

s 22(1)(a)(ii)

**From:** s 22(1)(a)(ii)

**Sent:** Monday, 2 November 2020 5:41 PM

**To:** Robertson, Dana <Dana.Robertson@pmc.gov.au>

**Subject:** FW: KK&O. Agency to ATM - s 22(1)(a) | AusGov Social Media Moderation [SEC=OFFICIAL]

OFFICIAL

Dana – I'm sorry I keep hassling about this, but any update on signing the KK&O contract?

s 22(1)(a)  
(ii)

Digital Communications | Communications Branch  
p. (02) s 22(1) | m. s 22(1)(a)(ii)

**From:** Ty Kudla s 47F

**Sent:** Monday, 2 November 2020 3:23 PM

**To:** s 22(1)(a)(ii)

**Cc:** s 47F

**Subject:** Re: KK&O. Agency to ATM - s 22(1)(a) | AusGov Social Media Moderation [SEC=OFFICIAL]

Hi s

I hope you are well.

Just wanted to see if there were any updates/advice on the start of this contract.

Look forward to hearing from you,

Ty Kudla

M: s 47F

E: s 47F

LinkedIn s 47F

W: [www.kkoagency.com.au](http://www.kkoagency.com.au)

s 47F

[KK&O Wins Little Scholars & Harbour Town](#)  
[KK&O Wins Surfing Australia](#)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

**From:** s 22(1)(a)(ii)@pmc.gov.au>  
**Sent:** Tuesday, 3 November 2020 5:01 PM  
**To:** Robertson, Dana <Dana.Robertson@pmc.gov.au>  
**Subject:** AusGov moderation - PIV being recalled [SEC=OFFICIAL]

## OFFICIAL

Hi Dana,

As discussed, I've been advised that from 4 December the PIV moderation team for AusGov are being recalled back to PIV. This means by that date, we either need to have KK&O on board or find another in-house solution.

To flag, in terms of timing for outsourcing, if Gerard agrees we would still need time to execute the contract and also on-board KK&O. I expect this would involve at least a week where select members of the PIV moderation team would spend time with the Agency running through processes, providing guidance and answering questions. PIV may be able to assist post 4 December with this handover process, but this would need to be negotiated with Alison.

If the decision is to not outsource – then we need to find another way to resource the moderation work internally before 4 December. I don't have visibility of workloads across the whole branch, but my team are already shouldering the moderation of Instagram and don't have capacity to take on the remainder (especially as we've just picked up NCC accounts). Christmas leave also becomes an issue and we would need to be able to resource either side of and during shut down – at least to an extent.

In order to get either solution in place before 4 December, I need a decision by the end of the week (and ideally sooner).

Very happy to chat,

s  
22(1)

s 22(1)(a)

Digital Communications | Communications Branch  
 Ministerial Support Division | Department of the Prime Minister and Cabinet  
 p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)  
 e s 22(1)(a) @pmc.gov.au | w. www.pmc.gov.au  
 One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600





The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

s 22(1)(a)(ii)

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**From:** Robertson, Dana  
**Sent:** Tuesday, 3 November 2020 6:19 PM  
**To:** Martin, Gerard <Gerard.Martin@pmc.gov.au>  
**Subject:** FOR APPROVAL: Contract for AusGov social media account moderation  
 [SEC=OFFICIAL:Sensitive]

### OFFICIAL:Sensitive

Hi Gerard

I understand PIV staff are being recalled back to the branch within the next month – which has given an added urgency to the need for us to put longer term solutions in place for managing moderation of the Australian Government social media channels.

The PIV staff have been an enormous asset in the moderation to date and we would have been unable to deliver this service without their assistance.

We do not have the capacity to absorb the work into the branch, and using APS staff would be a more costly and less flexible ongoing expense than outsourcing.

Our proposed solution is to engage KK&O — an Indigenous-owned brand and marketing agency — to perform moderation on a contract basis.

The agency has been identified through a limited tender process, as it is the only agency on the Supply Nation register that was capable of undertaking this kind of work. And we have benchmarked their costs against other agencies and found them comparable — s 47C  
 s 47C

The contract will cost s 47C. We propose to enter into an initial six month contract (approx. total s 47C) with the option, but no obligation, to extend for up to two years. (I've attached a copy of the contract and value for money assessment for further detail.)

We expect it would take a couple of weeks at least to do a full handover with KK&O so it would be ideal to sign the contract and begin that process asap, before the PIV staff are no longer available, and to give us time to have processes well-established before the end of year shutdown period.

Is this an expense we may be able to absorb across the division s 47C  
 s 47C

Happy to discuss further,

Dana

**Dana Robertson** | Assistant Secretary  
Communications Branch  
Department of the Prime Minister and Cabinet  
p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii)  
e. [dana.robertson@pmc.gov.au](mailto:dana.robertson@pmc.gov.au) | w. [www.pmc.gov.au](http://www.pmc.gov.au)

s 22(1)(a)(ii)

# Value for Money Assessment for social media moderation (RD005811)

This proposal is used to support the approval of commitments of relevant money for goods or services under the PGPA Act and is to be attached to the Procure to Pay contract record prior to submitting it to the Delegate in P2P for approval.

## BACKGROUND

Whole of Government social media channels were established during the response to COVID-19 – this includes Facebook, Twitter, Instagram and LinkedIn accounts.

Comments and questions received on these social media channels require consistent moderation. This is currently being managed by PM&C staff who have been redeployed internally, however these staff will at some stage be required to return to their normal roles. Social media moderation will need to continue as long as the accounts are live – hence the need to outsource.

The Communications Branch currently manages the channels, however given the size of the audience and the number of comments and questions that need to be moderated daily, it is not practical for moderation to be managed internally within the Communications Branch. Moderation is important in managing reputational risk for.

## ESTIMATED VALUE

The estimated value must include whole-of-life costs. Figures must be GST inclusive.

Forward year commitments over \$80,000 will workflow through to s 22(1)(a)(ii) to assess the forward year budget implications and assign a forward year commitment certificate number. For further information, please contact the Management Reporting and Governance Team s 22(1)(a)(ii)

The estimated value of this procurement is approximately s 47C (GST inclusive).

Including extensions, we estimate the value of this procurement to be approximately s 47C (GST inclusive).

Financial Year	Current	Next FY 1*	Next FY 2*	Other
Proposed Expenditure	s 47C	\$Enter Amount	\$Enter Amount	\$Enter Amount

\* FYC values for each financial year are to be entered into separate line items in the 'Contract Schedule' section when entering the contract into Procure to Pay.

s 47E(d)

## CONSULTANCY SERVICES

Non-corporate Commonwealth entities are required to identify on AusTender whether contracts are for the procurement of consultancy services. Guidance to assist in distinguishing between a consultancy and a non-consultancy contract is provided under the Commonwealth's Procurement Framework at:

<https://www.finance.gov.au/government/procurement/buying-australian-government/additional-reporting-consultancies>

Select the procurement method by clicking in the relevant check boxes.

Based on the published guidance, the proposed arrangement is:

☒ not a consultancy for reporting purposes.

Or

☐ is a consultancy for reporting purposes. Under the contract:

- the services involve the development of an intellectual output that assists with agency decision making;
- the intellectual output will reflect the independent views of the service provider; and
- the intellectual output is the sole or majority element of the contract in terms of relative value and importance.

## PROCUREMENT METHOD

It is a mandatory requirement under the Indigenous Procurement Policy (IPP) that Departments look first to Indigenous business for all contracts in Remote Areas regardless of value; and all other domestic contracts valued between \$80,000 and \$200,000. If the Indigenous business can deliver the goods or services on a value for money basis you must give the work to the Indigenous business.

### Application of the Indigenous Procurement Policy

- ☐ The estimated value of this procurement is not between \$80,000 and \$200,000 and the services will not be delivered in a Remote Area; therefore, the IPP mandatory set aside provisions do not apply to this procurement.

or

- ☒ This procurement is subject to the IPP mandatory set aside provisions. The procurement approach has complied with the requirements of the IPP as described following:

In accordance with the Indigenous Procurement Policy, an Indigenous supplier has been approached to deliver the services required. Only one Indigenous supplier on Supply Nation was identified, so they were the only supplier approached. They have demonstrated that they are able to deliver the services and represent value for money.

Select the procurement method by clicking in the relevant check boxes.

- ☐ **Open Tender**
- ☐ Request for tender via AusTender
  - ☐ Standing offer (panel) – N/A - [list of current panel arrangements](#)
- ☐ **Prequalified Tender**
- ☐ Multi-use list
  - ☐ Shortlist following an initial open approach to market (e.g. expression of interest)
- ☒ **Limited Tender**
- ☒ Involves approaching one or more potential suppliers to make submissions, when the process is not subject to the requirements for Open Tender or Prequalified Tender.
  - ☐ If the procurement is valued at or above \$80,000 (Including GST) and was conducted via Limited Tender, you must review the CPRs and outline in the text box below how either a Condition for Limited Tender under paragraph 10.3 of the CPRs, or an exemption from Division 2 under Appendix A of the CPRs, has been applied.

As above, this procurement was subject to the IPP mandatory set aside provisions. In accordance with the Indigenous Procurement Policy, an Indigenous supplier has been approached to deliver the services required. Only one Indigenous supplier on Supply Nation was identified, so they were the only supplier approached. They have demonstrated that they are able to deliver the services and represent value for money.

## HOW WAS VALUE FOR MONEY ACHIEVED?

**Answer the following questions in the text boxes below. The information provided in this section of the assessment must be sufficient to demonstrate to the delegate that the proposed arrangement represents the proper use of the relevant money (i.e. the efficient, effective, economical and ethical) and must be commensurate with the scale and scope of the proposal:**

1. *How did you approach the market i.e. Open Tender, Prequalified Tender, Limited Tender.*  
Limited Tender
2. *How many suppliers, who did you approach, and why were these providers chosen?*  
One supplier was approached. They were the only supplier listed on Supply Nation that delivered the relevant services. They have demonstrated through their initial response to the Approach to Market, along with subsequent questions, that they can deliver the services required.
3. *Who is the Preferred Supplier?*  
KK&O Agency
4. *Outline the key strengths in the preferred supplier's submission that demonstrated their capacity to deliver the services*

While they are a small agency, the preferred supplier demonstrated their capacity to provide moderation seven days a week, along with flexibility with the hours worked depending on the amount of activity on the channels. Their PR and brand experience will also be invaluable to the way in which they manage moderation of external facing channels.

5. *How have you determined that the proposed cost is commensurate with the services e.g. fees are consistent with established market rates OR bids were received through a competitive market process?*

Initial scoping of market rates was undertaken before beginning the procurement process. The hourly rate of the preferred supplier is comparable with the rates provided by other suppliers -s 47G(1)(a)  
s 47G(1)(a)

However, at this stage those services won't be required on weekends. s 47G(1)(a)  
s 47G(1)(a)

s 47C

6. *What will be the overall benefit to the business area and the department when the goods or services are delivered?*

Staff currently moderating these channels have been redeployed from other areas of the Department. By outsourcing these services, we mitigate the risk that these staff will suddenly need to return to their usual areas of and moderation is not adequately resourced. Poor management and moderation of the channels is a risk to the brand and reputation of the 'Australian Government' channels.

## RISK RATING

*A Risk Assessment must be completed for all procurements in a template commensurate with the scale and scope of the procurement.*

As per the attached Risk Assessment, the highest level of risk rating arising from any risk associated with this procurement has been assessed as **Moderate**.

## OTHER REQUIREMENTS

	Yes / No / Not Applicable	Please provide further detail
Does the procurement involve a <b>Contingent Liability</b> ?	No	If 'Yes', provide details <a href="#">Click here to enter text.</a>
Has the procurement been assessed as a <b>Consultancy</b> ?	Not a consultancy	If 'Yes', provide details <a href="#">Click here to enter text.</a>
Does the Contract contain <b>Confidentiality Provisions</b> ?	No	If 'Yes', provide details of reasons for agreeing to keep the information confidential <a href="#">Click here to enter text.</a>

## NEXT STEPS

- Create a Detailed Contract in Procure to Pay to obtain Approval for Commitment of Relevant Money from an appropriate delegate.
- Execute a contract with preferred supplier – the Commonwealth Contracting Suite is mandated for all contracts less than \$200,000 (GST inclusive) (except purchases via credit card or panel arrangements).
- Your contract will be published on AusTender by the Procurement Helpdesk (if over \$10,000 GST inclusive).





## Australian Government

### Commonwealth Contract – Services

Reference ID: **XXX**

#### Customer

Customer Name:	Department of the Prime Minister and Cabinet
Customer ABN:	18 108 001 191
Address:	Andrew Fisher Building 1 National Circuit Barton ACT 2600

#### Supplier

Full Name of the Legal Entity:	The Trustee for Orchard Family Trust & The Trustee for The Kudla Family Trust T/A KK&O Agency
Supplier ABN:	20 289 921 223
Address:	s 47G(1)(a) <div></div>

## 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:	30 October 2020 (TBC)
Contract Term:	This Contract will remain in force for a period of six months.
Contract Extension Option:	This Contract includes the following extension option(s): 3 x six month contract extensions.

## C.A.2 The Requirement

The Supplier is required to deliver the following services:

### **Moderation of Australian Government social media platforms**

- Moderation of all organic posts on all Australian Government social media platforms (including Instagram direct messages).
- Moderation of boosted posts on Australian Government social media platforms from 24 hours after they have been boosted. Note: currently under the Commonwealth's master media buying agreement, Universal McCann moderate all boosted posts for an initial period of 24 hours. After this time the Customer is responsible for moderation.

Moderation must include:

- Reviewing all comments
- Responding to genuine and relevant questions in accordance with the KPIs at C.A.2(a)
  - The Supplier will use a document with cleared responses (provided by the Customer) to respond to questions.
  - For questions with no appropriate cleared responses, the Supplier will use a template (provided by the Customer) to collate and submit questions for answering by the Customer.
  - Questions for which a cleared response has not already been provided or if it is unclear if a response is required should be escalated to the Customer by 3pm each day (if required) and cleared responses will be provided for publishing by start of business the following day, at the latest.
  - The Customer will liaise with subject matter experts internally and in other government agencies to provide approved responses for posting.
- Blocking users posting abusive or explicit content. Details to be provided to the Customer for records.
- Hiding or deleting content that breaches the Customer's social media moderation guidelines published at: <https://www.australia.gov.au/social-media-moderation-guidelines>.
- At no time should the Supplier post content that has not been cleared by the Customer.

Note: Anything with explicit language is automatically filtered by social platforms, acknowledging that this is an imperfect process and anything that is missed should be hidden manually.

Moderation is required Monday to Friday each week, including public holidays. As a general rule, questions should be responded to within 24 hours. The Customer will notify the Supplier if moderation on a weekend is required. Estimated hours per day:

- 2-4 hours on weekdays
- 1-2 hours on weekends and public holidays

On occasion, the Australian Government social media platforms may experience unexpected increases in activity. It is expected that when this occurs, the supplier will have the capacity to manage this. Additional costs may be incurred for this work and approved by the Customer when required.

### **Reporting**

- Weekly basic sentiment reporting and key themes/trends.
- Bi-weekly meetings with the Customer to update on the activity on the platforms, and raise issues.

### **Australian Government social media platforms include:**

- Facebook: [www.facebook.com/ausgov/](https://www.facebook.com/ausgov/)

# Commonwealth Contract – Services

- o Instagram: [www.instagram.com/ausgov/](https://www.instagram.com/ausgov/)
- o Twitter: [twitter.com/ausgov](https://twitter.com/ausgov)
- o LinkedIn: [www.linkedin.com/company/australian-government](https://www.linkedin.com/company/australian-government)

## 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>.

## Key Performance Indicators

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

- o All questions of a genuine nature received on Australian Government social media platforms are responded to.
- o Questions with a cleared response are responded to within 12 hours.
- o Questions for which there is no cleared response should be escalated to the Customer by 3pm each day (if required) and cleared responses will be provided for publishing by start of business the following day, at the latest.
- o The backlog of comments to be moderated never exceeds two days. Noting that this may not be possible if the platforms experience a significant and unexpected increase in activity.

## C.A.2(b) Security Requirements

None Specified

## 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.

## 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*].

## Commonwealth Contract – Services

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date
Notification in writing of any errors made by the Supplier.	s 22(1)(a)(ii)	s 47E(d) @pmc.gov.au; s 22(1)(a)(ii) @pmc.gov.au	Same day – as needed.
Weekly report – Sentiment and key themes	s 22(1)(a)(ii)	s 47E(d) @pmc.gov.au; s 22(1)(a)(ii) @pmc.gov.au	Weekly on a Friday by COB
Monthly report – hours moderated	s 22(1)(a)(ii)	s 47E(d) @pmc.gov.au; s 22(1)(a)(ii) @pmc.gov.au	Monthly

### C.A.2(e) Meetings

The Supplier is required to attend meetings as follows:

Meeting Type	Position Required	Frequency	Teleconference/ Onsite	Location
WIP	As deemed appropriate	Bi-weekly	Teleconference	n/a

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

The Customer will not make any facilities or assistance available to the Supplier.

### C.A.2(g) Customer Material

Bank of cleared responses. This will be updated as needed.

### C.A.2(h) Conflicts of Interest

The Supplier has declared that it has no actual, perceived or potential conflicts of interest relevant to the performance of its obligations under this Contract.

### 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:	Public Interest Disclosure Team
Email Address:	publicinterestdisclosure@pmc.gov.au
Telephone:	s 47E(d)

### C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

Name/Position:	Complaints Coordinator
Email Address:	s 47E(d) @pmc.gov.au
Telephone:	s 47E(d)

### C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$95,678.00** as set out below.

#### Fixed Price (including all expenses) per Month

Monthly Moderations Breakdown	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
<b>Weekday Moderation</b> - s 47G(1)(a) <b>Saturday Moderations</b> s 47G(1)(a) - s 47G(1)(a) <b>Sunday Moderation</b> s 47G(1)(a) - s 47G(1)(a)  <b>*Weekly reporting &amp; meetings included in the above time allocation.</b> s 47G(1)(a)	s 47G(1)(a)		
<b>Public Holidays billed at the end of each month as required at an additional s 47G(1) to meet s</b> s 47G(1) ( ) - s 47G(1)(a)  <b>*Based on public holidays in Qld between November 2020 and May 2021.</b>	s 47G(1)(a)		

#### C.A.3(a) Payment Schedule

Progress payments (inclusive of any GST and all taxes and charges) will be made as follows:

Estimated Date	Milestone Description	Total Price GST Exclusive	GST Component	Total Price GST Inclusive
1/11/2020	Monthly moderation	s 47G(1)(a)		
1/12/2020	Monthly moderation			
1/01/2021	Monthly moderation			
1/02/2021	Monthly moderation			
1/03/2021	Monthly moderation			

## Commonwealth Contract – Services

1/04/2021	Monthly moderation	s 47G(1)(a)
*As outlined above, Public Holidays billed at the end of each month as required at an additional s 47G(1) to meet s 47G(1)(a)		

**Total Fixed Price for Services \$95,678.00 GST Inclusive**

## 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: Director, Digital Communications  
Currently: s 22(1)(a)(ii)  
Telephone: (02) s 22(1)(a)(ii)  
Email Address: s 22(1)(a)(ii)@pmc.gov.au  
Postal Address: Andrew Fisher Building  
1 National Circuit  
Barton ACT 2600

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

Addressee Name/Position Title: Director, Digital Communications  
Email Address: s 47E(d)@pmc.gov.au  
Postal Address: Andrew Fisher Building  
1 National Circuit  
Barton ACT 2600

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

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

Name: Ty Kudla  
Position Title: Director  
Mobile: s 47F  
Email Address: s 47F  
Postal Address: s 47G(1)(a)

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

Name: Ty Kudla  
Position Title: Director  
Email Address: s 47F  
Postal Address: s 47G(1)(a)



**C.A.5 Specified Personnel**

Position/Role	Name	Current Security Clearance Level	Percentage of Total Project Time
Director	Ty Kudla	N/A	15%
Director	s 47F	N/A	20%
Senior Social Media Manager	s 47F	N/A	65%

**C.A.6 Subcontractors**

None Specified

### Additional Contract Terms

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

#### **C.B.1 Intellectual Property**

For the purposes of this clause, “Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

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

To the extent the Supplier or a third party holds any Intellectual Property Rights in any existing Material, the Supplier hereby agrees to licence the Customer to enable the Customer to exercise full rights and interests in the Intellectual Property Rights in any Material provided under this Contract. The Supplier agrees to create, execute or sign any documents and perform all acts which may be necessary to allow the use of those rights by the Customer for any purpose.

The Customer grants to the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence for this Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under this Contract. The licence in this clause is subject to any conditions or limitations of third parties that the Customer notifies to the Supplier.

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**

Not Applicable

#### **C.B.2 Confidential Information of the Supplier**

Not Applicable

#### **C.B.3 Interest on Late Payments**

Where the Customer and the Supplier both have the capability to deliver and receive e-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 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.

## 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.

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

## Commonwealth Contract Terms

- (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 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 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.



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## Commonwealth Contracting Suite (CCS) Glossary

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### 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

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**“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 – 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; and
- e) Contract Annex 1 – Supplementary Information (if any).

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by Department of the Prime Minister and Cabinet

**ABN** 18 108 001 191 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 The Trustee for Orchard Family Trust & The Trustee for The Kudla Family Trust T/A KK&O Agency **ABN** 20 289 921 223 in the presence of:

Signature of witness

Signature of supplier

---

---

Name of witness (*print*)

Name of supplier (*print*)

---

---

Date:

---



s 22(1)(a)(ii)

**From:** s 22(1)(a)(ii)@pmc.gov.au>  
**Sent:** Thursday, 12 November 2020 12:29 PM  
**To:** Ty Kudla s 47F  
**Cc:** s 47F s 22(1)(a)(ii)  
 Robertson, Dana <Dana.Robertson@pmc.gov.au>  
**Subject:** s 22(1)(a) - Contract for signature [SEC=OFFICIAL]

## OFFICIAL

Hi Ty,

Please find attached a contract for signature.

A couple of things to note:

- I have included a start date of 1 December 2020 as discussed last week.
- As per earlier conversations, we have shortened the contract term – however you'll notice there are contract extension options.

If you could sign the attached and return a soft copy via email – we will then sign and provide a copy of the executed contract for your records. If it's possible for you to provide a signed copy today or tomorrow that would be great.

Thanks again for your patience with this process – I'm looking forward to having KK&O on board.

Any questions let me know,

s

s 22(1)(a)

Digital Communications | Communications Branch  
 Ministerial Support Division | Department of the Prime Minister and Cabinet  
 p. (02) s 22(1)(a) | m. s 22(1)(a)(ii)  
 e s 22(1)(a) @pmc.gov.au | w. www.pmc.gov.au  
 One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.



## Australian Government

### Commonwealth Contract – Services

Reference ID: CD010300

#### Customer

Customer Name:	Department of the Prime Minister and Cabinet
Customer ABN:	18 108 001 191
Address:	Andrew Fisher Building 1 National Circuit Barton ACT 2600

#### Supplier

Full Name of the Legal Entity:	The Trustee for Orchard Family Trust & The Trustee for The Kudla Family Trust T/A KK&O Agency
Supplier ABN:	20 289 921 223
Address:	s 47G(1)(a) <div></div>

## 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:	1 December 2020
Contract Term:	This Contract will remain in force for a period of six months.
Contract Extension Option:	This Contract includes the following extension option(s): 3 x six month contract extensions.

s 22(1)(a)(ii)

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**From:** s 22(1)(a)(ii) @pmc.gov.au>  
**Sent:** Tuesday, 17 November 2020 11:20 AM  
**To:** Robertson, Dana <Dana.Robertson@pmc.gov.au>  
**Subject:** FW: s 22(1)(a) - Contract for signature [SEC=OFFICIAL]

OFFICIAL

Hi Dana,

Can I get your signature on this today?

Will print a copy and leave on your desk ☺

s  
22(

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**From:** s 22(1)(a)(ii)  
**Sent:** Thursday, 12 November 2020 6:35 PM  
**To:** Robertson, Dana <Dana.Robertson@pmc.gov.au>  
**Subject:** FW: s 22(1)(a) - Contract for signature [SEC=OFFICIAL]

OFFICIAL

Dana,

Signed contract from KK&O for your signature.

s 22(1)(a)(ii)

s 22(1)(a)

Digital Communications | Communications Branch  
p. (02) s 22(1)(a) | m. s 22(1)(a)(ii)

**From:** Ty Kudla <[ty@kkoagency.com.au](mailto:ty@kkoagency.com.au)>  
**Sent:** Thursday, 12 November 2020 2:27 PM  
**To:** s 22(1)(a)(ii) @pmc.gov.au>  
**Cc:** s 47F s 22(1)(a)(ii)  
Robertson, Dana <[Dana.Robertson@pmc.gov.au](mailto:Dana.Robertson@pmc.gov.au)>  
**Subject:** Re s 22(1)(a) - Contract for signature [SEC=OFFICIAL]

Good afternoon s  
22(1)

Fantastic to hear from you. Please find signed contract attached.

Would you like to pencil in teleconference perhaps next Wednesday to discuss handover protocol and linking your social accounts in Hootsuite ready for moderation?

Would be great if we could link in a week out from Dec 1, just so we could observe and then hit the ground running.

Thanks,

Ty.

On Thu, 12 Nov 2020 at 11:28, s 22(1)(a)(ii) @pmc.gov.au> wrote:

OFFICIAL

Hi Ty,

Please find attached a contract for signature.

A couple of things to note:

- I have included a start date of 1 December 2020 as discussed last week.
- As per earlier conversations, we have shortened the contract term – however you'll notice there are contract extension options.

If you could sign the attached and return a soft copy via email – we will then sign and provide a copy of the executed contract for your records. If it's possible for you to provide a signed copy today or tomorrow that would be great.

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Any questions let me know,

s 22(1)  
( ) (ii)

s 22(1)(a)

Digital Communications | Communications Branch  
Ministerial Support Division | Department of the Prime Minister and Cabinet

p. (02) s 22(1)(a) m. s 22(1)(a)(ii)  
e s 22(1) @pmc.gov.au | w. www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

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IMPORTANT: This message, and any attachments to it, contains information

that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

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## Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – 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; and
- e) Contract Annex 1 – Supplementary Information (if any).

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by Department of the Prime Minister and Cabinet

**ABN 18 108 001 191** 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 The Trustee for Orchard Family Trust & The Trustee for The Kudla Family Trust T/A KK&O Agency **ABN 20 289 921 223** in the presence of:

Signature of witness

Signature of supplier

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Name of witness (*print*)

Name of supplier (*print*)

s 47F

Ty Kudla

Date:

12/11/20

s 22(1)(a)(ii)

**From:** s22(1)(a)(ii)@pmc.gov.au>  
**Sent:** Thursday, 19 November 2020 12:52 PM  
**To:** Robertson, Dana <Dana.Robertson@pmc.gov.au>  
**Subject:** RE: WOG conf call [SEC=OFFICIAL]

OFFICIAL

Hi Dana,

s22(1)(a)(ii)

I'm about to put the KK&O contract through to Procurement for uploading to AusTender etc. To confirm, you wanted the AusTender description to say 'Information Services'?

s22(1)(a)(ii)

## Commonwealth Contract – Services

### Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – 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; and
- e) Contract Annex 1 – Supplementary Information (if any).

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by Department of the Prime Minister and Cabinet

**ABN 18 108 001 191** by its duly authorised delegate in the presence of

Signature of witness,  
s 22(1)(a)(ii)

Signature of delegate  
s 22(1)(a)(ii)

Name of witness (*print*)

Name of delegate (*print*)

s 22(1)(a)(ii)

DANA ROBERTSON

Position of delegate (*print*)

ASSISTANT SECRETARY, COMMUNICATIONS

Date:

17/11/2020

**Executed** by The Trustee for Orchard Family Trust & The Trustee for The Kudla Family Trust T/A KK&O Agency **ABN 20 289 921 223** in the presence of:

Signature of witness  
s 22(1)(a)(ii)

Signature of supplier  
s 22(1)(a)(ii)

Name of witness (*print*)

Name of supplier (*print*)

s 47F

Ty Kudla

Date:

12/11/20