



Australian Government
Defence

[INSERT NAME OF SUPPLIES] DEED OF STANDING OFFER

DEED NO: [INSERT NUMBER]

DETAILS SCHEDULE

PARTIES

COMMONWEALTH OF AUSTRALIA represented by the Department of Defence
ABN 68 706 814 312 (Commonwealth)

Commonwealth Representative:	(INSERT NAME)	
Notice Details:	Address:	(INSERT POSTAL ADDRESS)
	Fax:	(INSERT FAX NUMBER)
	Email:	(INSERT EMAIL ADDRESS)

(INSERT FULL NAME OF CONTRACTOR) ABN (INSERT CONTRACTOR'S ABN) (Contractor)

Contractor Representative:	(INSERT NAME)	
Notice Details:	Address:	(INSERT POSTAL ADDRESS)
	Fax:	(INSERT FAX NUMBER)
	Email:	(INSERT EMAIL ADDRESS)

INFORMATION TABLE

Item	Information		
Item 1 (clause 1.3.1)	Term:	Effective Date:	(INSERT DATE OF EXECUTION OF DEED)
		Expiry Date:	(INSERT DATE)
Item 2 (clause 3.2.1)	Defect Rectification Period:	[INSERT PERIOD - THIS SHOULD BE 90 DAYS OR THE CONTRACTOR'S OR MANUFACTURER'S STANDARD WARRANTY PERIOD (WHICHEVER IS THE LONGER)]	
Item 3 (clause 9.3.1)	Limitation Amount: (Optional)	[INSERT AMOUNT]	
Item 4 (clause 11.1.1)	Governing Law:	[INSERT RELEVANT STATE OR TERRITORY]	

TABLE OF CONTENTS

1	Deed Framework	1
1.1	Definitions (Core).....	1
1.2	Interpretation (Core).....	1
1.3	Term (Core)	1
1.4	Entire Agreement (Core).....	2
1.5	Precedence of Documents (Core)	2
1.6	Formation and Operation of Deed (Core).....	2
1.7	Ordering of Supplies (Core).....	2
1.8	No Assurance of Orders (Core).....	3
2	ROLES AND REPOSIBILITIES	3
2.1	Authorised Officer (Core).....	3
2.2	Notices (Core).....	4
2.3	Repairable Items (Core).....	4
3	PROVISION OF SUPPLIES	4
3.1	Supplies (Core).....	4
3.2	Defects (Core).....	4
3.3	Approvals and Compliance (Core).....	5
4	AUSTRALIAN INDUSTRY CAPABILITY	6
5	CONTRACT MATERIAL AND INTELLECTURAL PROPERTY	6
5.1	Ownership of Intellectual Property (Core).....	6
5.2	Contract Material (Core)	6
5.3	No Commercialisation (Core)	6
5.4	Warranties (Core)	7
6	ACCEPTANCE AND OWNERSHIP	7
6.1	Acceptance (Core).....	7
6.2	Ownership and Risk (Core)	7
7	PRICE AND PAYMENT	7
7.1	Price Basis (Core).....	7
7.2	Payment (Core).....	9
7.3	Late Payment (Core).....	9
7.4	Invoice (Core)	10
8	WARRANTIES	10
8.1	Warranty (Core)	10
9	INSURANCE AND LIABILITY	10
9.1	Indemnity (Core)	10
9.2	Insurance (Core).....	11
9.3	Limitation of Liability (Optional).....	11
10	DEED MANAGEMENT	11
10.1	Assignment (Core).....	11
10.2	Commonwealth Access (Core).....	11
10.3	Subcontracting (Core).....	12

10.4 Security and Safety (Core) 13

11 POLICY AND LAW 15

11.1 Governing Law (Core)..... 15

11.2 Workplace Gender Equality (Optional) 15

11.3 Indigenous Procurement Policy (Optional) 16

11.4 Shadow Economy Procurement Connected Policy (Optional) 16

11.5 Country of Tax Residency (Optional)..... 18

11.6 Child Safety (Optional)..... 18

11.7 Modern Slavery (Optional)..... 19

11.8 Commonwealth Supplier Code of Conduct (Core) 19

11.9 Australian Skills Guarantee (Optional)..... 20

12 DISPUTES AND TERMINATION 20

12.1 Termination (Core)..... 20

12.2 Set Off (Core)..... 21

ATTACHMENTS

A. Statement of Work A -1

B. Price and Delivery Schedule B -1

C. Tasking Order C -1

D. Contract Material Rights Schedule D -1

E. Glossary..... E-1

1 DEED FRAMEWORK

1.1 Definitions (Core)

1.1.1 In the Deed and in any Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them by the Details Schedule or by the Glossary at Attachment E. The Glossary also contains a list of documents referred to in the Deed and details of the version that is applicable to the Deed and any Contract.

1.2 Interpretation (Core)

1.2.1 In the Deed and in any Contract, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed or any Contract;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes any others;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date specified in the Details Schedule and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word 'includes' in any form is not a word of limitation;
- k. a reference to a party includes that party's administrators, successors, and permitted assignees, including any person to whom that party novates any part of the Deed or any Contract; and
- l. a provision stating that a party 'may' agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval

1.2.2 All information delivered as part of the Supplies under the Deed and any Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or, if Supplies are imported, units of measurement as agreed by the Commonwealth Representative.

1.3 Term (Core)

1.3.1 The Deed is legally binding from the Effective Date specified in the Details Schedule. Unless terminated earlier, the Deed expires on the Expiry Date specified in the Details Schedule.

1.3.2 The termination or expiry of this Deed does not, of itself, affect the validity or ongoing force or effect of individual Contracts placed under this Deed. The Contractor shall fulfil all Contracts placed by the Commonwealth under clause 1.7 during the Term notwithstanding that the date for completion of the Contract may occur after the date on which the Deed has expired.

1.4 Entire Agreement (Core)

- 1.4.1 The Deed represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

1.5 Precedence of Documents (Core)

- 1.5.1 If there is any ambiguity or inconsistency between the documents comprising the Deed, the document appearing higher in the following list will have precedence to the extent of the ambiguity or inconsistency:
- a. the Deed;
 - b. the Attachments; and
 - c. any document incorporated by express reference as part of the Deed.

1.6 Formation and Operation of Deed (Core)

- 1.6.1 The Deed constitutes a standing offer for the Term during which the Commonwealth may require the Contractor to provide Supplies as and when required by the Commonwealth in accordance with clause 1.7.

1.7 Ordering of Supplies (Core)

- 1.7.1 The range of Supplies which the Contractor offers the Commonwealth and the technical requirements, Lead Times and prices applicable to those Supplies are set out in Attachments A and B.

Note to drafters: Clause 1.7.2 should be amended if either of the optional clauses 3 or 5 of Attachment A are not used or clause 3.3 of Attachment A is omitted. If neither clause 3.3 nor clause 5 of Attachment A are included in the draft deed, then clause 1.7.2 should be deleted and replaced with 'Not used'.

- 1.7.2 Additionally, subject to clause 1.7.8, the Commonwealth may request a quote for Maintenance Services or codification data in accordance with clauses 3.3 or 5.2 of Attachment A, respectively, and within 10 Working Days (or other time as agreed by the Authorised Officer), the Contractor shall provide a quote for the Maintenance Services or codification data. If satisfied with the quote, the Authorised Officer will order the Maintenance Services or codification data in accordance with clause 1.7.3.
- 1.7.3 If the Commonwealth requires any Supplies, the Authorised Officer shall submit a Tasking Order to the Contractor which specifies:
- a. the Supplies it requires from those listed in Attachment B; and
 - b. the Special Conditions (if any) that the Commonwealth requires to apply to the delivery or performance of those Supplies.
- 1.7.4 If the Commonwealth specifies Special Conditions in a Tasking Order submitted to the Contractor under clause 1.7.3, the Contractor shall confirm within 10 Working Days (or other time as agreed by the Authorised Officer) that it agrees to those Special Conditions and will comply with them in the delivery or performance of the Supplies. If the Contractor does not confirm its agreement within 10 Working Days (or other time as agreed by the Authorised Officer) the Commonwealth may procure the relevant Supplies from an alternate contractor.
- 1.7.5 A Contract for the delivery or performance of Supplies described in a Tasking Order will be formed and effective on and from the date that:
- a. the Commonwealth Representative submits a Tasking Order to the Contractor in accordance with clause 1.7.3; or
 - b. if Special Conditions are to apply to the delivery or performance of Supplies, from the date the Contractor provides confirmation of its acceptance of the Special Conditions under clause 1.7.4.
- 1.7.6 The terms of each Contract formed under this clause 1.7 shall comprise:

- a. the Special Conditions, if any, specified in the Tasking Order;
 - b. clauses 1, and 3.1 to 12.2 of this Deed;
 - c. Attachment A (SOW) and Attachment B to this Deed; and
 - d. the details set out in the Tasking Order.
- 1.7.7 To the extent of any inconsistency between documents forming part of a Contract formed under this clause 1.7, the provisions of the higher ranked document at clause 1.7.6 shall prevail to the extent of the inconsistency.
- 1.7.8 The Contractor acknowledges and agrees that this Deed is not intended for use by the Commonwealth to procure Goods, Maintenance Services or other Supplies that involve:
- a. design and development activities;
 - b. modification of systems;
 - c. systems installation or integration;
 - d. maintenance activities on Defence premises; and
 - e. **[INSERT OTHER SPECIFIC TYPE OF WORK OR TASK(S) FOR WHICH CONTRACTS UNDER THE DEED SHOULD NOT BE USED].**
- 1.7.9 If, at any time, the Contractor is requested to quote for, or provide or perform, Supplies under this Deed that require or involve any one or more of the activities described in clause 1.7.8 above, then prior to performing or quoting in relation to those Supplies the Contractor shall notify the Commonwealth in writing that the request to quote or provide such Supplies is inconsistent with clause 1.7.8.

1.8 No Assurance of Orders (Core)

- 1.8.1 The Commonwealth does not make any representation nor in any way binds itself to placing any specific number of Tasking Orders or any Tasking Orders at all, during the Term of the Deed.
- 1.8.2 The Deed or any Tasking Orders are not to be interpreted as:
- a. the Contractor having the right to be the sole provider of the Supplies, or any part of the Supplies, to the Commonwealth; or
 - b. the Commonwealth being prevented from seeking the Supplies from other contractors.

2 ROLES AND RESPONSIBILITIES

2.1 Authorised Officer (Core)

- 2.1.1 The Commonwealth Representative may nominate to the Contractor by written notice from time to time any Authorised Officers for the purposes of the Deed. The written notice shall include the address, fax number and email address at which notice or communication under the Deed or any Contract is to be delivered to the Authorised Officer.
- 2.1.2 An Authorised Officer is responsible for placing and administering Contracts on behalf of the Commonwealth. The Contractor shall comply with the reasonable directions of the Authorised Officer made within the scope of the administration of a Contract. All directions by an Authorised Officer will be provided in writing.
- 2.1.3 Unless authorised by this Deed or any Contract or a direction given under clause 2.1.2, any work performed or cost incurred by the Contractor in response to a communication from the Authorised Officer is at the Contractor's sole risk.
- 2.1.4 Notwithstanding any other provision of this Deed or any Contract, the Authorised Officer for the purposes of a Contract is the Authorised Officer who placed that Contract.

2.2 Notices (Core)

- 2.2.1 Any notice or communication under the Deed will be effective if it is in writing, signed and delivered to the Commonwealth Representative or Contractor Representative, as the case may be, in accordance with the Notice Details set out in the Details Schedule.
- 2.2.2 Any notice or communication under any Contract will be effective if it is in writing, signed and delivered to the Authorised Officer at the address specified in the written notice under clause 2.1.1 or, as the case may be, to the Contractor Representative in accordance with the Notice Details.
- 2.2.3 Notices or communications that relate to a specific Contract shall clearly identify the specific Contract (for example by Tasking Order number).

2.3 Repairable Items (Core)

- 2.3.1 The Contractor acknowledges that all Repairable Items remain the property of the Commonwealth at all times.
- 2.3.2 If a Contract requires the performance of Maintenance Services in relation to a Repairable Item then:
- a. the Contractor shall collect or accept delivery of the Repairable Item in accordance with the relevant Contract for Maintenance Services;
 - b. the Contractor shall keep the Repairable Item safe and secure and not use the Repairable Item for any purpose other than for the purpose of providing the Maintenance Services;
 - c. the Contractor shall not part with possession or control of the Repairable Item except where specified in the relevant Contract or otherwise agreed by the Authorised Officer;
 - d. the Contractor shall not create or allow to be created any lien, charge, mortgage or encumbrance over the Repairable Item; and
 - e. the Contractor shall return the Repairable Item to the Commonwealth on or before the Delivery Date specified in the Tasking Order that forms part of that Contract.

3 PROVISION OF SUPPLIES**3.1 Supplies (Core)**

- 3.1.1 For each Contract formed pursuant to clause 1.7, the Contractor shall, for the Contract Price, and any other payment required under that Contract, provide the Supplies in accordance with that Contract, and fulfil all other obligations as specified in that Contract.
- 3.1.2 The Contractor shall not respond to any directions in relation to a Contract unless those directions are issued by the Authorised Officer.
- 3.1.3 The Contractor shall deliver the Supplies required to be delivered under each Contract in accordance with the SOW at Attachment A.

3.2 Defects (Core)

- 3.2.1 Notwithstanding acceptance of the Supplies by the Commonwealth in accordance with clause 6.1, the Contractor shall remedy at its cost any defects in the Supplies notified by the Commonwealth to the Contractor at any time within the Defect Rectification Period specified in the Details Schedule following acceptance of the Supplies by the Commonwealth.
- 3.2.2 The Contractor shall remedy all defects notified to it by the Commonwealth under clause 3.2.1 promptly, to a high professional standard, and in accordance with the directions of the Commonwealth. The Contractor shall bear all costs and expenses arising out of, or in connection with the remedy of defects in Supplies in accordance with clause 3.2.1.
- 3.2.3 If the Contractor does not remedy any defect, the Commonwealth may (itself or through a third party) remedy the defect and the costs incurred by the Commonwealth in doing so will be a debt due from the Contractor to the Commonwealth.

3.3 Approvals and Compliance (Core)

- 3.3.1 The Contractor shall obtain and maintain in force any necessary export licences, licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the delivery of the Supplies or the work performed under the Deed or any Contract and arrange any necessary customs entry for the Supplies. The Contractor shall comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Deed or any Contract is to be carried out and all Commonwealth policies relevant or applicable to the Deed or any Contract.
- 3.3.2 Subject to any relevant foreign government restrictions, where the Contractor provides the Supplies to the Commonwealth in Australia and the Supplies include plant which requires registration of design under the WHS Legislation (see Part 1 of Schedule 5 of the *Work Health and Safety Regulations 2011* (Cth)) or an OHS Law (in the case of an OHS Law, as a result of a licence being granted to the Australian Defence Organisation - see Regulation 743 of the *Work Health and Safety Regulations 2011* (Cth)), the Contractor shall:
- a. obtain the registration of design from a relevant regulator (or where this is not possible, from the Australian Defence Organisation pursuant to a licence granted under the OHS Law) and provide this to the Commonwealth at the time the Contractor provides the Supplies to the Commonwealth;
 - b. attach a data plate to the relevant item (or items) of plant with the design registration details (or in a circumstance where it is not practicable to attach the data plate to the relevant item of plant, the data plate is to be affixed in a prominent place in the vicinity of the plant), which includes:
 - (i) the Design Registration Number (DRN);
 - (ii) the date of issue of the DRN; and
 - (iii) the name of the Commonwealth, State or Territory regulator that issued the DRN; and
 - (iv) provide maintenance documentation that details all mandatory maintenance activities and inspections required to ensure the plant is without risks to health and safety, including those required by an OHS Law or the WHS Legislation at the time the Contractor provides the Supplies to the Commonwealth.
- 3.3.3 Subject to any relevant foreign government restrictions, where the Contractor provides the Supplies to the Commonwealth outside Australia and the Supplies include plant which requires registration of design under the WHS Legislation (see Part 1 of Schedule 5 of the *Work Health and Safety Regulations 2011* (Cth)) or an OHS Law (in the case of an OHS Law, as a result of a licence being granted to the Australian Defence Organisation - see Regulation 743 of the *Work Health and Safety Regulations 2011* (Cth)), the Contractor shall, at the time the Contractor provides the Supplies to the Commonwealth, provide to the Commonwealth all information sufficient for the Commonwealth to register the design of the plant in Australia. Such information may include:
- a. a statement signed by the designer of the plant specifying the published technical standards and engineering principles used in the design;
 - b. a design verification statement in a format supplied by the Commonwealth;
 - c. representational drawings of the design; and
 - d. a statement in a format supplied by the Commonwealth concerning compliance with the designer obligations of the WHS Legislation.

4 AUSTRALIAN INDUSTRY CAPABILITY

Note to drafters: *If the expected value of a Contract under any resultant Deed is less than \$4 million (including GST), or an exemption from the AIC program applies (refer to the 2019 Defence Policy for Industry Participation), then an AIC program is not required.*

If an AIC program is not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading. This will preserve the clause numbering and cross references throughout the Deed.

If the expected value of any resultant Contract is at or above \$4 million and less than \$20 million (including GST), then Australian Industry Capability (AIC) requirements will need to be inserted. Drafters should transfer the provisions from the ASDEFCON (Standing Offer for Services) template.

If the expected value of a Contract under any resultant Deed is at or above \$20 million (including GST), then a more extensive AIC program, including an AIC Plan, will be required. Drafters will then need to transfer and tailor appropriate provisions from the higher level ASDEFCON templates into the draft Contract, and update the applicable tender data requirements. Drafters should contact their contracting officer for guidance on how to incorporate these requirements.

Drafters can consult with:

CASG AIC Division at: aic.delivery@defence.gov.au; and

Strategy, Policy and Industry (SP&I) Group's AIC Directorate at aic.info@defence.gov.au or visit:

• <http://drnet/strategy/DIPD/Australian-Industry-Capability/Pages/AIC.aspx>.

5 CONTRACT MATERIAL AND INTELLECTUAL PROPERTY

5.1 Ownership of Intellectual Property (Core)

Note to drafters: *The Commonwealth's default position as reflected in clause 5.1 is that the Contractor (or its nominee) will own all IP created under the Deed and any Contract or Subcontract. If Commonwealth ownership of IP (for example, if the Contractor will be developing Commonwealth-owned IP or for security reasons), further tailoring will be required.*

Note to tenderers: *The Commonwealth's default position reflected in clause 5.1 is that the Contractor (or its nominee) will own all IP created under the Deed.*

5.1.1 Nothing in this Deed or under any Contract affects the ownership of Intellectual Property (IP), except as expressly provided for in this clause 5.

5.1.2 All IP created under this Deed or under any Contract in respect of Contract Material is assigned to the Contractor (or its nominee) immediately upon its creation.

5.2 Contract Material (Core)

5.2.1 The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material (other than Commercial Material) to Use the Contract Material for any Defence Purpose and to grant a sublicense to:

- a. a Commonwealth Service Provider to Use the Contract Material to enable it to perform its obligations, functions or duties to the Commonwealth; and
- b. any person to Use the Contract Material, or to grant a further sublicense to Use the Contract Material, for a Defence Purpose but subject to any restrictions specified in the Contract Material Rights (CMR) Schedule for the relevant Contract Material.

5.2.2 The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial Material on the best commercial terms.

5.3 No Commercialisation (Core)

5.3.1 A Licence or sublicense granted in accordance with this clause 5 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the Contract Material.

- 5.3.2 For the avoidance of doubt, clause 5.3.1 does not prevent the Commonwealth from granting a sublicense in accordance with the rights granted in this clause 5 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.

5.4 Warranties (Core)

- 5.4.1 The Contractor warrants that the rights granted to the Commonwealth in accordance with this clause 5, will not prevent the Commonwealth from:
- a. Using the Contract Material; or
 - b. otherwise obtaining the benefit of the Services as contemplated under the Contract.
- 5.4.2 The Contractor warrants and shall ensure that, in respect of all IP licensed to the Commonwealth under or in connection with this Contract:
- a. the relevant licensor has the right, title or authority to license, and has been made aware of, the rights granted in respect of IP under this clause 5; and
 - b. as at the time of delivery and after making diligent enquiries, the Contractor has no notice of any challenge, claim or proceeding in respect of any such IP.
- 5.4.3 The Contractor shall notify the Commonwealth if the Contractor becomes aware of any challenge, claim or proceeding referred to in clause 5.4.2b arising in respect of any IP after the Contract Material is delivered to the Commonwealth.

6 ACCEPTANCE AND OWNERSHIP

6.1 Acceptance (Core)

- 6.1.1 The Commonwealth may accept or reject the relevant Supplies within 10 Working Days after delivery of the Supplies to the Delivery Location specified in the relevant Contract. If the Commonwealth does not notify the Contractor of acceptance or rejection within the 10 Working Day period, the Commonwealth will be taken to have accepted the Supplies on the expiry of the 10 Working Day period. The Commonwealth may reject the Supplies where the Supplies do not comply with the requirements of the relevant Contract including any acceptance tests specified. If the Commonwealth rejects the Supplies the Commonwealth may:
- a. require the Contractor to provide, at the Contractor's cost, replacement Supplies which comply with the requirements of the relevant Contract within a period determined by the Commonwealth; or
 - b. terminate the relevant Contract in accordance with clause 12.1.2.
- 6.1.2 If required by the Commonwealth, the Contractor shall promptly remove any rejected Goods or Repairable Items (or both) from the Commonwealth's premises at the Contractor's cost.

6.2 Ownership and Risk (Core)

- 6.2.1 Title to the Goods transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with clause 6.1. The risk of any loss or damage to the Goods remains with the Contractor until their delivery to the Commonwealth at the Delivery Location specified in the relevant Contract. The Contractor bears the risk of any loss or damage to a Repairable Item from the time at which the Repairable Item is either delivered to, or picked up by, the Contractor until the return of the Repairable Item to the Commonwealth at the Delivery Location.

7 PRICE AND PAYMENT

7.1 Price Basis (Core)

- 7.1.1 The Contract Price is inclusive of GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas. (For contracts raised through the Military Integrated Logistics Information System (MILIS) the GST will be applied at the invoice stage). The Contract Price includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

Option: Where price adjustment is allowed.

Note to drafters: These clauses should be used when the Term of the Deed is greater than two years and adjustments for fluctuation in the cost of labour and materials will be allowed. This Deed is not approved for use for a term of greater than five years.

7.1.2 The prices at Attachment B shall be subject to adjustments on the Price Adjustment Date to reflect changes in the cost of labour and materials in accordance with this formula:

$$AUP = EDP \times \frac{V}{V_0}$$

where:

AUP = Adjusted Price;

EDP = Price at Effective Date;

V = the index number for the quarter preceding the quarter containing the applicable Price Adjustment Date; and

V₀ = the index number for the quarter containing the Effective Date;

and

The index number to be used in the formula is the first published index number for the relevant quarter.

7.1.3 10 Working Days prior to the Price Adjustment Date, the Contractor shall supply to the Commonwealth an updated Price and Delivery Schedule calculated in accordance with the formula at clause 7.1.2.

7.1.4 Within 10 Working Days of receiving the updated Price and Delivery Schedule in accordance with clause 7.1.3, the Commonwealth shall inform the Contractor that it either:

- a. accepts the updated Price and Delivery Schedule as an accurate application of the formula at clause 7.1.2; or
- b. rejects the updated Price and Delivery Schedule as an accurate application of the formula at clause 7.1.2 and shall instruct the Contractor to make any changes necessary to give application to the formula.

7.1.5 The Contract Price shall be calculated with respect to the date of issue of the Tasking Order.

Note to drafters: If the prices for different items of Supplies are to be adjusted with reference to different indices, or a formula which applies to more than one index is considered necessary, the template must be amended. Drafters should contact Commercial Financial Analysis (CFA) if they require further assistance.

Drafters must select an appropriate index from the list of CFA approved indexes. Any index selected which is not included in the CFA approved list of indexes must be reviewed and cleared by CFA prior to inclusion in the RFT or Standing Offer. The list of approved indexes is available from:

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/682BB2D7-2D14-408A-9B47-888C261DAFE0>

7.1.6 The designated index shall be as follows:

Description of Index	Table	Group
Example ABS Catalogue 6427 Producer Price Indexes	11	ARTICLES PRODUCED BY MANUFACTURING INDUSTRIES (a) Subdivision & Group. Electronic Equipment and other machinery (283-286).

7.2 Payment (Core)

Note to tenderers: Per the Commonwealth Supplier Pay On-Time or Pay Interest Policy, maximum payment terms will depend on the applicability of the Pan-European Public Procurement On-Line (PEPPOL) framework. The maximum payment term will either be:

- 5 days, where the Commonwealth and the Contractor both have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or
- 20 days where the PEPPOL framework does not apply.

Further information on the Supplier Pay On-Time or Pay Interest Policy is available at:

- <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417>.

7.2.1 The Commonwealth shall pay the Contract Price to the Contractor within the following period (as applicable) after receiving a correctly rendered invoice in accordance with clause 7.4:

Note to tenderers: The option selected below will depend on the tenderer's response to clause 24.1 of the Conditions of Tender.

Option A: For when the PEPPOL framework has been agreed by the Commonwealth and the Contractor.

7.2.2 The Commonwealth and the Contractor shall use electronic invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework for the purposes of the delivery and receipt of payment claims under the Contract.

7.2.3 When a claim is Approved under clause 7.2.1, the Commonwealth shall make payment within 5 days of receipt of the claim.

Option B: For when the use of the PEPPOL framework has not been agreed by the Commonwealth and the Contractor.

7.2.4 When a claim is Approved under clause , the Commonwealth shall make payment within 20 days of receipt of the claim.

7.2.5 Subject to compliance with clause 7.4, the Commonwealth is deemed to have received a correctly rendered invoice at the following times:

- a. at the time of delivery of the Supplies where the invoice is supplied:
 - (i) prior to delivery of the Supplies; or
 - (ii) at the time of delivery of the Supplies;
- b. at the time of actual receipt of the invoice, where the invoice is provided by the Contractor after delivery of the Supplies.

7.3 Late Payment (Core)

Note to drafters: In accordance with the Supplier Pay On-Time or Pay Interest Policy, the Commonwealth is obliged to pay interest when it does not make payment in full within the maximum payment terms. Refer to Resource Management Guide 417 for further information, including exceptions to the application of the policy:

- <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417>.

7.3.1 If payment of an amount due to the Contractor under a Contract is made late, the Commonwealth shall pay interest on the unpaid amount, whether or not the Contractor has submitted a separate invoice for the interest.

7.3.2 Interest payable by the Commonwealth under this clause 7.3 shall be calculated in accordance with the following formula:

$$\text{Interest payment} = \frac{I\% \times P \times n}{365}$$

Where:

- “I%” means the Australian Taxation Office (ATO) sourced General Interest Charge rate current at the due date of payment expressed as a percentage;
- “P” = the amount of the late payment.
- “n” = the number of days that the payment was late up to and including the day that the payment is made.

7.3.3 Interest shall only be payable in accordance with this clause 7.3 if the interest amount exceeds A\$100.

7.4 Invoice (Core)

7.4.1 The Contractor shall submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if:

- a. it is correctly addressed and calculated in accordance with the relevant Contract;
- b. the Commonwealth has not rejected the Supplies under clause 6.1;
- c. it is for an amount which does not exceed the relevant Contract Price;
- d. it includes the Tasking Order number, and the name and phone number of the Authorised Officer; and
- e. it is a valid tax invoice in accordance with the GST Act.

7.4.2 The Contractor shall promptly provide to the Authorised Officer such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the relevant Contract by the Contractor or payment of the Contract Price by the Commonwealth.

8 WARRANTIES

8.1 Warranty (Core)

8.1.1 The Contractor warrants that:

- a. the Goods are new (unless agreed in writing with the Authorised Officer in accordance with clause 3.7 of Attachment A), free from deficiencies in design, manufacture and workmanship and are fit for the purposes for which the Contractor knows, or ought reasonably to know, the Goods are to be used;
- b. in providing the Maintenance Services, it will use workmanship of a standard consistent with best industry standards for work of a similar nature to the provision of the Maintenance Services and which is fit for its intended purpose; and
- c. the Maintenance Services and Goods that the Contractor performs or uses on, or in relation to, each Repairable Item shall not adversely affect the condition, functionality or capability of the Repairable Item.

9 INSURANCE AND LIABILITY

9.1 Indemnity (Core)

9.1.1 The Contractor indemnifies the Commonwealth, its officers, employees and agents against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- a. a default or any unlawful, wilful or negligent act or omission on the part of the Contractor, its officers, employees, agents or subcontractors; or

- b. any action, claim, dispute, suit or proceeding brought by any third party in respect of any infringement or alleged infringement of that third party's Intellectual Property rights or moral rights in connection with the Supplies.

9.1.2 The Contractor's liability to indemnify the Commonwealth under clause 9.1.1a is reduced to the extent that any wilful, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or agents contributed to the liability, loss, damage, cost, compensation or expense.

9.2 Insurance (Core)

Note to drafters: If a Repairable Item is being provided to the Contractor, consideration should be given as to whether additional or specific insurance covering the Repairable Item is required.

9.2.1 The Contractor shall procure and maintain such insurances and on such terms and conditions as a prudent contractor, providing supplies similar to the Supplies, would procure and maintain.

9.3 Limitation of Liability (Optional)

Note to drafters: A risk assessment should be undertaken by the Commonwealth prior to release of the RFT to determine appropriate caps for inclusion in this clause 9.3.

Note to tenderers: The Commonwealth's preference is for liability under the Deed to be assessed according to common law principles. If the tenderer proposes an alternative liability regime, the following clause may be used – refer to the conditions of tender for further information.

9.3.1 Subject to clause 9.3.2, the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of the Contract will be limited in aggregate to the Limitation Amount specified in the Details Schedule.

9.3.2 The limitation in clause 9.3.1 does not apply to liability of the Contractor for:

- a. personal injury and death;
- b. loss of, or damage to, third party property or Commonwealth property (other than Defence property);
- c. breach of Intellectual Property rights, confidentiality, privacy or security obligations;
- d. fraud;
- e. unlawful (not including breach of contract) or illegal acts; or
- f. the Intellectual Property indemnity provided by the Contractor under clause 9.1.19.1.1b.

10 DEED MANAGEMENT

10.1 Assignment (Core)

10.1.1 The Contractor shall not assign any of its rights under the Deed or any Contract without the prior written consent of the Authorised Officer.

10.2 Commonwealth Access (Core)

10.2.1 At the Commonwealth Representative's request (acting reasonably), the Contractor shall permit the Commonwealth and its nominees timely and sufficient access to the Contractor's premises, records or accounts relevant to the Deed or any Contract to:

- a. undertake quality audits and quality surveillance (as defined in AS/NZ ISO 9000 current at the date the Tasking Order is issued) of the Contractor's quality system and/or the production processes related to the Supplies; and
- b. monitor the Contractor's work health and safety and environmental compliance in connection with the provision of the Supplies.

10.2.2 In addition, if the cumulative value of all Tasking Orders (by itself or cumulatively with previous changes to Tasking Orders) entered into under the Deed is equal to or greater than A\$100,000, the Contractor shall permit the Commonwealth and its nominees timely and

sufficient access to the Contractor's premises, records or accounts relevant to the Deed or any Contract to conduct audits under the *Auditor-General Act 1997*. The Commonwealth and its nominees may copy any records or accounts relevant to the Deed or any Contract and retain or use these records and accounts for the purposes of this clause 10.2.

10.2.3 Without affecting this clause 10.2, the Contractor acknowledges that:

- a. the Auditor-General has the power under the Auditor Act 1997 to conduct audits (including performance audits) of the Contractor and Subcontractors in relation to the Contract;
- b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest, in the report or the content of the extract; and
- c. the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, under clause 10.2.1.

10.3 Subcontracting (Core)

10.3.1 Subcontracting the whole or part of the Contractor's obligations under the Deed or any Contract will not relieve the Contractor from any of its obligations. Upon request, the Contractor shall make available to the Commonwealth the details of all subcontractors engaged to provide the Supplies under the Deed or any Contract. The Contractor acknowledges that the Commonwealth may be required to disclose such information.

Note to drafters: These clauses 10.3.2 to 10.3.6 must be included in the draft RFT when a procurement will be subject to the Payment Times Procurement Connected Policy (PT PCP). The PT PCP applies to procurements of new standing offers where the estimated value of all anticipated orders awarded under the standing offer is expected to exceed \$4 million (GST inclusive). If the value of the procurement is not known, it should be assumed for the purposes of the PT PCP, that the procurement is valued above \$4 million (inc GST), unless it is reasonable to assume otherwise.

It is not mandatory to include these clauses if any of the limitations at 2.1 of the PT PCP apply.

Note to tenderers: The Payment Times Procurement Connected Policy (PT PCP) imposes obligations on large businesses who enter into a contract with the Commonwealth to pay invoices under their new subcontracts (up to \$1 million (inc GST)) within 20 days. Late payments of invoices in scope will incur interest. Further information about the Payment Times Procurement Connected Policy is available from the Department of Treasury at:

- <https://treasury.gov.au/small-business/payment-times-procurement-connected-policy>.

The PT PCP complements the Government Supplier Pay On-Time or Pay Interest Policy.

The following clauses will be included in the COD if:

- **the Tenderer is a Reporting Entity as at the date of its tender response; and**
- **the estimated value all anticipated orders awarded under the standing offer is expected to exceed \$4 million (GST inclusive).**

10.3.2 The Contractor shall comply with the Payment Times Procurement Connected Policy (PT PCP), including the obligation to provide and comply with a PT PCP Remediation Plan (as defined in the PT PCP) when required to do so by the PT PCP Policy Team.

10.3.3 If the Contractor enters into a PT PCP Subcontract, the Contractor shall include in that subcontract:

- a. a requirement for the Contractor to pay the PT PCP Subcontractor:
 - (i) within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice provided that this does not affect any other obligation to comply with applicable legislation that provides for a shorter payment period; and

- (ii) subject to clause 10.3.5, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with the formula for late payments at clause 7.3;
 - b. a statement that the PT PCP applies to that subcontract;
 - c. a statement that the subcontractor may make a complaint to the PT PCP Policy Team in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 10.3.3;
 - d. a statement that the Contractor must respond to any complaint of non-compliance made by the subcontractor under clause 10.3.3c; and
 - e. a statement that, if requested by the PT PCP Policy Team, the Contractor must complete a questionnaire in the form of Appendix C to the PT PCP.
- 10.3.4 If the Contractor enters into a Reporting Entity Subcontract, the Contractor:
- a. shall include in that subcontract obligations equivalent to those in clause 10.3.3; and
 - b. use reasonable endeavours to include in that subcontract a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (i) obligations equivalent to those in clause 10.3.3; and
 - (ii) obligations equivalent to this clause 10.3.4b (such that the obligations in this clause 10.3.4b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 10.3.5 The Contractor is not required to pay interest in accordance with clause 10.3.3a(ii) if either:
- a. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - b. the amount of the interest that would otherwise be payable is less than \$100 (inc GST).
- 10.3.6 The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clauses 10.3.2 to 10.3.5, or the associated payment provisions of a PT PCP Subcontract, the Contractor shall:
- a. not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - b. cooperate in good faith with the PT PCP Policy Team in connection with any investigation or inquiry and any attempt to resolve the complaint.

10.4 Security and Safety (Core)

Note to drafters: Drafters should consider whether Defence Industry Security Program (DISP) membership in accordance with Control 16.1 of the DSPF is required for this contract. For further assistance and guidance in relation to determining whether DISP membership is required, refer to DISP Factsheet here:

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>.

If it is determined that DISP membership is required, a more extensive template will be required and drafters should refer to the ASDEFCON Suite of Tendering and Contracting Templates available at:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>

- 10.4.1 If the Commonwealth provides the Contractor with access to any Commonwealth place, area or facility, the Contractor shall comply with any security and safety requirements notified to the Contractor by the Commonwealth or of which the Contractor is aware and ensure that its

officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.

- 10.4.2 Where the Supplies are designed, manufactured, supplied, installed, commissioned or constructed by the Contractor within Australia or the Contractor imports the Supplies into Australia (and is an importer for the purposes of the WHS Legislation), the Contractor shall:
- a. comply with, and shall ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Deed or any Contract in Australia; and
 - b. where applicable, comply with, and must ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth, the Contractor or the subcontractors (as the case may be) and any other person who, concurrently with the Commonwealth, the Contractor or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.
- 10.4.3 Subject to any relevant foreign government restrictions, the Contractor shall provide to the Commonwealth Representative at the time the Contractor provides the Supplies to the Commonwealth adequate information concerning:
- a. each purpose for which the Supplies were designed or manufactured;
 - b. the results of any calculations, analysis, testing or examination carried out concerning the safety of the Supplies (and the risks to the health and safety of persons), including any hazardous properties identified by the testing; and
 - c. any conditions necessary to ensure the Supplies are without risks to health and safety when used for a purpose for which it was designed or manufactured.
- 10.4.4 Subject to any relevant foreign government restrictions, the Contractor shall, so far as is reasonably practicable, provide to the Commonwealth Representative within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any current relevant information concerning the matters referred to in clauses 10.4.3a to 10.4.3c.
- 10.4.5 The Contractor shall ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who use the Supplies for a purpose for which they were designed or manufactured.
- 10.4.6 Without limiting the Contractor's obligations under the Deed or any Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Supplies or the work performed under the Deed or any Contract, provide, and shall use its reasonable endeavours to ensure that a subcontractor provides, to the Commonwealth within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any information or copies of documentation requested by the Commonwealth and held by the Contractor or subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.
- 10.4.7 The Contractor shall not provide Supplies containing Asbestos Containing Material and shall not take any Asbestos Containing Material onto Commonwealth premises in connection with providing the Supplies.
- 10.4.8 If a Notifiable Incident occurs in connection with work carried out under the Deed or any Contract:
- a. on Commonwealth premises;
 - b. which involves Commonwealth personnel; or
 - c. which involves a Commonwealth specified system of work,
- the Contractor shall:
- d. immediately report the incident to the Commonwealth;

- e. promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
 - f. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
 - g. provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.
- 10.4.9 From time to time the Commonwealth may advise the Contractor of hazards to health and safety that have been identified at, or in the proximity of, Commonwealth premises where Contractor and/or subcontractor personnel may be working.
- 10.4.10 On receipt of advice from the Commonwealth under clause 10.4.9, the Contractor shall undertake necessary risk assessments, identify control measures and advise Contractor and/or subcontractor personnel of the hazards and risks and relevant control measures.
- 10.4.11 Unless the Commonwealth Representative otherwise agrees in writing, the Contractor shall:
- a. not deliver Supplies that contain or emit a Problematic Substance where:
 - (i) the Problematic Substance may affect the health or safety of persons who may be exposed to the Problematic Substance; or
 - (ii) a persons health or safety may be affected by the Problematic Substance when:
 - (iii) using the Supplies for a purpose for which they were designed or manufactured;
 - (iv) handling or storing the Supplies; or
 - (v) carrying out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; and
 - b. not use, handle or store a Problematic Substance on Commonwealth premises in connection with work carried out under the Deed or any Contract.

11 POLICY AND LAW

11.1 Governing Law (Core)

- 11.1.1 The laws of the jurisdiction specified in the Details Schedule apply to the Deed and each Contract.

11.2 Workplace Gender Equality (Optional)

Note to drafters: The following clauses must be used for procurements at or above the relevant procurement threshold and that do not meet the exemptions set out at Appendix A to the CPRs. If the procurement is specifically exempt from the additional rules detailed in Division 2 of the CPRs as a result of a Defence specific exemption (a list of Defence specific exemptions is found in the DPPM) the procurement will still be subject to the Workplace Gender Equality Procurement Principles and this clause must be used.

Note to tenderers: The following clauses apply only to the extent that the Contractor has identified itself as a Relevant Employer for the purposes of the Workplace Gender Equality Procurement Principles. The Workplace Gender Equality Procurement Principles will only apply to overseas based contractors to the extent that they have 100 or more employees in Australia.

- 11.2.1 The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act).
- 11.2.2 If the Contractor becomes non-compliant with the WGE Act during the period of the Deed or any Contract, the Contractor shall notify the Authorised Officer.

11.3 Indigenous Procurement Policy (Optional)

Note to drafters: The following clause is for use if the IPP mandatory minimum requirements are NOT included in the RFT.

Note to tenderers: It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. The Commonwealth Indigenous Procurement Policy is available at:

- <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>

11.3.1 The Contractor shall use its reasonable endeavours to increase its:

- purchasing from Indigenous enterprises; and
- employment of Indigenous Australians,

in the performance of the Contract. For the purposes of this clause “Indigenous enterprise” means an organisation that is 50 per cent or more Indigenous owned that is operating a business. Supply Nation maintains a list of enterprises that meet the definition of “Indigenous enterprises” (www.supplynation.org.au).

11.4 Shadow Economy Procurement Connected Policy (Optional)

Note to drafters: A procurement will be subject to the Shadow Economy Procurement Connected Policy where the procurement is conducted by open tender, subject to the CPRs and is valued at over \$4 million (inc GST). In the context of a standing offer, the estimated value of the procurement is the collective total value of all potential orders under the standing offer.

Note to tenderers: The Shadow Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain from contractors satisfactory and valid STRs and to require contractors to obtain and hold STRs in respect of certain Subcontractors. Further information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at:

- <https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>.

The Contractor will be required to obtain and hold copies of satisfactory and valid STRs for any Subcontractors that the Contractor directly engages (i.e. first tier Subcontractors) where the subcontract value will be over \$4 million (inc GST). Any STRs obtained from these Subcontractors must be provided to the Commonwealth upon request.

11.4.1 The Contractor shall not enter into a Subcontract with a proposed direct Subcontractor (or agree to a novation of a direct Subcontract) if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST), unless the Contractor has obtained and holds any the following STRs, as applicable to the proposed direct Subcontractor:

If the proposed Subcontractor to enter into the Subcontract is:	STRs required:
(a)	(b)
a. a body corporate or natural person;	a satisfactory and valid STR in respect of that body corporate or person;
b. a partner acting for and on behalf of a partnership;	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract;
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the:

	(i) trustee; and (ii) the trust;
d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group;
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.

11.4.2 The Contractor shall obtain and hold additional STRs in the following circumstances within 10 Working Days of the Contractor becoming aware of the circumstances arising:

If the Contractor or Subcontractor is:	Additional STRs required:
(a)	(b)
a. a partner acting for and on behalf of a partnership;	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Deed or Subcontract (as applicable);
b. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of any new trustee appointed to the trust;
c. a joint venture participant;	a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture;
d. a member of a Consolidated Group;	a satisfactory and valid STR in respect of any new head company of the Consolidated Group; and
e. a member of a GST Group;	a satisfactory and valid STR in respect of any new representative for the GST Group.

11.4.3 The Contractor shall provide the Commonwealth with copies of the STRs referred to in clause 11.4.1 or 11.4.2 within 5 Working Days after a written request by the Commonwealth.

11.4.4 For the purposes of the Contract, an STR is taken to be:

- a. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and

valid if the STR has not expired as at the date on which the STR is required to be held.

11.5 Country of Tax Residency (Optional)

Note to Drafters: *These clauses must be included if a procurement is valued at over \$200,000 (GST Inclusive).*

Note to tenderers: *In accordance with the Buy Australian Plan and to support transparency in Australian Government procurement, tenderers for Australian Government contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. Each request for a Quotation may constitute a fresh request for tender as envisaged by the policy. To avoid the need to reaffirm this information with each Quotation sought under the standing offer, the draft conditions of deed include the below requirement. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:*

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaustralianplan>; and
- <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.

Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at:

- MNETaxTransparency@treasury.gov.au.

11.5.1 The Contractor shall provide:

- a. a written update on the Contractor's country of tax residency; and
- b. a written update on the Contractor's ultimate parent entity's country of tax residency, within a reasonable period after becoming aware that this information has changed during the term of the Deed.

11.5.2 In complying with clause 11.5.1, if the Contractor or the Contractor's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.

11.5.3 Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not determining the Contractor's or the Contractor's ultimate parent entity's country of tax residency.

11.6 Child Safety (Optional)

Note to drafters: *The Department of Prime Minister and Cabinet) has developed the [Commonwealth Child Safe Framework \(CCSF\)](#) to protect children and young people who may have contact with Commonwealth entities. The CCSF sets out the minimum standards for Commonwealth entities to protect children.*

Defence and all Defence officials have an obligation under the [Child Protection legislation](#) and the Work Health Safety Act 2011 (Cth) to ensure the health and safety of youth when they engage or interact with Defence. This obligation also extends to Defence contractors. Youth special care provisions also extend to over 18 year olds participating in a Defence Youth Program.

Defence policy relating to Child Safety is contained in

<https://www.defenceyouth.gov.au/defence-youth-policy/>.

Defence has developed relevant clauses, for use with ASDEFCON Defence has developed relevant clauses, for use with ASDEFCON based approaches to market, which address the requirements of the CCSF and YOUTHPOLMAN. These clauses are adapted from model clauses included in Department of Finance's ClauseBank and must be inserted into Defence procurements using the [ASDEFCON Suite of Tendering and Contracting Templates](#), where the

Contractor will engage with or interact with youth in performing its obligations under the Contract

The clauses can be found here:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>

If you have any questions relating to the clauses please email:

procurement.asdefcon@defence.gov.au.

For information in relation to CCSF and policy related questions please email:

procurement.policy@defence.gov.au.

For further assistance and guidance in relation to the application of the CCSF please refer to the Child Safety Framework Factsheet here.

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

11.7 Modern Slavery (Optional)

Note to drafters: If a potential contractor has a consolidated revenue of at least AU\$100 million over its 12 month reporting period, and is either an Australian entity or a foreign entity carrying business in Australia at any time in that reporting period (as set out in the Modern Slavery Act 2018 (Cth)). Then the procurement is subject to the Modern Slavery Act 2018 (Cth), and drafters must use the model clauses to be inserted into relevant Defence procurements using the ASDEFCON Suite of Tendering and Contracting Templates. The model clauses can be found here:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>

If you have any questions relating to the clauses please email:

procurement.asdefcon@defence.gov.au.

For further assistance and guidance in relation to the application of the Modern Slavery clauses please refer to the Modern Slavery Factsheet here:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

11.8 Commonwealth Supplier Code of Conduct (Core)

- 11.8.1 Without limiting the Supplier's obligations under the Contract or at law, the Supplier must comply with, and ensure that its officers, employees, agents and subcontractors comply with the Commonwealth Supplier Code of Conduct in the performance of the Contract. The Supplier's performance of its obligations under this clause will be at no additional cost to the Commonwealth.
- 11.8.2 The Supplier must immediately notify the Authorised Officer in writing if it becomes non-compliant with the Commonwealth Supplier Code of Conduct, including a description of the non-compliance, the date that the non-compliance occurred, and whether any Supplier personnel engaged in the performance of the Contract were or may have been involved in the non-compliance. The Commonwealth may request in writing further information from the Supplier concerning the non-compliance. The Supplier must provide the requested information to the Commonwealth within 3 days.
- 11.8.3 The Commonwealth may notify the Supplier in writing that a non-compliance or possible non-compliance of the Commonwealth Supplier Code of Conduct has occurred. The Supplier must respond to the Commonwealth's notification within 3 days and comply with its requirements in accordance with this clause.
- 11.8.4 The Supplier agrees that the Commonwealth may take into account the Supplier's compliance with the Commonwealth Supplier Code of Conduct in any future procurement process.

11.9 Australian Skills Guarantee (Optional)

Note to drafters: A procurement will be subject to the Australian Skills Guarantee (ASG) Procurement Connected Policy (PCP) within ICT and Construction as follows:

- Major construction projects (projects with a total contract value of \$10 million (GST Inclusive) or more;
- Direct Commonwealth procurements in the ICT sector, with a total contract value of \$10 million (GST Inclusive) or more; and
- Flagship construction projects (projects with a total contract value of \$100 million or more in the construction sector).

Information relating to the ASG PCP can be found at the Department of Employment and Workplace Relations (DEWR) website here:

- <https://www.dewr.gov.au/australian-skills-guarantee>.

If a procurement is subject to the ASG PCP drafters must include the model clauses for Defence procurements subject to the requirements of the ASG. These model clauses are based on the DEWR model clauses and have been developed for use with ASDEFCON-based contracts. They are contained in the ASDEFCON Clausebank which can be found here:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>.

If you have any questions relating to the clauses please email the ASDEFCON and Contracting Initiatives team at: procurement.asdefcon@defence.gov.au.

If you have any questions relating to the ASG PCP or policy related questions, please email the Commercial Policy team at: procurement.policy@defence.gov.au.

Or DEWR at: ASG@dewr.gov.au.

12 DISPUTES AND TERMINATION

12.1 Termination (Core)

- 12.1.1 The Commonwealth Representative may immediately terminate this Deed for any reason by written notice to the Contractor. Any Contracts in operation at the time of termination of the Deed are not affected by the termination of the Deed, and continue in effect unless terminated separately under clause 12.1.2 or clause 12.1.4.
- 12.1.2 The Authorised Officer may terminate any one or more Contracts placed under this Deed if:
- a. the Contractor:
 - (i) does not deliver all of the Supplies and, if applicable, the Repairable Item to the Delivery Location by the relevant Delivery Date specified in the relevant Contract; or
 - (ii) notifies the Commonwealth that it will be unable to deliver the Supplies and, if applicable, the Repairable Item to the Delivery Location by the Delivery Date specified in the relevant Contract;
 - b. the Commonwealth rejects any of the Supplies in accordance with clause 6.1;
 - c. the Contractor breaches the Contract and the breach is not, in the opinion of the Commonwealth, capable of remedy;
 - d. the Contractor does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued by the Commonwealth to the Contractor requiring the Contractor to remedy the breach;
 - e. the Contractor becomes bankrupt or insolvent, except to the extent the exercise of a right under this clause 12.1.2e is prevented by law;

- f. the Contractor breaches any of its obligations under clause 10.4 of the conditions of deed or clause 4 of the SOW; or

Option: When limitation of liability is included at clause 9.3.

- g. the Contractor would have, except for the operation of clause 9.3, been liable for Commonwealth loss to an amount equal to or greater than the amount of the liability cap.

- 12.1.3 If the Commonwealth has provided a Repairable Item to the Contractor in relation to any Contract which has been terminated, the Contractor shall immediately return that Repairable Item to the Commonwealth at the Contractor’s cost.
- 12.1.4 In addition to any other rights it has under any Contract, the Commonwealth may at any time terminate any Contract by notifying the Contractor in writing. If the Commonwealth issues such a notice, the Contractor shall stop work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts.
- 12.1.5 If the Commonwealth terminates any one or more Contracts pursuant to clause 12.1.4, the Commonwealth will only be liable for payments to the Contractor for Supplies delivered and accepted in accordance with clause 5 under the affected Contract or Contracts before the effective date of termination and any reasonable costs incurred by the Contractor that are directly attributable to the termination of the affected Contract or Contracts. The Contractor’s entitlement to recover amounts under this clause 12.1.5 is subject to the Contractor mitigating all losses associated with any termination and substantiating all amounts to the satisfaction of the Commonwealth.
- 12.1.6 The Contractor will not be entitled to profit anticipated on any part of any Contract terminated.

12.2 Set Off (Core)

- 12.2.1 If the Contractor owes any debt to the Commonwealth in connection with the Deed or any Contract, the Commonwealth may deduct the amount of the debt from payment of the Contract Price in relation to any Contract.

OFFICIAL

EXECUTED AS A DEED

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

(signature) (print name and position) (date)

In the presence of:

(signature of witness) (print name of witness) (date)

SIGNED for and on behalf of

THE CONTRACTOR:

Note for Deed Signature: *Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the 'Executing Agreements Fact Sheet', found on the Procurement and Contracting intranet page at:*

<http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>.

This guidance is developed for Commonwealth Personnel and should be used to assess the Contractor's execution of the Deed. The Contractor should seek its own independent legal advice on its execution of the Deed.

(INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE)

STATEMENT OF WORK

Note to drafters: This Statement of Work (SOW) is a template SOW for the Deed and, therefore, would apply to any Tasking Order and subsequent Contract to be issued under the Deed. These template SOW clauses should only be used where the risks to technical integrity (ie, risks to fitness for service, safety and the environment) are assessed as low.

The approach outlined in the SOW clauses below allows purchase of Goods that will subsequently require Maintenance to sit harmoniously with other Goods to be purchased (eg, piece parts for Defence-provided Maintenance). For example, the Deed could include requirements to both purchase a particular type of generator set as one of the Goods, and to have it subsequently Maintained. Other Goods that may also be included in the Deed could be the oil filters, air filters and other piece parts required for Defence-provided Maintenance. All of these are classed as Goods under the Deed and clause 1 below.

1. SUPPLY OF GOODS (CORE)

Note to drafters: Amend and/or delete the following clauses, as necessary, to meet the specific requirements of the Deed and the envisaged Contracts.

- 1.1 The Authorised Officer will notify the Contractor, in accordance with clause 1.7 of the conditions of deed, when items of Goods are required.
- 1.2 The Contractor shall deliver the required Goods to the Delivery Location on or before the Delivery Date and in accordance with the terms of the Contract applicable to those Goods.

2. PACKAGING AND MARKING OF GOODS AND REPAIRABLE ITEMS (CORE)

- 2.1 The Contractor shall ensure that all Goods and Repairable Items that need to be delivered to the Commonwealth are packaged and marked for delivery such that the delivered items comply with appropriate packaging, package marking, consignment documentation and documentation language standards as may be necessary to meet the requirements of any Contract. Non captive pallets such as CHEP or LOSCAM origin will not be accepted.
- 2.2 The Contractor shall ensure that secure and legible documentation is affixed to the outside of each package for delivery to the Commonwealth, with duplicate copies inside at the top of each package, which includes the following information:
 - a. the relevant Commonwealth Tasking Order and Contract number;
 - b. the item name;
 - c. the item quantity;
 - d. the name of the supply source;
 - e. the consignment Delivery Location; and
 - f. the date of dispatch.

3. MAINTENANCE SERVICES (OPTIONAL)

Note to drafters: Amend and/or delete the following clauses, as necessary, to meet the specific requirements of the Deed and the envisaged Contracts. For example, if the Contractor is required to pick up equipment for Maintenance from a specific location, then this should be inserted here. Additionally, if specific Acceptance Testing is required and/or particular certificates of conformance, then clauses to address these requirements should be included.

The proposed SOW clauses allow both preventive maintenance (eg, car servicing) and corrective maintenance (eg, car repairs), but both would need to be specified in Attachment B.

Drafters should be aware that these clauses do not require any maintenance management planning, formal defect investigations, maintenance investigations, or incorporation of any modifications. If these types of services are required, then drafters should consider using a different template.

- 3.1 For the purposes of this clause 3, Maintenance includes all actions taken to retain materiel in, or restore it to, a specified condition or to restore it to serviceability. It includes inspection,

ATTACHMENT A

condition monitoring, servicing, repair, overhaul, testing, calibration, rebuilding, reclamation, upgrades, modification, recovery, classification and the salvage of technical equipment.

- 3.2 The Authorised Officer will notify the Contractor, in accordance with clause 1.7 of the conditions of deed, when Maintenance Services are required to be provided to a Repairable Item.
- 3.3 When the Maintenance Services required are not identified at Attachment B (eg, to repair a damaged Repairable Item), and the Authorised Officer has requested a quote for these Maintenance Services in accordance with clause 1.7 of the conditions of deed, the Contractor shall provide the following information in the quote:
- a. a breakdown of the labour effort and associated costs;
 - b. an itemised list of material requirements and associated costs; and
 - c. any other applicable costs.
- 3.4 When Maintenance Services are required to be provided to a Repairable Item, the Commonwealth shall either:
- a. deliver the Repairable Item to the Contractor; or
 - b. make the Repairable Item available for collection by the Contractor at the location and time specified in the Contract.
- 3.5 The Contractor shall undertake the Maintenance of Repairable Items, including disposal of any waste products, in accordance with:
- a. the terms of the Deed and any Contract;
 - b. the respective manufacturer's instructions;
 - c. the applicable federal, State, Territory and local government legislation, regulations, and guidelines, including in relation to work health and safety, public health and safety, and the environment; and
 - d. the relevant Australian standards.
- 3.6 The Contractor shall ensure that a Repairable Item requiring calibration is calibrated by an organisation accredited by the National Association of Testing Authorities (NATA) for the class of testing appropriate to that Repairable Item.

Note to drafters: The following clause assumes that all replacement items used in maintenance are consumables (which include spares that are discarded during maintenance). If this is not the case, the following clause should be amended.

- 3.7 Except where otherwise agreed, in writing, by the Authorised Officer, the Contractor shall only use unused items to replace items fitted to a Repairable Item, with all replacement items to be sourced from:
- a. the original equipment manufacturer;
 - b. a source of supply approved by the original equipment manufacturer; or
 - c. if neither a. nor b. are viable, the direction of the Authorised Officer.
- 3.8 Unless otherwise directed or agreed in writing by the Authorised Officer, the Contractor shall not remove a serviceable item from a piece of equipment in order to use that item to make another piece of equipment serviceable.
- 3.9 The Contractor shall immediately notify the Authorised Officer, in writing, of any Repairable Items that, in the Contractor's assessment, either:
- a. cannot physically be repaired (eg, due to damage); or
 - b. is not economic to repair,
- including the rationale for this assessment and the recommended course of action.
- 3.10 After the required Maintenance Services have been completed, the Contractor shall return the Repairable Item to the Delivery Location on or before the Delivery Date and in accordance with the terms of the Contract applicable to those Repairable Items.

ATTACHMENT A

4. PROBLEMATIC SUBSTANCES (CORE)

- 4.1 Where the Commonwealth agrees that the Supplies may contain a Problematic Substance or that the Contractor may use, handle or store a Problematic Substance on Commonwealth premises, the Contractor shall, subject to any foreign government restrictions, ensure that:
- a. full details of the Problematic Substance are provided to the Commonwealth in the format of a Safety Data Sheet (SDS), except where the applicable SDS exists within the Australian ChemAlert database and the Contractor identifies that SDS to the Commonwealth by reference to its unique record within that database; or
 - b. if the Contractor provides the Supplies to the Commonwealth outside Australia and the Contractor demonstrates to the satisfaction of the Commonwealth it is unable to comply with the requirements of clause 4.1a, the Contractor shall provide all information necessary to facilitate the Commonwealth complying with the requirements of clause 4.1a prior to or at the time the Supplies are provided to the Commonwealth.
- 4.2 In addition, the Contractor shall, subject to any foreign government restrictions, ensure that:
- a. at the time of provision to the Commonwealth the Problematic Substance is correctly labelled and packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Supplies clearly identifies the nature of the substance and its associated hazards; or
 - b. if the Contractor provides the Supplies to the Commonwealth outside Australia and the Contractor demonstrates to the satisfaction of the Commonwealth it is unable to comply with the requirements of clause 4.2a, the Contractor shall provide all information necessary to facilitate the Commonwealth complying with the requirements of clause 4.2a prior to or at the time the Supplies are provided to the Commonwealth.

5. CODIFICATION DATA (OPTIONAL)

Note to drafters: Delete this clause and replace with 'Not Used' if Codification Data is not required to be provided by the Contractor.

Note to tenderers: Under Defence policy, codification is mandatory for any Supplies that are repetitively procured, owned, stored or repaired by Defence. These items must also be registered on the Military Integrated Logistics Information System (MILIS) for asset management and financial reporting purposes. Additionally, all items of supply that are deployable or provide support to an operational capability must be purchased and repaired through MILIS, which also requires codification action to be undertaken. As a sponsored nation in the NATO Codification System, Australia is required to adhere to the policies and principles published in the NATO Manual of Codification (ACodP 1).

- 5.1 The Contractor acknowledges and agrees that, when the data supplied by the Contractor (eg, that accompanies the Goods identified at Attachment B) is not sufficient to enable the Commonwealth to perform codification action, the Contractor will be required to supply information regarding any item of Supplies (excluding data, services or IP) that enables the unique character of an item of Supplies to be established and to be differentiated from any other item (eg, manufacturer's references, part numbers, print drawings, specifications and related documents).
- 5.2 When the circumstances under clause 5.1 arise and the Authorised Officer has requested a quote for this codification data in accordance with clause 1.7 of the conditions of deed, the Contractor shall provide a breakdown of the required data and the associated costs and Lead Times in the quote.
- 5.3 The Contractor shall supply codification data as Goods.
- 5.4 The Commonwealth will only use the codification data supplied by the Contractor to undertake codification action.

PRICE AND DELIVERY SCHEDULE

Note to tenderers: Attachment B will consist of an amalgamation of the Request for Tender Proforma and the successful tenderer's response.

OFFICIAL
ATTACHMENT C
TASKING ORDER



Australian Government
Department of Defence

Tasking Order and Contract for the Supply of Goods and Maintenance Services

A.B.N. 68 706 814 312

Contractor Details		Contractor's Tender or Reference No.		Address for Delivery including any special instructions			Address for Claims for Payment	
A.B.N.		Standing Offer No.						
A.C.N./A.R.B.N.								
Line No.	NATO Stock No. (if applicable)	Description	Unit	Qty	Unit Price (A\$, Duty Paid, GST Exclusive)	GST Applies (Y/N)	Item Subtotal (A\$, Duty Paid, GST Inclusive)	Delivery Date and Location
Total Number of Items on this Tasking Order					Contract Price (GST Exclusive)	Total GST	Contract Price (GST Inclusive)	
Repairable Item		Description of Repairable Item		Condition of Repairable Item at date of Tasking Order		Collection Date and Location		Delivery Date and Location
Financial Year	Account Code	Cost Code	Centre	Work Breakdown Structure	Procurement Identifier:			

ATTACHMENT C

<p>Inquiries regarding this order should be directed to the Authorised Officer:</p> <p>Name: Address: Phone No: Fax No: Email:</p>	<p>This Tasking Order is issued on the terms set out in the conditions of deed for the Supply of Goods and Maintenance Services and any Special Conditions attached by the Commonwealth.</p> <p>Signed on behalf of the Commonwealth:</p>				
<p>Commonwealth Special Conditions attached:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>.....</p> <table><tr><td>Signature</td><td>Name</td><td>Appointment</td><td>Date</td></tr></table>	Signature	Name	Appointment	Date
Signature	Name	Appointment	Date		

OFFICIAL
ATTACHMENT D

CONTRACT MATERIAL RIGHTS SCHEDULE (CORE)

Note to tenderers: Attachment D defines any restrictions on the rights granted under the Contract to Use or grant sublicences in respect of Contract Material. Attachment D will consist of an amalgamation of information contained in this Attachment D, the successful tenderer's response and any negotiated adjustments.

Unique Line Item Description	Owner or Licensor	Description of Contract Material	Restrictions on Commonwealth's rights to sublicense the Contract Material (COD, clause 5.2.1b.)	Justification for Restriction(s)
(a)	(b)	(d)	(e)	(f)
<i>Example: D-1-1</i>	<i>Contractor</i>			
<i>Example: D-1-2</i>	<i>Contractor</i>			

GLOSSARY

Note to drafters: All conditions of tender definitions in section two should be removed from the version used for any resultant Deed, as they are no longer applicable.

Definitions, acronyms and abbreviations that are not used in a draft Deed may be deleted. If drafters propose a new definition, acronym or abbreviation, careful consideration must be given to the legal effect of that addition in the context of the existing document.

The listing of all acronyms, abbreviations, definitions and referenced documents, and the version numbers of all referenced documents should be reviewed for currency prior to both the RFT release and the Effective Date.

1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
ABN	Australian Business Number
ACM	Asbestos Containing Material
ACN	Australian Company Number
ADF	Australian Defence Force
AIC	Australian Industry Capability
AIA	Australian Industry Activity
ANZ	Australia and New Zealand
ATO	Australian Taxation Office
CASG	Capability, Acquisition and Sustainment Group
COD	Conditions of Deed
COT	Conditions of Tender

Abbreviation	Description
CPRs	Commonwealth Procurement Rules – April 2019
GST	Goods and Services Tax
IPP	Indigenous Procurement Policy
IP	Intellectual Property
ISO	International Standards Organisation
LIA	Local Industry Activity
PEPPOL	Pan-European Public Procurement On-Line
PT PCP	Note to drafters: Include if clauses 10.3.2 - 10.3.6 are included in the COD. Payment Times Procurement Connected Policy
SDS	Safety Data Sheet
TD	Technical Data
WHS	Work Health and Safety

2. DEFINITIONS

Term	Status	Definition
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Authorised Officer	(Core)	means the Commonwealth Representative or person nominated in accordance with clause 2.1.1.

ATTACHMENT E

Term	Status	Definition
Commercial Item	(Core)	means any item or service that is: a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and b. able to be used for its intended purpose under the Contract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item or use the service), but does not include an item created, manufactured or produced by the Contractor or a Related Body Corporate of the Contractor.
Commercial Material	(Core)	means any Contract Material that is: a. a Commercial Item or material which relates to a Commercial Item; b. supplied, without further development or modification, in conjunction with a Commercial Item, under the standard commercial terms applicable to that item; or c. Free and Open Source Software, or any TD supplied in conjunction with Free and Open Source Software.
Commercialise	(Core)	means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in Contract Material or Software in return for payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.
Commonwealth Representative	(Core)	means the person so named on the Details Schedule or any other person appointed as the Commonwealth Representative.
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.
Contract	(Core)	means a contract for the delivery or performance of Supplies created in accordance with clause 1.7.
Contract Price	(Core)	means the contract price for the delivery of Supplies and the completion of all other obligations under a Contract as specified in the Tasking Order forming part of that Contract.
Contract Material	(Core)	means information, including Technical Data or Software, reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to the Commonwealth under the Contract.
Contract Material Rights Schedule or CMR Schedule	(Core)	means Attachment D to the Contract.
Correctly Rendered Invoice	(Optional)	a. Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD. b. for the purposes of clause 9.9.7 of the COD, means an invoice which is: c. rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and d. for amounts that are correctly calculated and due for payment and payable under the terms of the relevant PT PCP Subcontract.
day	(Core)	means a calendar day.
Deed	(Core)	means the COD, the Attachments and any document expressly incorporated as part of the Deed.

ATTACHMENT E

Term	Status	Definition
Delivery Date	(Core)	means the date or dates for provision of the Supplies under a Contract as specified in the Tasking Order that forms part of that Contract. If a date for provision of Supplies is not specified in a Contract, then the Delivery Date shall be the Lead Time for that item of Supplies specified in Attachment B.
Delivery Location	(Core)	means the location or locations for the delivery of the Supplies under a Contract as specified in the Tasking Order that forms part of that Contract.
Free and Open Source Software	(Core)	means Software that: <ul style="list-style-type: none"> a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and b. may be used, modified, developed or adapted by any person subject to specified conditions, and includes open source software, public domain software, shareware, community source software and freeware.
General Interest Charge Rate	(Core)	means the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> on the day payment is due, expressed as a decimal rate per day.
Glossary	(Core)	means this glossary at Attachment E to the Contract.
Goods	(Core)	means the goods specified in Attachment B that are offered by the Contractor to the Commonwealth and any goods or component parts supplied by the Contractor as part of providing the Maintenance Services under the Deed or any Contract. Goods do not include the Repairable Items.
GST	(Core)	means a Commonwealth goods and services tax imposed by the GST Act.
GST Act	(Core)	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> and associated taxation legislation. The expressions "adjustment note", "taxable supply" "taxable importation" and "tax invoice" have the meanings given to those expressions in the GST Act.
Intellectual Property	(Core)	means all present and future rights conferred by law in or in relation any of the following: <ul style="list-style-type: none"> a. Copyright; b. rights in relation to a Circuit Layout, Patent, Registerable Design or Trade Mark (including service marks); and c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.
Lead Time	(Core)	means: <ul style="list-style-type: none"> a. in relation to delivery of Goods, the timeframe from the effective date for a Contract in accordance with clause 1.7.5 until the Goods are delivered to the Delivery Location; and b. in relation to a Repairable Item requiring Maintenance Services, the time from either delivery to the Contractor or pick-up by the Contractor of the Repairable Item until the return to the Delivery Location of the Repairable Item after the required Maintenance Services have been completed.

ATTACHMENT E

Term	Status	Definition
Licence	(Core)	means a non-exclusive licence of IP in respect of Contract Material, being a licence that: <ul style="list-style-type: none"> a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee; b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term; c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence; d. operates on a world-wide basis; and e. binds each successor in title to the owner of the IP in respect of the Contract Material.
Maintenance Services	(Core)	means the maintenance services in respect of the Repairable Item or Repairable Items specified in Attachments A and B that are offered by the Contractor to the Commonwealth under the Deed or any Contract.
Notifiable Incident	(Core)	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
Patent	(Core)	means the rights and interests in any registered, pending, or restored standard or innovation patent under the <i>Patents Act 1990</i> (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.
Price Adjustment Date	(Optional)	means the last Working Day of the month that is twenty four calendar months from the Effective Date and the last Working Day of the month occurring each twelve calendar months thereafter.
Problematic Substance	(Core)	means: <ul style="list-style-type: none"> a. any substance identified as having ozone depleting potential, or any gas identified as a Synthetic Greenhouse Gas, in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or any regulations made under that Act; b. any dangerous goods as defined in the <i>Australian Code for the Transport of Dangerous Goods by Road and Rail</i> (extant edition and as amended); or c. any hazardous chemicals as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
PT PCP	(Optional)	Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD. means the Commonwealth's 'Payment Times Procurement Connected Policy'.
PT PCP Policy Team	(Optional)	Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.

ATTACHMENT E

Term	Status	Definition
PT PCP Subcontract	(Optional)	<p>Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD.</p> <p>means a Subcontract between a Reporting Entity and another party (Other Party) where:</p> <ol style="list-style-type: none"> the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract; both parties are carrying on business in Australia; and the component of the Subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (inc GST) during the period of the Subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the Subcontract; <p>but does not include the following Subcontracts:</p> <ol style="list-style-type: none"> Subcontracts entered into prior to the Reporting Entities' tender response for the Contract; Subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or Subcontracts for the purposes of: <ol style="list-style-type: none"> procuring and consuming goods or services overseas; or procuring real property, including leases and licences.
PT PCP Subcontractor	(Optional)	<p>Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD.</p> <p>means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.</p>
PTR Act	(Optional)	<p>Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD.</p> <p>means the Payment Times Reporting Act 2020 (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.</p>
Repairable Item	(Core)	<p>means the item or items specified in Attachments A and B that may be provided by the Commonwealth to the Contractor for the purpose of the Maintenance Services under a Contract formed under this Deed.</p>
Reporting Entity	(Optional)	<p>Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD.</p> <p>has the meaning given to this term in the PTR Act.</p>
Reporting Entity Subcontractor	(Optional)	<p>Note to drafters: Include if clauses 10.3.2 to 10.3.6 (regarding PT PCP) are included in the COD.</p> <p>means any person that:</p> <ol style="list-style-type: none"> is a Reporting Entity; and provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (inc GST). <p>'Reporting Entity Subcontract' has a corresponding meaning.</p>

ATTACHMENT E

Term	Status	Definition
Safety Data Sheet	(Core)	means a safety data sheet prepared in accordance with the Code of Practice, Preparation of Safety Data Sheets for Hazardous Chemicals, approved under section 274 of the Work Health and Safety Act 2011 (Cth). 'SDS' has the same meaning.
Special Conditions	(Core)	means the special conditions (if any) that form part of a Contract formed under this Deed.
Software	(Core)	means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, (including using a computer programming language to control a computer or its peripheral devices) and includes computer programs, firmware and applications, but excludes Source Code.
Source Code	(Core)	means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.
Supplies	(Core)	comprise the Goods and the Maintenance Services and, for the avoidance of doubt, do not include the Repairable Items.
Tasking Order	(Core)	means the document to be used by the Commonwealth in the form set out in Attachment C by which the Commonwealth places an order for the Goods and Maintenance Services and enters into a Contract with the Contractor.
WHS Legislation	(Core)	means: <ul style="list-style-type: none"> a. the Work Health and Safety Act 2011 (Cth) and the Work Health and Safety Regulations 2011 (Cth); and b. any corresponding WHS law as defined in section 4 of the Work Health and Safety Act 2011 (Cth).
Technical Data	(Core)	means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to Supplies described in the Specification and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, Training Materials (excluding Software), test results and writings and includes Source Code
Use	(Core)	means, in relation to a licence of any Contract Material granted to a licensee, to: <ul style="list-style-type: none"> a. use, reproduce, adapt and modify the Contract Material in accordance with the licence; and b. disclose, transmit and communicate the Contract Material: c. to the licensee's employees, officers and agents; and d. to a sublicensee under a sublicense granted in accordance with the licence.
WHS Legislation	(Core)	means: <ul style="list-style-type: none"> a. the Work Health and Safety Act 2011 (Cth) and the Work Health and Safety Regulations 2011 (Cth); and any corresponding WHS law as defined in section 4 of the Work Health and Safety Act 2011 (Cth).

ATTACHMENT E

Term	Status	Definition
Working Day	(Core)	in relation to the doing of an action in a place, means any day in that place other than: <ul style="list-style-type: none">a. a Saturday, Sunday or public holiday; andb. any day within the two-week period that starts on:<ul style="list-style-type: none">(i) the Saturday before Christmas Day; or if Christmas Day falls on a Saturday, Christmas Day.

OFFICIAL
ATTACHMENT E

3. REFERENCED DOCUMENTS

Reference	Description
	Auditor-General Act 1997 (Cth)
	Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010) (Cth)
	Australian Code for the Transport of Dangerous Goods by Road and Rail
Shadow Economy Procurement Connected Policy	Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019.
	Defence Cost Principles, as amended from time to time.
	Code of Practice, Managing the Work Environment and Facilities (an approved code of practice under section 274 of the WHS Act)
	Code of Practice, Preparation of Safety Data Sheets for Hazardous Chemicals (an approved code of practice under section 274 of the WHS Act)
CPRs	Commonwealth Procurement Rules – July 2022
	means the Commonwealth Supplier Code of Conduct, as amended from time to time
	Complaints and Alternative Resolutions Manual
	Criminal Code Act 1995 (Cth)
	Defence and Industry Policy Statement
	Defence Work Health and Safety (WHS) Manual
DEFLOGMAN, Part 2, Vol 5	Stocktaking of Defence Assets and Inventory
	Designs Act 2003 (Cth)
DSPF	Defence Security Principles Framework, as amended from time to time
	Financial Policy – Gifts and Benefits
	Financial Policy - Sponsorship
GHS	Globally Harmonised System of Classification and Labelling of Chemicals, 3rd Revised Edition
GST Act	A New Tax System (Goods and Services Tax) Act 1999 (Cth)
	Incident Reporting and Management Manual
	Integrity Policy Manual
IPP	<i>Commonwealth Indigenous Procurement Policy</i> – December 2020. A copy of the IPP is available from: https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp
	Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)
	Payment Times Procurement Connected Policy
	Privacy Act 1988 (Cth)
WHS Act	Work Health and Safety Act 2011 (Cth)
WHS Regulations	Work Health and Safety Regulations 2011 (Cth)

OFFICIAL

ASDEFCON (Standing Offer for Goods and Maintenance Services)

Part 2

ATTACHMENT E

Reference	Description
	<i>Workplace Gender Equality Act 2012 (Cth)</i>
	<i>Workplace Gender Equality Procurement Principles</i>