

Infrastructure Advisory – Standardised Terms & Conditions Term Sheet for Consultation

This Term Sheet sets out the proposed commercial principles that will form the basis of new template contracts (and guidance) for NSW Government buyers of infrastructure advisory services under the following whole of government schemes (the Schemes):

- SCM1191 Consultants in Construction up to \$9 million Scheme
- SCM10611 Consultants in Construction above \$9 million Scheme
- SCM0005 Performance and Management Services (PMS) Scheme (engagement type 15)
- SCM0801 Government's Architect's Strategy and Design Scheme.

The Term Sheet was developed in consultation with NSW Government agencies and has been informed by a comprehensive review of relevant templates, including those currently applicable to the Schemes.

A consultation period will take place to obtain feedback on the Term Sheet from relevant industry participants. The consultation period will commence at 2pm on Tuesday, 26 July 2022 and conclude at **5pm on Tuesday, 23 August 2022**.

There are two main ways of providing feedback on the Term Sheet:

- Complete the online survey through the *Have Your Say* website, and/or
- Upload a detailed submission using the template provided on the *Have Your Say* website.

Prior to submitting feedback, respondents are encouraged to review the Term Sheet in its entirety. The Recommendation column reflects the proposed risk position. The Rationale column provides further context and objectives relating to the proposed risk position.

Feedback is particularly sought on the recommendations associated with identified Focus Areas.

Feedback will be used to inform a Final Term Sheet, which will form the basis of two template contracts (short form and long form) applicable to the Schemes.

Capitalised terms within the Term Sheet will be defined in the template Contract(s); however, for brevity are intentionally not defined in this Term Sheet.

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#	Subject	Recommendation	Rationale
A	Performance of Services		
1	General obligations	<p>Contract to include Service Provider's obligations relating to:</p> <ul style="list-style-type: none"> a) Timeliness of services b) Informing itself of Agency requirements c) Compliance with laws, standards, guidelines, and directions d) Co-ordination and cooperation e) (For project management services) compliance with Project contracts and ensuring completion of contracts on time and budget f) (For design services) completion of design so that works, when constructed in accordance with the design, meet all requirements of the Contract and other standards and laws. 	<p>In substance, broad and general obligations are generally harmonised across existing Government templates and will be included in the new template Contracts.</p> <p>As most obligations are consistent across service-types, additional obligations for specific services should also be dealt with in the template Contract.</p>
2	Standard of Care	The requisite standard of care should be the general standard of care, skill, and diligence to be expected of a competent, qualified, and experienced Service Provider providing similar services.	<p>The general standard of care expected of Service Providers is substantially harmonised across existing Government contracts. It is not proposed to amend this position.</p> <p>The practical effect of the general standard will vary between Service Providers performing different roles and functions and in different contexts.</p>
3	Fitness for Purpose (FFP) – Focus Area	<ul style="list-style-type: none"> a) Purpose (for which Services must be fit) is as specified in, or reasonably ascertainable from, the Contract. b) Fitness for Purpose (FFP) obligations should be linked to the Service Provider exercising skill, care and diligence to the requisite standard of care (Refer A2. Standard of Care) c) (Exception to FFP liability) - Compliance with the Contract specifications for the Services and other materials which the Service Provider is expressly entitled to rely upon, will shield the Service Provider from breach of its obligations to ensure that the Services and Deliverables are fit for purpose. 	FFP warranties across existing templates require clarification and consistency as to the 'purpose' to which they relate and the circumstances in which FFP obligations apply or might be relieved. To support this objective, an Agency is encouraged to explore early on whether a reverse brief can or should be obtained to ensure all parties are aligned as to the 'purpose'.
4	Conflict of Interest	<ul style="list-style-type: none"> a) Service Provider to provide an undertaking that no conflict exists at the date of Contract. 	The obligations and requirements for managing conflicts are substantially harmonised across existing Government contracts and it is not proposed to deviate from this.

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		<ul style="list-style-type: none"> b) Service Provider to inform the Agency on becoming aware of the existence or possibility of a conflict. c) Agency can approve (with reasonable conditions) continued performance of the Services if notified of a conflict. d) Agency can terminate the Contract if the conflict cannot be managed, or the Agency otherwise determines necessary. e) (Optional) Service Provider to sign a Statement of Interests and Associations if required by the Agency. f) (Optional) Where performing Probity related Services, Service Provider must disclose current, recent, and new Probity services engagements with Government agencies. 	<p>Whilst steps may be taken to facilitate the continued performance of the Services once a conflict has been notified, an Agency should have the discretion to determine whether this can be managed and if continued performance is appropriate, or if termination of the Contract is necessary.</p>
5	Work, health and safety (WHS)	<p>Contracts to include Service Provider's obligations relating to the following WHS principles:</p> <ul style="list-style-type: none"> • Compliance with security and safety requirements when accessing Agency site or premises (including ensuring personnel have completed site inductions) • Ensuring the Services are performed without risk to the health and safety of any persons • (For design services) ensuring safety in and buildability of design • Notifying the Agency of WHS incidents • Cooperation with principal contractor and other persons with WHS duties relating to the infrastructure project. 	<p>WHS provisions in template Contracts should be standardised. An Agency can include any project-specific requirements in the Scope Schedule or Special Conditions of the Contract.</p>
B Personnel, Records, Reporting and Access			
1	Approved Personnel	<ul style="list-style-type: none"> a) Service Provider must only use approved personnel in performing the Services. Approved personnel will be named as 'Key Personnel' in the relevant Contract Schedule. b) Agency can direct the Service Provider to remove or replace any personnel in its discretion. c) Subject to d) below, Agency approval to replace Key Personnel should not be unreasonably withheld. d) Replacement Key Personnel to have equivalent expertise and experience of the original Key Personnel. Agency can attach 	<p>Key personnel are an important consideration in an Agency's selection of a Service Provider. An Agency should therefore have appropriate rights in relation to the approval of Key Personnel.</p>

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		<p>reasonable conditions to the approval of Replacement Key Personnel.</p> <p>e) Service Provider's responsibility for the Services is not altered by Agency approval of Replacement Key Personnel.</p> <p>f) Agency may consider bespoke personnel requirements (such as working with children checks) and include these as Special Conditions of the Contract.</p> <p>g) Agency may require Service Provider's payment claims to be accompanied by timesheets for verification of Services performed by approved Key Personnel.</p>	
2	Access to Supplier Premises	Service Provider to provide the Agency with access to premises, information, documents, or materials (including books and records) (or verified copies) to inspect upon the Agency giving reasonable notice.	Service Provider obligations to provide an Agency access to premises, books and records are substantially harmonised across existing Government contracts and are considered appropriate and necessary. No deviation from this position is recommended.
3	Records	<p>a) Service Provider to keep proper accounts, records, and time sheets in accordance with accounting principles in respect of its performance of the Services, charges, fees, and reimbursable expenses.</p> <p>b) The retention period for the records referred to in a) above is 7 years (post expiry or earlier termination of the Contract).</p>	Service Provider's general obligation to keep records is substantially consistent across existing Government contracts. Clarification and consistency are required with respect to minimum record retention periods, which should be expressly stated.
4	Performance Reporting	<p>a) Service Provider to submit regular performance reports against stated criteria.</p> <p>b) Service Provider to acknowledge and consent to details of the Service Provider's performance being shared with other Government Bodies, and that an Agency will take account of information about the contractor's performance.</p>	Template Contracts should provide an express and standardised approach to performance reporting and cross-Government sharing of performance information across the infrastructure advisory services category.
5	NSW Government Policies	<p>a) NSW Government Modern Slavery model clauses to apply.</p> <p>b) <i>Aboriginal Procurement Policy</i> model clauses to apply for engagements valued at \$7.5 million or above.</p>	The Service Provider's compliance with mandatory policy requirements is an Agency's fundamental consideration when selecting a supplier.

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C	Confidentiality, Privacy and Publications		
1	Confidentiality	<p>a) Confidential Information to cover information:</p> <ul style="list-style-type: none"> i. disclosed to or acquired by the Service Provider in relation to the Services or Contract ii. expressly designated as confidential iii. by its nature reasonably considered confidential <p>b) Confidentiality Deed Poll to be annexed to the Contract. Agency to determine whether a Confidentiality Deed Poll is required from Service Provider personnel.</p>	<p>A Service Provider's obligations of confidentiality are in substance consistent across existing Government contracts, though harmonisation is required as to the breadth of Confidential Information which is captured, for example, whether Confidential Information is any information disclosed by the Agency or any information in connection with the Services or Contract, and exceptions or permitted disclosures. The default position should be that confidentiality obligations are unilateral on the Service Provider, reflecting public interest considerations that an Agency has disclosure obligations in relation to government information.</p> <p>Clarity should be provided as to the circumstances and engagements for which Confidentiality Deed Polls may be required.</p>
2	Privacy	<p>Where personal information is being collected, Service Provider to:</p> <ul style="list-style-type: none"> i. comply with Privacy legislation and policies ii. only use personal information for Contract purposes iii. notify Agency of any breach of privacy related obligations. 	<p>Template Contracts should provide an express and standardised short form approach to privacy obligations. If an Agency determines that more detailed requirements are necessary due to the specific services or project, this can be addressed by the Agency through Special Conditions of the Contract.</p>
3	Media and publications	<ul style="list-style-type: none"> a) Service Provider must not disclose details about the Contract or Services without Agency consent. b) Service Provider may (if expressly stated in the Contract) be permitted to include a factual description of the services performed (or if appropriate, a copy of their work) for a stated purpose, for example, a proposal to third parties or academic publication. c) If agreed, Agency can specify any permission to be granted to Service Provider to publish information about or a copy of their work and for what express purpose. 	<p>Restrictions in existing Government contracts on the Service Provider's disclosure of details about the Contract or Services should continue to apply. Any Service Provider disclosure should be subject to Agency consent. Carve outs should be at the Agency's discretion but may be agreed by the parties.</p>

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D	Intellectual Property		
1	Warranty	a) Service Provider to warrant that: <ul style="list-style-type: none"> i. it owns or has the necessary rights to the Intellectual Property (IP) to be used in the provision of the Services; and ii. the Agency will not infringe any IP rights in using the Service Provider's Deliverables. b) IP indemnity applies to breach of this warranty (refer D5. Indemnity).	Warranties regarding IP in the Services and Deliverables should be express and consistent across Government contracts.
2	Intellectual Property (IP) Rights in Contract material – Focus Area	a) Default position - Ownership: Contract materials vest absolutely in the Agency on creation and the Service Provider must do everything necessary to perfect that vesting. Agency grants Service Provider a licence to use Contract materials to perform the Services. b) Alternative position - Licence: Service Provider retains Intellectual Property (IP) rights in Deliverables and grants a licence (including right to sub-license) to the Agency to use, reproduce or modify the Deliverables. c) Service Provider must grant or procure a licence of IP in the Contract materials not capable of being vested in the Agency (refer D3. Third Party IP).	The consistent and default position should remain, that IP and ownership in new Contract material vests with the Agency on creation; however, a level of optionality in Contracts may be required where a licence may be the preferred or only viable option for a specific project or engagement.
3	Pre-existing and Third Party IP	a) Service Provider grants, or must procure the grant, to the Agency of an irrevocable, royalty-free, perpetual and fully assignable licence (including the right to sub-license) to use Background IP and Third Party IP. b) Background IP means any IP owned or licensed by the Service Provider prior to the date of the Contract or which is brought into existence other than for the purpose of the Services or performance of the Service Provider's obligations under the Contract.	Rights to use Background IP and Third Party IP in Contract materials are substantially harmonised across existing Government templates. No deviation from this position is recommended.

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4	Service Provider's IP Rights	<ul style="list-style-type: none"> a) Service Provider retains ownership and rights in Service Provider's Background IP. b) Agency grants to the Service Provider a non-exclusive, non-transferable licence to use Agency-supplied materials solely for the purpose of performing the Services. 	Template Contracts should provide a standardised approach to IP rights preserved or granted to the Service Provider for the purpose of it performing the Services. This is limited to pre-existing materials owned by either the Service Provider or Agency.
5	Indemnity	Service Provider indemnifies the Agency for any actual or alleged infringement of IP rights arising out of the supply or use of the Services or any Deliverables.	Template Contracts across Government should provide a standardised approach to indemnities with respect to IP.
6	Moral Rights – Focus Area	Service Provider warrants that consent has been obtained from individuals who may have moral rights in Deliverables provided under the Contract which would enable the Agency (and others) to deal with that material or those works without attribution of authorship.	An Agency's rights to use and obtain the benefit of Deliverables or works paid for under the Contract should not be constrained. The Service Provider in providing the Services should procure appropriate moral rights consents or waivers as the party best placed to assess and manage this risk.
E Agency-supplied Information			
1	Reliance and Information Documents – Focus Area	<ul style="list-style-type: none"> a) Agency is encouraged to provide Service Provider with a level of reliance on baseline information. b) Service Provider cannot solely rely on accuracy or completeness of site information documents provided by the Agency and should undertake their own assessment of risk. c) Long form Contract to include: <ul style="list-style-type: none"> i. Rely-Upon Information regime under which Service Provider may be entitled to rely on specified material ii. Rely-Upon Information excludes interpretations or assumption or unreasonable reliance on such material iii. If Rely-Upon Information is inaccurate, the Service Provider may claim time and/or cost entitlements under the Contract iv. Information Documents excluded from reliance d) Agency to be clear on whether due diligence documents to be provided to tenderers for the relevant infrastructure project are Information Documents or Rely-Upon Information. 	Providing no reliance shifts the focus to the Service Provider pricing unknown risks. Template Contract should facilitate the parties agreeing a balanced risk allocation for Rely-Upon Information or 'information only' material, which best reflects the specific circumstances of the project.

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2	Discrepancies/errors	<ul style="list-style-type: none"> a) Service Provider must notify Agency of any discrepancy or error at least 14 days before using a document. b) Agency must give a direction to the Service Provider resolving the discrepancy or error. c) Service Provider is entitled to an adjustment to the fee and/or time to deliver the Services if the direction results in the Service Provider incurring more time/costs than could have been reasonably expected at the Contract date. d) Service Provider's entitlement to claim is only where: <ul style="list-style-type: none"> i. errors could not reasonably be identified prior to the date of Contract; and ii. Service Provider has complied with its obligations to notify the Agency of the discrepancy or error, otherwise it is responsible for any rework. e) Information Documents are carved out from the entitlement to additional fees and/or time as described in this section E2. 	Service Provider should be obliged to notify the Agency of any errors or discrepancies in information provided. There should be a standardised approach in template Contracts as to the nature and extent of the Agency's obligations where it receives such notice and the relief available to the Service Provider in those circumstances.
F Documents and Deliverables			
1	Agency review and non-complying services/deliverables	<ul style="list-style-type: none"> a) Agency has no duty to review the Deliverables. b) Agency may reject non-compliant Deliverables (which must be rectified by the Service Provider). c) Service Provider has no claim arising from the Agency's review or failure to review and remains responsible for the Deliverables. 	An Agency's rights to review and comment on Deliverables are discretionary. An Agency should have an express right to reject non-compliant Deliverables.
2	Amendments to approved documents	Service Provider cannot make any alternations to previously approved documents without prior written consent of the Agency (acting reasonably).	A Service Provider's right to alter Deliverables is subject to Agency consent. An Agency should act reasonably in considering any proposed alterations.
3	Third party reliance – Focus Area	<ul style="list-style-type: none"> a) A third party may rely on the Service Provider's report to the extent set out in the Reliance Letter (usually data only, and not interpretation of that data, or completeness of it). b) If a Reliance Letter is not provided, the Service Provider to indemnify the Agency in relation to any reliance by a third party (including Authority) on the Deliverables. 	Government's preference is for the Service Provider to provide a Reliance Letter. A level of reliance should be considered having regard to the specific Services and infrastructure project. Excluding third-party reliance on some deliverables can lead to double costs for an Agency, for example, where a Principal Contractor is unable to rely on data or surveys provided by the Service Provider and must undertake that testing again (at the

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			Agency's cost). The parties should agree the most appropriate mechanism for reliance having regard to the Deliverables to be relied upon and by whom (and the extent to which this is known).
G Liability & Indemnities			
1	Indemnities – Focus Area	<ul style="list-style-type: none"> a) Service Provider to indemnify the Agency and its Personnel (other than its consultants and contractors) for claims, damages, losses, expenses, costs (including third party claims and legal costs) or liabilities. b) Agency "Personnel" include its officers, employees, consultants, agents, and contractors (other than the Service Provider). c) Indemnity for claim, damage, loss, expense, cost (including third party claims and legal costs) or liability which covers: <ul style="list-style-type: none"> i. Loss of or damage to property caused or contributed to by, or in connection with, the Service Provider carrying out the Services ii. Personal injury or death caused or contributed to by, or in connection with, the Service Provider carrying out the Services iii. Unlawful, wrongful, wilful, or negligent act or omission iv. Alleged or actual infringement of Third Party Intellectual Property Rights d) Service Provider's liability to indemnify the Agency is reduced proportionally to the extent of a breach of contract, unlawful, wrongful, wilful, or negligent act/omission of the Agency or employees or agents (other than the Service Provider) of the Agency. 	<p>There is general inconsistency as to the beneficiaries of indemnities, types of losses indemnified and types of acts triggering indemnities. These should be standardised across template Contracts.</p> <p>There should be no separate indemnity for breach of contract. This is covered by usual remedies for breaches (i.e. damages).</p>
2	Limitation on Liability – Focus Area	<ul style="list-style-type: none"> a) Limitation of liability (i.e. liability cap) extends to the Service Provider's total liability under the Contract (subject to express exclusions). For example, the liability cap should not be limited to the Service Provider's liability to indemnify the Agency. b) Liability cap to increase where a variation to the Contract significantly increases the contract price. 	Template Contracts should enable the parties to agree appropriate limitations on liability on a project/market basis to appropriately reflect the level of financial risk retained by the Agency. The assessment of an appropriate liability cap should have regard to the contract value, nature of the Services, and risks to be covered.

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		c) Agency to consider, in determining the liability cap, the extent to which insurance for the relevant infrastructure project may cover the risks and should ensure the liability cap does not preclude available insurance cover, to the Agency's detriment.	
3	Exclusions from Limitation on Liability – Focus Area	<p>The following liabilities are excluded from any agreed liability cap:</p> <ul style="list-style-type: none"> • Liability that cannot be limited at law • Personal injury, death or illness • Wilful or reckless misconduct, fraud, or criminal conduct • Insurance proceeds that are or would have been recoverable • Abandonment of obligations • Intellectual Property indemnity and warranty. 	Standardised liability exclusions should apply in all template Contracts where there is an agreed cap on liability. These exclusions are generally of a nature where liability should be uncapped, irrespective of contract value.
4	Consequential Loss	<p>a) Neither party is liable for the consequential loss of the other party (categories specified).</p> <p>b) Exclusion of consequential loss from the Service Provider's liability does not affect the Service Provider's liability for matters in the list of exclusions to the liability cap (refer G3. Exclusions from Limitation on Liability).</p>	There is a lack of certainty in relation to liability for consequential loss in existing Government contracts. This should be dealt with expressly in all template Contracts. Both parties should have the benefit of a mutual exclusion of liability for consequential loss.
5	Proportionate Liability – Focus Area	Agency not to contract out of Part 4 of the <i>Civil Liability Act (NSW) 2002</i> unless justified on a project specific basis, as determined by the Agency.	Part 4 of the Civil Liability Act 2002 permits parties to exclude or modify the application of the proportionate liability regime. Agencies are entitled to contract out of proportionate liability, however, are discouraged from doing so in an inflexible manner, and without a proper assessment of whether the circumstances justify doing so. An Agency should provide sufficient time during the tender process for the Service Provider for the prospective Service Provider(s) to agree proportionate liability through cross-indemnity arrangements.

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H Insurances			
1	Professional Indemnity – Focus Area	<ul style="list-style-type: none"> a) Under the short form Contract, Service Provider to procure at least \$1 million cover in Professional Indemnity Insurance, to cover the duration of the relevant infrastructure project plus 1 year. b) Under the long form Contract, Service Provider to procure at least \$10 million cover in Professional Indemnity Insurance of 6 years duration. c) Retention period for insurance records apply from the later of the Date of Completion and Expiry of the Term. 	A standardised approach in template Contracts to minimum insurance amounts and periods of cover provides certainty to the Service Provider. Where discretion is warranted, an Agency should consult iCare on the appropriateness of decreasing or increasing minimum Professional Indemnity requirements to ensure consistency across Government to the extent possible.
2	Public Liability – Focus Area	<ul style="list-style-type: none"> a) Under the short form Contract, Service Provider to procure at least \$10 million cover in Public Liability Insurance. b) Under the long form Contract, Service Provider to procure at least \$20 million cover in Public Liability Insurance. 	A standardised approach to minimum insurance amounts and periods of cover is proposed, because while an Agency's request to increase insurance limits is a benefit to the State, increased requirements may limit the availability of suppliers. An Agency should consult iCare on the appropriateness of decreasing or increasing minimum insurance requirements to ensure consistency across Government to the extent possible.
3	Workers Compensation	Service Provider to procure Workers Compensation Insurance in the amount required by relevant Workers Compensation legislation, annually until the later of the Service Provider ceasing to perform the Services and expiry of the Term.	Recommendation based on NSW Workers Compensation legislation.
I Fees and Payment			
1	Fees	<ul style="list-style-type: none"> a) Service Provider fees to be based on a fixed fee, upper limiting fee (ULF) or schedule of rates. b) Service Provider to notify Agency of anticipated excess fees above ULF. c) Service Provider warrants that any agreed and accepted rates are not exceeded. 	Template Contracts should provide options for different fee structures so that an Agency can select an appropriate fee structure that best reflects the specific project circumstances (including risks), for example fixed fees may not always be appropriate where there is limited information available at the time of tender.
2	Security of Payment Act (SOPA)	<ul style="list-style-type: none"> a) Optional clauses and payment terms which are required SOPA alignment of payment provisions in all agreements. b) Prescribed Supporting Statement required by the legislation to be attached 	'Related services' under SOPA is broadly defined and will capture a large portion of services within the IA category (whilst SOPA will not apply to a few service-types).

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		c) SOPA schedules and clauses may be subject to being marked as applicable in an item in the Contract Schedule.	Agreements should include compliant provisions which apply to services to which SOPA applies.
3	Set-off	Agency to have a set-off right for: <ul style="list-style-type: none"> debt or other money due by the Service Provider any bona fide claims under or in connection with the Contract 	Agencies should have a contractual right of set-off and the triggers for this right should be standardised across Government contracts.
J Subcontracting and Novation			
1	Novation to third party – Focus Area	Service Provider to consent to a novation of the Contract where required by the Agency.	Novation of a Service Provider's Contract may form part of an Agency's project procurement strategy. An Agency should consider the design approach early and if novation is contemplated, have early and open dialogue with the prospective Service Providers during the Service Provider tender process. Under a long form Contract where the Agency requires novation of the Service Provider's Contract, a pro forma deed of novation will be attached to the Contract. To the extent permissible, an Agency should explore whether details of a potential incoming client or Principal Contractor can be shared with Service Provider.
K Force Majeure & Suspension			
1	Force Majeure	<ul style="list-style-type: none"> a) Parties are not liable for failure to perform obligations which are prevented or delayed due to a Force Majeure Event. b) A Force Majeure Event must be beyond the reasonable control of parties and in respect of the Service Provider, could not have been wholly mitigated. c) Full form definitions of Force Majeure Events to be exhaustive, generally specifying events such as: acts of terrorism (taking place in Australia); war (taking place in Australia); ionising radiation or radioactive contamination; confiscation; nationalisation; or property damage under the order of any Government taking place in Australia. d) Long form Contract to provide termination right for prolonged Force Majeure Events, for example of 3 months duration. e) Payments due and payable to the Service Provider for obligations performed prior to Force Majeure Event are not affected. 	Existing templates are generally silent on Force Majeure Events. It is in both parties' interests that their rights and obligations in circumstances of Force Majeure Events are expressly provided for in the Contract.

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2	Suspension	<p>a) Agency can suspend the Service Provider's Services in its discretion.</p> <p>b) Service Provider is entitled to reasonable costs directly and properly incurred if it has:</p> <ol style="list-style-type: none"> i. not caused the suspension ii. notified the Agency of anticipated costs iii. complied with any directions of the Agency to minimise its costs iv. taken all necessary measures to minimise its costs and mitigate the effects of the suspension. <p>c) A time cap, for example, 90 days, applies to the suspension period, after which the Agency must terminate the Contract.</p>	Template Contracts should allow for suspension of the Services, which includes cost relief where the Service Provider is not at fault, and a cap on the suspension period.
L Defaults and Termination			
1	Service Provider defaults	<p>Each of the following events give rise to a Service Provider default event, entitling the Agency to terminate the Contract:</p> <ul style="list-style-type: none"> • Insolvency Event • Substantial breach that is not capable of remedy • Substantial breach that is unremedied for a specified timeframe from notice (e.g. 10 Business Days) <p>Substantial breaches include:</p> <ul style="list-style-type: none"> • Abandonment of obligations • Failure to proceed with due diligence and without delay • Failure to provide insurances • Breach of obligations of confidentiality and privacy • Breach of Modern Slavery provisions • Breach of Intellectual Property obligations 	The nature of Service Provider defaults which could lead to termination of the Contract should be standardised across Government contracts and should be expressly provided for.
2	Termination for Convenience	<p>Agency can terminate the Contract for convenience after providing the Service Provider with:</p> <ul style="list-style-type: none"> • (Short Form Contract) 5 Business Days' notice • (Long Form Contract) 15 Business Days' notice. 	The right to terminate the Contract for convenience should be included in the template Contracts to provide the Agency with the necessary discretion to terminate the Contract if considered necessary. Where the Service Provider is not at fault, an express notice period should apply.

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3	Termination by Service Provider	Service Provider may terminate the Contract for non-payment only (after notification steps taken and time periods for payment elapse).	As the Agency's primary obligation is payment, a Service Provider should have standardised but limited rights to terminate the Contract for non-payment only.
4	Payment on Termination (no default)	a) Agency to pay the Service Provider the fee for Services performed up to termination of the Contract, plus actual and direct costs properly incurred as a result of termination. b) Service Provider's payment entitlement is limited to the amount in a) above. Service Provider has no claim for loss of profit.	Service provider's entitlement to payment on termination of the Contract should be clear and standardised. There are inconsistent approaches across existing Government contracts to paying a Service Provider for loss of profit and capping of direct reimbursable expenses.
5	Payment on Termination (default)	Service Provider to be entitled to payment for Services performed up to termination of the Contract less any adjustments or set offs.	There are inconsistent approaches across existing Government contracts as to whether a Service Provider is entitled to payment where the Contract is terminated due to the default of the Service Provider. It is reasonable that a Service Provider be entitled to payment for Services performed up to termination of the Contract less any adjustments or set offs.
6	Dispute Resolution	Alternate dispute resolution forums to apply at the option of the Agency having regard to the nature of the Services and value of the Contract.	Options for alternate dispute resolution forums should apply, though the forum should be appropriate having regard to the nature of the Services and value of the Contract.
M General			
1	Relationship of parties	Relationship of parties is one of independent contractor only - no relationship of partnership, joint venture, employment or agency and Service Provider has no right to bind the Agency (unless authorised in writing).	Standard and default wording regarding the relationship of the parties, i.e. that of client and independent contractor, should apply. The default position should be that no agency relationship exists. If applicable, agency appointments should be limited, expressed in writing and the scope of any authority should be clear.
2	Secondment	a) For secondment arrangements where the Service Provider provides the Agency with one of its representatives for a period, the Agency to have sole responsibility for the secondees work. b) Requirements for Professional Indemnity Insurance to be waived for secondments where the secondees is acting as an agent for the Agency.	A different risk and commercial profile will apply where the parties agree that a representative of the Service Provider will be engaged on a secondment basis. Secondment provisions should only apply on an exceptions basis as Special Conditions of the Contract.