless:

- a) it is terminated earlier; or
- b) the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Details
Contract Start Date:	For example - Friday, 1 May 2020
Contract Term:	This Contract will remain in force for a period of << insert contract duration here >>.
Contract Extension Option:	This Contract includes the following extension option(s): << insert contract extension option (if any) here >>.

SAMPLE

C.A.2 The Requirement

<< insert requirement here >>

Provide a clear and concise description of the Requirement. When defining the Requirement always look for ways to give Potential Suppliers the opportunity to offer alternative solutions. Define your actual needs, do not merely describe the characteristics of an already known service. The amount of detail you provide should reflect the complexity of the Requirement.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards (or in its absence an international standard) including any requirements or standards specified in this Statement of Work. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with all applicable Australian or international standards, including, but not limited to, those specified in this Statement of Work.

Web Content Accessibility

As applicable, the Supplier must ensure that any website, associated material and/or online publications (where applicable) complies with the Web Content Accessibility Guidelines available at:

<https://www.w3.org/WAI/intro/wcag>.

Australian Standards (if any)

The Supplier must comply with the following Australian Standard(s):

AS Number	Title
<< insert standard number here >>	<< insert standard title here >>

Key Performance Indicators (if any)

To demonstrate progress towards achievement of the Requirement, the Supplier is required to comply with the following Key Performance Indicators:

<< insert key performance indicators here >>

To demonstrate progress towards achievement of the Requirement, the Supplier will be required to comply with the Key Performance Indicators identified here.

C.A.2(b) Security Requirements

The cost of obtaining each security clearance will be borne by the Supplier. The Supplier must ensure that its Specified Personnel promptly provide to the Customer relevant details to assist with the security clearance process, and the Supplier must notify the Customer promptly in writing of any change in circumstances which is likely to affect the Customer's assessment of the Specified Personnel's entitlement to hold a security clearance.

Supplier personnel are required to be cleared to a minimum level of << insert required security clearance level here >> .

<< insert other security requirements here >>

C.A.2(c) Work Health and Safety

Prior to commencement of this Contract, the Customer's Contract Manager and the Supplier's Contract Manager will identify any potential Work Health and Safety issues anticipated to arise during the term of this contract and assign management of each issue identified to the party best able to manage it. The Supplier will provide the Customer with a plan for approval.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any Work Health and Safety issues that arise.

Commonwealth Contract – Goods and Services

C.A.2(d) Delivery and Acceptance

Where the Customer rejects any deliverables under Clause C.C.11 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the deliverables meet the requirements of this Contract. The Supplier must comply with any such requirement. Rectified deliverables are subject to acceptance under Clause C.C.11 [*Delivery and Acceptance*].

The Supplier will refund all payments related to the rejected deliverables unless the relevant deliverables are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate this Contract in accordance with Clause C.C.16 [*Termination for Cause*].

Item/Description	Delivered To	Delivery Address	Contact Phone	Delivery Date
<< insert item description here >>	<< insert name here >>	<< insert delivery address here >>		1/06/2020
<< insert item description here >>	<< insert name here >>	<< insert delivery address here >>		15/06/2020

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date
<< insert milestone description here >>	<< insert contact here >>	<< insert delivery location here >>	1/07/2020
<< insert milestone description here >>	<< insert contact here >>	<< insert delivery location here >>	15/07/2020

Reports (if any)

During the term of this Contract the Supplier must provide the Customer with reports as set out in the table below:

Report Type	Detailed Description	Due Date
<< insert report type here >>	<< insert detailed description of report here >>	5pm 30/06/2020

Delivery and Acceptance – Additional Instructions (if any)

<< insert additional delivery and acceptance instructions here >>

C.A.2(e) Meetings (if any)

The Supplier is required to attend meetings as follows:

Meeting Type	Position Required	Frequency	Teleconference/ Onsite	Location
<< insert meeting type here >>	<< insert required personnel here >>	<< insert frequency here >>	On-site	<< insert location here >>

C.A.2(f) Facilities and Assistance Offered by the Customer (if any)

Commonwealth Contract – Goods and Services

<< insert any facilities and assistance you will be providing to the supplier here >>

C.A.2(g) Customer Material (if any)

<< insert any Customer Material you will be providing to the supplier here >>

C.A.2(h) Conflicts of Interest (if any)

The Supplier has declared that it has or may have real or perceived or potential conflicts of interest (COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to implement any COI management strategies specified in **Annex 1 - Conflicts of Interest Management Plan** and keep the Customer informed of all relevant details relating to COI specified below:

<< insert suppliers conflict of interest here >>

In addition to the Supplier's obligations under clause C.C.3 [*Conflict of Interest*], the Supplier also agrees to comply with any additional requirements notified by the Customer from time to time in relation to the management of this conflict.

C.A.2(i) Public Interest Disclosure

Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at:

<http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	<< insert name and position here >>
Email Address:	<< insert email address here >>
Telephone:	<< insert telephone number here >>

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

Name/Position:	<< insert name and position here >>
Email Address:	<< insert email address here >>
Telephone:	<< insert telephone number here >>

Commonwealth Contract – Goods and Services

C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$139,700.00** as set out below.

Fixed Price (including all expenses)

Due Date	Item Description	Quantity	Unit Price GST Exclusive	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
1/06/2020	<< insert item description here >>	200	\$400.00	\$80,000.00	\$8,000.00	\$88,000.00

Total Fixed Price for Goods \$88,000.00 GST Inclusive

Due Date	Milestone Description	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
1/07/2020	<< insert milestone description here >>	\$40,000.00	\$4,000.00	\$44,000.00
15/07/2020	<< insert milestone description here >>	\$7,000.00	\$700.00	\$7,700.00

Total Fixed Price for Services \$51,700.00 GST Inclusive

Adjustment to Fixed Pricing for Contract Variation/Extension

<< insert pricing adjustment here >>

C.A.3(a) Payment Schedule

The Total Fixed Fees and Charges will be made as a single payment on completion of contracted deliverables.

C.A.4 Contract Managers and Addresses for Notices

Contract Managers are responsible for issuing or accepting any written Notices under this Contract and are the contact points for general liaison.

C.A.4(a) Customer's Contract Manager:

The person occupying the position of: << insert position here >>
Currently: << insert name here >>
Telephone: << insert telephone here >>
Mobile: << insert mobile here >>
Email Address: << insert email address here >>
Postal Address: << insert address here >>

C.A.4(b) Customer's Address for Invoices:

Addressee Name/Position Title: << insert name and position here >>
Telephone: << insert telephone here >>
Email Address: << insert email address here >>
Postal Address: << insert address here >>

The Customer's preferred method of invoicing is by email.

C.A.4(c) Supplier's Contract Manager:

Name: << insert name here >>
Position Title: << insert position here >>
Telephone: << insert telephone number here >>
Mobile: << insert mobile number here >>
Email Address: << insert email address here >>
Postal Address: << insert address here >>

C.A.4(d) Supplier's Address for Notices

Name: << insert name here >>
Position Title: << insert position here >>
Email Address: << insert email address here >>
Postal Address: << insert address here >>

C.A.5 Specified Personnel (if any)

Position/Role	Name	Current Security Clearance Level	Percentage of Total Project Time
<< insert position here >>	<< insert name here >>	<< insert security clearance here >>	<< insert percentage here >>%

C.A.6 Subcontractors (if any)

Full Legal Name	Postal Address	ACN / ABN / ACNR	Services to be Performed
<< insert legal name here >>	<< insert address here >>	<< insert ACN or ABN here >>	<< insert services here >>

SAMPLE

Additional Contract Terms

An executed contract will incorporate the Commonwealth Contract Terms and also the following Additional Contract Terms:

C.B.1 Intellectual Property

The Supplier owns the Intellectual Property Rights in the Material created under this Contract.

The Supplier grants to the Customer:

- a) a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence to exercise the Intellectual Property Rights in the Material provided under this Contract for any purpose; and
- b) a right to sub-licence the rights in (a) above to third parties, including to the public under an open access or Creative Commons 'BY' licence.

The licence includes the right of commercial exploitation by the Customer.

The Supplier warrants that it is entitled to grant this licence to the Customer; and that the provision of the Goods and/or Services and any Material by the Supplier under this Contract, and its use by the Customer, in accordance with this Contract, will not infringe any third party's Intellectual Property Rights and Moral Rights.

Intellectual Property Rights in Goods provided under this Contract or pre-existing Intellectual Property of the Supplier, set out below (if any), will not change as a result of this Contract.

Pre-Existing Intellectual Property of the Supplier

The Supplier grants to, or in the case of Third-Party Material, must obtain for, the Customer a non-exclusive, irrevocable, royalty-free, perpetual, world-wide licence (including the right to sub-licence) to exercise the Intellectual Property Rights in all Pre-existing Material and Third-Party Material incorporated into the Material to enable the Customer to receive the full benefit of the Goods and/or Services and the Material and to exercise its rights in relation to the Material.

C.B.2 Confidential Information of the Supplier (if any)

The Customer agrees that the following information meets the Commonwealth's confidentiality guidelines and agrees to treat the information as confidential unless required by law to disclose the information. The Customer retains the right to disclose any other information contained in this Contract.

Information to be kept confidential
<< insert information here >>

C.B.3 Interest on Late Payments

Where the Customer and the Supplier both have the capability to deliver and receive invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use electronic invoicing (e-Invoicing), the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within five (5) calendar days after receiving it, or if this day is not a business day, on the next business day.

In all other circumstances, the Customer will pay the amount of a Correctly Rendered Invoice to the Supplier within twenty (20) calendar days after receiving it, or if this day is not a business day, on the next business day.

If the total initial value of the Contract (excluding any options, extensions, renewals or other mechanisms that may be executed over the life of the contract) is less than A\$1 million (GST inclusive) and the Customer fails to make a payment to the Supplier by the business day it is due, the Customer will pay the

Commonwealth Contract – Goods and Services

unpaid amount plus interest on the unpaid amount, provided the amount of interest payable under this clause exceeds A\$100.

Interest payable under this clause will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Customer effects payment, calculated using the General Interest Charge Rate available on the Australian Taxation Office website as it applies on the day the amount was due and payable expressed as a daily rate.

C.B.X Workplace Gender Equality Act 2012 (Cth) (if relevant)

Where the Supplier is a relevant employer the Supplier must provide evidence that it complies with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act) before commencement of any Contract and annually thereafter for the duration of the Contract.

If the Supplier becomes non-compliant with the WGE Act during the course of the Contract, the Supplier must notify the Customer's Contact Officer. Compliance with the WGE Act does not relieve the Supplier from its responsibilities to comply with its other obligations under the Contract.

User Guidance

Additional Contract Terms

The Commonwealth Contracting Suite (CCS) Commonwealth Contract online smart form enables the user to specify additional terms that will be included in a contract resulting from the ATM. When going through the CCS smart form the user will be prompted to decide whether specific terms need to be included for their procurement. These include:

Intellectual Property (IP): - the form will ask if you require an IP clause and if so which of the following scenarios apply to your procurement:

- Will any material developed under the contract require a security classification?
- Will any material developed under the contract contain personal information?
- Does your entity's Intellectual Property Management Policy or AAI require ownership of the Intellectual Property created under the Contract?

The answers to these questions will determine which clause is inserted into your contract. The clause included on the previous page is applicable if the entity requires ownership of the intellectual property rights.

Interest on Late Payments: - Different payment policies apply depending on whether your entity is a Non-corporate Commonwealth Entity (NCE) or a Corporate Commonwealth Entity (CCE). This will be preselected by the smart form depending on your entity. The clause included on the previous page is applicable for an NCE.

Notifiable Data Breaches: - You can select a set term if the resultant contract will involve the use of or the collection of personal information.

Liability Cap for Supplier: - You can select to cap Suppliers liability to a defined value based on a formal risk assessment of your procurement.

Other Specific Contract Terms – an option is available within the smart form to insert other contract terms if deemed necessary for your specific procurement.

Contract Annex 1 – Conflicts of Interest Management Plan (if any)

<< insert Conflicts of Interest Management Plan, (if any) here >>

Contract Annex 2 – Supplementary Information (if any)

<< insert supplementary information (if any) here >>

SAMPLE

Commonwealth Contract Terms

C.C.1 Background:

The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Statement of Requirement.

Some terms used in these *Commonwealth Contract Terms* have been given a special meaning. Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

C.C.2 Relationship of the Parties:

Neither party is the employee, agent, officer or partner of the other party nor, by virtue of this Contract, authorised to bind or represent the other party.

The Supplier must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the Customer.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and cooperate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
- (e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflict of Interest:

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict. As soon as practicable, any verbal advice must be followed by written confirmation.

C.C.4 Precedence of Documents:

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any),

unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

The Contract may be signed and dated by the parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law:

The laws of the Australian Capital Territory apply to the Contract.

C.C.6 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was entered.

Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

The Parties agree that no agreement or understanding varying or extending the Contract will be legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival:

All Additional Contract Terms (if any), plus Clauses C.C.14 [*Liability of the Supplier*], C.C.17 [*Supplier Payments*], C.C.20 [*Transition Out*], C.C.22 [*Compliance with Commonwealth Laws and Policies*], C.C.22(A) [*Access to Supplier's Premises and Records*], C.C.22(F) [*Fraud*] survive termination or expiry of the Contract.

C.C.8 Notices:

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A Notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

C.C.9 Assignment:

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting:

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item. Unless otherwise agreed by the Customer (in writing) the Supplier must not subcontract any part of its obligations under the Contract other than to Subcontractors named in Item C.A.6. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.

Commonwealth Contract Terms

The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

C.C.11 Delivery and Acceptance:

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to so.

Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery or such longer period specified in the Contract at Item C.A.2(d) [*Delivery and Acceptance*], if the Goods and/or Services do not comply with the requirements of the Contract ("Acceptance Period").

If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).

If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

C.C.12 Licences Approvals and Warranties:

At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

C.C.13 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:

- (a) is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer;
- (b) is not a fit and proper person; or
- (c) is not suitably qualified to perform the Services.

Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.

C.C.14 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any negligent or wilful breach of the Supplier's obligations or representations under the Contract.

The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier's liability under this clause shall not exceed the maximum applicable amount that applies to the claim loss or damage under a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002 (ACT)*, or any corresponding State, Territory or Commonwealth legislation, that limits the civil liability of members of particular professions arising from the performance of their professional services, where the Supplier is a member of that scheme, and where that scheme applies to the Goods and/or Services delivered under the Contract.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

C.C.15 Termination or Reduction for Convenience:

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Supplier, acting in good faith, may notify that it wishes to,

terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

Commonwealth Contract Terms

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with clause C.C.11 [Delivery and Acceptance] and item C.A.2(d) [Delivery and Acceptance] before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

C.C.16 Termination for Cause:

The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches a material term of the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a material breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) subject to the Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth); or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966* (Cth).

Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

C.C.17 Supplier Payments:

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution:

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;
- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier or the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to clause C.C.16 [Termination for Cause] or to legal proceedings for urgent interlocutory relief.

C.C.19 Transition In:

The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out:

If the Contract expires or is terminated under clause C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Laws:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

C.C.22 Compliance with Commonwealth Laws and Policies:

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services.

Commonwealth Contract Terms

If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to G below, it must:

- (a) immediately report it to the Customer and provide a written report on the matter within five (5) business days; and
- (b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records: The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's, or its Subcontractor's premises, personnel, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under the Contract, including (but not limited to) in connection with a request made under the *Freedom of Information Act 1982* (Cth) or audit or review by the Australian National Audit Office. Unless the access is required for the purpose of a criminal investigation into the Supplier, its employees or subcontractors, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request.

The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.

B. Privacy Act 1988 (Cth) Requirements: In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.

C. Confidential Information: Other than information available in the public domain, the Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

The Customer may at any time require the Supplier to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety: When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including, but not limited to, the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

E. Criminal Code: The Supplier acknowledges that:

- (a) the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth); and
- (b) failing to meet the requirements of the *Combating Child Sexual Exploitation Legislation Amendment Act 2019* is a serious offence under Division 273B of the *Criminal Code*.

The Supplier must ensure that any subcontractor engaged in connection with the Contract is aware of the information contained in this clause.

F. Fraud: For the purposes of this clause, Fraud means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.

If an investigation finds that the Supplier or its employees have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud by an employee or subcontractor, the Supplier must reimburse or compensate the Customer in full.

G. Taxation: The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

Supplier Obligations

Both Parties Equally

Supplier Benefits



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Commonwealth Contracting Suite (CCS) Glossary

In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms** or the **Commonwealth Purchase Order Terms**, as the case may be.

“Additional Contract Terms” means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

“Approach to Market or ATM” means the notice inviting potential suppliers to participate in the procurement.

“Closing Time” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“Contract” means the documentation specified in clause C.C.4 [*Precedence of Documents*].

“Contract Extension Option” means an option of a Customer to extend the term of a Contract for one or more additional time periods.

“Contract Manager” means the contract manager for the Customer and/or Supplier (as relevant) specified in the Contract.

“Contract Price” means the total contract price specified in the Contract, including any GST component payable, but does not include any simple interest payable on late payments.

“Correctly Rendered Invoice” means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

“Customer” means a party specified in a Contract as a Customer.

“Delivery and Acceptance” means the process by which Goods and/or Services are delivered to a Customer and accepted by the Customer as meeting the terms specified in the Contract.

“General Interest Charge Rate” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

“Goods and/or Services” means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“GST” means a Commonwealth goods and services tax imposed by the GST Act.

“Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

Commonwealth Contracting Suite (CCS) Glossary

“Material” means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” means the rights in *Part IX of the Copyright Act 1968 (Cth)*, including the right of attribution, the right against false attribution and the right of integrity.

“Notice” means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Contract or as notified from time to time.

“Requirement” means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’;
- c) for the purposes of the Commonwealth Purchase Order Terms the document setting out the Goods and/or Services.

“Specified Personnel” means the personnel specified in the Contract or such other personnel who are accepted by the Customer in accordance with clause C.C.13 [*Specified Personnel*].

“Statement of Requirement” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“Statement of Work” means the section of the Contract, as the case may be, with the heading ‘Statement of Work’.

“Supplier” means a party specified in a Contract as a Supplier.

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Goods and Services, they enter into a Contract comprising:

- a) Additional Contract Terms (if any);
- b) Statement of Work;
- c) Commonwealth Contract Terms;
- d) Commonwealth Contracting Suite Glossary;
- e) Contract Annex 1 – Conflict of Interest Management Plan; and
- f) Contract Annex 2 – Supplementary Information (if any).

EXECUTED as an Agreement

Signed for and on behalf of the **Commonwealth of Australia** as represented by << insert entity legal name here >>

ABN << insert entity ABN here >> by its duly authorised delegate in the presence of

Signature of

witness

Signature of delegate

Name of witness (*print*)

Name of delegate (*print*)

Position of delegate (*print*)

Date:

Executed by << insert supplier name here >> **ABN** in accordance with Section 127 of the *Corporations Act 2001*

Signature of

director

Signature of director/company secretary
(Please delete as applicable)

Name of director (*print*)

Name of director/company secretary (*print*)

Date: