CONDITIONS OF CONTRACT

Contractor Standing Capability RELEVANT Clauses

Note to drafters: Incorporate the following changes to the COC to provide the commercial coverage for the CSC. Refer to 01\_SPTV5.1\_CSC\_General for further tailoring guidance.

**1.5 Operative Date**

Note to drafters: The following addition to the Operative Date is optional, depending upon the required start date for the CSC. The CSC can have its own CSC Commencement Date, as addressed in clause 15.2.1 which may occur on or after the Operative Date.

1.5.3a (xiv) establish the Contractor Standing Capability (CSC);

**1.11 Periodic Cost Reviews**

Note to drafters: Insert the new subclause to the end of clause 1.11.6 and correct clause structure and numbering as necessary.

1.11.6d. for CSC Services, an analysis of the labour and mark-up rates set out in Attachment B, including, when adjustment to the rates is considered necessary, a proposal to adjust the rates, including suitable justification for each labour category for which the rate is proposed to be changed (eg, by providing a comparison with current industry norms).

**3.20 Non Exclusivity**

Note to drafters: Insert the new subclause to the end of clause 3.20.1 and correct clause structure and numbering as necessary.

3.20.1e. CSC Services under clause 15,

**7.1 Price**

Note to drafters: Insert the new subclause to the end of clause 7.1.1 and correct clause structure and numbering as necessary.

7.1.1h. for the provision of the CSC, payment of the CSC Fee and the fee for CSC Additional Resources in accordance with clause 15.5.

**7.4 Adjustments**

Note to drafters: Insert the amended subclause as the replacement for clause 7.4.1b.

7.4.1b. prices for Services other than Services included in Milestones, on each Adjustment Date. However, unless stated otherwise in an S&Q Order or an Approved CSC Task Plan where CSC Additional Resources are utilised, the formulae in clause 7.2 of Attachment B shall not be applied to an S&Q Order or to prices for CSC Additional Resources in relation to any unperformed S&Q Services or CSC Task.

**7.14 Cost Principles**

Note to drafters: Insert the amended subclause as the replacement for clause 7.14.1c.

7.14.1c. price for any CCP under clause 11.1, S&Q Order under clause 3.15, or CSC Additional Resources under clause 15.4; or

Note to drafters: Insert the following provisions as new COC clause 15. Internal cross-references should automatically update. Do not use paste special as this will convert cross-references into fixed numbers. After inserting and ensuring that clause numbers are correct (including adding live links to other COC clauses), select the entire COC (CTRL A) and press the F9 button. This will update the Table of Contents and ensure that all cross-references are updated. Search for ‘error’ to find any cross-referencing errors.

1. Contractor Standing Capability
   1. Contractor Standing Capability Background
      1. The Contractor shall perform the CSC Services in accordance with the provisions of this clause 1, DSD-ENG-CSC, the Approved CSC Task Plans, and the directions given by the Commonwealth Representative.
      2. The Contractor shall not use the CSC to perform Services other than CSC Services, except to the extent that the Commonwealth Representative may otherwise direct in writing.
   2. Contractor Standing Capability Term and Composition

Note to drafters: Insert the appropriate duration for the CSC into the following clause.

* + 1. Subject to clause 1.2.2, the Contractor shall establish and maintain the CSC, comprising the CSC Personnel needed to provide the CSC Service Hours, commencing from the CSC Commencement Date and expiring on the date being [...INSERT TIMEFRAME, eg, 12 months or 2 years ...] after the CSC Commencement Date (**CSC Term**).

Note to drafters: Insert the CSC Term duration (as above) and an appropriate time for notifying the Contractor of any proposed changes to the CSC.

* + 1. The Contractor grants to the Commonwealth the option to extend the CSC Term for one or more periods, each of [...INSERT TIMEFRAME, eg, 12 months or 2 years ...] in duration, or where the extension enters the Off Ramp Period, in accordance with the Phase Out provisions under clause 14 and the Approved Phase Out Plan (if applicable). Subject to clause 1.2.4, the Commonwealth may exercise its option to extend the CSC Term by providing the Contractor with written notice of its intention to do so at any time before the date that is [...INSERT TIMEFRAME, eg, three months ...] prior to the expiry of the then current CSC Term.
    2. The Commonwealth Representative may in its notice under clause 1.2.2, require an adjustment to the number of CSC Personnel, labour categories and/or skill levels of CSC Personnel and the CSC Service Hours that are to be provided by the Contractor during the extended CSC Term.
    3. Within 10 Working Days of the Commonwealth issuing a notice under clause 1.2.2, the Contractor shall submit a CCP to give effect to the extension including, when applicable, proposed changes to Annex H to Attachment B and a change to the CSC Fee representing any adjustment to the composition of the CSC. The CSC Term shall be extended following both parties signing the CCP. An extension to the CSC Term commences from the end of the current CSC Term.
    4. Notwithstanding any other provision of this clause 1, and unless otherwise directed by the Commonwealth Representative to cease work, all CSC Tasks that commenced during the CSC Term shall be completed by the Contractor, even if the CSC Term has expired. Subject to clause 1.6.1, where CSC Service Hours are provided after the expiry of the CSC Term, that portion of the CSC Fee attributable to the CSC Service Hours provided after the expiry of the CSC Term shall be payable to the Contractor.
  1. CSC Tasks
     1. The performance of a CSC Task:
        1. is a Service to be provided under the Contract; and
        2. shall be provided in accordance with the terms of the Contract, except to the extent that the Approved CSC Task Plan states that, a provision of the SOW or another attachment:
           1. does not apply to the provision of the CSC Task; or
           2. is amended for the purposes of providing the CSC Task.
     2. Notwithstanding the terms of an Approved CSC Task Plan, the Approved CSC Task Plan shall not amend the COC and the COC shall apply to the extent of any inconsistency with the Approved CSC Task Plan.
     3. If the Contractor determines that a proposed CSC Task or the provision of a CSC Task in accordance with an Approved CSC Task Plan requires or has resulted in a need to amend the Contract, the Contractor shall promptly raise the issue with the Commonwealth Representative and seek a direction as to whether the proposed CSC Task or the Approved CSC Task Plan is to be amended or whether the Contractor is to submit a CCP in accordance with clause 11.1 to give effect to the required change.
  2. CSC Additional Resources
     1. If the Contractor considers, in respect of a proposed CSC Task, that CSC Additional Resources are required to perform and complete that proposed CSC Task, the Contractor shall submit to the Commonwealth Representative, as part of the relevant CSC Task Plan, a quotation for those CSC Additional Resources, identifying the:
        1. rates, calculated in accordance with Annex E to Attachment B (S&Q Services), for all CSC Additional Resources that the Contractor considers will be required to complete the relevant CSC Task; and
        2. total number of hours for each skill set, and items of material (if any), that are required to complete the relevant CSC Task.
     2. The Contractor shall not engage or employ or otherwise be required to enter into any arrangement to engage or employ any CSC Additional Resources in relation to any CSC Task unless and until:
        1. the CSC Task Plan, which includes the quotation in respect of those CSC Additional Resources, has been Approved by the Commonwealth Representative; or
        2. the Commonwealth Representative otherwise notifies the Contractor in writing to do so on the basis that costs and expenses incurred by the Contractor in relation to such direction will be borne by the Commonwealth.
     3. Any liability, cost or expense incurred by the Contractor in relation to any CSC Additional Resources (other than where Approval is given as contemplated in clause 1.4.2a or in accordance with the Commonwealth’s written notice under clause 1.4.2b) shall be solely at the Contractor's cost and risk.
  3. Payment for CSC Fee and CSC Additional Resources
     1. Subject to clause 3.18, the Contractor shall be entitled to submit a claim for payment, in accordance with clause 7.3, for:
        1. the CSC Fee, monthly in arrears, subject to any withholding or reduction under clauses 1.5.2 or 1.5.3, during the CSC Term;
        2. any amount withheld by the Commonwealth under clause 1.5.2 to which the Contractor has become entitled to submit a claim for payment;
        3. the fee for CSC Additional Resources (if applicable), monthly in arrears as incurred or as otherwise set out in the applicable Approved CSC Task Plan, subject to any adjustment under clause 1.5.2; and
        4. direct costs incurred by the Contractor where expressly permitted in accordance with an Approved CSC Task Plan (eg, for reimbursement of travel costs) and/or a Commonwealth direction under clause 1.4.2b.
     2. During the performance of a CSC Capped Price Task the Contractor is entitled to be paid the first 80% of the 'budget' for that CSC Capped Price Task through the monthly CSC Fee. The Commonwealth may then withhold from the monthly CSC Fee an amount of up to 20% of the 'budget' for that CSC Capped Price Task until that CSC Capped Price Task is completed in accordance with the Approved CSC Task Plan. On completion of the CSC Capped Price Task in accordance with the Approved CSC Task Plan, the Contractor shall be entitled to submit a claim for payment for the total amount withheld for that CSC Capped Price Task. For the purposes of this clause, the 'budget' for the relevant CSC Capped Price Task is the total of the person-hours of effort allocated to the CSC Task (as detailed in the Approved CSC Task Plan) multiplied by the applicable hourly rate (as set out in Annex H to Attachment B) plus the fee for CSC Additional Resources (if applicable) set out in an Approved CSC Task Plan.
     3. If, during the CSC Period, the Contractor fails to make available to the Commonwealth the CSC Service Hours as specified in Annex H to Attachment B (or such other number of CSC Service Hours as may be agreed in writing between the parties from time to time), whether or not those Personnel were required to perform a CSC Task, the CSC Fee payable to the Contractor for the final payment of the CSC Period shall be reduced by an amount equal to the value of the CSC Service Hours not provided during the relevant CSC Period as determined in accordance with Annex H to Attachment B. The amount shall either be agreed between the parties, or where the parties are unable to agree within 10 Working Days after the expiry of the CSC Period, be reasonably determined by the Commonwealth Representative.
     4. The Commonwealth shall be entitled to recover any reduction to the CSC Fee in accordance with clause 1.5.3 as a debt due to the Commonwealth under clause 13.7.
     5. For the avoidance of doubt, clause 1.5.3 does not apply if, and only to the extent that during the CSC Period, the Contractor did make available to the Commonwealth the CSC Personnel needed to provide the CSC Service Hours in accordance with Annex H to Attachment B (or such other number of CSC Service Hours as may be agreed in writing between the parties from time to time), but the Commonwealth failed to task those CSC Personnel to perform CSC Tasks sufficient to utilise the available CSC Service Hours.
  4. Adherence to Approved CSC Task Requirements
     1. For any CSC Capped Price Task that is not completed within the resources allocated in the relevant Approved CSC Task Plan (including CSC Service Hours and/or Additional CSC Resources), the Contractor shall, subject to clause 1.8, complete the remainder of that CSC Task at its sole risk, liability and expense (including, unless otherwise directed by the Commonwealth Representative, after the expiry of the then CSC Term). For the avoidance of doubt, compliance with this requirement does not limit or reduce the Contractor's obligation to provide the CSC Service Hours nor entitle the Contractor to a claim for performance relief under clause 6.4 or otherwise.
     2. Any unused CSC Service Hours from a completed CSC Capped Price Task shall be available for use by the Commonwealth for another CSC Task.
     3. For any CSC T&M Task, the Contractor shall not exceed the relevant budget for that CSC Task without obtaining the Commonwealth Representative’s Approval, which shall be given within five Working Days, or where such Approval is not given by the Commonwealth Representative, the Contractor shall cease work on the CSC Task.
  5. Defect Notification and Rectification
     1. For the avoidance of doubt and without limiting or affecting the Contractor's other obligations under the Contract, clause 8 shall apply to all goods, services and other items provided to the Commonwealth under or in connection with the CSC or a CSC Task.
  6. Commonwealth Representative’s Directions
     1. The Commonwealth Representative may, at any time by written notice to the Contractor:
        1. require the Contractor to cease work (whether permanently or temporarily) on any CSC Task (whether in whole or in part);
        2. direct the Contractor to prioritise work on a particular CSC Task, or particular CSC Tasks over other CSC Tasks;
        3. amend a CSC Task including changing any requirement, process, criteria or procedure in relation to the CSC Services being provided under a CSC Task; or
        4. take any other reasonable action under or in connection with the performance of a CSC Task.
     2. Where the Commonwealth requires the Contractor to cease work permanently in respect of the whole or part of a CSC Task in accordance with clause 1.8.1, the Commonwealth may perform that work (whether in whole or in part) itself or enter into an arrangement with a person other than the Contractor to undertake that work (whether in whole or in part).
     3. If the Commonwealth Representative issues a notice under clause 1.8.1a, the Contractor shall:
        1. stop work in accordance with the notice;
        2. comply with any directions given to the Contractor by the Commonwealth; and
        3. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the notice, including those arising from affected Subcontracts.
     4. The Contractor shall, within five Working Days (or such longer period as may be agreed by the Commonwealth Representative) of its receipt of any direction under clause 1.8.1 notify the Commonwealth Representative of the impacts (if any) the direction may have on the Contractor's compliance with its obligations under the Contract, including its obligation to complete CSC Tasks in accordance with the relevant Approved CSC Task Plans.
     5. The Commonwealth Representative may, but is under no obligation to, revise or withdraw any direction issued under clause 1.8.1 in the light of the Contractor's notification under clause 1.8.4.
     6. The Contractor shall comply with the directions of the Commonwealth Representative issued under clause 1.8.1 (including as such directions may be revised under 1.8.5).
     7. Subject to clause 1.8.9, where the Commonwealth Representative issues a notice under clause 1.8.1 and compliance with the direction requires an amendment to one or more Approved CSC Task Plans, the Contractor shall, within 15 Working Days (or such longer period as may be agreed by the Commonwealth Representative), submit the amended CSC Task Plan(s) and amended CSC Master Schedule to the Commonwealth Representative for Approval, to address those aspects notified in accordance with clause 1.8.4.
     8. If the Commonwealth Representative issues a notice under clause 1.8.1a requiring the Contractor to cease work permanently on a CSC Task, the Commonwealth's liability to pay the fee for CSC Additional Resources shall be limited to:
        1. payments under the payment terms of the Contract for work conducted before the effective date of the notice in accordance with clause 1.8.1a; and
        2. any reasonable costs incurred by the Contractor in relation to the Additional CSC Resources that are directly attributable to the cessation work on the CSC Task,

if the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative, or if these amounts cannot be so substantiated, as otherwise determined reasonably by the Commonwealth Representative.

* + 1. Except as expressly provided in this clause 1.8, the Contractor shall not be entitled to make or bring any claim against the Commonwealth arising from or in connection with any direction of the Commonwealth Representative under clause 1.8.1.
  1. CSC Impact on Contract Services

Note to drafters: The following clause requires a CCP to change those elements of the Contract that the parties agree need to be amended as an outcome of a CSC Task. For example, the CSC may develop a modification to one of the Products Being Supported, which then needs to be incorporated into the Contract to enable the modified elements to be supported.

* + 1. Where required by the Commonwealth, the Contractor shall submit a CCP to amend the Contract to reflect the outcomes of a CSC Task.