



**Australian Government**  
**Defence**

[INSERT NAME OF SERVICES] SERVICES CONTRACT

CONTRACT NO: (INSERT NUMBER)

**DETAILS SCHEDULE**

**PARTIES**

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

<b>Commonwealth Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

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

<b>Contractor Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

**INFORMATION TABLE**

<b><u>Item</u></b>	<b><u>Information</u></b>		
<b>Item 1</b>	<b>Effective Date</b> (Core)	(INSERT DATE)	
<b>Item 2</b> (clause 6.1)	<b>Defect Rectification Period:</b> (Core)	The period of [INSERT PERIOD] after the date of acceptance of the Services.	
<b>Item 3</b> (clause 7.1)	<b>Approved Contractor Insurance Program Status</b> (Core)	<input type="checkbox"/> Yes / <input type="checkbox"/> No	
<b>Note to drafters: Delete insurance policies if they do not apply.</b>	<b>Limits of indemnity for required insurances:</b> (Core)	Public liability (clause 7.1.5)	[\$[INSERT AMOUNT] million
		Professional indemnity (7.1.6)	[\$[INSERT AMOUNT] million

Item	Information		
<b>Item 4</b> (clause 8.5.1)	<b>Limitation Amount:</b> (Optional)	\$[INSERT AMOUNT] million	
<b>Item 5</b> (clause 8.5.2)	<b>Base Date:</b> (Optional)	[INSERT DATE]  <b>Note to drafters: This Item should be included if clause 8.5 (Liability Cap) is included.</b>	
<b>Item 6</b> (clause 9.9)	<b>Defence Security:</b> (Core)	Security classification: (clause 9.9.3)	[INSERT CLASSIFICATION]
		Personnel security clearance: (clause 9.9.3b)	[INSERT CLASSIFICATION]
		DISP membership required: (clause 9.9.4 or 9.9.5)  <b>Note to Drafters: Delete DISP Governance Level, DISP Personnel Security Level, DISP Physical Security Level and DISP Information / Cyber Security Level if DISP membership is not required.</b>	<input type="checkbox"/> Yes / <input type="checkbox"/> No
		DISP Governance Level:  <b>Note to Drafters: In accordance with Control 16.1 of the DSPF, the DISP membership level required for the Governance element must equal the highest DISP membership level required for the other elements.</b>	[INSERT LEVEL]]  [INSERT SPECIFIC DETAILS IF REQUIRED]
		DISP Personnel Security Level:	[INSERT LEVEL]]  [INSERT SPECIFIC DETAILS IF REQUIRED]
DISP Physical Security Level:	[INSERT LEVEL]]  [INSERT SPECIFIC DETAILS IF REQUIRED]		

<u>Item</u>	<u>Information</u>	
		<p>DISP Information / Cyber Security Level: <b>[INSERT LEVEL]</b>  <b>[INSERT SPECIFIC DETAILS IF REQUIRED]</b></p> <p>Security Classification and Categorisation Guide required: <input type="checkbox"/> Yes / <input type="checkbox"/> No                      (clause 9.9.7)</p> <p>COMSEC material: <input type="checkbox"/> transmitted in Australia <input type="checkbox"/> transmitted overseas                      (clause 9.9.10)</p>
<b>Item 7</b> (clause 10.1)	<b>Governing law:</b> (Core)	<b>[INSERT RELEVANT STATE OR TERRITORY]</b>

## PART TWO – CONDITIONS OF CONTRACT

## TABLE OF CONTENTS

	Page
<b>1 CONTRACT FRAMEWORK</b> .....	<b>1</b>
1.1 Definitions (Core).....	1
1.2 Interpretation (Core).....	1
1.3 Commencement of Operation (Core) .....	1
1.4 Entire Agreement (Core).....	1
1.5 Precedence of Documents (Core) .....	1
1.6 Contracted Requirement (Core) .....	2
<b>2 ROLES AND RESPONSIBILITIES</b> .....	<b>2</b>
2.1 Representatives (Core).....	2
2.2 Notices (Core).....	2
<b>3 PROVISION OF THE SERVICES</b> .....	<b>2</b>
3.1 Standards of Work and Conformity (Core) .....	2
3.2 Fitness for Purpose (Core) .....	3
3.3 Authorisations (Core).....	3
3.4 GFM – Provision and Management (Optional) .....	3
3.5 Commonwealth Property (Core).....	4
3.6 Key Persons (Core) .....	4
<b>4 CONTRACT MATERIAL AND INTELLECTUAL PROPERTY</b> .....	<b>5</b>
4.1 Ownership of Intellectual Property (Core).....	5
4.2 Contract Material (Core) .....	5
4.3 GFM Licence (Optional).....	5
4.4 No Commercialisation (Core) .....	6
4.5 Warranties (Core) .....	6
<b>5 PRICE AND PAYMENT</b> .....	<b>6</b>
5.1 Price and Price Basis (Core) .....	6
5.2 Payment (Core).....	6
5.3 Claims for Payment (Core) .....	7
5.4 Ownership and Control of Services (Core).....	8
5.5 Taxes and Duties (Core).....	8
5.6 Late Payments (Core).....	8
5.7 Cost Principles (Core).....	9
<b>6 DEFECT RECTIFICATION</b> .....	<b>9</b>
6.1 Defect Rectification Obligations (Core).....	9
<b>7 INSURANCE</b> .....	<b>9</b>
7.1 Insurance (Core).....	9
<b>8 INDEMNITIES, DAMAGES, RISK AND LIABILITY</b> .....	<b>12</b>
8.1 Indemnity (Core) .....	12
8.2 Intellectual Property and Confidentiality (Core) .....	13
8.3 Loss of or Damage to Commonwealth Property.....	13
8.4 Exclusions of Certain Losses (Core) .....	13
8.5 Liability Cap (Optional).....	14
8.6 When [Liability Cap and] Exclusions of Certain Losses do not apply (Core) .....	14

8.7	Proportionate Liability Laws (Core).....	15
<b>9</b>	<b>CONTRACT MANAGEMENT .....</b>	<b>15</b>
9.1	Change to the Contract (Core) .....	15
9.2	Waiver (Core).....	15
9.3	Confidential Information (Core).....	15
9.4	Assignment and Novation (Core).....	16
9.5	Negation of Employment and Agency (Core) .....	16
9.6	Commonwealth Access (Core) .....	16
9.7	Contractor Access (Core) .....	17
9.8	Subcontracts (Core).....	17
9.9	Defence Security (Core) .....	18
9.10	Conflict of Interest (Core).....	20
9.11	Post Defence Separation Employment (Core) .....	21
<b>10</b>	<b>POLICY AND LAW .....</b>	<b>21</b>
10.1	Governing Law (Core).....	21
10.2	Compliance With Laws (Core) .....	21
10.3	Policy Requirements (Core).....	22
10.4	Work Health and Safety (Core).....	23
10.5	Environmental Obligations (Core).....	25
10.6	Severability (Core) .....	25
10.7	Privacy (Core) .....	25
10.8	Child Safety (Optional).....	26
10.9	Modern Slavery (Optional).....	27
10.10	Commonwealth Supplier Code of Conduct (Core) .....	27
10.11	Australian Skills Guarantee (Optional).....	28
<b>11</b>	<b>DISPUTES AND TERMINATION .....</b>	<b>28</b>
11.1	Resolution of Disputes (Core).....	28
11.2	Termination Without Notice for Contractor Default (Core).....	29
11.3	Termination or Reduction for Convenience (Core).....	29
11.4	General Termination Provisions (Core) .....	29
11.5	Right of Commonwealth to Recover Money (Core).....	30
11.6	Survivorship (Core) .....	30
 <b>ATTACHMENTS</b>		
A.	Statement of Work (Core) .....	A-1
B.	Payments (Core)	B-1
C.	Contract Material Rights Schedule (Core)	C-1
D.	Confidential Information and Reporting (Core)	D-1
E.	Security Classification and Categorisation Guide (Optional)	E-1
F.	Glossary (Core)	F-1
G.	<b>[INSERT OTHER ATTACHMENTS]</b>	G-1

## **1 CONTRACT FRAMEWORK**

### **1.1 Definitions (Core)**

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

### **1.2 Interpretation (Core)**

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1.2.1 In the Contract, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Contract;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes any other;
- 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;
- 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, 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 assigns, including any person to whom that party novates any part of the 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 Services under the 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 Services are imported, units of measurement as agreed by the Commonwealth Representative.

### **1.3 Commencement of Operation (Core)**

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1.3.1 The Contract commences on the Effective Date specified in the Details Schedule.

### **1.4 Entire Agreement (Core)**

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1.4.1 To the extent permitted by law, the Contract 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)**

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1.5.1 If there is any inconsistency between parts of the Contract, a descending order of precedence shall be accorded to:

- a. the COC (including the Details Schedule) and the Glossary (other than the referenced documents in the Glossary);
- b. the SOW and any annexes;

- c. the attachments other than the SOW and the Glossary; and
  - d. any document incorporated by express reference as part of the Contract,
- so that the term in the higher ranked document, to the extent of the inconsistency, shall prevail.

## **1.6 Contracted Requirement (Core)**

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- 1.6.1 The Contractor shall, for the Contract Price and any other payment required under the Contract, provide the Services and fulfil all its other obligations under the Contract.

## **2 ROLES AND RESPONSIBILITIES**

### **2.1 Representatives (Core)**

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- 2.1.1 The Commonwealth Representative is responsible for administering the Contract on behalf of the Commonwealth.
- 2.1.2 The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the Contract.
- 2.1.3 If given orally, a direction shall be confirmed in writing by the Commonwealth Representative within 10 Working Days. Unless otherwise specified in the Contract, the Commonwealth Representative has no authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 9.1.
- 2.1.4 The Contractor Representative has the authority to represent the Contractor for the purposes of the Contract.
- 2.1.5 The Commonwealth Representative or the Contractor Representative:
- a. shall advise of a change in representative; and
  - b. may delegate their functions under the Contract, or authorise another person on their behalf to carry out their functions under the Contract,
- by giving a notice to the other party (including updated Notice Details specified in the Details Schedule, and the scope of the delegation or authorisation, as applicable).
- 2.1.6 Unless authorised by the Contract, any work performed or cost incurred by the Contractor in response to a communication from the Commonwealth Representative is at the Contractor's sole risk.

### **2.2 Notices (Core)**

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- 2.2.1 Unless the contrary intention appears, any notice under the Contract shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or Contractor Representative, as the case may be, in accordance with the Notice Details specified in the Details Schedule.
- 2.2.2 A notice given in accordance with this clause 2.2 is deemed to be delivered:
- a. if hand delivered, when received at the address;
  - b. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
  - c. if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,
- but if the receipt or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is taken to be received at 9.00am (recipient's local time) on the next Working Day.

## **3 PROVISION OF THE SERVICES**

### **3.1 Standards of Work and Conformity (Core)**

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- 3.1.1 The Contractor shall:
- a. carry out its work under the Contract (including providing the Services):

- (i) in accordance with the standards specified in the Contract and all applicable laws; and
  - (ii) otherwise in accordance with good industry practice; and
- b. ensure that the Services conform to the requirements of the Contract.
- 3.1.2 For the purpose of this clause, "good industry practice" means practices, methods and standards that would reasonably be expected from professional and experienced contractors in the relevant industry undertaking the same type of work as the Contractor in the same or similar circumstances.

### **3.2 Fitness for Purpose (Core)**

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- 3.2.1 The Contractor shall ensure that the Services are fit for the purpose or purposes for which services of that kind could be reasonably expected to be applied by the Commonwealth, except to the extent that the failure of the Services to be fit for purpose results from a Commonwealth Default.

### **3.3 Authorisations (Core)**

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- 3.3.1 The Contractor shall, and shall ensure that its Subcontractors:
- a. obtain and maintain in full force all Authorisations required for provision of the Services;
  - b. provide a copy of any Authorisations to the Commonwealth within five Working Days after request by the Commonwealth; and
  - c. ensure that the Services are provided in accordance with all Authorisations.
- 3.3.2 The Contractor shall notify the Commonwealth Representative within five Working Days after receiving notification that an Authorisation is refused, revoked or qualified.

### **3.4 GFM – Provision and Management (Optional)**

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- 3.4.1 The Commonwealth shall deliver or provide access to, and the Contractor shall manage, GFM in accordance with the Contract.
- 3.4.2 The Commonwealth shall notify the Contractor of any known damage, defect or deficiency in the GFM.
- 3.4.3 The Contractor shall ensure that GFM does not adversely impact on the Services.
- 3.4.4 The Contractor acknowledges and agrees that:
- a. the Commonwealth's obligations to provide GFM on the dates or at the times described in the SOW is subject to the Contractor providing the Services in accordance with this clause 3.4; and
  - b. any delay of the Contractor in meeting its obligations under the Contract may result in the Commonwealth not being able to provide GFM at the time the Contractor requires delivery of or access to that GFM.
- 3.4.5 If at any time the Contractor requires a change to the timing of delivery or access to GFM, the Commonwealth shall use reasonable endeavours to accommodate such change.
- 3.4.6 To avoid doubt, clause 3.4.5 does not require the Commonwealth to remove GFM from operational requirements, amend any other contracts, incur any additional costs or provide the Contractor with GFM allocated to or available for other contracts.

***Option: For when GFI is to be provided.***

- 3.4.7 The parties acknowledge that the GFI is not furnished to the Contractor for the purpose of directing the Contractor's task under the Contract. The Commonwealth does not warrant the suitability of such GFI for any particular use or application, nor does the Commonwealth warrant the accuracy or precision of the GFI.
- 3.4.8 Except as otherwise provided in this clause 3.4, the Contractor shall be responsible for the application or use of the GFI and any conclusions, assumptions or interpretations made by the Contractor on the basis of the GFI, or its application or use of them.



**Option: For use if the Contract includes GFD.**

**Note to Drafters: Data should only be furnished to the Contractor as GFD where it is required for the performance of the Contract, and can only be provided to the Contractor by the Commonwealth and cannot be independently verified by the Contractor.**

- 3.4.9 The Commonwealth shall ensure that each item of GFD is fit for the purpose provided for in the SOW in respect of that item, except to the extent that the failure of the item to be fit for the relevant purpose results from:
- a. a defect that was present in the item when it was provided to the Commonwealth by or through the Contractor or a Related Body Corporate of the Contractor (whether under the Contract or another contract); or
  - b. a Contractor Default.

### **3.5 Commonwealth Property (Core)**

- 3.5.1 The Contractor acknowledges that GFM and any other Commonwealth Property provided to or used by the Contractor or a Subcontractor for the purposes of the Contract, remains the property of the Commonwealth.
- 3.5.2 The Commonwealth retains the right to identify Commonwealth Property as its property and the Contractor shall preserve any means of identification.
- 3.5.3 The Contractor shall only use Commonwealth Property:
- a. for the purposes of the Contract;
  - b. in a manner consistent with any applicable requirements for the Commonwealth Property, including as set out in the SOW; and
  - c. for the purposes for which the Commonwealth Property was designed, manufactured or constructed or as otherwise required by the Contract.
- 3.5.4 The Contractor shall not, without the prior written approval of the Commonwealth Representative, modify, move or transfer possession or control of Commonwealth Property to any other person except to the extent reasonably necessary to enable the Contractor to satisfy an express requirement of the Contract.
- 3.5.5 The Contractor shall not, without the prior written approval of the Commonwealth Representative, create or allow to be created any Security Interest over any Commonwealth Property.
- 3.5.6 The Contractor shall return all items of Commonwealth Property (including GFM) that are required to be returned to the Commonwealth in accordance with the SOW or as otherwise directed by the Commonwealth Representative.
- 3.5.7 The Contractor acknowledges that it may be provided with the ability to access Commonwealth held information in connection with its performance of the Contract, including through access to Commonwealth information technology systems. The Contractor shall not access or use Commonwealth held information except to the extent strictly required for the performance of the Contractor's obligations under the Contract.
- 3.5.8 Without limiting the Contractor's obligations with respect to Commonwealth Property as set out in the SOW, the Contractor shall notify the Commonwealth Representative within five Working Days after becoming aware of any material loss or damage to, or any material defect in, any Commonwealth Property provided to, or used by, the Contractor or a Subcontractor for the purposes of the Contract.

### **3.6 Key Persons (Core)**

- 3.6.1 The Contractor shall ensure that the Services are performed by Contractor Personnel who:
- a. are suitably qualified, with appropriate skills and experience; and
  - b. hold an appropriate current certificate, Authorisation or accreditation at all times during the provision of the Services.
- 3.6.2 The Contractor shall ensure that each Key Person named in the SOW at Attachment A delivers the Services under the Contract identified in that Attachment.

- 3.6.3 If the Contractor becomes aware that a Key Person will or may become unavailable for the performance of the work under the Contract, the Contractor shall:
- promptly notify the Commonwealth of the impending unavailability; and
  - as soon as practicable, nominate a suitable replacement with comparable experience, skills and expertise.
- 3.6.4 The Commonwealth may give a notice, including reasons, directing the Contractor to remove a Key Person or other Contractor Personnel from work in respect of the Services. The Contractor shall arrange for their replacement at the earliest opportunity with Contractor Personnel of appropriate skills and experience.
- 3.6.5 If the Contractor is unable to provide a replacement with suitable skills or in a sufficient time to enable the Contractor to complete the Services in accordance with the Contract, the Commonwealth may terminate the Contract in accordance with clause 11.1.2.
- 3.6.6 Any requirement to replace any of the Contractor Personnel during the course of the Contract (whether at the request of the Commonwealth or not) shall not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Contract.

## 4 CONTRACT MATERIAL AND INTELLECTUAL PROPERTY

### 4.1 Ownership of Intellectual Property (Core)

**Note to drafters: The Commonwealth's default position as reflected in clause 4.1 is that the Contractor (or its nominee) will own all IP created under the Contract or a Subcontract. If Commonwealth ownership of IP is required (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 is that the Contractor (or its nominee) will own all IP created under the Contract or a Subcontract. Clause 4.1 of this template reflects that position.**

- 4.1.1 Nothing in the Contract affects the ownership of Intellectual Property (IP) except as expressly provided for in this clause 4.

**Note to drafters: The wording in square brackets should be included if GFM is to be provided to the Contractor.**

- 4.1.2 **[Subject to clause 4.1.3]** IP created under the Contract or a Subcontract in respect of Contract Material is assigned to the Contractor (or its nominee) immediately upon its creation.

**Option A: Include if GFM is to be provided to the Contractor.**

- 4.1.3 IP created under the Contract or a Subcontract in respect of GFM is assigned to the Commonwealth (or its nominee) immediately upon its creation.

### 4.2 Contract Material (Core)

- 4.2.1 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 Commonwealth Service Provider to Use the Contract Material to enable it to perform its obligations, functions or duties to the Commonwealth;
  - any person to Use the Contract Material, or to grant a further sublicense to Use the Contract Material, for any Defence Purpose, but subject to any restrictions specified in the CMR Schedule for the relevant Contract Material; or
  - any person for a purpose referred to in clause 9.3.1.
- 4.2.2 The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial Material on the best commercial terms.

**Note to drafters: Include clause 4.3 if GFM is to be provided to the Contractor.**

### 4.3 GFM Licence (Optional)

- 4.3.1 The Commonwealth grants to the Contractor (or shall ensure the Contractor is granted), a non-exclusive, royalty-free licence in respect of TD or Software in GFM, to:

- a. Use the TD or Software for the purpose of enabling the Contractor to perform its obligations under the Contract;
  - b. grant a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
  - c. grant a sublicense to a person for a purpose referred to in clause 9.3.3, subject to any restrictions specified in Attachment A or as otherwise notified by the Commonwealth.
- 4.3.2 The licence under clause 4.3.1 (and any sublicense granted under clause 4.3.1b) expires upon the expiry or termination (whichever is the earlier) of the Contract or the relevant Subcontract.

#### **4.4 No Commercialisation (Core)**

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- 4.4.1 A Licence or sublicense granted in accordance with this clause 4 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the Contract Material.
- 4.4.2 For the avoidance of doubt, clause 4.4.1 does not prevent the Commonwealth from granting a sublicense in accordance with the rights granted in this clause 4 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.

#### **4.5 Warranties (Core)**

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- 4.5.1 The Contractor warrants that the rights granted to the Commonwealth in accordance with this clause 4, 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.
- 4.5.2 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 4; 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.
- 4.5.3 The Contractor shall notify the Commonwealth if the Contractor becomes aware of any challenge, claim or proceeding referred to in clause 4.5.2b arising in respect of any such IP after the Contract Material is delivered to the Commonwealth.

### **5 PRICE AND PAYMENT**

#### **5.1 Price and Price Basis (Core)**

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- 5.1.1 The Contract Price is set out in Attachment B, and is payable, subject to satisfactory performance of the Services, in accordance with the Contract. Unless otherwise agreed by the parties in accordance with clause 9.1, all prices and rates listed in the Contract are unalterable.
- 5.1.2 The Commonwealth shall be entitled, without derogating from any other rights it may have, to defer payment of a claim until the Contractor has completed, to the satisfaction of the Commonwealth Representative, that part of the Services to which the claim relates.

#### **5.2 Payment (Core)**

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***Note to tenderers: It is Commonwealth policy to pay its suppliers by direct credit. If it has not done so in the past, the successful tenderer should prior to Contract signature provide the Commonwealth Representative with details of the bank account into which payments should be directed.***

- 5.2.1 The Contractor shall submit a claim for payment in accordance with clause 5.3.
- 5.2.2 On receipt of a claim for payment the Commonwealth Representative shall either:
- a. Approve the claim if it is submitted in accordance with clause 5.2.1; or
  - b. reject the claim if it is not submitted in accordance with clause 5.2.1 or on the basis of clause 5.1.2.

**Note to tenderers: Per the Commonwealth Pay On-Time Policy, if the Contract Price is up to and including A\$1 million (GST inclusive), 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 Pay On-Time Policy is available at:**

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

**Option A: For when the Contract Price is up to and including A\$1 million (GST inclusive) and the use of the PEPPOL framework has been agreed by the Commonwealth and the Contractor.**

5.2.3 When a claim is Approved under clause 5.2.2a, and the Commonwealth and the Contractor both have the capability to deliver and receive electronic invoices (e-invoices) through the Pan-European Public Procurement On-Line (PEPPOL) framework and have agreed to use e-invoicing, the Commonwealth shall make payment within 5 days of receipt of the claim.

**Option B: For when the Contract Price is up to and including A\$1 million (GST inclusive) and the use of the PEPPOL framework has not been agreed by the Commonwealth and the Contractor.**

5.2.4 When a claim is Approved under clause 5.2.2a, the Commonwealth shall make payment within 20 days of receipt of the claim.

5.2.5 If the Commonwealth Representative rejects the claim under clause 5.2.2b, the Commonwealth Representative shall, within 10 Working Days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.

5.2.6 Upon receipt of a notice issued pursuant to clause 5.2.6, the Contractor shall promptly take all necessary steps to make the claim for payment conform to the requirements of the Contract and shall submit a revised claim to the Commonwealth Representative when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.

5.2.7 If the Commonwealth agrees that acceptance may be achieved despite any minor defects or other non-compliance, the Commonwealth may, after consultation with the Contractor:

- a. determine a revised Contract Price reflecting the reduction in value for money of the omission, defect or non-compliance ('**Reduction Amount**'); and
- b. exercise its rights under clause 11.3 in respect of the Reduction Amount.

### **5.3 Claims for Payment (Core)**

5.3.1 The Contractor shall be entitled to submit claims for payment in accordance with Attachment B.

5.3.2 All claims for payment submitted by the Contractor shall:

- a. subject clause 5.2.8, be correctly addressed, calculated in accordance with the Contract and meet the requirements of the Contract;
- b. be in the form of a valid tax invoice in accordance with clause 5.5;
- c. contain the following information:
  - (i) the title of the Services and the name of the Contractor Representative as specified in the Details Schedule;
  - (ii) the name and phone number of the Commonwealth Representative;
  - (iii) the Contract number;

- (iv) the date, task item, number of hours and hourly rate (if applicable); and
  - (v) the amount of the claim; and
- d. be accompanied by any documentation requested by the Commonwealth Representative in order to establish that the Services meet the requirements of the Contract or that the claim is in accordance with the Contract.

5.3.3 All claims for payment are to be submitted to the Commonwealth Representative in accordance with clause 2.2.1.

#### **5.4 Ownership and Control of Services (Core)**

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- 5.4.1 Subject to clause 4, ownership of Services, or partially completed Services, shall pass to the Commonwealth upon payment of a claim relating to those Services in accordance with clause 5.
- 5.4.2 If ownership of the Services vests in the Commonwealth, the Contractor shall deliver to the Commonwealth all Services remaining in its possession upon expiration or termination of the Contract.

#### **5.5 Taxes and Duties (Core)**

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- 5.5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract shall be met by the Contractor and shall be included within the Contract Price.
- 5.5.2 The Contract Price set out in Attachment B includes GST for Services to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.
- 5.5.3 The Contractor shall submit each claim for payment under this clause 5 in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.
- 5.5.4 If the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 5.5.5 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Contractor under or in connection with the Contract, the Commonwealth shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 5.5.6 The Commonwealth may elect to recover from the Contractor under clause 11.5 any amount of GST to be paid by the Contractor under clause 5.5.5. No amount shall be owing to the Commonwealth under this clause 5.5.6 until the Commonwealth elects to recover the amount.

#### **5.6 Late Payments (Core)**

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**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-rmq-417>

- 5.6.1 If payment of an amount due to the Contractor under the 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.
- 5.6.2 Interest payable by the Commonwealth under this clause 5.6 shall be calculated in accordance with the following formula:

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

where:

"I%" means the ATO sourced General Interest Charge rate current at the due date of payment expressed as a percentage;

"P" means the amount of the late payment; and

"n" means the number of days that the payment was late up to and including the day that the payment is made.

5.6.3 Interest shall only be payable in accordance with this clause 5.6 if the interest amount exceeds A\$100.

## 5.7 Cost Principles (Core)

5.7.1 Without in any way affecting or overriding the other terms of the Contract, the Commonwealth may apply the Defence Cost Principles, as amended from time to time, when considering any:

**Option: For use when Defence Cost Principles are applied**

**Note to drafters: Use unless not required as per clause 2.31. of the Defence Cost Principles**

a. price for any CCP under clause 9.1 or

b. claim for costs if the Contract is terminated.

## 6 DEFECT RECTIFICATION

### 6.1 Defect Rectification Obligations (Core)

6.1.1 If the Commonwealth Representative notifies the Contractor of a defect in Services during the Defect Rectification Period (specified in the Details Schedule) applicable to the Services, the Contractor shall, within **[INSERT PERIOD]** after the notification, or a longer period agreed in writing by the Commonwealth Representative, by repair, replacement or modification:

- a. rectify the defect; and
- b. rectify any adverse effect of the defect or the rectification on other Services, whether or not the defect arises out of or as a consequence of a Contractor Default.

6.1.2 The Contractor shall be entitled to claim for an additional amount (calculated in accordance with Attachment B and on the same basis as the Contract Price) for any rectification work performed under clause 6.1.1, but only to the extent that the defect arose out of or as a consequence of a Commonwealth Default.

6.1.3 The Contractor's obligations under clause 6.1.1 do not require the Contractor to remedy a defect in GFM incorporated into Services except to the extent that the defect resulted from a Contractor Default.

6.1.4 Subject to clause 6.1.1, the Contractor shall, except to the extent that the Commonwealth Representative otherwise agrees, bear all costs of, and incidental to, rectifying defects as required by the Contract.

6.1.5 If the Contractor fails to rectify a defect within the period specified in clause 6.1.1, the Commonwealth may rectify the defect itself or by a third party. The Commonwealth may elect to recover from the Contractor under clause 11.5 the amount of the Commonwealth's costs of rectifying the defect. No amount shall be owing to the Commonwealth under this clause 6.1.5 until the Commonwealth elects to recover the amount

## 7 INSURANCE

### 7.1 Insurance (Core)

**Note to drafters: This clause is a shortened version of the long form insurance clause contained in the ASDEFCON Strategic Materiel, Complex Materiel Volume 2 and Support templates. If the limit of indemnity for any one of the required liability insurance policies in this clause meets (or exceeds) the monetary threshold nominated in Functional Policy (Procurement) – Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative (ie \$25m) or any type of aviation or marine insurance policy is required drafters should use the long form clause or consult with the ACIP Management Team about tailoring this short form clause.**

**Drafters are to tailor this clause by selecting only those insurance policies actually required for the draft Contract and by inserting the required limit of indemnity for the relevant insurances in the Details Schedule (Note: the LRA provides the basis for determining the insurance requirements). As a guide, insurance policy indemnity limits should be based on the Maximum**

**Probable Loss (MPL) determined by the LRA. The MPL represents the financial consequence of a risk event occurring after taking into account any risk treatments that mitigate consequence – it is NOT to be discounted by multiplying consequence x likelihood.**

**The ACIP Initiative applies to CASG procurements in accordance with Functional Policy (Procurement) – Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative. Drafters should refer to the ASDEFCON Insurance Handbook for guidance to assist with understanding and tailoring this clause. In accordance with paragraphs 28 to 31 of Functional Policy (Procurement) – Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative (ie \$25m) or any type of aviation or marine insurance policy is required drafters should use the, material changes to this clause must be approved by the ACIP Management Team at [ACIP.ManagementTeam@defence.gov.au](mailto:ACIP.ManagementTeam@defence.gov.au).**

**Information on the ACIP Initiative is available at:**

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/331E4CAE-EEBE-45A0-9DA6-9B2C24E1DE33>

**For non-CASG procurements, drafters may seek approval to apply the ACIP Initiative from the [ACIP.ManagementTeam@defence.gov.au](mailto:ACIP.ManagementTeam@defence.gov.au).**

**Drafters using this clause for Defence (excluding CASG) procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, must delete the Note to tenderers below and also delete clause 7.1.12 and its associated Note to tenderers.**

**Note to tenderers: The operation of clause 7.1 will vary depending on whether the Contractor has Approved Contractor Insurance Program (ACIP) status and, where a Contractor has ACIP status, to the extent any of the policies required by clause 7.1 are within the Contractor's ACIP.**

**As per clause 7.1.12, for Contractors with ACIP status, the Contractor will be deemed compliant with relevant requirements of this clause where the policy is within the scope of the Contractor's ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/acip-initiative>.

- 7.1.1 The Contractor shall effect and maintain (or be insured under) the insurances for the times and in the manner specified in this clause 7.1, except to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 7.1.
- 7.1.2 For the avoidance of doubt, the terms of this clause 7.1 do not alter the allocation of risk or liability between the parties as provided for under any other clause of the Contract.
- 7.1.3 The Contractor shall use its reasonable endeavours to ensure that its Subcontractors and their employees, officers and agents are insured as required by this clause 7.1, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Contractor.

**Option: For use if workers compensation insurance is required.**

- 7.1.4 **(workers compensation)** The Contractor shall effect and maintain workers compensation insurance or registrations as required by law, in respect of the Contractor's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract.

**Option: For use if public liability insurance is required.**

- 7.1.5 **(public liability)** The Contractor shall effect and maintain public liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each and every occurrence which covers the Contractor and Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract by the Contractor or Contractor Personnel.

*Option: For use if professional indemnity insurance is required.*

7.1.6 (professional indemnity) The Contractor shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than the amount specified in the Details Schedule for any one claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity by reason of any act or omission of the Contractor or Contractor Personnel. Such insurance shall:

- a. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Contractor or Contractor Personnel under the Contract;

**Note to drafters: Paragraphs b, c, d and f are optional depending on the services and risks. Where b or c is selected, f should also be included.**

- b. extend to cover claims related to Software and IT risks;
- c. extend to cover claims for unintentional breaches of intellectual property rights;
- d. extend to cover claims for unintentional breaches of trade practices laws;
- e. have a retroactive date of no later than the earlier of the commencement of the work under the Contract or any earlier preparatory work by the Contractor and Contractor Personnel; and
- f. have worldwide territorial and jurisdictional limits.

7.1.7 The insurances and registrations referred to in:

- a. the following clauses shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed:
  - (i) clause 7.1.4 (workers compensation); and
  - (ii) clause 7.1.5 (public liability); and
- b. clause 7.1.6 (professional indemnity) shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until the earlier of:
  - (i) [7/10] years following completion of the work under the Contract; or
  - (ii) [7/10] years following an earlier termination of the Contract.

7.1.8 To the extent that the Contractor's insurances and registrations required by clause 7.1 of this Contract are in fact written on a claims made basis (notwithstanding any requirements of this Contract for such insurances to be written on an occurrence basis) then the Contractor must maintain those insurances and registrations until the earlier of:

- a. [7/10] years following completion of the work under the Contract; or
- b. [7/10] years following an earlier termination of the Contract.

7.1.9 With the exception of statutory insurances, the insurances referred to in this clause 7.1 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably.

7.1.10 The Contractor shall, on request, produce evidence satisfactory to the Commonwealth Representative, acting reasonably, of the currency and terms of the insurances referred to in this clause 7.1.

7.1.11 In respect of each insurance referred to in this clause 7.1, the Contractor shall:

- a. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by the Commonwealth; and



- b. do everything reasonably required by the Commonwealth in order to allow the Commonwealth or any other person for whose benefit the policy is effected to claim and to collect or recover monies due under any insurance policy.

**Note to drafters: When using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, delete clause 7.1.12 and its associated Note to tenderers.**

**Note to tenderers: Clause 7.1.12 will only be included if the Contractor has an ACIP and may require amendment to only apply to those insurances to be covered by the ACIP.**

7.1.12 The Contractor shall be:

- a. deemed compliant with the requirements of the following clauses:
- (i) clause 7.1.1;
  - (ii) clause 7.1.4 (workers compensation);
  - (iii) clause 7.1.5 (public liability);
  - (iv) clause 7.1.6 (professional indemnity); and
  - (v) clauses 7.1.4, 7.1.8 and 7.1.9; and
- b. relieved of its obligations under clauses 7.1.10 and 7.1.11,
- c. in respect of a particular insurance listed in clause 7.1.12a for any period during which the Contractor's insurance program holds Approved Contractor Insurance Program (ACIP) status under CASG's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether the Contractor's ACIP status extends to that type of insurance). The Contractor shall advise the Commonwealth Representative within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

7.1.13 If the Contractor fails to effect and maintain the insurances in accordance with this clause 7, the Commonwealth may:

- a. effect and maintain those insurances and the Commonwealth may elect to recover the amount from the Contractor under clause 11.5; or
- b. provide a notice of termination for default in accordance with clause 11.1.2.

No amount shall be owing to the Commonwealth under this clause 7.1.13 until the Commonwealth elects to recover the amount.

## **8 INDEMNITIES, DAMAGES, RISK AND LIABILITY**

### **8.1 Indemnity (Core)**

8.1.1 The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with:

- a. the death, personal injury, disease or illness of any employee or officer of the Contractor in relation to the Contract; and
- b. a Claim by a third party arising out of or as a consequence of a Contractor Default, including a Claim in respect of:
- (i) the death, personal injury, disease or illness of any person; or
  - (ii) loss of or damage to any third party property.

8.1.2 The liability of the Contractor under clause 8.1.1 shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of:

- a. a Commonwealth Default;
- b. an Excepted Risk
- c. a breach of a general law duty or an applicable law by an Unrelated Party.

- 8.1.3 The Contractor shall release the Commonwealth and Commonwealth Officers in respect of any liability for Loss referred to in clause 8.1.1, except to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default.

## **8.2 Intellectual Property and Confidentiality (Core)**

---

- 8.2.1 The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party in respect of:
- a. an infringement or alleged infringement of the third party's IP rights (including Moral Rights) arising out of or as a consequence of an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in the Contract (including in clause 4); and
  - b. breach or alleged breach of any obligation of confidentiality owed to that third party arising out of or as a consequence of any act or omission of the Contractor or Contractor Personnel.
- 8.2.2 The liability of the Contractor under clause 8.2.1 shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default.
- 8.2.3 In this clause 8.2:
- "infringement"** of a right includes an act or omission that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), or section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement of the right.

## **8.3 Loss of or Damage to Commonwealth Property**

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- 8.3.1 The Contractor shall (and shall ensure that all Contractor Personnel) take reasonable care to prevent loss of, or damage to, Commonwealth Property in connection with the work under the Contract.
- 8.3.2 The Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to any Commonwealth Property while it is:
- a. on any Contractor Premises; or
  - b. being stored or transported by or on behalf of the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; or
- in connection with the Contract, whether or not the loss or damage arises out of or as a consequence of a Contractor Default.
- 8.3.3 The liability of the Contractor under clause 8.3.2 shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of a Commonwealth Default.
- 8.3.4 Without limiting clause 8.3.2, the Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to, Commonwealth Property arising out of or as a consequence of a Contractor Default.
- 8.3.5 The liability of the Contractor under clause 8.3.4 shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of a Commonwealth Default.

## **8.4 Exclusions of Certain Losses (Core)**

---

- 8.4.1 Subject to clause 8.6.1, the Contractor is not liable to pay compensation or damages under or in relation to this Contract, or liable to make a payment under an indemnity in this Contract, for Loss incurred by the Commonwealth resulting from:
- a. damage to reputation or exemplary or punitive damages incurred by the Commonwealth; or
  - b. diminished revenue, profits or business opportunity suffered by the Commonwealth.
- 8.4.2 The Commonwealth is not liable to pay compensation or damages under or in relation to this Contract for Loss resulting from damage to reputation or for exemplary or punitive damages incurred by the Contractor.

## 8.5 Liability Cap (Optional)

**Note to drafters: A Liability Risk Assessment (LRA) is to be undertaken by the Commonwealth in accordance with the LRA template which can be accessed at:**

- <http://drnet.defence.gov.au/casg/commercial/UndertakingProcurementinDefence/Pages/Liability-Risk-Management.aspx>.

**The LRA provides the basis for determining the liability caps in this clause 8.5 and the insurance requirements in clause 7. If this clause is not included, the optional text in clause 8.6 should be deleted.**

**Note to tenderers: The limitation of liability amount was determined by the Commonwealth based on a liability risk assessment conducted in accordance with the Defence Liability Risk Assessment template, which can be accessed at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/liability-risk-management>.

8.5.1 Subject to clause 8.6.1, the liability of the Contractor to the Commonwealth in connection with the Contract (including at general law, in negligence or in equity) is limited in aggregate to the Limitation Amount specified in the Details Schedule.

8.5.2 The amount of the liability cap in clause 8.5.1 shall be adjusted in accordance with the formula:

$$\text{new amount} = \left( \frac{\text{most recent CPI}}{\text{Base Date CPI}} \right) \times \text{existing amount}$$

where:

'**Base Date CPI**' means the CPI most recently published before the Base Date;

'**CPI**' means the Consumer Price Index, All Groups, Weighted Average of Eight Capital Cities published by the ABS in Catalogue number 6401.0, Table 7, Series ID A2325846C or, if that Index is no longer published by the ABS, the index published by the ABS that most closely corresponds to that Index; and

8.5.3 '**most recent CPI**' means the CPI most recently published before the question whether a liability cap has been reached is determined.

## 8.6 When [Liability Cap and] Exclusions of Certain Losses do not apply (Core)

8.6.1 The [liability cap in clause 8.5 and] exclusions of liability under clause 8.3 do not apply to a liability of the Contractor under or arising out of the Contract in relation to:

- a. (**third party claims**) a Claim by a third party in respect of:
  - (i) the death, personal injury, disease or illness of any person; or
  - (ii) loss of or damage to property of a third party;
- b. (**IP**) an infringement of an intellectual property right (including a Moral Right) of any person;
- c. (**confidentiality**) a breach of an obligation of confidence;
- d. (**death of or personal injury to Commonwealth Officers**) the death, personal injury, disease or illness of a Commonwealth Officer;
- e. (**non-Defence Commonwealth Property**) the loss of, or damage to, Commonwealth Property (other than Defence Property);
- f. (**Defence security**) a breach of the Contractor's obligations in relation to Defence security;
- g. (**privacy**) a breach of a written law with respect to privacy;
- h. (**criminal offences**) an act or omission of the Contractor or Contractor Personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
- i. (**Wilful Default**) a Wilful Default of the Contractor or Contractor Personnel;

- j. **(repudiation)** a repudiation of the Contract by the Contractor where the Contractor has intentionally abandoned the Contract; or
- k. **(restitution)** restitution of amounts paid under a mistake of fact or law in relation to the Contract.

8.6.2 Each paragraph of clause 8.6.1 is independent of, and its application is not affected by, any of the other paragraphs.

## **8.7 Proportionate Liability Laws (Core)**

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- 8.7.1 The parties agree that, to the extent permitted by law, the provisions of the Contract:
- a. are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
  - b. exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

## **9 CONTRACT MANAGEMENT**

### **9.1 Change to the Contract (Core)**

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- 9.1.1 Either party may propose a change to the Contract. The Contract may only be changed in writing and signed by both parties. A change to the Contract shall take effect on the date on which the change is signed by the parties or, if signed on separate days, the date of the last signature.
- 9.1.2 The Commonwealth Representative may issue an amendment to the Contract to incorporate any changes that have taken effect under clause 9.1.1. Such an amendment does not affect the legal status of the Contract change as determined under clause 9.1.1.
- 9.1.3 The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the change is in accordance with this clause 9.1.

### **9.2 Waiver (Core)**

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- 9.2.1 Failure by either party to enforce a condition of the Contract shall not be construed as in any way affecting the enforceability of that condition or the Contract as a whole.
- 9.2.2 The exercise of the Commonwealth's rights under the Contract does not affect any other rights of the Commonwealth and does not constitute an election, or a representation, regarding the Commonwealth's exercise of particular rights.

### **9.3 Confidential Information (Core)**

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- 9.3.1 Each party shall ensure that Confidential Information identified in Attachment D as being confidential to the other party is not disclosed by the party, except to the extent that:
- a. the disclosure is permitted under clause 9.3.3;
  - b. the Confidential Information is in Contract Material and the disclosure is in connection with the exercise of rights provided for in clause 4; or
  - c. the disclosure is to a Commonwealth Service Provider to enable it to perform its obligations, functions or duties to the Commonwealth; or
  - d. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- 9.3.2 Each party shall ensure that, before disclosing Confidential Information under clause 9.3.1b or 9.3.1c, the recipient executes (or has already executed) a written undertaking in the form of a deed of confidentiality or contractual obligation that appropriately restricts the further disclosure of that information.
- 9.3.3 The restriction in clause 9.3.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is:
- a. required or authorised by law;
  - b. necessary for the conduct of any legal proceedings arising in connection with the Contract;

- c. made by the Commonwealth, a Minister or the Parliament, in accordance with statutory or portfolio duties or functions or for public accountability reasons, including following a request by the Parliament, a parliamentary committee or a Minister; or
- d. to any of the following persons:
  - (i) a legal adviser, insurer, financier, auditor or accountant of a party to the extent required to enable them to perform those roles;
  - (ii) a Related Body Corporate for internal management purposes;
  - (iii) any Commonwealth Personnel who need to know the information in order to undertake their duties or functions; and
  - (iv) an employee, officer or agent of the Contractor who needs to know the information to enable the Contractor to perform its obligations under the Contract.

9.3.4 The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term 'Confidential Information' or equivalent terms.

9.3.5 Subject to clause 9.3.6, the Contractor shall return to the Commonwealth or destroy all documents in its possession, power or control which contain any Confidential Information of the Commonwealth if the Confidential Information is no longer required for the purposes of the Contract.

9.3.6 The Contractor may retain Confidential Information of the Commonwealth in its records, if retention is required to comply with any legal, professional or insurance obligations or where it is not reasonably practicable to destroy the records included in routine electronic backups.

9.3.7 Retention, return or destruction of the documents referred to in this clause 9.3 does not release the Contractor from its obligations under the Contract.

#### **9.4 Assignment and Novation (Core)**

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9.4.1 Neither party may, without the written consent of the other, assign its rights under the Contract or novate its rights or obligations under the Contract.

9.4.2 If the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.

9.4.3 The Commonwealth may refuse to consent to an arrangement proposed by the Contractor under clause 9.4.2.

#### **9.5 Negation of Employment and Agency (Core)**

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9.5.1 The Contractor shall not represent itself, and shall ensure that Contractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.

9.5.2 Without limiting clause 9.5.1, the Contractor shall clearly identify itself, and shall ensure that Contractor Personnel clearly identify themselves, as a contractor to the Commonwealth when communicating through telephone, email or any other communication tool in the course of performing the Services.

9.5.3 None of the Contractor or Contractor Personnel shall, by virtue of the Contract, be, or for any purpose be taken to be, an employee, partner or agent of the Commonwealth.

#### **9.6 Commonwealth Access (Core)**

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9.6.1 During the performance of the Contract, the Contractor shall, at the Commonwealth's request (acting reasonably), provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with timely and sufficient access to its premises, records or accounts relevant to the Contract. The Commonwealth and its nominees may copy any records or accounts relevant to the Contract and retain or use these records or accounts for the purposes of this clause.

9.6.2 Without limiting clauses 9.6.1, and 9.6.3, the Contractor acknowledges and agrees that:

- a. the Auditor-General has the power under the *Auditor-General Act 1997 (Cth)* 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, 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, to access premises, records and accounts under clause 9.6.1 or 9.6.3.
- 9.6.3 Without limiting the generality of clause 9.6.1 or 9.6.4, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:
- a. inspecting CMCA, attending, conducting or checking stocktakes of CMCA, including viewing and assessing the Contractor's inventory control and stocktaking systems, and removing CMCA that is no longer required for the performance of the Contract;
  - b. investigating the reasonableness of proposed prices or costs in any Contract change proposal submitted in accordance with clause 9.1;
  - c. monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Services;
  - d. assessing the financial viability of the Contractor to perform and complete the Contract; and
  - e. monitoring and assessing compliance with the Commonwealth Supplier Code of Conduct in accordance with clause 10.10.1.
- 9.6.4 If the Contractor enters into a Subcontract in accordance with clause 9.8, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
- 9.6.5 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.

## **9.7 Contractor Access (Core)**

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- 9.7.1 The Commonwealth shall, during the period of the Contract, allow the Contractor or its Key Persons access to Commonwealth Premises as necessary for the Contractor's performance of the Contract.
- 9.7.2 The Contractor shall comply with, and require persons afforded access under clause 9.7.1 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth Premises.
- 9.7.3 The Commonwealth retains the right to deny access on occasions to the Contractor or its Key Persons because of safety and security arrangements or as a result of failure by the Contractor or Key Persons to comply with clause 9.9.
- 9.7.4 The Contractor acknowledges that it may be provided with the ability to access Commonwealth-held information in connection with its performance of the Services, including through access to Commonwealth information technology systems. Without limiting the Contractor's other obligations under this Contract or otherwise at law, the Contractor shall not seek to access or use Commonwealth-held information except to the extent strictly required for the provision of the Services.

## **9.8 Subcontracts (Core)**

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- 9.8.1 The Contractor shall not Subcontract the whole of the work under the Contract. The Contractor shall not Subcontract any part of the work under the Contract without the prior written approval of the Commonwealth Representative.
- 9.8.2 The Contractor, by subcontracting any part of the work under the Contract, or by obtaining the Commonwealth Representative's approval of a Subcontractor, shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 9.8.3 Without limiting the Contractor's obligations under the Contract, the Contractor shall ensure that:

- a. the requirements of clauses 3.3, 4.2, 9.5, 10.1, 10.3, and 10.7 are included in all Subcontracts;
  - b. each Subcontractor that requires access to any Commonwealth place, area or facility or to security classified information is subject to the requirements of clause 9.9;
  - c. the requirements of clauses 9.6, 9.9 and 9.10, are included in all Subcontracts; and
  - d. the Contractor obtains rights, in each Subcontract, that are equivalent to the rights of the Commonwealth under clause 11.3.
- 9.8.4 The Contractor shall not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 9.8.5 The Contractor acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose Subcontractors' participation in the performance of the Contract. If requested by the Commonwealth Representative, the Contractor shall provide the Commonwealth Representative with names of Subcontractors and copies of Subcontracts (which copy need not contain prices) for this purpose.

### **9.9 Defence Security (Core)**

- 9.9.1 If the Contractor or Contractor Personnel require access to any Commonwealth Premises under the control or responsibility of Defence, the Contractor shall:
- a. comply with any security requirements (including those contained in the Defence Security Principles Framework (DSPF)) notified to the Contractor by the Commonwealth Representative from time to time; and
  - b. ensure that Contractor Personnel are aware of and comply with the Commonwealth's security requirements.
- 9.9.2 The Contractor shall:
- a. ensure that Contractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
  - b. promptly notify the Commonwealth Representative of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and
  - c. provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.

**Note to drafters:** For further information on personnel security clearances and types of accreditation, refer to Principles 23, 40 and 73 of the DSPF. Facility accreditations will be required for certain Business Impact Levels. For information on Business Impact Levels refer to:

- <http://drnet/eig/Defence-Security/Security-Risk-Management/Pages/BIL.aspx>

or contact the relevant Regional DSVS Office.

**Where the procurement involves complex security arrangements or a range of personnel security clearances, details should be set out in the Security Classification and Categorisation Guide at Attachment E. In this event, reference to that attachment should be made in the relevant section of the Details Schedule.**

**Note to tenderers:** For information on security classification, and required facility accreditations refer to the Security Classification and Categorisation Guide (SCCG) at Attachment E (if applicable), Principle 73 and Principle 10 of the DSPF, and the Australian Government's Protective Security Policy Framework at:

- <https://www.protectivesecurity.gov.au/policies>.

- 9.9.3 The security classification of the information and assets accessible to the Contractor and work to be performed under the Contract will be up to and including the level specified in the Details Schedule. The Contractor shall:
- a. comply with the classification and protection of official information requirements of Principle 10 of the DSPF; and

- b. ensure that all required personnel (if any) possess a personnel security clearance at the level specified in the Details Schedule, and comply with the requirements and procedures of Principle 40 of the DSPF.

**Note to drafters: DISP membership in accordance with Control 16.1 of the DSPF is required in various circumstances, including but not limited to where:**

- a contractor is working on classified information or assets, storing or transporting Defence weapons or explosive ordnance, providing security services for Defence bases and facilities;
- the procurement involves weapons or explosive ordnance; or
- as a result of a Defence business requirement.

**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>

**Note to tenderers: For information on the DISP (and equivalent international agreements or arrangements for overseas tenderers) refer to Control 16.1 of the DSPF. For access to the DSPF tenderers should contact the Contact Officer listed in the Tender Details Schedule.**

**Option A: If the Contractor will require DISP membership in accordance with Control 16.1 of the DSPF.**

- 9.9.4 The Contractor shall obtain and maintain all elements of DISP membership at the levels specified in the Details Schedule (or an equivalent international agreement or arrangement) in accordance with Control 16.1 of the DSPF for the purposes of the Contract.

**Option B: If the Contractor will not require DISP membership in accordance with Control 16.1 of the DSPF.**

- 9.9.5 The Contractor is not required to hold DISP membership within the meaning of Control 16.1 of the DSPF for the purposes of the Contract.

**Note to drafters: Where work to be performed overseas will involve security classified information and/or assets, the following option is to be included. Otherwise the option should be deleted.**

**If, at the time of drafting, it is not clear that this clause will be required, the option is to be included in the draft Contract. Otherwise, the option should be deleted.**

**Note to tenderers: If the tenderer proposes to perform work at an overseas location and that work involves information and/or assets that is subject to a security classification, and that aspect proposal is agreed in any resultant Contract, the following clauses will be included.**

**Option: If work is to be performed overseas and will involve security classified information and/or assets (as identified in the Details Schedule).**

- 9.9.6 Where work under the Contract is performed overseas, the Contractor shall hold a Facility Security Clearance at the relevant level verified by Defence Security Vetting Service (DSVS) through a bilateral security instrument in accordance with Principle 16 of the DSPF.

**Option: For when the procurement involves classified information or security protected assets (as identified in the Details Schedule).**

- 9.9.7 The Contractor shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide in Attachment E and shall ensure that such information is safeguarded and protected according to its level of security classification.

- 9.9.8 With respect to security classified information, the Contractor shall:

- a. ensure that no security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative;



- b. promptly report to the Commonwealth Representative any security incident, as defined by the DSPF, including instances in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country; and
- c. ensure that all security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Principle 71 of the DSPF.

**Note to drafters: If, at the time of drafting, it is not clear that COMSEC material will be required to be transmitted within Australia, the following option is to be included in the draft contract. Otherwise, the option should be deleted.**

**Option: For when COMSEC material is transmitted in Australia (as identified in the Details Schedule).**

- 9.9.9 Where COMSEC material is transmitted in Australia, the Contractor shall ensure that:
- a. without limiting clause 9.9.8b, all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall, be subject to the special security provisions of Principle 13 of the DSPF; and
  - b. all security classified information transmitted between the parties or a party and a Subcontractor located overseas whether generated in Australia or by another country shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.

**Note to drafters: If, at the time of drafting, it is not clear that COMSEC material will be required to be transmitted overseas, the following option is to be included in the draft contract. Otherwise, the option should be deleted.**

**Option: For when COMSEC material is transmitted overseas (as identified in the Details Schedule).**

- 9.9.10 Where COMSEC material is transmitted overseas, the Contractor shall ensure that:
- a. all COMSEC material transmitted between the parties or a party and a Subcontractor located overseas shall be subject to approval in the first instance by the Director ASD, in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries; and
  - b. once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director ASD and to any bilateral security instrument between Australia and the overseas country.

- 9.9.11 If there has been a breach by the Contractor or Contractor Personnel of this clause 9.9, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 11.2.1c.

## **9.10 Conflict of Interest (Core)**

- 9.10.1 The Contractor:
- a. warrants that, to the best of its knowledge after making diligent inquiries at the Effective Date specified in the Details Schedule, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any Contractor Personnel; and
  - b. shall promptly notify the Commonwealth in writing if such a conflict of interest or risk of such a conflict of interest arises.
- 9.10.2 Within five Working Days after giving notice under clause 9.10.1, the Contractor shall notify the Commonwealth, in writing, of the steps the Contractor will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth.

- 9.10.3 If the Contractor fails to notify the Commonwealth in accordance with clauses 9.10.1 or 9.10.2 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate the Contract in accordance with clause 11.2.1.

### **9.11 Post Defence Separation Employment (Core)**

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- 9.11.1 Except with the prior written approval of the Commonwealth Representative, the Contractor shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding 12 month period was engaged or involved in:
- a. the preparation or management of the Contract;
  - b. the assessment or selection of the Contractor; or
  - c. the planning or performance of the procurement or any activity relevant or related to the Contract,
- to perform or contribute to the performance of the Contract.
- 9.11.2 To avoid doubt, the 12 month period referred to in clause 9.11.1 applies from the date which is 12 months before the date on which the Contractor proposes that the person start performing or contributing to the performance of the Contract.
- 9.11.3 The Commonwealth Representative shall not unreasonably withhold approval under clause 9.11.1 and shall consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
  - b. any information provided by the Contractor about the character and duration of the Services to be performed by the person under the Contract;
  - c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Contract in the manner proposed under 9.11.3b, and the arrangements which the Contractor proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
  - d. any information provided by the Contractor concerning any significant effect which withholding approval will have on the person's employment or remuneration opportunities or the performance of the Contract; and
  - e. the policy requirements set out in DI ADMINPOL Annex C AG5 and the *Integrity Policy*, as applicable.

## **10 POLICY AND LAW**

### **10.1 Governing Law (Core)**

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- 10.1.1 The laws of the State or Territory specified in the Details Schedule shall apply to the Contract. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.
- 10.1.2 The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to the Contract.

### **10.2 Compliance With Laws (Core)**

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- 10.2.1 The Contractor shall, in the performance of the Contract, comply with and ensure Contractor Personnel comply with, the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.
- 10.2.2 The Contractor shall provide to the Commonwealth Representative within 10 Working Days after a request by the Commonwealth written confirmation that, to the best of the Contractor's knowledge and based on reasonable enquiries undertaken by the Contractor, the Contractor and Contractor Personnel are compliant with all laws (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of the Contract and the Subcontracts.
- 10.2.3 The Contractor:
- a. shall take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under the Contract or any Subcontract; and,

- b. acknowledges and agrees that its obligation in clause 10.2.3a extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by Contractor Personnel.

If the Contractor knows that any fraud is occurring or has occurred, it shall, as soon as practicable, provide written details to the Commonwealth, and provide such further information and assistance as the Commonwealth, or any person authorised by the Commonwealth, reasonably requires in relation to the fraud.

### 10.3 Policy Requirements (Core)

**Note to drafters: Prior to RFT release and prior to the execution of any resultant Contract, the Glossary should be updated to reflect the version of the following documents and policies current at the time of RFT release and signature of any resultant Contract, as applicable.**

**If there are other Commonwealth or Defence policies relevant to the procurement activity, that are not otherwise referenced in the draft Contract, they can be listed below.**

- 10.3.1 The Contractor shall comply with, and shall ensure that Contractor Personnel comply with the following Commonwealth policies of general application relevant or applicable to the Contract:
- a. DI, and in particular:
    - (i) Administration and Governance Provision 4 AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
    - (ii) Administration and Governance Provision 5, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual; and
    - (iii) People Provision 7, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
  - b. Financial Policy Gifts and Benefits (Including Hospitality) – Receiving;
  - c. Financial Policy Gifts and Benefits (Including Hospitality) – Spending;
  - d. Australian Defence Force alcohol policy detailed in MILPERSMAN Part 4 Chapter 1;
  - e. Public Interest Disclosure policy detailed at:
 

<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>; and
  - f. **[DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES].**

**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/resource-centre/indigenous-affairs/indigenous-procurement-policy>

- 10.3.2 The Contractor shall use its reasonable endeavours to increase its:

- a. purchasing from Indigenous enterprises; and
- b. 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” (<https://supplynation.org.au/>).

**Option: For when a procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.**

**Note to drafters: 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, the procurement will still be subject to the Workplace Gender Equality Procurement Principles and the following clauses must be used.**

**A list of Defence specific exemptions is found in the factsheet 'Exemptions from Division 2 of the Commonwealth Procurement Rules' which is available here:**

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

**Note to tenderers: These clauses 10.3.3 and 10.3.4 apply only to the extent that the tenderer 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.**

10.3.3 The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act).

10.3.4 If the Contractor becomes non-compliant with the WGE Act during the period of the Contract, the Contractor shall notify the Commonwealth Representative.

## **10.4 Work Health and Safety (Core)**

10.4.1 The Commonwealth and the Contractor:

- a. shall, where applicable, comply with, and the Contractor shall 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 WHS duty under the WHS Legislation in relation to the same matter; and
- b. acknowledge that they have a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
  - (i) Commonwealth Personnel;
  - (ii) Contractor Personnel; and
  - (iii) other persons,
 in connection with the Services.

10.4.2 The Contractor represents and warrants that:

- a. it has given careful, prudent and comprehensive consideration to the WHS implications of the work to be performed by it under the Contract; and
- b. the proposed method of performance of that work complies with, and includes a system for identifying and managing WHS risks which complies with, all applicable legislation relating to WHS including the WHS Legislation.

10.4.3 The Contractor shall:

- a. provide the Services in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Services (such as in relation to testing or auditing); and
- b. ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the Services for the purposes referred to in clause 3.2.1, and to maintain, support and develop the Services,

without the Commonwealth or Commonwealth Personnel contravening any legislation relating to WHS including the WHS Legislation, any applicable standards relating to WHS or any policy relating to WHS identified in the Contract.

- 10.4.4 Without limiting the application of the WHS Legislation (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Services, provide, and shall use its reasonable endeavours to ensure that a Subcontractor provides, 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 Representative any information or copies of documentation requested by the Commonwealth Representative 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.
- 10.4.5 Subject to clause 9.9 and any relevant foreign government restrictions, the Commonwealth shall provide to the Contractor in a timely manner any information or copies of documentation reasonably requested by the Contractor and held by the Commonwealth to enable the Contractor to comply with its obligations under the applicable WHS Legislation in relation to the Contract.
- 10.4.6 To the extent not inconsistent with the express requirements of the Contract, the Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable legislation relating to WHS including the WHS Legislation in relation to the provision of the Services. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the Commonwealth Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 10.4.7 The Contractor shall not use ACM in providing the Services and shall not take any ACM onto Commonwealth Premises in connection with providing the Services.
- 10.4.8 Unless the Commonwealth Representative otherwise agrees in writing, the Contractor shall:
- a. ensure that any deliverable provided to the Commonwealth in connection with the Services does not contain a Problematic Substance; and
  - b. not use, handle or store a Problematic Substance on Commonwealth Premises in connection with the Services.
- 10.4.9 Where the Commonwealth Representative agrees that a deliverable may contain a Problematic Substance or that the Contractor may use, handle or store a Problematic Substance on Commonwealth Premises, the Contractor shall ensure that:
- a. full details of the Problematic Substances are provided to the Commonwealth Representative in the format of a SDS, except where the applicable SDS exists within the Australian ChemAlert database and the Contractor identifies that SDS to the Commonwealth Representative by reference to its unique record within that database; and
  - b. 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 Services clearly identifies the nature of the substance and its associated hazards.
- 10.4.10 If a Notifiable Incident occurs in connection with the work carried out under the 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 Representative;
  - e. promptly provide the Commonwealth Representative 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 Representative 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 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.
- 10.4.11 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 Personnel may be working.
- 10.4.12 On receipt of advice from the Commonwealth under clause 10.4.11, the Contractor shall undertake necessary risk assessments, identify control measures and advise Contractor Personnel of the hazards and risks and relevant control measures.

#### **10.5 Environmental Obligations (Core)**

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- 10.5.1 The Contractor shall perform its obligations under the Contract in such a way that:
- a. the Commonwealth is not placed in breach of; and
  - b. the Commonwealth is able to support and to make full use of the Services for the purposes for which they are intended without being in breach of,
- any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

#### **10.6 Severability (Core)**

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- 10.6.1 If any part of the Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Contract shall not be affected and shall be read as if that part had been severed.

#### **10.7 Privacy (Core)**

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- 10.7.1 The Contractor shall:
- a. if it obtains Personal Information in the course of performing the Contract, use or disclose that Personal Information only for the purposes of the Contract subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
  - b. comply with its obligations under the *Privacy Act 1988* (Cth); and
  - c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.
- 10.7.2 The Contractor shall notify the Commonwealth as soon as reasonably practicable if:
- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 10.7, whether by the Contractor, Contractor Personnel or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
  - b. in relation to Personal Information obtained in the course of performing the Contract:
    - (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
    - (ii) it is approached by the Privacy Commissioner.
- 10.7.3 The Contractor shall ensure that Contractor Personnel who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause 10.7.

**10.8 Child Safety (Optional)**

**Option: For when the Commonwealth Child Safe Framework applies**

**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 YOUTHPOLMAN, which can be found here:

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

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](mailto:procurement.asdefcon@defence.gov.au).

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

[procurement.policy@defence.gov.au](mailto: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>

**10.9 Modern Slavery (Optional)**

**Option: For inclusion where the modern slavery risk assessment for the procurement has determined there is a risk of modern slavery existing in the relevant supply chain.**

**Note to drafters: The procurement should be assessed for the risk of modern slavery existing in the supply chain. Guidance on performing this risk assessment, as well as other guidance on the Modern Slavery Act 2018 (Cth), can be found on the Attorney-General's Department (AGD) Modern Slavery Register site here:**

- <https://modernslaveryregister.gov.au/resources/>.

**If the modern slavery risk assessment determines that there is a risk of modern slavery existing in the supply chain, drafters must include the model clauses for Defence procurements subject to the requirements of the Modern Slavery Act 2018 (Cth). These model clauses are based on the AGD's 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:**

- [procurement.asdefcon@defence.gov.au](mailto: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://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/700DDE0B-7EB6-4C98-BD11-CE00EAE739DA>

**10.10 Commonwealth Supplier Code of Conduct (Core)**

**Note to drafters: A procurement must incorporate the Commonwealth Supplier Code of Conduct in accordance with paragraph 6.11 of the CPRs.**

**Drafters must consider the interaction and alignment of this clause with clauses 3.3, 3.6, 9.3, 9.6, 9.10, 10.2, 10.3, 10.4, 11.2 prior to RFT release and prior to any resultant Contract.**

- 10.10.1 The Contractor shall (and shall ensure that all Contractor Personnel) comply with the Commonwealth Supplier Code of Conduct in the performance of the Contract.
- 10.10.2 The Contractor shall notify the Commonwealth Representative immediately after becoming aware of any potential or actual non-compliance with the Commonwealth Supplier Code of Conduct, including:
- a. a description of the non-compliance,
  - b. the date that the non-compliance occurred, and
  - c. whether any Contractor Personnel engaged in the performance of the Contract were or may have been involved in the non-compliance.
- 10.10.3 If the Commonwealth considers that a potential or actual non-compliance with the Commonwealth Supplier Code of Conduct has occurred, the Commonwealth may by notice to the Contractor, without limiting any of its other rights under the Contract, require that the Contractor:
- a. provide a response to the Commonwealth Representative within 3 Working Days on whether a potential or actual non-compliance has occurred; and
  - b. comply with its obligations under clause 10.10.
- 10.10.4 The Commonwealth Representative may request, and the Contractor shall provide, further information on any matter relating to:
- a. the policies, frameworks, or systems the Contractor has established to monitor and assess compliance with the Commonwealth Supplier Code of Conduct;
  - b. the Contractor's compliance with the Commonwealth Supplier Code of Conduct; or
  - c. an actual or potential non-compliance with the Commonwealth Supplier Code of Conduct, including its obligations under clauses 10.10.1 or 10.10.3a.



The Contractor shall provide such information within the timeframes and in the manner specified by the Commonwealth Representative at the time of request.

- 10.10.5 The Contractor acknowledges and agrees that compliance with the Commonwealth Supplier Code of Conduct and the obligations under clause 10.10 shall not relieve the Contractor from its liabilities or other obligations under the Contract or at law.
- 10.10.6 The Contractor's performance of its obligations under this clause will be at no additional cost to the Commonwealth.
- 10.10.7 If the Contractor fails to comply with the Commonwealth Supplier Code of Conduct in accordance with clause 10.10.1, the Commonwealth may give the Contractor a notice of termination for default under clause 11.2.1.

#### 10.11 Australian Skills Guarantee (Optional)

**Option: For inclusion when a procurement is subject to the Australian Skills Guarantee Policy.**

**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](mailto: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](mailto:procurement.policy@defence.gov.au).

**Or DEWR at:**

- [ASG@dewr.gov.au](mailto:ASG@dewr.gov.au).

## 11 DISPUTES AND TERMINATION

### 11.1 Resolution of Disputes (Core)

- 11.1.1 If a dispute arising between the Commonwealth and the Contractor cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 11.1.2 The Contractor shall at all times during the dispute continue to fulfil its obligations under the Contract.

**11.2 Termination Without Notice for Contractor Default (Core)**

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- 11.2.1 The Commonwealth may terminate the Contract by notice to the Contractor, if any of the following occurs:
- a. an Insolvency Event occurs in relation to the Contractor, except to the extent the exercise of a right under this clause 11.2.1 is prevented by law;
  - b. the Contractor commits a breach of the Contract that, in the Commonwealth's opinion, is not capable of being remedied;
  - c. an event occurs in respect of which the Contract provides that a notice of termination may be given;
  - d. the Contractor fails to take action to remedy a default by the Contractor of another obligation to be performed or observed under the Contract within 10 Working Days of being given notice in writing by the Commonwealth Representative to do so or, where action is taken within 10 Working Days, the Contractor fails to remedy the default within the period specified in the notice;
  - e. the Contractor breaches any of its obligations under clause 10.4; or
  - f. the Contractor fails to obtain or maintain any Authorisation required to enable it to comply with its obligations under the Contract, except to the extent that the failure was outside of the Contractor's reasonable control;

**Option: For when a Limitation Amount is included in the Details Schedule.**

- g. the Contractor would have, except for the operation of the limitation of liability under clause 8.5, been liable to the Commonwealth for Loss in aggregate for an amount greater than the Limitation Amount.

- 11.2.2 To avoid doubt, the Commonwealth is not required to provide prior notice of an exercise of its rights under clause 11.2.

**11.3 Termination or Reduction for Convenience (Core)**

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- 11.3.1 In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract for convenience, by notifying the Contractor in writing.
- 11.3.2 None of the other provisions of the Contract limit the Commonwealth's ability to terminate or reduce the scope of the Contract under this clause 11.3.
- 11.3.3 If the Contract is terminated or reduced under this clause 11.3, the Commonwealth's liability in respect of the termination or reduction is limited to:
- a. payments under the payment terms of the Contract for work performed before the date the termination or reduction takes effect; and
  - b. any reasonable costs incurred by the Contractor that are directly attributable to the termination or reduction,

and then only when the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative. In particular, the Contractor shall not be entitled to profit calculated by reference to any period after the date of the termination or reduction takes effect.

**11.4 General Termination Provisions (Core)**

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- 11.4.1 If the Contract is terminated under this clause 10.10 or otherwise:
- a. the termination takes effect on the date of the notice of termination, or if the notice of termination specifies a later date, the later date;
  - b. the Contractor shall:
    - (i) stop work in accordance with the notice of termination;
    - (ii) comply with any directions given to the Contractor by the Commonwealth; and
    - (iii) 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;

- c. the Contractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of Contractor Personnel that contain or relate to any Confidential Information or which are security classified;
- d. the Contractor shall deliver to the Commonwealth the TD for Services produced prior to the date of termination, within 30 days of receipt of the notice of termination, or other period agreed by the parties;
- e. subject to clause 11.6, the parties shall be relieved from future performance, without prejudice to:
  - (i) any right, or cause of action that has accrued at the date of termination; or
  - (ii) any amount owing under or in connection with the Contract as at the date of termination;
- f. the Contractor shall deliver to the Commonwealth all Commonwealth Property that the Contractor or Contractor Personnel have in their possession in connection with the Contract; and

**Note to drafters: only select the clause in square brackets if a Limitation Amount is included in the Details Schedule**

- g. subject to clauses 8.3, [8.5] and 11.3, the right to recover damages, including full contractual damages, shall not be affected.

11.4.2 The rights of the Commonwealth to terminate or reduce the scope of the Contract under clauses 11.2 and 11.3 are in addition to any other right or remedy the Commonwealth may have in relation to the Contract.

#### **11.5 Right of Commonwealth to Recover Money (Core)**

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11.5.1 Without limiting the Commonwealth's rights or remedies under the Contract or at law, if the Commonwealth elects, in accordance with the Contract, to recover an amount from the Contractor or the Contractor otherwise owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may:

- a. deduct the amount from payment of any claim; or
- b. give the Contractor a notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days after receipt of notice.

11.5.2 If any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor shall pay to the Commonwealth interest at the ATO sourced General Interest Charge Rate current at the date the payment was due for each day the payment is late.

#### **11.6 Survivorship (Core)**

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11.6.1 Any provision of the Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Contract and any rights arising on termination or expiration shall survive the termination or expiration of the Contract on its terms.

11.6.2 Without limiting clause 11.6.1, any provision dealing with Confidential Information, IP, Defence Security, Privacy, and any warranties, guarantees, licences, indemnities, liability caps, rights to recover money or financial and performance securities given under the Contract shall survive the termination or expiration of the Contract on its terms.

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA

----- (signature)	----- (print name and position)	----- (date)
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In the presence of:

----- (signature of witness)	----- (print name of witness)	----- (date)
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SIGNED for and on behalf of

THE CONTRACTOR:

**Note for Contract 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 should be used to assess the Contractor's execution of the Contract.***

**(...INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE...)**

## ATTACHMENT A

## STATEMENT OF WORK (CORE)

**Note to drafters: This Attachment provides example clauses only for writing a Statement of Work. Guidance on these issues can be found in the ASDEFCON (Services) Handbook.**

**Note to tenderers: Attachment A will consist of an amalgamation of this Attachment and the successful tenderer's response.**

**1. INTRODUCTION (CORE)**

- 1.1 [INSERT SUMMARY OF REQUIREMENT]  
 1.2 [INSERT BACKGROUND TO REQUIREMENT]

**2. STATEMENT OF WORK (CORE)**

**Note to drafters: It is usual to either set up a services contract so that the Contractor is conducting the work in phases, or else is performing ongoing duties. There are many different ways to draft a SOW to address these separate needs. Detailed below are just two examples of drafting to reflect these needs. Please note the following example assumes that there is no right for the Commonwealth to terminate the Contract at the completion of each phase.**

**Option A: For when a Contractor is performing a specific task (produce a report etc), drafters may choose to use clauses similar to the following:**

- 2.1 The Contractor shall undertake the work in the following phases:
- a. Phase 1: [INSERT DETAILS];
  - b. Phase 2: [INSERT DETAILS];
  - c. Phase 3: [INSERT DETAILS]; etc.
- 2.2 Phase 1: [INSERT DETAILS OF PHASE/NAME]
- a. The Contractor shall.....
  - b. The Contractor shall.....
- 2.3 Phase 2: [INSERT DETAILS OF PHASE/NAME]
- a. The Contractor shall.....
  - b. The Contractor shall.....

**Option B: For when a Contractor is performing ongoing duties rather than a specific discrete task, drafters may choose to use clauses similar to the following:**

- 2.4 The Contractor shall:
- a. [INSERT DETAILS AS APPROPRIATE...for example: provide general Project Management and ILS advice on THE PROCUREMENT]; and
  - b. draft and staff documentation including:
    - (i) ILS Plans; and
    - (ii) transition plans; etc

ATTACHMENT A

3. DELIVERABLES (CORE)

**Option A: For when a Contractor is performing a specific task (produce a report etc), drafters may choose to use clauses similar to the following:**

3.1 The Contractor shall provide [INSERT NUMBER] hard copies and [INSERT NUMBER] soft copies of the deliverables in accordance with the schedule detailed below:

**Table 1: Contract deliverables**

No.	Deliverables	Location	SOW Ref	Delivery Date

3.2 The Contractor shall provide the deliverables in the following format:

- a. Soft copies: [INSERT FORMAT]; and
- b. Hard copies: [INSERT FORMAT].

**Option B: For when a Contractor is performing ongoing duties rather than a specific discrete task, drafters may choose to use clauses similar to the following:**

**Note to drafters: Care must be exercised here when specifying tasks to minimise the risk of the Contractor being deemed to be an employee of the Commonwealth**

3.3 [DESCRIBE THE SERVICES. For example: the Contractor shall provide deliverables on an ongoing basis as directed by the Commonwealth Representative].

4. MEETINGS AND REPORTING (OPTIONAL)

4.1 [INSERT ANY SPECIFIC MEETING AND REPORTING REQUIREMENTS].

5. KEY PERSONS (CORE)

5.1 The Key Persons identified for the performance of the Contract are:

**Table 2: Personnel Identified for the Performance of the Contract**

Name	Task Title / Duties	Labour category (if applicable)

**Option: For when Key Persons will not be required to work over the Christmas / New Year stand-down period.**

**Note to Drafters: Depending on the nature of the Services to be provided, it may be necessary to avoid situations where the Contractor is working without access to guidance or management from APS/ADF personnel during the Christmas / New Year stand-down period. This may be especially important if Commonwealth employee input or supervision is required for the Services to be satisfactorily completed.**

5.2 Key Persons will not be required to work over the Christmas / New Year stand-down period scheduled from [INSERT DATE] to [INSERT DATE].

## ATTACHMENT A

**6. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)**

**Note to drafters: In this instance, GFM includes items such as work areas. Drafters are to specifically identify in the table below where items are GFE for the purposes of clause 3.2.8 of the Draft Conditions of Contract**

- 6.1 The Commonwealth shall provide the following Government Furnished Material (GFM) to the Contractor at the times and places detailed below:

**Table 3: Government Furnished Material**

Item	Date Required	Location Required	Licence Restrictions (if applicable)	Remarks / Intended Purpose

**7. STOCKTAKING OF CONTRACTOR MANAGED COMMONWEALTH ASSETS (CORE)**

- 7.1 The Contractor shall:

- a. institute, maintain and apply a system for, the accounting for and control, handling, preservation, protection and maintenance of Contractor Management Commonwealth Assets (CMCA);
- b. undertake quarterly stocktakes of CMCA; and
- c. develop and deliver quarterly CMCA stocktaking reports that include the following information:
  - (i) the stocktake number;
  - (ii) the storage location of all goods included in the stocktake;
  - (iii) all stocktake codes;
  - (iv) stocktake start and end dates; and
  - (v) statistical data including the quantity and value of all discrepancies, shelf stock held, shelf stock stocktaked, surpluses and deficiencies.

- 7.2 The Contractor shall promptly conduct investigations into every discrepancy arising from stocktakes of CMCA.

- 7.3 The Contractor shall immediately notify the Commonwealth Representative of any deficiencies that are discovered through a stocktake of CMCA.

## ATTACHMENT B

## PAYMENT (CORE)

## 1. BASIS OF PAYMENT

**Option A: For when the Contractor will be paid at the conclusion of the task.**

- 1.1 Subject to clause 5 of the COC, the Contract Price is (INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE), and is payable upon delivery of the final deliverable and completion of the Services. The Contractor may submit a claim for payment of the Contract Price upon delivery of the final deliverable and completion of the Services.

**Option B: For when the Contractor will be paid on completion of agreed milestones.**

**Note to drafters: Milestone details should align with the phases in the SOW.**

- 1.2 Subject to clause 5 of the COC, the Contract Price is (INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE), and is payable in the following instalments:
- a. (INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE) upon completion of [INSERT MILESTONE DETAILS]; and
  - b. (INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE) upon completion of [INSERT MILESTONE DETAILS].
- 1.3 The Contractor may submit a claim for payment of each instalment following completion of the relevant milestone.

**Option C: For when the Contractor will be paid monthly in arrears based on pre-agreed rates that apply to defined labour categories, and the Services are to be delivered within an agreed maximum (i.e. not to be exceeded) Contract Price.**

- 1.4 Subject to clause 5 of the COC, the Contract Price shall be payable progressively, monthly in arrears. The progressive payments shall be calculated as a factor of the labour rates defined in the following table, the allowable hours expended on the task and any reimbursable expenses as defined in clause 2:

Labour Category	Estimated Allowable Hours	Labour Rates (GST Inclusive)

- 1.5 The Contractor may submit a claim for payment of each progress payment following the last Working Day of the relevant month.
- 1.6 Notwithstanding clause 1.4 above, and subject to clause 5.3 of the COC, the Contractor shall provide the Services for a Contract Price which shall not exceed (INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE).

## 2. REIMBURSABLE EXPENSES

**Note to drafters: Drafters should choose one of the following clauses.**

**Information on Travelling Allowances is available from the Defence Travel website at:**

- <http://drnet/dfg/Travel/GuidesInfo/Pages/default.aspx>

**Option A: For when no expenses will be reimbursed.**

- 2.1 No expenses shall be reimbursable under the Contract.



## ATTACHMENT B

**Note to tenderers: If information on Defence Travelling Allowance rates is required prior to submitting your tender, contact the Contact Officer.**

**Option B: For when the Commonwealth will reimburse specified expenses.**

2.2 The following expenses shall be reimbursed to the Contractor under the Contract:

- a. Where the Commonwealth has provided its prior consent, the Contractor shall be entitled to reimbursement for travel, accommodation and living expenses up to the Defence travelling allowance rates which have been adjusted to include an element for GST. All claims for such reimbursement shall be submitted on a valid tax invoice showing the GST exclusive price, with GST then being charged on the total amount. The total GST inclusive claim for such reimbursement shall not exceed that of the total allowable Defence travelling allowances. As an alternative to reimbursement of such expenses, and at the discretion of the Commonwealth, the Commonwealth may undertake to arrange travel and accommodation required by the Contractor for the purposes of the Contract. The Contractor shall promptly supply all necessary information required by the Commonwealth to make these arrangements.
- b. [INSERT OTHER REIMBURSABLE EXPENSES PRIOR TO CONTRACT SIGNATURE].

2.3 If the Contractor is required to travel under the Contract, the hours spent travelling are not billable work hours, and the maximum allowable billable hours for each day shall be eight hours (a standard work day). Time spent travelling for work under the Contract does not constitute a reimbursable expense.

2.4 If requested by the Commonwealth Representative, the Contractor shall provide satisfactory evidence to substantiate any specified claim for reimbursement prior to any payment of the related claim.

ATTACHMENT C

CONTRACT MATERIAL RIGHTS SCHEDULE (CORE)

**Note to tenderers: Attachment C defines any restrictions on the rights granted under the Contract to Use or grant sublicenses in respect of Contract Material. Attachment C will consist of an amalgamation of information contained in this Attachment C, 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 (COC, clause 4.2.1b.)	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>			

## ATTACHMENT D

## CONFIDENTIAL INFORMATION AND REPORTING (CORE)

**Note to tenderers:** This Attachment will consist of the successful tenderer's response to this Attachment and any negotiated adjustments.

**Note:** The Commonwealth's policy on the identification of Confidential Information, including the 'Confidentiality Test', is contained on the Department of Finance (DoF) website at:

- <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.

The following four criteria comprise the 'Confidentiality Test', and must all be met before commercial information will be considered to be Confidential Information:

- Criterion 1:** The information to be protected must be specifically identified;
- Criterion 2:** The information must be commercially sensitive;
- Criterion 3:** Disclosure would cause unreasonable detriment to the owner of the information or another party; and
- Criterion 4:** The information was provided with an express or implied understanding that it would remain confidential.

The period of confidentiality must be specified for each item (e.g. for the period of the Contract, a period specified in the Contract). It should not be for an unlimited period.

Pricing provisions in Attachment B must only be listed in this Attachment if they meet the Confidentiality Test.

**Note to drafters:** Drafters must review their draft Contract to determine if it contains commercial information that meets the Confidentiality Test. Drafters should then review the examples provided below, prior to release of the RFT, and complete the tables as appropriate. Commercial information claimed to be confidential must be assessed against the Confidentiality Test and only information that meets this test can be included in this Attachment. Only the information in this Attachment can be considered for reporting confidentiality provisions on AusTender and for Senate Order 192.

Item	Clause Title	Reason for classification	Party for whom the information is Confidential	Period of Confidentiality
<b>Confidentiality (Contract)</b>				
<b>Conditions of Contract</b> , for example				
Clause 6.6 (i.e. if not standard template liability regime)	Limitation of Liability		Commonwealth/ Contractor	
(Any clauses which are not standard template clauses and that meet the DoF Confidentiality Test)			Insert name of party	
<b>Attachments</b> , for example				
Attachment A:	Statement of Work  (Identify specific clause/s)		Commonwealth/ Contractor	

## ATTACHMENT D

Attachment B:	Payment  (Identify specific clause, table or section)		<b>Contractor</b>	
Attachment C	Contract Material Rights Schedule		<b>Contractor</b>	

## ATTACHMENT E

## SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (OPTIONAL)

**Note to drafters:** A SCCG is to be included where the procurement involves classified information or security-protected assets.

For information on developing a SCCG refer to the Defence Security Division's guidance on Business Impact Levels at:

- <http://drnet/eig/Defence-Security/Security-Risk-Management/Pages/BIL.aspx>

and contact the Defence Security Division Project Security Team at:

[DSA.ProjectSecurity@defence.gov.au](mailto:DSA.ProjectSecurity@defence.gov.au).

[DRAFTERS TO INSERT SECURITY CLASSIFICATION AND CATEGORISATION GUIDE PRIOR TO RELEASE OF RFT].

## ATTACHMENT F

## GLOSSARY (CORE)

**Definitions, acronyms or abbreviations that are not used in a particular RFT or Contract may be deleted from this list. If drafters consider that an additional definition, acronym or abbreviation should be added, careful consideration needs to be given to the legal effect of the proposed 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
ACIP	Approved Contractor Insurance Program
ACM	Asbestos Containing Material
ACN	Australian Company Number
ADF	Australian Defence Force
ANZ	Australia and New Zealand
ASD	Australian Signals Directorate
ATO	Australian Taxation Office
CASG	Capability Acquisition and Sustainment Group
CCP	Contract Change Proposal
CMCA	Contractor Managed Commonwealth Assets
CMR	Contract Material Rights
COC	Conditions Of Contract
COMSEC	Communications Security
COT	Conditions of Tender
CPRs	Commonwealth Procurement Rules – June 2023
DEFLOGMAN	Defence Logistics Manual
DI ADMINPOL	Defence Instruction Administrative Policy
DISP	Defence Industry Security Program
DPI	Departmental Personnel Instruction
DSVS	Defence Security Vetting Service
DSPF	Defence Security Principles Framework
GFD	Government Furnished Data
GFE	Government Furnished Equipment
GFI	Government Furnished Information
GFM	Government Furnished Material
GST	Australian Goods and Services Tax
ICT	Information and Communications Technology
ILS	Integrated Logistics Support

## ATTACHMENT F

Abbreviation	Description
IP	Intellectual Property
MEC	Multiple Entry Consolidated
PEPPOL	Pan-European Public Procurement On-Line
SCCG	Security Classification and Categorisation Guide
SDS	Safety Data Sheet
SOW	Statement of Work
STR	Statement of Tax Record
TD	Technical Data
WHS	Work Health and Safety

## 2. DEFINITIONS

Term	Status	Definition
Approval	(Core)	means the act of the Commonwealth Representative approving, in writing, a CCP, quote, claim, proposal or a particular course of action as a basis for further work under the Contract.  Approval in either case does not constitute Acceptance; and 'Approve' and 'Approved' have a corresponding meaning.
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Australian Privacy Principles	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Authorisation	(Core)	means a licence, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for the provision of the Services.
Circuit Layout	(Core)	means a circuit layout that is protected under the <i>Circuit Layouts Act 1989</i> (Cth) or the corresponding laws of any other jurisdiction.
Claim	(Core)	means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).
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.

## ATTACHMENT F

Term	Status	Definition
Commercial Material	(Core)	means any Contract Material that is: <ul style="list-style-type: none"> <li>a. a Commercial Item;</li> <li>b. supplied, without further development or modification, in conjunction with a Commercial Item, under the standard commercial terms applicable to that item; or</li> <li>c. Free and Open Source Software, or any TD supplied in conjunction with Free and Open Source Software.</li> </ul>
Commercialise	(Core)	means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in Contract Material in return for payment of a royalty or a commercial return to the Commonwealth or the sublicensee.
Commonwealth Contractor	(Core)	means a person (other than the Contractor or a Subcontractor) engaged by the Commonwealth to provide goods or services to the Commonwealth.
Commonwealth Default	(Core)	means a Default by the Commonwealth, a Commonwealth Officer or a Commonwealth Contractor.
Commonwealth Officer	(Core)	means any of the following: <ul style="list-style-type: none"> <li>a. a Minister of State for the Commonwealth;</li> <li>b. a person employed or engaged under the <i>Public Service Act 1999</i> (Cth) or the <i>Members of Parliament (Staff) Act 1984</i> (Cth);</li> <li>c. a person who is included in Defence Personnel; and</li> <li>d. a member of the Australian Federal Police.</li> </ul>
Commonwealth Personnel	(Core)	means any Commonwealth Officers, Defence Personnel and any other agents of the Commonwealth.
Commonwealth Premises	(Core)	means any of the following that is owned, leased, occupied or operated by the Commonwealth: <ul style="list-style-type: none"> <li>a. an area of land or any other place (whether or not it is enclosed or built on);</li> <li>b. a building or other structure; and</li> <li>c. a vehicle, a vessel (including a submarine) or an aircraft.</li> </ul>
Commonwealth Property	(Core)	means property of any kind (including GFM) owned or leased by, or in the possession of, the Commonwealth.
Commonwealth Representative	(Core)	means the person so named on the Details Schedule or any other person appointed as Commonwealth Representative.
Commonwealth Service Provider	(Core)	means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide: <ul style="list-style-type: none"> <li>a. professional, administrative, contract management or project management services to Defence; or</li> <li>b. technical management or assurance services, including verification and validation, safety, certification, security or capability development.</li> </ul>
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.



## ATTACHMENT F

Term	Status	Definition
Confidential Information	(Core)	<p>means information (whether or not owned by the Commonwealth) that meets all of the following criteria:</p> <ul style="list-style-type: none"> <li>a. is specifically identified at Attachment D;</li> <li>b. is commercially sensitive (not generally known or ascertainable);</li> <li>c. the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and</li> <li>d. was provided with an express or implied understanding that it would remain confidential;</li> </ul> <p>but does not include information which:</p> <ul style="list-style-type: none"> <li>e. is or becomes public knowledge other than by breach of the Contract;</li> <li>f. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or</li> <li>g. has been independently developed or acquired by the receiving party.</li> </ul>
Contract	(Core)	means the COC (including the Details Schedule), the Attachments including the SOW, and any document expressly incorporated as part of the 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 C to the Contract.
Contract Price	(Core)	means the amount set out in Attachment B.
Contractor Default	(Core)	means a Default in relation to the Contract by the Contractor or Contractor Personnel.
Contractor Managed Commonwealth Assets	(Core)	means any item of Commonwealth Property subject to inventory and stock control that is in the care, custody or control of the Contractor or Contractor Personnel for the purposes of the Contract.
Contractor Personnel	(Core)	<p>means each of the following:</p> <ul style="list-style-type: none"> <li>a. an employee, officers or agent of the Contractor;</li> <li>b. a Subcontractor; and</li> <li>c. an employee, officers or agent of a Subcontractor.</li> </ul>
Contractor Premises	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a. premises owned by the Contractor or a Subcontractor; and</li> <li>b. premises: <ul style="list-style-type: none"> <li>(i) that are leased by, or licensed to, the Contractor or a Subcontractor; and</li> <li>(ii) where the Contractor or the Subcontractor is responsible for controlling physical access to the premises.</li> </ul> </li> </ul>

## ATTACHMENT F

Term	Status	Definition
Controller	(Core)	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Copyright	(Core)	means any existing or future copyright as defined under the <i>Copyright Act 1968</i> (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.
Default	(Core)	<p>means any of the following:</p> <p>a. a breach of an express or implied provision of the Contract by a party to the Contract; and</p> <p>b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following:</p> <p>(i) the Commonwealth or Commonwealth Personnel;</p> <p>(ii) a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor; and</p> <p>(iii) the Contractor or Contractor Personnel.</p> <p>A breach of a general law duty or an applicable law by Commonwealth Personnel, a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor is taken to be a Default by the Commonwealth.</p> <p>A breach of a general law duty or an applicable law by Contractor Personnel is taken to be a Default of the Contractor.</p>
Defence	(Core)	means the Department of Defence and/or the Australian Defence Force.
Defence Personnel	(Core)	means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the <i>Defence Act 1903</i> (Cth)) and the equivalents from other organisations on exchange to Defence.
Defence Property	(Core)	means Commonwealth Property administered by Defence.
Defence Purpose	(Core)	<p>means any purpose related to any of the following:</p> <p>a. the defence and defence interests of Australia;</p> <p>b. the national security of Australia;</p> <p>c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and</p> <p>d. peacekeeping or peace enforcement activities.</p>
Defence Service Provider	(Core)	means a person, other than an Defence Personnel, involved in Defence work or engaged by Defence.
document	(Core)	<p>includes each of the following:</p> <p>a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and</p> <p>b. any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.</p>

## ATTACHMENT F

Term	Status	Definition
Environment	(Core)	<p>in the context of environmental management, means any of the following:</p> <ul style="list-style-type: none"> <li>a. ecosystems and their constituent parts;</li> <li>b. natural and physical resources;</li> <li>c. the qualities and characteristics of locations, places and areas;</li> <li>d. noise; and</li> <li>e. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraph a, b or c.</li> </ul>
Excepted Risk	(Core)	<p>means an event or circumstance that is any of the following:</p> <ul style="list-style-type: none"> <li>a. an act of God, including a natural disaster, such as a bushfire, an earthquake, a flood, a landslide or a cyclone;</li> <li>b. war, invasion, acts of foreign enemies, hostilities between nations, a terrorist act as defined in section 100.1 of the Criminal Code, civil insurrection or militarily usurped power;</li> <li>c. confiscation by governments or public authorities; and</li> <li>d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels,</li> </ul> <p>except to the extent that the event or circumstance (or any resulting delay, loss or damage):</p> <ul style="list-style-type: none"> <li>e. arose out of or as a consequence of a Contractor Default; or</li> <li>f. could have been prevented or mitigated, by reasonable care on the part of the Contractor or Contractor Personnel.</li> </ul>
Free and Open Source Software	(Core)	<p>means Software that:</p> <ul style="list-style-type: none"> <li>a. is distributed on a free to use basis without a requirement to pay a royalty or other fee; and</li> <li>b. may be used, modified, developed or adapted by any person subject to specified conditions,</li> </ul> <p>and includes open source Software, public domain Software, shareware, community source Software and freeware.</p>
General Interest Charge	(Core)	has the meaning given to it under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth).
Glossary	(Core)	means this glossary at Attachment F to the Contract.
Government Furnished Data or GFD	(Core)	means the data identified as "Government Furnished Data" in Table 3 to the SOW.
Government Furnished Equipment or GFE	(Core)	means the equipment specifically identified as GFE in Table 3 to Attachment A.
Government Furnished Information or GFI	(Core)	means the information identified as "Government Furnished Information" in Table 3 to the SOW.
Government Furnished Material or GFM	(Core)	means the material to be provided to the Contractor under the Contract and which is listed in the SOW.

## ATTACHMENT F

Term	Status	Definition
GST Act	(Core)	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and associated taxation legislation.
Insolvency Event	(Core)	means, in respect of a person, any of the following: <ul style="list-style-type: none"> <li>a. the person: <ul style="list-style-type: none"> <li>(i) becoming insolvent;</li> <li>(ii) ceasing to carry on all or a material part of its business; or</li> <li>(iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;</li> </ul> </li> <li>b. the appointment of a Controller, a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;</li> <li>c. the person becoming subject to external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth);</li> <li>d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of person's property (including seizing the person's property within the meaning of section 123 of the <i>Personal Properties Securities Act 2009</i> (Cth));</li> <li>e. person being taken under section 459F(1) of the <i>Corporations Act 2001</i> (Cth) to have failed to comply with a statutory demand;</li> <li>f. an order or resolution for the winding up or deregistration of the person;</li> <li>g. a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; and</li> <li>h. any analogous event under the law of any applicable jurisdiction.</li> </ul>
Intellectual Property or IP	(Core)	means all present and future rights conferred by law in or in relation to any of the following: <ul style="list-style-type: none"> <li>a. Copyright;</li> <li>b. rights in relation to a Circuit Layout, Patent Registrable Design or Trade Mark (including service marks); and</li> <li>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.</li> </ul>
Key Persons	(Core)	means the personnel specified in Attachment A as personnel required to undertake the Services or part of the work constituting the Services.

## ATTACHMENT F

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"> <li>a. is fully paid-up and does not require any additional payment by the licensee, including by way of royalty or any other fee;</li> <li>b. cannot be revoked or terminated by the licensor for any reason except on expiration of a statutory protection term;</li> <li>c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;</li> <li>d. operates on a world-wide basis; and</li> <li>e. binds each successor in title to the owner of the IP in respect of the Contract Material.</li> </ul>
Loss	(Core)	means any liability, loss (including economic loss), damage, compensation, costs and expenses.
Moral Rights	(Core)	means any of the following: <ul style="list-style-type: none"> <li>a. a right of attribution of authorship;</li> <li>b. a right not to have authorship falsely attributed; or</li> <li>c. a right of integrity of authorship.</li> </ul>
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.
Personal Information	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	(Core)	has the same meaning as in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Problematic Substance	(Core)	means: <ul style="list-style-type: none"> <li>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;</li> <li>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 from time to time); or</li> <li>c. any hazardous chemicals as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).</li> </ul>

## ATTACHMENT F

Term	Status	Definition
Proportionate Liability Law	(Core)	means any of the following: <ul style="list-style-type: none"> <li>a. <i>Civil Liability Act 2002</i> (NSW) – Part 4;</li> <li>b. <i>Wrongs Act 1958</i> (Vic) – Part IVAA;</li> <li>c. <i>Civil Liability Act 2002</i> (WA) – Part 1F;</li> <li>d. <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2;</li> <li>e. <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A;</li> <li>f. <i>Proportionate Liability Act 2005</i> (NT);</li> <li>g. <i>Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001</i> (SA) – Part 3;</li> <li>h. <i>Civil Liability Act 2002</i> (Tas) – Part 9A;</li> <li>i. <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA;</li> <li>j. <i>Corporations Act 2001</i> (Cth) – Part 7.10, Div 2A; and</li> <li>k. <i>Australian Securities &amp; Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.</li> </ul>
Related Body Corporate	(Core)	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).
Registrable Design	(Core)	means a design able to be protected under the <i>Designs Act 2003</i> (Cth) or the corresponding laws of any other jurisdiction.
Relevant Employer	(Optional)	means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Contractor will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.
Services	(Core)	means the services and goods (including Contract Material) required to be provided under the Contract, and includes items acquired in order to be incorporated in the Services.
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, applications and updates, but excludes source code.
Subcontractor	(Core)	means any person (not the Commonwealth) that, for the purposes of the Contract, provides items or services directly or indirectly to the Contractor; and ‘Subcontract’ has a corresponding meaning.
Technical Data or TD	(Core)	means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to the Services and includes all calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, training materials, test results and writings, and includes source code.
Trade Mark	(Core)	means a trade mark protected under the <i>Trade Marks Act 1995</i> (Cth) or corresponding laws of any other jurisdiction.

## ATTACHMENT F

Term	Status	Definition
Unrelated Party	(Core)	means any person other than any of the following: <ol style="list-style-type: none"> <li>a. the Commonwealth and Commonwealth Personnel;</li> <li>b. the Contractor and Contractor Personnel;</li> <li>c. a Related Body Corporate of the Contractor; and</li> <li>d. an employee, officer or agent of a Related Body Corporate of the Contractor.</li> </ol>
Use	(Core)	means, in relation to a licence of any Contract Material granted to a licensee, to: <ol style="list-style-type: none"> <li>a. use, reproduce, adapt and modify the Contract Material in accordance with the licence; and</li> <li>b. disclose, transmit and communicate the Contract Material:               <ol style="list-style-type: none"> <li>(i) to the licensee's employees, officers and agents; and</li> <li>(ii) to a sublicensee under a sublicense granted in accordance with the licence.</li> </ol> </li> </ol>
WHS Legislation	(Core)	means any of the following: <ol style="list-style-type: none"> <li>a. the <i>Work Health and Safety Act 2011</i> (Cth) and the <i>Work Health and Safety Regulations 2011</i> (Cth); and</li> <li>b. any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011</i> (Cth).</li> </ol>
Wilful Default	(Core)	means a Default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.
Working Day	(Core)	in relation to the doing of an action in a place, means any day in that place other than: <ol style="list-style-type: none"> <li>a. a Saturday, Sunday or public holiday; and</li> <li>b. any day within the two-week period that starts on:               <ol style="list-style-type: none"> <li>(i) the Saturday before Christmas Day; or</li> <li>(ii) if Christmas Day falls on a Saturday, Christmas Day.</li> </ol> </li> </ol>

## 3. REFERENCED DOCUMENTS

Reference	Description
	<i>Auditor-General Act 1997</i> (Cth)
	Australian Code for the Transport of Dangerous Goods by Road and Rail, (Extant edition and as amended from time to time)
	Defence Cost Principles, as amended from time to time
CPRs	Commonwealth Procurement Rules – June 2023
	Commonwealth Supplier Code of Conduct, as amended from time to time
	Complaints and Alternative Resolutions Manual
	<i>Corporations Act 2001</i> (Cth)
	Defence WHS Manual
	Defence and the Private Sector – Working with Integrity

## ATTACHMENT F

Reference	Description
DEFLOGMAN Part 2 Volume 5 Section 17	Stocktaking of Defence Assets and Inventory
DSPF	Defence Security Principles Framework, as amended from time to time
	<i>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</i>
	Financial Policy – Gifts and Benefits (Including Hospitality) - Receiving
	Financial Policy – Gifts and Benefits (Including Hospitality) - Spending
	Financial Policy - Sponsorship
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
	Incident Reporting and Management Manual
	Integrity Policy
	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)</i>
	<i>Privacy Act 1988 (Cth)</i>
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>
WHS Regulations	<i>Work Health and Safety Regulations 2011(Cth)</i>
WGE Act	<i>Workplace Gender Equality Act 2012 (Cth)</i>
	Workplace Gender Equality Procurement Principles