C.C.1 Background

1.1 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 Requirement.

1.2 Some terms used in these Commonwealth Contract Terms have been given a special meaning. Their meanings are set out in the Commonwealth Contracting Suite (CCS) Glossary and Interpretation or in the Contract.

C.C.2 Relationship of the Parties

2.1 By virtue of this Contract, neither Party is the employee, agent, officer or partner of the other Party nor authorised to bind or represent the other Party.

2.2 Each Party must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the other Party.

2.3 In all dealings related to the Contract, the Parties agree to:

a) communicate openly with each other and cooperate in achieving the contractual objectives

b) act honestly and ethically

c) comply with reasonable commercial standards of fair conduct

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 Conflicts of Interest

3.1 The Supplier warrants that, other than as previously declared in writing to the Customer at the commencement of the Contract, no Conflicts of Interest exist, relevant to the performance by the Supplier of its obligations under the Contract.

3.2 At any time during the term of the Contract, the Customer may require the Supplier to execute a Conflicts of Interest declaration in the form specified by the Customer.

3.3 As soon as the Supplier becomes aware that a Conflict of Interest has arisen, or is likely to arise during the term of the Contract, the Supplier will:

a) immediately report it to the Customer

b) provide the Customer with a written report setting out all relevant information within three (3) Business Days, and

c) comply with any reasonable requirements notified by the Customer relating to the Conflict of Interest.

3.4 If the Supplier fails to notify the Customer as set out in this clause or does not comply with the Customer's reasonable requirements to resolve or manage Conflicts of Interest, the Customer may terminate or reduce the scope of the Contract in accordance with C.C.16 [Termination for Cause].

C.C.4 Precedence of Documents

4.1 The Contract is comprised of:

a) Additional Contract Terms (if any)

b) if the Contract is issued under a DoSO, the Contract Details Schedule

c) Statement of Work

d) Commonwealth Contract Terms

e) CCS Glossary and Interpretation, and

f) additional Contract annexes (if any),

unless otherwise agreed in writing between the Parties.

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

4.3 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

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

C.C.6 Entire Agreement

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

6.2 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 or the RFQ as relevant remain correct.

6.3 Any agreement or understanding to vary or extend the Contract will not be legally binding upon either Party unless in writing and agreed by both Parties.

6.4 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

7.1 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], and
C.C.21 [Compliance with Law and Policy],
survive termination or expiry of the Contract.

C.C.8 Notices

8.1 A Notice is deemed to be delivered:

a) if delivered by hand - on delivery to the relevant address

b) if sent by registered post - on delivery to the relevant address, or

c) if transmitted by email or other electronic means when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.

8.2 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 delivered on the next working day in that place.

C.C.9 Assignment

9.1 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.

9.2 To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty (20) Business Days, or such other time as agreed between the Parties, of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

C.C.10 Subcontracting

10.1 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.

10.2 The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services specified in the Contract. The Supplier must not subcontract any part of its obligations under the Contract, or replace approved Subcontractors, without prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.

10.3 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.

10.4 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.

10.5 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

11.1 The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.

11.2 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 Contract and advise the Customer when it will be able to do so.

11.3 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 Contract.

11.4 The Customer may reject the Goods and/or Services within ten (10) Business Days after delivery or such longer period specified in the Contract ("Acceptance Period"), if the Goods and/or Services do not comply with the requirements of the Contract.

11.5 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).

11.6 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.

11.7 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

12.1 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.

12.2 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.

12.3 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

13.1 The Supplier must ensure that the Specified Personnel set out in the Contract (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.

13.2 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.

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

C.C.14 Liability of the Supplier

14.1 The Supplier will indemnify the Customer for any damage claim, cost or loss resulting from any negligent or wilful breach of its obligations or representations under the Contract by the Supplier or its officers, employees, agents or Subcontractors.

14.2 The Supplier's obligation to indemnify the Customer will reduce proportionally to the extent that the Customer has contributed to the claim, cost or loss.

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

14.4 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

15.1 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.

15.2 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.

15.3 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.

15.4 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 C.C.11 [Delivery and Acceptance] and the Contract before the effective date of termination or reduction.

15.5 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.

15.6 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

16.1 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 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).

16.2 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

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

17.2 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.

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

17.4 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

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

a) both Contract Managers will try to settle the dispute by direct negotiation

b) if unresolved within five (5) Business Days, 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. The date the dispute Notice is issued will be the date of the Notice ("Notice Date")

c) if the proposed solution is not accepted by the other Contract Manager within five (5) Business Days of the Notice Date, 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 twenty (20) Business Days of the Notice Date, 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 thirty (30) Business Days of the Notice Date or such other period as agreed by the Parties, and

e) If the dispute is not resolved within sixty (60) Business Days of the Notice Date, either the Supplier or the Customer may commence legal proceedings or, by agreement, continue the mediation process for a period agreed by the Parties.

18.2 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.

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

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

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

C.C.19 Transition In

19.1 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

20.1 If the Contract expires or is terminated under 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 Law and Policy

21.1 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with all laws applicable to the performance of this Contract and warrants that it will not cause the Customer to breach any laws.

21.2 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with any Commonwealth policies relevant to the Goods and/or Services.

21.3 The Supplier agrees to provide such reports and other information regarding compliance with applicable law and Commonwealth policy as reasonably requested by the Customer or as otherwise required by applicable law or policy.

21.4 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in 21.A to 21.J below, or any other applicable law or Commonwealth policy, it must:

a) immediately report it to the Customer and provide a written report on the matter within three (3) Business Days unless otherwise set out in these Terms, and

b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

21.A Access to Supplier's Premises and Records

A.1 The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.

A.2 The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's or its Subcontractor's premises, personnel, computer systems, 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 in connection with a request made under the *Freedom of Information Act 1982* (Cth) or an audit or review by the Australian National Audit Office.

A.3 Unless the access is required for an urgent purpose, the Customer will provide reasonable prior notice to the Supplier.

A.4 If requested by the Supplier, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request, unless the access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents or Subcontractors.

A.5 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.

21.B *Privacy Act 1988* (Cth) Requirements

B.1 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.

21.C Notifiable Data Breaches

C.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract, the Supplier must:

a) immediately report it to the Customer and provide a written report within three (3) Business Days, and

b) carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

C.2 Where the Supplier is aware that there has been an Eligible Data Breach in relation to the Contract, the Supplier must:

a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates

b) take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and

c) take any other action as reasonably directed by the Customer.

21.D Personal Information

D.1 The Supplier agrees to provide the Customer, or its nominee, relevant information (including personal information) relating to the Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to a Contract.

D.2 When providing personal information of a natural person under this clause, the Supplier warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).

D.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).

21.E Confidential Information

E.1 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.

E.2 This obligation will not be breached where:

a) the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or

b) the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information, but any such request must be reported by Notice to the Customer without delay and the text of the disclosure provided in writing to the Customer as soon as practicable.

E.3 The Customer may at any time require the Supplier to arrange for its officers, 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.

E.4 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.

E.5 The Customer will not be in breach of any confidentiality agreement if the Customer discloses the information for the purposes of managing the Contract or if it is required to disclose the information by law, a Minister or a House or Committee of Parliament, or for accountability or reporting purposes.

21.F Security and Safety

F.1 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.

F.2 If directed by the Customer, the Supplier and its officers, employees, agents and Subcontractors are required to undertake a security briefing prior to being able to work inside a Commonwealth office, area or facility.

F.3 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.

F.4 The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including 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.

21.G Criminal Code

G.1 The Supplier acknowledges that 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).

G.2 The Supplier must ensure that its officers, employees, agents and Subcontractors engaged in connection with the Contract are aware of the information contained in this clause.

21.H Fraud

H.1 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.

H.2 If an investigation finds that the Supplier or its officers, employees, agents or Subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse or compensate the Customer in full.

21.I Taxation

I.1 The Supplier agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

21.J Public Interest Disclosure

J.1 The Supplier must familiarise itself with the *Public Interest Disclosure Act 2013* (Cth) and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013* (Cth).

J.2 Information for disclosers is available at https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure.

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