Liquidated Damages (CORE)

Note to drafters: The LD Amounts in clause 1.1 exclude GST.

Note to tenderers: Attachment D will consist of an amalgamation of information contained in this draft Attachment, the successful tenderer’s response and any negotiated adjustments.

1. FOR FAILURE TO ACHIEVE A KEY REQUIREMENT

Note to drafters: Drafters are to include:

1. the relevant Key Requirements to which liquidated damages are to be applied;
2. the rate of liquidated damages and/or the formula for its calculation; (not including any adjustment as per clause 2.1 below); and
3. any other specific conditions which are to apply in addition to the formula for variation of LD Amounts set out below.

The amount specified must be a genuine pre-estimate of the loss that will be suffered by the Commonwealth as a result of the failure to achieve the Key Requirement.

If drafters have included clause 1.5.10a in the COC, drafters should ensure the lump sum amount in clause 1.5.10 reflects the Commonwealth's loss arising from a termination of the Contract before OD occurs.

* 1. For each Key Requirement listed in an item below, the LD Amount applicable to that Key Requirement is the amount set out in the corresponding column for that item.

|  |  |  |
| --- | --- | --- |
| Item | Key Requirement | LD Amount  (GST exclusive) |
| (a) | (b) | (c) |
| 1. 1 | 1. The Contractor fulfils each of its obligations under clause 1.5.3a of the COC by the Planned OD. |  |
| 1. 2 |  |  |

* 1. The LD Amounts are GST exclusive.

1. ADJUSTMENT TO LIquidated damages
   1. The LD Amounts in clause 1.1 shall be subject to adjustment in accordance with the following formula:



where:

|  |  |
| --- | --- |
| A = | adjustment; |
| LD = | value of the relevant LD Amount at the Base Date (specified in the Details Schedule); |
| CPIi = | the CPI number for the quarter ending immediately before the date on which the LD Amounts are paid to the Commonwealth; and |
| CPIo = | the CPI number for the quarter containing the Base Date. |

* 1. In this Attachment D, ‘CPI’ means the Consumer Price Index, All Groups, weighted average of eight capital cities published by the ABS, or if that Index is no longer published by the ABS, the index published by the ABS in substitution for that Index.
  2. To avoid doubt, if the Commonwealth elects to accept compensation in lieu of liquidated damages under clause 10.6 of the COC, (as the case may be) the value of the compensation to which the Commonwealth shall be entitled is equivalent to the LD Amount that would otherwise be payable to the Commonwealth in respect of the relevant Key Requirement, as varied by the formula set out in clause 2.1.