

**GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY OF SERVICES
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1. TERM

- 1.1 The Contract is legally binding on and from the date of execution of the Contract. If the Contract Particulars specify a Service Commencement Date and Expiry Date, the Contractor must provide the Services on and from the Service Commencement Date until the Expiry Date. Otherwise, the Contractor must provide the Services on and from the date of execution of the Contract.

2. SERVICES

- 2.1 The Contractor agrees to provide the Services to the Commonwealth and the Commonwealth agrees to purchase the Services in accordance with the terms of the Contract.

3. CONTRACT DOCUMENTS

- 3.1 The Contract between the Commonwealth and the Contractor comprises the:
- a. Special Conditions;
 - b. Contract Particulars (other than the Special Conditions); and
 - c. Conditions of Contract.
- 3.2 If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

4. SPECIAL CONDITIONS

- 4.1 The Contractor must comply with the Special Conditions (if any).

5. PROVISION OF SERVICES

- 5.1 The Contractor must provide the Services to the Commonwealth:
- a. for the period, at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Contract Particulars;
 - b. using the personnel identified in the Contract Particulars (if any) or otherwise using appropriately qualified, skilled and experienced personnel;
 - c. in a professional manner consistent with industry or professional best practice and, without limiting clause 5.1a, in a timely manner;
 - d. to the satisfaction of the Contract Officer and in accordance with the directions of the Contract Officer as may be given from time to time; and
 - e. in accordance with any other requirements specified in the Contract.
- 5.2 The Contractor must promptly notify the Commonwealth if the Contractor or any of its officers, employees, agents or subcontractors become aware that the Contractor will be unable to provide all or part of the Services in accordance with the requirements of this clause 5.

6. REPLACEMENT SERVICES

- 6.1 If the Contractor fails to provide the Services in accordance with the Contract, the Contractor must, at its cost, provide replacement Services or take any other action to rectify any aspect of the Services which do not comply with the Contract, as the Commonwealth directs.

7. NATURE OF ENGAGEMENT

7.1 The Commonwealth engages the Contractor to provide the Services as an independent contractor and not as the Commonwealth's agent or employee. The Contractor has no authority to bind the Commonwealth or act on the Commonwealth's behalf at any time. The Contractor is not entitled to any benefit from the Commonwealth usually attributable to an employee.

8. REMOVAL OF CONTRACTOR'S PERSONNEL

8.1 The Commonwealth may, at its absolute discretion, give notice requiring the Contractor to remove any personnel from work in respect of the Services. The Contractor must promptly arrange for their replacement with personnel of appropriate qualifications, skills and experience acceptable to the Commonwealth at no additional cost to the Commonwealth.

9. PAYMENT

9.1 Subject to clause 11, the Contract Particulars and any Special Conditions, the Commonwealth must pay:

- a. the Contract Price to the Contractor within 30 days of receipt of a correctly rendered invoice; or
- b. if the Contract Particulars provide for the payment of the Contract Price by way of:
 - (i) instalments, the amount of the relevant instalment to the Contractor within 30 days of receipt of a correctly rendered invoice; or
 - (ii) milestone payments, the amount of the relevant milestone payment to the Contractor within 30 days of receipt of a correctly rendered invoice; and
- c. if the Contract Particulars provide for the reimbursement of out of pocket expenses, the amount of those out of pocket expenses which have been incurred by the Contractor in accordance with the Contract, within 30 days of receipt of a correctly rendered invoice.

9.2 If the Commonwealth fails to pay a correctly rendered invoice within 30 days of receipt and:

- a. the Contractor is a Small Business; and
- b. the Contract Price is valued up to A\$1 million,

the Contractor may submit a separate invoice in accordance with clause 10 for payment of simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due up to and including the day that the payment is made, provided the interest payable exceeds A\$10.

10. INVOICE

10.1 An invoice is correctly rendered under clause 9 if:

- a. the amount claimed for payment is calculated in accordance with the Contract and is due for payment;
- b. the Services meet the requirements of the Contract; and
- c. the invoice:
 - (i) is set out in a manner that enables the Commonwealth to ascertain the Services to which the invoice relates and that part of the Contract Price payable in respect of those Services;

- (ii) if the Contract Particulars provide for the reimbursement of out of pocket expenses, the invoice separately itemises all expenses for which reimbursement is being sought. Copies of invoices substantiating the out of pocket expenses must be attached to the invoice;
- (iii) contains the purchase order number, the name and phone number of the Contract Officer and is addressed as specified in the Contract Particulars; and
- (iv) is a valid tax invoice in accordance with the *GST Act*.

10.2 The Contractor must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Contractor or payment of the Contract Price by the Commonwealth.

11. DEDUCTION FROM PAYMENT

11.1 The Commonwealth may deduct from any payment of the whole or part of the Contract Price any taxes, charges, insurance premiums or levies imposed by law upon the Commonwealth which are ordinarily required to be paid by the Contractor as a result of the Contractor providing the Services. In doing so, the Contractor will be the entity that is taken to be complying with legislative requirements and the Commonwealth will not be seen to be treating the Contractor or any of its officers, employees, agents and subcontractors as anything other than an independent contractor.

12. PRICE BASIS

12.1 The Contract Price is inclusive of all:

- a. GST and all taxes, duties and government charges imposed or levied in Australia or overseas;
- b. remuneration to the Contractor's officers, employees, agents and subcontractors, including salaries, wages, fees, superannuation, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract with the Contractor or under any award, statute or at common law;
- c. costs in respect of procuring and maintaining the insurances required under clause 20; and
- d. costs of compliance with all other statutory, award or other legal or contractual requirements with respect to the Contractor's officers, employees, agents and subcontractors.

13. OUT OF POCKET EXPENSES

13.1 Except as provided for in the Contract Particulars, the Contractor must perform its obligations under the Contract at its own cost and neither the Contractor nor any of its officers, employees, agents and subcontractors will be entitled to be reimbursed for any out of pocket expenses incurred in providing the Services.

14. WARRANTY

14.1 The Contractor warrants that:

- a. the Services will be fit for the purpose or purposes for which services of that kind could be reasonably expected to be applied by the Commonwealth; and
- b. the Services will be provided by appropriately qualified, skilled and experienced personnel.

15. USE OF COMMONWEALTH ITEMS

- 15.1 The Contractor must not, and must ensure that its officers, employees, agents and subcontractors do not, use any Commonwealth Items for any purpose other than for the provision of the Services.
- 15.2 The Contractor must protect all Commonwealth Items from loss or damage, maintain the Commonwealth Items in good order and promptly return the Commonwealth Items to the Commonwealth upon request by the Commonwealth, when they are no longer required to provide the Services or otherwise upon termination of the Contract.

16. INTELLECTUAL PROPERTY

- 16.1 Subject to clause 16.2, title in, and ownership of all Intellectual Property associated with any deliverable or material developed by the Contractor in connection with this Contract ("**Foreground IP**") vests on its creation in the Commonwealth. The Contractor agrees to execute all documents and do all acts and things required by the Commonwealth to give effect to this clause.
- 16.2 The Commonwealth acknowledges that the vesting of ownership in the Commonwealth of all Foreground IP does not apply to Intellectual Property in any pre-existing material (including software, documentation or data) which is incorporated or embedded in that deliverable or material ("**Background IP**"). In such circumstances, the Contractor grants to the Commonwealth (or must ensure the grant of) a royalty free, irrevocable, non-exclusive, perpetual, world wide licence (including the right to sub licence) of the Background IP to use, copy, adapt, expand, develop, publish or otherwise change, the pre-existing material.
- 16.3 As permitted by law, the Contractor unconditionally and irrevocably:
- a. consents, and will obtain all other necessary unconditional and irrevocable consents, to any act or omission that would otherwise infringe any moral rights in any work that is included in a deliverable or material comprised in the Services, whether occurring before or after a consent is given; and
 - b. waives, and will obtain all other necessary unconditional and irrevocable written waivers of, moral rights,
- for the benefit of the Commonwealth, its licensees and anyone authorised by any of them.
- 16.4 The Contractor warrants the provision of the Services (and the Commonwealth's use of any deliverable or material developed or supplied under the Contract) will not infringe the Intellectual Property or moral rights of any person.

17. TERMINATION

- 17.1 The Commonwealth may terminate the Contract in whole or in part if the Contractor:
- a. does not provide, or notifies the Commonwealth that it will be unable to provide, all of the Services for the period, at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Contract Particulars;
 - b. does not provide replacement personnel acceptable to the Commonwealth in accordance with clause 8;
 - c. breaches the Contract and the breach is not capable of remedy;
 - d. does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued by the

Commonwealth to the Contractor requiring the Contractor to remedy the breach;
or

- e. the Contractor becomes bankrupt or insolvent.

18. TERMINATION FOR CONVENIENCE

- 18.1 In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing. If the Commonwealth issues such a notice, the Contractor must stop work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts.
- 18.2 The Commonwealth will only be liable for payments to the Contractor for Services provided to the Commonwealth before the effective date of termination and any reasonable costs incurred by the Contractor that are directly attributable to the termination, if the Contractor substantiates these amounts to the satisfaction of the Commonwealth.
- 18.3 The Contractor will not be entitled to profit anticipated on any part of the Contract terminated.

19. SECURITY AND SAFETY

- 19.1 The Contractor must comply with any security and safety requirements notified to the Contractor by the Commonwealth or of which the Contractor is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.

20. INSURANCE

- 20.1 The Contractor must procure and maintain:
 - a. workers' compensation insurance in respect of those Contractor's officers, employees, agents and subcontractors involved in the provision of the Services;
 - b. the insurances specified in the Contract Particulars (if any); and
 - c. such other insurances and on such terms and conditions as a prudent contractor, providing services similar to the Services, would procure and maintain.

21. SET OFF

- 21.1 If the Contractor owes any debt to the Commonwealth in connection with the Contract, the Commonwealth may deduct the amount of the debt from payment of the Contract Price.

22. INDEMNITY

- 22.1 The Contractor indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:
 - a. a default or any unlawful, wilful or negligent act or omission on the part of the Contractor, its officers, employees, agents or subcontractors; or
 - b. any action, claim, dispute, suit or proceeding brought by any third party in respect of any infringement or alleged infringement of that third party's Intellectual Property including moral rights in connection with the Services.

22.2 The Contractor's liability to indemnify the Commonwealth under clause 22.1a is reduced to the extent that any wilful, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or contractors contributed to the liability, loss, damage, cost, compensation or expense.

23. PRIVACY

23.1 The Contractor agrees that:

- a. if it obtains Personal Information in the course of performing the Services, it will use or disclose that Personal Information only for the purposes of the Contract;
- b. it will carry out and discharge the obligations contained in the Information Privacy Principles as if the Contractor were an agency under the *Privacy Act*; and
- c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the *Privacy Act*, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:
 - (i) in the case of section 16F of the *Privacy Act*, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
 - (ii) in the case of a National Privacy Principle or an Approved Privacy Code, if the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code.

23.2 The Contractor shall promptly notify the Contract Officer if:

- a. it becomes aware of a breach or possible breach of any of the obligations mentioned in clause 23;
- b. it becomes aware that a disclosure of Personal Information may be required by law; or
- c. it is approached by the Privacy Commissioner or by any individual to whom any Personal Information relates.

23.3 The Contractor must ensure that its officers, employees, agents and subcontractors comply with this clause 23.

24. CONFIDENTIALITY

24.1 The Contractor must not disclose any Confidential Information to any third party without the prior written consent of the Commonwealth. The Contractor will not be in breach of this clause in circumstances where it is required by law to disclose any Confidential Information.

25. CONFLICT OF INTEREST

25.1 The Contractor warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of the Contract. The Contractor must not engage in any activity likely to compromise the ability of the Contractor to perform its obligations fairly and independently. The Contractor must immediately disclose to the Commonwealth any activity which constitutes or may constitute a conflict of interest.

26. NOTICES

26.1 Any notice or communication under the Contract will be effective if it is in writing, signed and delivered to the Contract Officer or the Contractor, as the case may be, at the address or facsimile number set out in the Contract Particulars.

27. ASSIGNMENT

27.1 The Contractor must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.

28. SUBCONTRACTING

28.1 The Contractor must not subcontract the whole or part of its obligations under the Contract without the prior written consent of the Commonwealth. Subcontracting the whole or part of the Contractor's obligations under the Contract will not relieve the Contractor from any of its obligations under the Contract. Upon request the Contractor must make available to the Commonwealth the details of all subcontractors engaged to provide the Services under the Contract. The Contractor acknowledges that the Commonwealth may be required to disclose such information.

29. APPROVALS AND COMPLIANCE

29.1 The Contractor must obtain any necessary export licences or other approvals for the provision of the Services. The Contractor must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth policies relevant or applicable to the Contract.

30. APPLICABLE LAW

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

31. ENTIRE AGREEMENT

31.1 The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

32. DEFINITIONS

32.1 In the Contract:

“**agency**” has the meaning given in the *Privacy Act*.

“**Approved Privacy Code**” has the meaning given in the *Privacy Act*.

“**Commonwealth**” means the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312.

“**Commonwealth Items**” means any information (including Confidential Information), property or facilities made available by the Commonwealth to the Contractor for the purpose of the Services.

“**Conditions of Contract**” means these General Conditions of Contract for the Supply of Services.

“**Confidential Information**” means any information provided by the Commonwealth to the Contractor or which comes into the possession of the Contractor in connection with the Services which the Commonwealth has identified as confidential or the Contractor ought reasonably to know is confidential.

“**Contract Officer**” means the contract officer specified in the Contract Particulars.

“**Contract**” has the meaning given in clause 3.

“**Contractor**” means the contractor specified in the Contract Particulars.

“**Contract Particulars**” means the contract particulars attached to these Conditions of Contract.

“**Contract Price**” means the contract price specified in the Contract Particulars, including any GST component payable, and for the purposes of clause 9 only, includes any simple interest payable on late payments.

“**Expiry Date**” means the expiry date specified in the Contract Particulars (if any).

“**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.

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

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

“**Information Privacy Principles**” has the meaning given in the *Privacy Act*.

“**Intellectual Property**” or “**IP**” means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

“**National Privacy Principle**” has the meaning given in the *Privacy Act*.

“**Personal Information**” has the meaning given in the *Privacy Act*.

“**Privacy Act**” means the *Privacy Act 1988* (Cth).

“**Service Commencement Date**” means the service commencement date specified in the Contract Particulars (if any).

“**Services**” means the services including any deliverables specified in the Contract Particulars.

“**Small Business**” means an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

“**Special Conditions**” means the special conditions attached to the Contract Particulars by the Commonwealth (if any).