

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 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.1 Relationship of the Parties:

Neither party is the employee, agent or partner of the other party. Neither party, by virtue of this Contract, is authorised to bind or represent the other party.

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

- (a) communicate openly with each other and co-operate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and workplaces.

C.C.2 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.

C.C.3 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).

as at 9:00am, Canberra time on the date of the Contract, 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 executed by the parties on separate, but identical, copies. All executed copies constitute one document.

C.C.4 Governing Law:

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

C.C.5 Entire Agreement:

The Contract represents the Parties' entire agreement in relation to the subject matter. 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.

No agreement or understanding varying or extending the Contract is 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 does not operate to prejudice those rights.

C.C.6 Survival:

Clauses C.C.12 [*Liability of the Supplier*], C.C.16 [*Supplier not to make representations*], C.C.21 [*Compliance with Commonwealth Laws and policies*] and clause C.B.1 [*Intellectual Property*] (if included) survive termination or expiry of the Contract.

C.C.7 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.8 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. The Supplier must ensure that specified Subcontractors (if any) are not replaced without the prior written consent of the Customer.

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).

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the supply of the Goods and/or Services any Subcontractor that the Customer reasonably considers should be removed.

C.C.9 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. ("Evaluation Period")

If during the Evaluation 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 requirements of the Contract, the Customer may give the Supplier a Notice before the end of the original Evaluation Period to a later date specified in the Notice (which must be reasonable having regard to the circumstances causing the delay). If the Customer does not notify the Supplier of rejection within the Evaluation 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.10 Licences Approvals and Warranties:

The Supplier must obtain and maintain all licenses or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

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 Moral Rights.

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.

C.C.11 Specified Personnel:

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform that 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.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

C.C.12 Liability of the Supplier:

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any 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 indemnity in this clause C.C.12 [*Liability of the Supplier*] does not apply to any claim, loss or damage for which the Supplier's liability is limited by 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.

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

C.C.13 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.

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 the Acceptance clause of the Contract, 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.14 Termination for Cause:

The Customer may terminate the Contract in whole or in part 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.10 [*Delivery and Acceptance*] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a 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) 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*; or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966*.

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

C.C.15 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 not evidence that the obligations under the Contract are accepted, evidence of the value of the obligations performed by the Supplier, or an admission of liability, but is payment on account only.

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.16 Supplier not to make representations:

The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Customer, or as otherwise able to bind or represent the Customer.

C.C.17 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 a 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 and 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 Termination for Cause under clause C.C.11 or to legal proceedings for urgent interlocutory relief.

C.C.18 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.19 Transition out

If the Contract expires or is terminated under clause C.C.14 [*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.20 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.21 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.

This general obligation is not limited by the following clauses A to F.

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, at no cost, to the Customer, or its nominee, access to the Supplier'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.

The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records 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.

The Supplier will immediately notify the Customer if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause C.C.21(B).

C. Confidential Information: 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).

If, at any time, the Customer requires, the Supplier is 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 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 any material and property (including security-related devices and clearances) 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.

E. Criminal Code: 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). The Supplier must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

F. Fraud Control: The Supplier must take steps to prevent fraud and to detect any fraud that is occurring or has occurred in connection with the Contract. If the Supplier knows or suspects that any fraud is occurring or has occurred, or if the Supplier believes that fraud is likely to occur, that has or may impact on the Supplier's ability to perform the Contract, it must immediately provide the details to the Customer and comply with any reasonable directions given by the Customer.