

From: [Mrdak, Mike](#)
To: s 47F
Subject: FW: CCS - Contract PRC0034273 (1) - Mrdak [SEC=OFFICIAL:Sensitive]
Date: Friday, 4 November 2022 12:03:16 PM
Attachments: [image001.jpg](#)
[image002.png](#)
[image004.png](#)
[CCS - Contract PRC0034273 \(1\) - Mrdak.docx](#)

OFFICIAL: Sensitive

From: s 22(1)(a)(ii) <[REDACTED]@pmc.gov.au>
Sent: Friday, 4 November 2022 11:14 AM
To: Mrdak, Mike <Mike.Mrdak@pmc.gov.au>
Subject: CCS - Contract PRC0034273 (1) - Mrdak [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Good morning Mr Mrdak

Please find attached for your signature a copy of the PM&C contract.

Grateful if you could return me a signed copy. Once I have received I will obtain the PM&C delegate signature and provide you will a copy.

Please do not hesitate to contact me if you have any queries.

Kind regards

s 22(1)(a)
/::\

s 22(1)(a)(ii)

Executive Officer to the First Assistant Secretary, Corporate Division | Michelle Wicks
Executive Officer to the First Assistant Secretary, Technology and Business Services | Hugh Cameron
Department of the Prime Minister and Cabinet
p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii) e. s 22(1)(a)(ii) [@pmc.gov.au](mailto:[REDACTED]@pmc.gov.au) | w. www.pmc.gov.au
One National Circuit, Barton ACT 2600 | PO Box 6500, CANBERRA ACT 2600
Ngunnawal Country



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

Commonwealth Contract – Consultancy Services



Australian Government

Commonwealth Contract – Consultancy Services

Reference ID: PRC0034273

Customer

Customer Name:	Department of the Prime Minister and Cabinet
Customer ABN:	18 108 001 191
Address:	PO Box 6500 Canberra ACT 2600

Supplier

Full Name of the Legal Entity:	Michael Mrdak
Supplier ABN:	64 528 027 178
Address:	s 47F

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:	Services deemed to have commenced on Monday 24 October 2022
Contract Term:	This Contract will terminate on Friday 23 December 2022.
Contract Extension Option:	Not applicable

C.A.2 The Requirement

The Supplier is required to complete a review of the Commonwealth Cyber Security Arrangements as per the Terms of Reference at Attachment A.

The objective of the review is to clarify and articulate cyber security roles and responsibilities across Government to ensure a coordinated approach in protecting Australian people and businesses from cyber threats. The review is to be conducted in consultation with Commonwealth departments and agencies, and supported by officers in the Department of the Prime Minister and Cabinet (PM&C), Department of Home Affairs, Attorney-General's Department and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The review will culminate in a confidential written report to Secretary PM&C detailing findings and recommendations.

All discussions in relation to the services will be directly between the Supplier and the Prime Minister and Cabinet Secretary, Glyn Davis.

C.A.2(a) Standards

The Supplier must ensure that any goods and services provided under this Contract comply with all applicable Australian standards and any Australian and international standards specified in this Statement of Work. The Supplier must ensure that it obtains copies of all relevant certifications and maintains records evidencing its compliance with those standards. If requested by the Customer, the Supplier must enable the Customer, or an independent assessor, to conduct periodic audits to confirm compliance with those standards.

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>.

Performance Measures

To demonstrate progress towards achievement of the Requirement, the Supplier is required to comply with the following performance measures:

- Demonstrate timely progress through the provision of regular status updates, highlighting progress made against the key deliverables
- Regular meetings with the Contract Manager and other key personnel as needed to provide verbal updates on progress and also to ensure continued progress
- Provide a detailed report with recommendations in line with the Terms of Reference provided by the Customer.
- Reporting delivered on time, in accordance with section C.A.2(d) of this contract (below)

C.A.2(b) Security Requirements

Supplier personnel are required to have the ability to obtain and maintain a minimum level of Negative Vetting 2.

The cost of obtaining each security clearance will be borne by the Customer. The Supplier must ensure that its Specified Personnel promptly provide to the Customer relevant details to assist with the security clearance process, and the Supplier must notify the Customer promptly in writing of any change in circumstances which is likely to affect the Customer's assessment of the Specified Personnel's entitlement to hold a security clearance.

All classified material relating to the review is to be stored in the Customer's building in the safe provided to the Supplier for that purpose.

C.A.2(c) Work Health and Safety

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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 (WHS) 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. For all issues assigned to the Supplier, the Supplier will provide the Customer with a WHS plan for approval and no work will commence until the plan is approved unless agreed in writing by the Customer.

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any WHS 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*].

Milestone Description	Contact for Delivery	Delivery Location/Email	Due Date
Interim observation report	Glyn Davis	Glyn.davis@pmc.gov.au	14/11/2022
Draft Report for customer review and comment	Glyn Davis	Glyn.davis@pmc.gov.au	23/11/2022
Final Report	Glyn Davis	Glyn.davis@pmc.gov.au	30/11/2022

C.A.2(e) Meetings

The Supplier is required to attend meetings as follows:

Meeting Type	Position Required	Frequency	Mode	Location
Pre-Contract Meeting	Michael Mrdak	The Customer and Supplier acknowledge a pre-contract meeting occurred on 24 October 2022	Phone	1 National Circuit, Barton
Progress meetings as required	Michael Mrdak	As required (preferably weekly)	Virtual or On-site	1 National Circuit, Barton

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

The Customer will provide the following facilities free of charge to the Specified Personnel for the performance of the Services, as reasonably required:

1. office accommodation at PM&C premises;
2. normal office services and facilities;
3. consumables and storage facilities;

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4. access to PM&C, data processing system, word processing services, and duplicating services; and
5. safe for storage of classified material.

C.A.2(g) Customer Material

Not applicable.

C.A.2(h) Conflicts of Interest

The Supplier has declared that it has or may have Conflicts of Interest (COI) relevant to the performance of its obligations under this Contract. During the Contract Term the Supplier agrees to keep the Customer informed of all relevant details relating to the following COI and implement any COI management strategies specified below:

The Specified Personnel is a former Australian Public Servant with his last role being Secretary of the Department of Communication and the Arts.

In addition to the Supplier's obligations under clause C.C.3 [*Conflict of Interest*], the Supplier also agrees to comply with any additional requirements notified by the Customer from time to time in relation to the management of this conflict.

C.A.2(i) Public Interest Disclosure

For information about how to make a Public Interest Disclosure, please refer to the information provided on the Customer's website: [Public Interest Disclosure Act | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](#)

All Public Interest Disclosure matters (relating to this procurement) should be referred to:

Name/Position:	Public Interest Disclosure Officer
Email Address:	publicinterestdisclosure@pmc.gov.au

C.A.2(j) Complaints Handling

Any complaints relating to this procurement should be referred to:

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

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C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$70,000.00** as set out below.

Fee Rates

Position Role/Level	Daily Fee (GST Inclusive)	Total Fee (GST Inclusive)
Michael Mrdak	\$2,640.00	\$68,000.00

Total Fees \$68,000.00 GST Inclusive

Expenses

The Supplier may only claim reimbursement for expenses when the expense is nominated in the table below, and the Customer has granted specific written approval prior to the relevant expense being incurred.

Additionally:

- a) all domestic air travel must be economy class,
- b) amounts claimed for accommodation and other expenses must not exceed the total amount specified in **Table 2** of [TD 2022/10](#) or the applicable financial year's Taxation Determination issued by the Australian Taxation Office, and
- c) a claim for reimbursement is submitted supported by a copy of the paid Tax Invoice.

Description/Comments	Cost GST Exclusive	GST Component	Total Cost GST Inclusive
Travel expenses including meals & incidentals (not including air travel & accommodation)	\$1,818.18	\$182.82	\$2,000.00

Maximum Estimated Expenses (not included above) \$2,000.00 GST Inclusive

C.A.3(a) Payment Schedule

If the Supplier incurs any reimbursable expenses, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a claim for reimbursement supported by a copy of the paid Tax Invoice.

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: First Assistant Secretary Corporate Division
Currently: Ms Michelle Wicks
Telephone: s 22(1)(a)(ii)
Email Address: Michelle.wicks@pmc.gov.au
Postal Address: PO Box 6500, Canberra ACT 2600

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

Addressee Name/Position Title: s 22(1)(a)(ii)
Telephone:
Peppol ID: n/a
Email Address: s 47E(d) @pmc.gov.au
Postal Address: PO Box 6500, Canberra ACT 2600

The Customer's preferred method of invoicing is by email. The Supplier must reference the Contract Reference ID on all invoices

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

Name: Mike Mrdak
Position Title: CEO NEC Australia and New Zealand
Telephone: As below
Mobile: s 47F
Email Address:
Postal Address: s 47F

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

Name: Mike Mrdak
Position Title: CEO NEC Australia and New Zealand
Email Address: s 47F
Postal Address: s 47F

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C.A.5 Specified Personnel

Position/Role	Name	Current Security Clearance Level	Percentage of Total Project Time
Specified Personnel	Michael Mrdak	s 47F	100%

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

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

The Customer agrees that the following information meets the Commonwealth's confidentiality guidelines and agrees to treat the information as confidential unless required by law to disclose the information. The Customer retains the right to disclose any other information contained in this Contract.

Information to be kept confidential
Content of conversations relating to the review
Interim observations report
Draft report
Final report

C.B.3 Payment Terms

Where the Customer and the Supplier both have the capability to deliver and receive eInvoices through the Peppol framework and have agreed to use eInvoicing, following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, 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 following receipt of a Correctly Rendered Invoice, including acceptance of the Goods and/or Services by the Customer, 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.

Where 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

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payment, calculated using the General Interest Charge Rate as published on the Australian Taxation Office website [https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

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C.C.1 Background

- 1.1 The Customer requires the provision of certain Goods and/or Services. The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Requirement.
- 1.2 Some terms used in these Commonwealth Contract Terms have been given a special meaning. Their meanings are set out in the Commonwealth Contracting Suite (CCS) Glossary and Interpretation or in the Contract.

C.C.2 Relationship of the Parties

- 2.1 By virtue of this Contract, neither Party is the employee, agent, officer or partner of the other Party nor authorised to bind or represent the other Party.
- 2.2 Each Party must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the other Party.
- 2.3 In all dealings related to the Contract, the Parties agree to:
 - a) communicate openly with each other and cooperate in achieving the contractual objectives
 - b) act honestly and ethically
 - c) comply with reasonable commercial standards of fair conduct
 - d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces, and
 - e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

C.C.3 Conflicts of Interest

- 3.1 The Supplier warrants that, other than as previously declared in writing to the Customer at the commencement of the Contract, no Conflicts of Interest exist, relevant to the performance by the Supplier of its obligations under the Contract.
- 3.2 At any time during the term of the Contract, the Customer may require the Supplier to execute a Conflicts of Interest declaration in the form specified by the Customer.
- 3.3 As soon as the Supplier becomes aware that a Conflict of Interest has arisen, or is likely to arise during the term of the Contract, the Supplier will:
 - a) immediately report it to the Customer
 - b) provide the Customer with a written report setting out all relevant information within three (3) Business Days, and
 - c) comply with any reasonable requirements notified by the Customer relating to the Conflict of Interest.

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

C.C.4 Precedence of Documents

- 4.1 The Contract is comprised of:
 - a) Additional Contract Terms (if any)
 - b) if the Contract is issued under a DoSO, the Contract Details Schedule
 - c) Statement of Work
 - d) Commonwealth Contract Terms
 - e) CCS Glossary and Interpretation, and
 - f) additional Contract annexes (if any), unless otherwise agreed in writing between the Parties.
- 4.2 If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- 4.3 The Contract may be signed and dated by the Parties on separate, but identical, copies. All signed copies constitute one (1) Contract.

C.C.5 Governing Law

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

C.C.6 Entire Agreement

- 6.1 The Contract represents the Parties' entire agreement in relation to the subject matter, at the time this Contract was executed.
- 6.2 Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM or the RFQ as relevant remain correct.
- 6.3 Any agreement or understanding to vary or extend the Contract will not be legally binding upon either Party unless in writing and agreed by both Parties.
- 6.4 If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

C.C.7 Survival

- 7.1 All Additional Contract Terms (if any), plus clauses: C.C.14 [Liability of the Supplier] C.C.17 [Supplier Payments] C.C.20 [Transition Out], and C.C.21 [Compliance with Law and Policy], survive termination or expiry of the Contract.

C.C.8 Notices

- 8.1 A Notice is deemed to be delivered:
 - a) if delivered by hand - on delivery to the relevant address
 - b) if sent by registered post - on delivery to the relevant address, or

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- c) if transmitted by email or other electronic means when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.
- 8.2 A Notice received after 5:00 pm, or on a day that is not a working day in the place of receipt, is deemed to be delivered on the next working day in that place.
- C.C.9 Assignment**
- 9.1 The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.
- 9.2 To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty (20) Business Days, or such other time as agreed between the Parties, of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.
- C.C.10 Subcontracting**
- 10.1 Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.
- 10.2 The Supplier must ensure that Subcontractors specified in the Contract (if any) perform that part of the Services specified in the Contract. The Supplier must not subcontract any part of its obligations under the Contract, or replace approved Subcontractors, without prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.
- 10.3 At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly remove from involvement in the Contract any Subcontractor that the Customer reasonably considers should be removed.
- 10.4 The Supplier must make available to the Customer the details of all Subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.
- 10.5 The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the Subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).
- C.C.11 Delivery and Acceptance**
- 11.1 The Supplier must provide the Goods and/or Services as specified in the Contract and meet any requirements and standard specified in the Contract.
- 11.2 The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the Contract and advise the Customer when it will be able to do so.
- 11.3 Any Goods must be delivered free from any security interest. Unless otherwise stated in the Contract, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the Contract.
- 11.4 The Customer may reject the Goods and/or Services within ten (10) Business Days after delivery or such longer period specified in the Contract ("Acceptance Period"), if the Goods and/or Services do not comply with the requirements of the Contract.
- 11.5 If during the Acceptance Period circumstances outside the Customer's reasonable control cause a delay in the Customer's evaluation of the compliance of the Goods and/or Services with the Contract, the Customer may give the Supplier a Notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).
- 11.6 If the Customer does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.
- 11.7 If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.
- C.C.12 Licences Approvals and Warranties**
- 12.1 At no cost to the Customer, the Supplier must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.
- 12.2 The Supplier must provide the Customer with all relevant third party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.
- 12.3 To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.
- C.C.13 Specified Personnel**
- 13.1 The Supplier must ensure that the Specified Personnel set out in the Contract (if any) perform

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- the part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer. The Customer's written consent will not be unreasonably withheld.
- 13.2 At the Customer's reasonable request, the Supplier, at no additional cost to the Customer, must as soon as reasonably practicable replace any Specified Personnel that the Customer reasonably considers:
- is not performing the Supplier's obligations under the Contract to the standard or within the timeframe reasonably required by the Customer
 - is not a fit and proper person, or
 - is not suitably qualified to perform the Services.
- 13.3 Any Specified Personnel must be replaced with personnel that are acceptable to the Customer.
- C.C.14 Liability of the Supplier**
- 14.1 The Supplier will indemnify the Customer for any damage claim, cost or loss resulting from any negligent or wilful breach of its obligations or representations under the Contract by the Supplier or its officers, employees, agents or Subcontractors.
- 14.2 The Supplier's obligation to indemnify the Customer will reduce proportionally to the extent that the Customer has contributed to the claim, cost or loss.
- 14.3 Where the Supplier is a member of a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002 (ACT)*, or any corresponding Commonwealth, State, Territory or legislation that limits civil liability arising from the performance of their professional services, and where that scheme applies to the Goods and/or Services delivered under the Contract, the Supplier's liability under this clause shall not exceed the maximum amount specified by that scheme or legislation.
- 14.4 The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.
- C.C.15 Termination or Reduction for Convenience**
- 15.1 In addition to any other rights either Party has under the Contract,
- the Customer acting in good faith, may at any time, or
 - the Supplier, acting in good faith, may notify that it wishes to,
- terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.
- 15.2 If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.
- 15.3 If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.
- 15.4 In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with C.C.11 [Delivery and Acceptance] and the Contract before the effective date of termination or reduction.
- 15.5 If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.
- 15.6 Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.
- C.C.16 Termination for Cause**
- 16.1 The Customer may issue a Notice to immediately terminate or reduce the scope of the Contract if:
- 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
 - the Customer rejects the Goods and/or Services in accordance with C.C.11 [Delivery and Acceptance] and the Goods and/or Services are not remedied as required by the Notice of rejection
 - the Supplier breaches a material term of the Contract and the breach is not capable of remedy
 - 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
 - subject to the Customer complying with any requirements in the *Corporations Act 2001 (Cth)*, the Supplier:
 - is unable to pay all its debts when they become due
 - 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
 - if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966 (Cth)*.
- 16.2 Termination of the Contract under this clause does not change the Customer's obligation to pay any Correctly Rendered Invoice.

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C.C.17 Supplier Payments

- 17.1 If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.
- 17.2 The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.
- 17.3 Payment of any invoice is payment on account only, and does not substantiate performance of the Contract.
- 17.4 If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

C.C.18 Dispute Resolution

- 18.1 For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (e) of this clause sequentially:
 - a) both Contract Managers will try to settle the dispute by direct negotiation
 - b) if unresolved within five (5) Business Days, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution. The date the dispute Notice is issued will be the date of the Notice ("Notice Date")
 - c) if the proposed solution is not accepted by the other Contract Manager within five (5) Business Days of the Notice Date, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation
 - d) failing settlement within twenty (20) Business Days of the Notice Date, the Customer will, without delay, refer the dispute to an appropriately qualified mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within thirty (30) Business Days of the Notice Date or such other period as agreed by the Parties, and
 - e) If the dispute is not resolved within sixty (60) Business Days of the Notice Date, either the Supplier or the Customer may commence legal proceedings or, by agreement, continue the mediation process for a period agreed by the Parties.
- 18.2 Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant Party and act in good faith to genuinely attempt to resolve the dispute.
- 18.3 The Supplier and the Customer will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

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

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

C.C.19 Transition In

- 19.1 The Supplier must perform all tasks reasonably required to facilitate the smooth transition of the provision of the Goods and/or Services from any outgoing supplier to the Supplier.

C.C.20 Transition Out

- 20.1 If the Contract expires or is terminated under C.C.16 [Termination for Cause] the Supplier must comply with any reasonable directions given by the Customer in order to facilitate the smooth transition of the provision of the Goods and/or Services to the Customer or to another supplier nominated by the Customer.

C.C.21 Compliance with Law and Policy

- 21.1 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with all laws applicable to the performance of this Contract and warrants that it will not cause the Customer to breach any laws.
- 21.2 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with any Commonwealth policies relevant to the Goods and/or Services.
- 21.3 The Supplier agrees to provide such reports and other information regarding compliance with applicable law and Commonwealth policy as reasonably requested by the Customer or as otherwise required by applicable law or policy.
- 21.4 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in 21.A to 21.J below, or any other applicable law or Commonwealth policy, it must:
 - a) immediately report it to the Customer and provide a written report on the matter within three (3) Business Days unless otherwise set out in these Terms, and
 - b) comply with any reasonable directions by the Customer in relation to any investigation or further reporting of the actual or suspected breach.

21.A Access to Supplier's Premises and Records

- A.1 The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records relating to the supply of the Goods and/or Services and performance of the Contract.
- A.2 The Supplier agrees to provide to the Customer, or its nominee, access to the Supplier's or its Subcontractor's premises, personnel, computer systems, documents and other records, and all assistance reasonably requested, for any purpose associated with the Contract or any review of the Supplier's or the Customer's performance under

Commonwealth Contract Terms

- the Contract, including in connection with a request made under the *Freedom of Information Act 1982* (Cth) or an audit or review by the Australian National Audit Office.
- A.3 Unless the access is required for an urgent purpose, the Customer will provide reasonable prior notice to the Supplier.
- A.4 If requested by the Supplier, the Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Customer's request, unless the access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents or Subcontractors.
- A.5 The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Customer at the conclusion of the Contract.
- 21.B Privacy Act 1988 (Cth) Requirements**
- B.1 In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and Subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.
- 21.C Notifiable Data Breaches**
- C.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract, the Supplier must:
- immediately report it to the Customer and provide a written report within three (3) Business Days, and
 - carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- C.2 Where the Supplier is aware that there has been an Eligible Data Breach in relation to the Contract, the Supplier must:
- take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates
 - take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and
 - take any other action as reasonably directed by the Customer.
- 21.D Personal Information**
- D.1 The Supplier agrees to provide the Customer, or its nominee, relevant information (including personal information) relating to the Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to a Contract.
- D.2 When providing personal information of a natural person under this clause, the Supplier warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).
- D.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).
- 21.E Confidential Information**
- E.1 The Supplier agrees not to disclose to any person, other than the Customer, any Confidential Information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer.
- E.2 This obligation will not be breached where:
- the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or
 - the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information, but any such request must be reported by Notice to the Customer without delay and the text of the disclosure provided in writing to the Customer as soon as practicable.
- E.3 The Customer may at any time require the Supplier to arrange for its officers, employees, agents or Subcontractors to give a written undertaking relating to nondisclosure of the Customer's Confidential Information in a form acceptable to the Customer.
- E.4 The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep such specified information confidential.
- E.5 The Customer will not be in breach of any confidentiality agreement if the Customer discloses the information for the purposes of managing the Contract or if it is required to disclose the information by law, a Minister or a House or Committee of Parliament, or for accountability or reporting purposes.
- 21.F Security and Safety**
- F.1 When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and Subcontractors are aware of, and comply with, such security and safety requirements.
- F.2 If directed by the Customer, the Supplier and its officers, employees, agents and Subcontractors are required to undertake a security briefing prior to being able to work inside a Commonwealth office, area or facility.
- F.3 The Supplier must ensure that all information, material and property provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and is returned as directed by the Customer.

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- F.4 The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

21.G Criminal Code

- G.1 The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).
- G.2 The Supplier must ensure that its officers, employees, agents and Subcontractors engaged in connection with the Contract are aware of the information contained in this clause.

21.H Fraud

- H.1 The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Contract. The Supplier acknowledges the occurrence of Fraud will constitute a breach of this Contract.
- H.2 If an investigation finds that the Supplier or its officers, employees, agents or Subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse or compensate the Customer in full.

21.I Taxation

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

21.J Public Interest Disclosure

- J.1 The Supplier must familiarise itself with the *Public Interest Disclosure Act 2013* (Cth) and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013* (Cth).
- J.2 Information for disclosers is available at <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>.



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Commonwealth Contracting Suite Glossary and Interpretation

Glossary

In the Commonwealth Contracting Suite (CCS):

“Additional Contract Terms” means the terms and conditions set out in the section of the Approach to Market, RFQ or the Contract as relevant with the heading ‘Additional Contract Terms’.

“Additional DoSO Terms” means the terms and conditions set out in the section of the DoSO with the heading ‘Additional DoSO Terms’.

“Approach to Market” or **“ATM”** means the notice inviting Potential Suppliers to participate in the relevant procurement.

“Black Economy Policy” means the *Black economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

“Business Days” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned, as defined by the *Corporations Act 2001* (Cth), and also excludes the period between Christmas Day and New Year’s Day.

“Closing Time” means the closing time and date as specified in the Approach to Market.

“Commonwealth Contracting Suite” or **“CCS”** means the suite of proprietary documents developed for Commonwealth procurements.

“Commonwealth Procurement Rules” means the legislative instrument issued by the Finance Minister under section 105B of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which establishes the framework under which entities govern and undertake their own procurement.

“Confidential Information” means any information that any Party does not wish to be shared outside those involved in the Contract or Standing Offer Arrangement. It can include anything that has been acquired, developed or made available to any of the Parties in the course of the relationship between the Parties. It includes, but is not limited to, information:

- a) specifically identified as confidential in the Contract or DoSO
- b) where disclosure would cause unreasonable detriment to the owner of the information or another party, or
- c) where the information was provided under an understanding that it would remain confidential.

“Conflicts of Interest” means any real or apparent situation where the personal interests of the Supplier, its officers, employees, agents or Subcontractors could improperly influence the Supplier’s performance of the Contract or DoSO as relevant.

“Contract” means the documents (specified in the Commonwealth Contract Terms or the Commonwealth Purchase Order Terms as relevant) as executed or amended from time to time by agreement in writing between the Supplier and the Customer.

“Contract Details Schedule” means the section in a Contract issued under the DoSO with the heading ‘Contract Details Schedule’.

“Contract Manager” means the ‘Contract Manager’ for the Customer or Supplier representative (as relevant) specified in the Contract.

“Contract Price” means the maximum 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 includes any purchase order number or other Customer reference advised by the Customer’s Contract Manager and the name and specified contact details of the Customer’s Contract Manager
- b) relates only to the Goods and/or Services that have been accepted by the Customer in accordance with the Contract or a payment or milestone schedule identified in the Contract
- c) is correctly calculated and charged in accordance with the Contract
- d) is for an amount which, together with 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 the party specified in the Contract as the Customer.

“Deed of Standing Offer” or **“DoSO”** means the documents (specified in the Commonwealth DoSO Terms) as executed or amended by agreement in writing between the Lead Customer and the Supplier.

“Delivery and Acceptance” means the process by which Goods and/or Services are delivered to the Customer and accepted by the Customer as meeting the terms specified in the Contract.

Commonwealth Contracting Suite Glossary and Interpretation

“DoSO Manager” means the ‘DoSO Manager’ for the Lead Customer or Supplier representative (as relevant) specified in the DoSO.

“Electronic invoicing” or **“eInvoicing”** means the automated exchange of invoices directly between the Customer and Supplier’s software or financial systems via the Peppol network, as long as both Parties are Peppol eInvoicing enabled.

“Eligible Data Breach” means an ‘Eligible Data Breach’ as defined in the *Privacy Act 1988* (Cth).

“End Date” means the date specified in the Contract or DoSO (as relevant) on which the agreement ceases.

“Fraud” means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.

“General Interest Charge Rate” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.

“Goods and/or Services” means:

- a) the Goods and/or Services and any Material, and
- b) all such incidental Goods and/or Services that are reasonably required to achieve the Requirement of the Customer,

as specified in the Contract and, where relevant, offered under a Standing Offer Arrangement.

“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).

“Indigenous Procurement Policy” means the procurement connected policy as described at the National Indigenous Australians Agency website <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>.

“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, databases, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights.

“Lead Customer” means the party specified in the DoSO as the Lead Customer.

“Material” means any material used or 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 or DoSO (as relevant) in writing, from one Contract or DoSO Manager to the other Contract or DoSO Manager (as the case may be), at the postal address, or email address, or facsimile number set out in the Contract or DoSO or as notified by the relevant Party.

“Peppol” means the Pan-European Public Procurement On-Line framework as described at the Australian Taxation Office website <https://softwaredevelopers.ato.gov.au/eInvoicing>.

“Party” or **“Parties”** means (as relevant) the Customer and Supplier specified in the Contract or the Lead Customer and Supplier specified in the DoSO.

“Personal Information” means information relating to a natural person as defined in the *Privacy Act 1988* (Cth).

“Potential Customer” means an Australian Government entity that is identified within the DoSO as being able to use the Standing Offer Arrangement.

“Potential Supplier” means any entity who is eligible to respond to an ATM.

“Pricing Schedule” means a schedule of maximum pricing rates that a Supplier can offer in an RFQ for Goods and/or Services as set out in the DoSO.

“Public Interest Certificate” means a certificate issued under section 22 of the *Government Procurement (Judicial Review) Act 2018* (Cth).

“Referenced Material” means any materials referenced in the ATM, including but not limited to, reports, plans, drawings or samples.

“Request for Quote” or **“RFQ”** means any notice inviting quotations to provide specific Goods and/or Services under the DoSO.

Commonwealth Contracting Suite Glossary and Interpretation

“Required Capabilities” means:

- a) in the DoSO ATM, the description of the Lead Customer's required Goods and/or Services. These may be categorised into several descriptions of Required Capabilities.
- b) in the DoSO, the description of the Goods and/or Services that a Supplier is approved to offer.

“Requirement” means the description of the Goods and/or Services in:

- a) for the purposes of the Commonwealth ATM Terms, the section of the Approach to Market with the heading ‘The Requirement’
- b) for the purposes of the Commonwealth Contract Terms, the section of the Contract with the heading ‘The Requirement’, or
- c) for the purposes of the Commonwealth Purchase Order Terms, the Customer's purchase order or similar ordering document setting out the Goods and/or Services.

“Response” means information provided by a Potential Supplier or Supplier demonstrating their capacity and capability to:

- a) provide the Requirement under the ATM or Request for Quote, or
- b) meet a Required Capability under the DoSO ATM.

“Satisfactory” in relation to the Black Economy Policy only, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Black Economy Policy or, if the circumstances in Part 6.c of the Black Economy Policy apply, the conditions set out in Part 8 of the Black Economy Policy.

“Specified Personnel” means personnel specified in the Contract, or who are accepted by the Customer in accordance with clause C.C.13 [Specified Personnel].

“Standing Offer Arrangement” means the DoSO arrangement, any Contract that is executed under the DoSO and any other document that applies to it.

“Standing Offer Details” means the section of the DoSO with the heading ‘Standing Offer Details’.

“Statement of Requirement” means the section of the Approach to Market with the heading ‘Statement of Requirement’.

“Statement of Tax Record” means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

“Statement of Work” means the section or schedule of the Contract (as the case may be) with the heading ‘Statement of Work’.

“Subcontractor” means an entity contracted by the Supplier to supply some or all of the Goods and/or Services required under the Contract.

“Supplier” means a party specified in the Contract or the DoSO as the Supplier.

“Valid” in relation to the Black Economy Policy only, means the Statement of Tax Record is valid in accordance with Part 7.c of the Black Economy Policy.

Commonwealth Contracting Suite Glossary and Interpretation

Interpretation

In the Commonwealth Contracting Suite, unless stated otherwise:

- a) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- b) words in the singular include the plural and words in the plural include the singular
- c) the words 'including', 'such as', 'particularly' and similar expressions are not used as and are not intended to be interpreted as words of limitation
- d) a reference to dollars is a reference to Australian dollars
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- f) clause headings are for reference only and have no effect in limiting or extending the language of the terms to which they refer, and
- g) the following clause references used in Commonwealth Contracting Suite documents refer to that section or part of the relevant CCS document listed in the table below:

Clause Reference	Section / Part	CCS Document
A.A.[x]	Statement of Requirement	CCS Approach to Market (ATM)
A.B.[x]	Commonwealth Approach to Market (ATM) Terms	
A.C.[x]	Additional Contract Terms	
C.A.[x]	Statement of Work	Commonwealth Contract
C.B.[x]	Additional Contract Terms	
C.C.[x]	Commonwealth Contract Terms	
P.C.[x]	Commonwealth Purchase Order Terms	Commonwealth Purchase Order Terms
D.A.[x]	CCS DoSO ATM	CCS Deed of Standing Offer (DoSO)
D.B.[x]	Commonwealth DoSO ATM Terms	
D.C.[x]	DoSO ATM Response Form	
D.D.[x]	CCS DoSO	
D.D.3(x)	Additional DoSO Terms	
D.E.[x]	Commonwealth DoSO Terms	
R.A.[x]	Schedule 1 - Statement of Work	CCS DoSO RFQ and Contract
R.B.[x]	Schedule 2 - Additional Contract Terms	
R.C.[x]	Schedule 3 - Supplier's Response Form	
R.D.[x]	Contract Details Schedule	

Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Consultancy 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 Interpretation
- 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 Michael Mrdak **ABN** 64 528 027 178 in the presence of:

Signature of witness

Signature of supplier

Name of witness (*print*)

Name of supplier (*print*)

Date:
