

ATTACHMENT A

STATEMENT OF WORK (CORE)

Note to tenderers: Attachment A will consist of an amalgamation of the draft SOW at Part 3 of the RFT and the successful tenderer's response.

ATTACHMENT B

PRICE AND PAYMENTS (CORE)

Note to tenderers: Attachment B will consist of an amalgamation of information submitted by the tenderer in response to TDR D, this draft Attachment B and any negotiated adjustments.

1. GENERAL (CORE)

1.1 Attachment B consists of the following clauses and associated Annexes as indicated in Table B-1 below:

Note to drafters: Some Annexes will include a file with the appropriate pricing table, such as a PDF copy of a worksheet from the Complex Services Pricing Workbook (CSERPW) For Recurring Services, multiple schedules may be included under Annex B. Update the following table for the Annexes (and schedules) to be included in the draft Contract. Files names may be added prior to ED, when known. The examples below are based on the tabs for worksheets within the CSERPW and the separate word file for Annex E.

If the draft Contract will significantly exceed the expected use of the template, for example, by exceeding a value of more than A\$20m per year (and relevant AIC requirements and 'prescribed ACE percentages' being applicable), drafters should consider using the Support Pricing Workbook and updating this Attachment (and TDR D) to those used for ASDEFCON (Support).

Table B-1: Annexes to Attachment B

Attachment B Clause Reference	Associated Annex	Annex File Names
2 Milestone Payments (OPTIONAL)	Annex A Milestone Payments Annex B Milestone Schedule and Criteria	<i>Milestone Schedule</i> <i>ASDEFCON_CSERV_V1.0_COC_ATTB_ANNB_MilestoneSchedule and Criteria</i>
3 Mobilisation Payments and Milestone Payments (OPTIONAL) Note to tenderers: Annex A will consist of an amalgamation of the price schedules in TDR D, the successful tenderer's response, and any negotiated adjustments.	Annex C Recurring Services	<i>Schedule 1: Recurring Services OD to X</i> <i>Schedule 2: Recurring Services X to Y</i> <i>Schedule 3: Recurring Services Y to Z</i>
1.1 Introduction		
1.1.1 This clause 2 and Annex A describe the amounts payable by the Commonwealth to the Contractor for the achievement		

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<p>of Milestones (INSERT THE FOLLOWING WHERE A MOBILISATION PAYMENT HAS BEEN AGREED, “or as a Mobilisation Payment”) in accordance with the Contract.</p> <p>1.2 Mobilisation Payment</p>		
<p>1.2.1 The amount of the Mobilisation Payment is (INSERT AMOUNT OF MOBILISATION PAYMENT).</p>		
<p>1.2.2 The Commonwealth shall pay to the Contractor the Mobilisation Payment upon (INSERT CRITERIA FOR MOBILISATION PAYMENT).</p>		
<p>1.3 Milestones</p> <p><i>Note to drafters: If the proposed Contract will not include Milestone Payments, the following clauses and note to tenderers can be deleted and the heading annotated as 'not used'. Prior to RFT release, drafters should populate the 'Milestone Schedule' worksheet of the CSERPW with descriptions</i></p>		

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appropriate for any Commonwealth-defined Milestones. Refer to TDR D-2 for details.

Note to tenderers: Annex A will consist of an amalgamation of the CSERPW 'Milestone Schedule' worksheet for the successful tenderer's response to TDR D-2, and any negotiated adjustments.

1.3.1 The Milestone Payment Schedule is detailed in the file: (...INSERT the file name for the "Milestone Schedule" from the workbook...), and forms Annex A to this Attachment.

1.3.2 Annex B sets out the Milestone details for the Contract, including the entry and exit criteria and the Milestone Dates. Annex A details the Milestone Payments for the Contract, noting that some Milestones may not have a Milestone Payment (ie, 'nil payment Milestones').

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<p>1.3.3 The Commonwealth shall, for achievement of a Milestone, pay to the Contractor the relevant Milestone Payment as specified in the Milestone Schedule.</p> <p>1.3.4 The Contractor is taken to have achieved a Milestone only if all of the corresponding criteria for the Milestone, as set out in Annex B, have been satisfied.</p> <p>Recurring Services (CORE)</p>		
<p>4 Task-Priced Services (OPTIONAL)</p>	<p>Annex D Task-Priced Services</p>	<p><i>Task Priced Services</i></p>
<p>5 S&Q Services (CORE)</p>	<p>Annex E S&Q Services</p>	<p><i>S and Q Services</i></p>
<p>6 Adjustments (CORE)</p>	<p>Annex F Adjustments</p>	<p><i>Adjustments</i></p>
<p>7 Performance Assessment and Performance Payments (OPTIONAL)</p>	<p>Annex G Performance Assessment and Performance Payments (Optional)</p>	<p><i>009_ASDEFCON_SPTS_V3.0_COC_ATTB_ANNE_PerformanceAssessmentandPerformancePayments</i></p>

- 1.2 The obligations of the Commonwealth under this Attachment B are subject to:
- a. the Contractor making a claim for payment in accordance with clause 7.2 of the COC; and
 - b. the other provisions of the Contract.
- 1.3 Except where expressly indicated to the contrary, the amounts set out in or calculated under this Attachment B are inclusive of all costs and other payments associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the Contract. This includes all licence fees, royalty payments, overseas taxes, duties and charges, Australian (Federal, State and Local Government) taxes including GST, customs and other duties and charges and arranging customs clearance and services of representatives.

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2 MOBILISATION PAYMENTS AND MILESTONE PAYMENTS (OPTIONAL)

Note to tenderers: Annex A will consist of an amalgamation of the price schedules in TDR D, the successful tenderer's response, and any negotiated adjustments.

2.1 Introduction

2.1.1 This clause 2 and Annex A describe the amounts payable by the Commonwealth to the Contractor for the achievement of Milestones (**INSERT THE FOLLOWING WHERE A MOBILISATION PAYMENT HAS BEEN AGREED, "or as a Mobilisation Payment"**) in accordance with the Contract.

2.2 Mobilisation Payment

2.2.1 The amount of the Mobilisation Payment is (**INSERT AMOUNT OF MOBILISATION PAYMENT**).

2.2.2 The Commonwealth shall pay to the Contractor the Mobilisation Payment upon (**INSERT CRITERIA FOR MOBILISATION PAYMENT**).

2.3 Milestones

Note to drafters: If the proposed Contract will not include Milestone Payments, the following clauses and note to tenderers can be deleted and the heading annotated as 'not used'. Prior to RFT release, drafters should populate the 'Milestone Schedule' worksheet of the CSERPW with descriptions appropriate for any Commonwealth-defined Milestones. Refer to TDR D-2 for details.

Note to tenderers: Annex A will consist of an amalgamation of the CSERPW 'Milestone Schedule' worksheet for the successful tenderer's response to TDR D-2, and any negotiated adjustments.

2.3.1 The Milestone Payment Schedule is detailed in the file: (...**INSERT the file name for the "Milestone Schedule" from the workbook...**), and forms Annex A to this Attachment.

2.3.2 Annex B sets out the Milestone details for the Contract, including the entry and exit criteria and the Milestone Dates. Annex A details the Milestone Payments for the Contract, noting that some Milestones may not have a Milestone Payment (ie, 'nil payment Milestones').

2.3.3 The Commonwealth shall, for achievement of a Milestone, pay to the Contractor the relevant Milestone Payment as specified in the Milestone Schedule.

2.3.4 The Contractor is taken to have achieved a Milestone only if all of the corresponding criteria for the Milestone, as set out in Annex B, have been satisfied.

3 RECURRING SERVICES (CORE)**3.1 Introduction**

3.1.1 This clause 3 and Annex C, including the schedules to Annex C, describe the amounts payable by the Commonwealth to the Contractor for the provision of Recurring Services in accordance with the Contract. The Recurring Services commence from the [...**INSERT "Effective Date" or "Operative Date"...**].

3.2 Recurring Services Fee

Option A: For when Annex G, Performance Assessment and Performance Payments, is included into the Contract.

3.2.1 Subject to clauses 5 and 6 of Annex G to this Attachment B, the Commonwealth shall pay to the Contractor, for the provision of the Recurring Services, the Recurring Services Fee, monthly in arrears.

Option B: For when Annex G, Performance Assessment and Performance Payments, is not included into the Contract.

3.2.2 The Commonwealth shall pay to the Contractor, for the provision of the Recurring Services, the Recurring Services Fee, monthly in arrears.

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4 TASK-PRICED SERVICES (OPTIONAL)

Note to drafters: If the proposed Contract will not include Task-Priced Services, the following clauses can be deleted and the heading annotated as 'not used'. Even if the Commonwealth does not specify any Task-Priced Services, the clauses and annex may be retained in the tender and draft Contract, should tenderers propose any, or if they become relevant under the Contract (eg, to replace an S&Q Service that is performed repeatedly).

4.1 Introduction

4.1.1 This clause 4 and Annex D describe the amounts payable by the Commonwealth to the Contractor for the provision of Task-Priced Services in accordance with the Contract.

4.2 Task-Priced Services

4.2.1 For each Task-Priced Service the Commonwealth shall pay to the Contractor the price for the Task-Priced Service, as specified in Annex D, applicable to the month in which the Task-Priced Service was Accepted in arrears at the end of that month or in such other manner as may be agreed in writing by the parties in respect of that Task-Priced Service.

5 S&Q SERVICES (CORE)**5.1 Introduction**

5.1.1 This clause 5 and Annex E describes the amounts payable by the Commonwealth to the Contractor for the provision of S&Q Services in accordance with the Contract.

5.2 S&Q Rates

5.2.1 Annex E sets out the labour categories / skill levels and labour rates for the Contractor's employees for the purpose of S&Q Services. The labour rates apply to:

- a. S&Q Services provided during **[INSERT DEFINITION OF NORMAL TIME]** (Normal Time); and
- b. S&Q Services provided at any other times (**Other Time**).

Note to drafters: Prior to RFT release drafters should refer to the 'S&Q Services' worksheet in the CSERPW and review and revise the value thresholds for the application of mark-ups on subcontracts, materials and other Allowable Costs, as applicable. Refer to TDR D-5 for details.

Note to tenderers: The Commonwealth prefers differential mark-ups on Contractor purchased materials, Subcontracts and other Allowable Costs so that higher value purchases attract a lower percentage mark-up. Mark-up rates above **[INSERT THRESHOLD] will be negotiated on a case-by-case basis during the S&Q process under clause 3.14 of the COC.**

5.2.2 Annex E sets out the mark-up on purchased materials, Subcontract costs and other Allowable Costs for the purpose of S&Q Services. Mark-ups for Subcontracts (including Subcontracts for materials) exceeding **[INSERT AMOUNT]** shall be subject to negotiation.

Option: Include the following clauses when foreign currencies are applicable.

5.2.3 If an S&Q Service will include component costs in foreign currencies, for rates that are not included in Annex E, values are to be quoted in source currency and equivalent Australian dollars (using the Reserve Bank of Australia rate as at the day prior to the submission of the S&Q Quote) inclusive of all applicable taxes and other duties, or as otherwise agreed between the parties.

5.2.4 Where an S&Q Quote is submitted that includes amounts priced in foreign currencies, and equivalent Australian dollar amounts determined in accordance with clause 5.2.3, the Commonwealth may elect to pay any amounts under any resulting S&Q Order in either source currency or Australian dollars, as applicable.

5.3 Not-To-Exceed S&Q Services

5.3.1 This clause applies to an S&Q Service to the extent that the S&Q Order specifies a Not-To-Exceed basis for pricing and payment.

5.3.2 The Commonwealth shall, for each Not-To-Exceed S&Q Service, pay to the Contractor, monthly in arrears, the lesser of:

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- a. the costs incurred by the Contractor in performing the S&Q Service, calculated using the labour rates specified in Annex E and by applying the mark-up specified in Annex E to materials, Subcontracts and other Allowable Costs (where applicable); or
- b. the Not-To-Exceed price set out in the S&Q Order.

5.4 Firm Price S&Q Services

- 5.4.1 This clause applies to an S&Q Service to the extent that the S&Q Order specifies a firm price basis for pricing and payment.
- 5.4.2 The Commonwealth shall, for each firm price S&Q Service, pay to the Contractor, monthly in arrears, the following:
 - a. if the Contractor achieves a milestone specified in the S&Q Order, the amount specified for the milestone in the S&Q Order;
 - b. upon Acceptance of the S&Q Service (and Acceptance of any associated Deliverables), any amount specified in the S&Q Order as being payable upon Acceptance; and
 - c. any other amount specified to be payable in accordance with the S&Q Order.

6 ADJUSTMENTS (CORE)

Note to tenderers: Agreements reached as a result of workplace enterprise bargaining are not considered to be awards for the purposes of the formula set out below.

6.1 General

- 6.1.1 In this clause 6, the following interpretations apply:
 - a. when applicable, the pricing tables in the Annexes to this Attachment are adjusted from the Adjustment Date, in accordance with clause 7.3 of the COC;
 - b. the price for a Milestone is the price applicable to the due date for achievement of that Milestone (ie, not a price applicable to a later date, if achievement of the Milestone or if the invoice was submitted, subsequent to the Adjustment Date);
 - c. subject to paragraph b, the price for a Service is the price applicable to the period of when the Service was performed, not the date of the invoice (ie, if the invoice was submitted subsequent to the Adjustment Date);
 - d. in accordance with clause 7.3.1 of the COC, unless stated otherwise in an S&Q Order, prices for an S&Q Service are not subject to an adjustment;
 - e. if a source of an index publishes provisional and final index values, only the index values designated as final shall be used;
 - f. subject to clause 6.1.1e, if an index is published more than once during a year then, for the purposes of the formulae, the index number for that year shall be taken to be the last index number officially published before the Adjustment Date; and
 - g. if an index is discontinued, rebased or modified and the entity publishing that index provides official guidance on the replacement, bridging or re-baselining methodology to be applied, that guidance should be used as one of the inputs for determining any required update the index.

6.2 Adjustment Process

Note to drafters: The formula below can be used for prices where underlying costs are in a foreign currency (with payments made in \$A or in source currency), when the appropriate indices are included in Annex F.

The following formula only allows for one labour and one materials index per source currency, with the same weightings applied to all adjusted prices. If an adjustment process that allows for different weightings for more than two components is required, drafters may refer to the 'complex' option within ASDEFCON (Support). Drafters should also seek CFA advice.

- 6.2.1 The prices specified in Annexes A, C and D to this Attachment B shall be adjusted for fluctuations in the cost of labour and materials (including where prices may be based in a foreign source currency) by applying the following formula in accordance with clause 7.3 of the COC:

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$$P_1 = \left(Y * \frac{L_1}{L_0} + Z * \frac{M_1}{M_0} \right) * P_0$$

Where, for each applicable source currency:

Ref	Description
P ₁	the new (ie, adjusted) price to apply on and from the Adjustment Date.
P ₀	the price applicable immediately prior to the relevant Adjustment Date.
Y	the component of a price (expressed as a decimal) specified in Annex F, which is attributed to a labour index series.
L ₁	the labour index value (number) for a labour index series (L) specified in Annex F, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
L ₀	the labour index value (number) for a labour index series (L) specified in Annex F that was used for the previous price adjustment or, in respect of the first price adjustment, the published index value for the quarter preceding the quarter containing the Base Date.
Z	the component of a price (expressed as a decimal) specified in Annex F, which is attributed to a materials index series.
M ₁	the materials index value (number) for a materials index series (M) specified in Annex F, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
M ₀	the materials index value (number) for the materials index series (M) specified in Annex F that was used for the previous price adjustment or, in respect of the first price adjustment, the published index value for the quarter preceding the quarter containing the Base Date.

and where, for each price being adjusted, the sum of the components attributed to labour and materials equals one (ie, Y + Z = 1).

- 6.2.2 For labour rates for S&Q Services in Annex E to Attachment B, the following price adjustment formula shall be applied in accordance with clause 7.3 of the COC:

$$P_1 = \frac{L_1}{L_0} * P_0$$

Where, for each applicable source currency:

Ref	Description
P ₁	the new (ie, adjusted) labour rate for S&Q Services, to apply to new S&Q Orders executed on and from the Adjustment Date.
P ₀	the labour rate for S&Q Services, as specified in Annex E, immediately prior to the relevant Adjustment Date.
L ₁	the labour index value (number) for a labour index series (L) specified in Annex F, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
L ₀	the labour index value (number) for a labour index series (L) specified in Annex F that was used for the previous rates adjustment or, in respect of the first rates adjustment, the published index value for the quarter preceding the quarter containing the Base Date.

6.3 Indices

- 6.3.1 The Australian and international indices for the Contract, and the proportions attributed to labour and materials components of the prices, are detailed in Annex F to this Attachment.

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Note to tenderers:

Note 1: For labour costs incurred in Australia, input based (cost of labour) indices acceptable to the Commonwealth are included in the ABS catalogue 'Wage Price Index' – Tables 8B and 9B.

Note 2: For labour costs incurred overseas, the labour index must be an appropriate index published by an agency of the relevant Government.

Note 3: For the Australian materials component, ABS catalogue 'Producer Price Indexes, Australia' – Table 12 should be utilised.

Note 4: For the imported materials component, the index must be appropriate and published by an agency of the relevant Government.

7 PERFORMANCE ASSESSMENT AND PERFORMANCE PAYMENTS (OPTIONAL)**7.1 Assessment of Performance and Calculation of Performance Payments**

7.1.1 Annex G describes the performance assessment process and the method for calculating Performance Payments.

ANNEX B TO ATTACHMENT B

MILESTONE SCHEDULE AND CRITERIA (OPTIONAL)

Note to tenderers: Annex B will consist of an amalgamation of TDR D-2, this draft Attachment, the successful tenderer's response and any negotiated adjustments.

1. MILESTONE SCHEDULE AND CRITERIA

- 1.1 The Contractor shall comply with the schedule of Milestones, including the dates and criteria as identified in Table B-B1: Milestone Schedule.
- 1.2 Table B-B1:
- a. identifies those Milestones that are Stop Payment Milestones; and
 - b. sets out the Milestone Criteria that will be used by the Commonwealth to validate whether:
 - (i) the Contractor may make claims in accordance with clause 7.2 COC in relation to the achievement of work on elements comprising a given Milestone; and
 - (ii) a given Milestone has been achieved.
- 1.3 Subject to clause 1.4, or unless otherwise agreed between the parties, the Contractor shall not claim completion for a Milestone until the following criteria have been met:
- a. all pre-requisite activities and criteria defined within the Contract, including within Table B-B1, have been met;
 - b. any goods scheduled for delivery to the Commonwealth on or prior to the Milestone have been delivered and, if applicable, Accepted;
 - c. any Services scheduled for completion on or prior to the Milestone have been completed to the satisfaction of the Commonwealth Representative;
 - d. all data items required to be delivered before the Milestone, which are applicable to the Milestone, have been delivered and the Commonwealth Representative considers them suitable for the purposes of the Milestone (which includes the suitability of the data items for the applicable Commonwealth action (eg, Approval or Acceptance)); and
 - e. any criteria defined in the Approved Services Management Plan, or other Approved governing plan under the Contract, have been met.
- 1.4 The Commonwealth Representative may agree that the requirements for a Milestone have been met despite the existence of minor omissions or defects in the Services, including any Deliverables, when the Contractor has, as applicable:
- a. provided a written explanation to the Commonwealth explaining how the Contractor plans to rectify the minor omission or defect, including the applicable timeframe for resolution, and the Commonwealth Representative has notified the Contractor of its agreement to the Contractor's proposed rectification plans; or
 - b. for related Deliverables subject to Acceptance, submitted an Application for a Deviation in accordance with clause 6.6.5 of the COC and clause 9.4.1 of the SOW.
- 1.5 The Contractor acknowledges and agrees that:
- a. it will comply with a rectification plan agreed under clause 1.4a; and
 - b. if an Application for a Deviation submitted in accordance with clause 1.4b is rejected, it will rectify the omission or defect within a reasonable period of the rejection;
 - c. the Commonwealth Representative is not required to exercise the discretion under clause 1.4; and
- exercising, or failing to exercise the discretion under clause 1.4 does not limit any other right of the Commonwealth in relation to the achievement of the Milestone and is not capable of being the subject of a dispute for the purposes of clause 13.1 of the COC or otherwise subject to review.

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Note to drafters: Ensure that prior to issuing the Request for Tender (RFT):

- a. *the list of Milestones is consistent with those identified for TDR D-2, including the Milestone Schedule in the Complex Services Pricing Workbook (CSERPW);*
- b. *the associated entry/exit criteria in the following table are updated to align with the specific requirements of the Contract, particularly the SOW;*
- c. *the Milestones that the Commonwealth wishes to have treated as Stop Payment Milestones are identified in the table.*

Also, drafters are to ensure that prior to the Effective Date, for each Milestone, corresponding entry and exit criteria are updated and included.

Notes on Table B-B1:

- a. **ID: A unique line item number.**
- b. **Milestone: Milestone name or abbreviation.**
- c. **Milestone Date: Scheduled date for the (start of the) Milestone in months after the Effective Date or a previous Milestone.**
- d. **Stop Payment: Is this Milestone a Stop Payment Milestone in accordance with clause 7.9 of the COC.**
- e. **Description of Milestone: Briefly describe the Milestone, including any Delivery Location requirements.**
- f. **Milestone Criteria: The specific Milestone Criteria relevant to each Milestone, as tailored to suit Contract-specific needs. Note, when a Milestone Payment is attached to a particular Milestone, specific exit criteria may be specified to determine whether or not payment can actually be made. Similarly, a Milestone may be used to designate the start of a pricing period for Recurring Services, and the exit criteria are used to determine if the new level of Services (and associated Recurring Services Fees) can commence. Milestone criteria may refer to Contractor plans (ie, if these are required to scope specific requirements) or referenced manuals (eg, completion of a major Maintenance servicing as defined in a planned servicing schedule). Milestone Payments should not be listed here but be listed in the 'Milestone Schedule' at Annex A to Attachment B. By way of example, entry and exit criteria are provided in the Table above.**

Table B-B1: Milestone Schedule

ID	Milestone	Milestone Date (in months)	Stop Payment (Y/N)	Description of Milestone	Milestone Criteria (including any specific entry and exit criteria)
(a)	(b)	(c)	(d)	(e)	(f)
	Effective Date (ED)	0 – complete			<ul style="list-style-type: none"> • <i>Contract signature</i> • <i>Provision to the Commonwealth of securities and deeds, in accordance with COC clauses 7.5 and 7.6</i>
	Operative Date (OD)			Refer to clause 1.6 of the COC.	<ul style="list-style-type: none"> • <i>Requirements of COC clause 1.6 have been met.</i>

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ID	Milestone	Milestone Date (in months)	Stop Payment (Y/N)	Description of Milestone	Milestone Criteria (including any specific entry and exit criteria)
(a)	(b)	(c)	(d)	(e)	(f)
	Start X Services (RU#1)				<ul style="list-style-type: none"> • Establishment of M1 maintenance capability and S1 supply capability at GFF#1 in accordance with the Approved Ramp Up Management Plan (RUMP). • Delivery of X Mission Systems and receipt of associated Support Resources by the Contractor from the Contractor (Acquisition). Refer Contract (Acquisition) SAA checklist. • Verification of M1 and S1 in accordance with the Approved RUMP. • Refer Contract (Acquisition) SAA checklist.
	Start Y Services (RU#2)				

ANNEX G TO ATTACHMENT B

PERFORMANCE ASSESSMENT AND PERFORMANCE PAYMENTS (OPTIONAL)

Note to drafters: This annex allows a Performance Based Contracting (PBC) methodology to be applied to any resultant Contract. The PBC element operates by adjusting the payments for Recurring Services Fees in response to Contractor performance, as measured by KPIs. If any resultant Contract will not be a PBC, this annex and related clauses (eg, clause 6.3 of the COC) are to be deleted or replaced with 'Not used', as appropriate.

For further information on the use of PBC clauses, refer to the ASDEFCON (Support Short) PBC Guide. For advice on preparing a PBC and assistance drafting KPIs, contact the PBC CoE.

1. OBJECTIVES

- 1.1 The Contractor acknowledges that the objective of performance assessment and the Performance Payments is to maximise the useable benefits of the Services for the Defence organisations that are the end customers of the Services.
- 1.2 This annex defines:
- a. the performance assessment process, which measures and assesses the Contractor's performance using Key Performance Indicators (KPIs); and
 - b. the method for calculating the Performance Payments.

2. KEY PERFORMANCE INDICATORS

- 2.1 The KPIs applicable to the Contract are:

Note to drafters: Replace the following KPI examples and amend the following subclauses to appropriately describe the Contract-specific KPIs.

- a. KPI-1: [...INSERT KPI NAME...]; and
- b. KPI-2: [...INSERT KPI NAME...].

Note to drafters: The KPI definitions below need to be drafted to suit the individual Contract. Selected KPIs need to be suitable measures of the Services, particularly in respect of the Contractor having sufficient control and responsibility for the required outcomes. KPI definitions need to identify the methods, timing (eg, daily or per event), and the data collection systems required to measure the Service outcomes measured by those KPIs.

Note that if a KPI for Non-RIs does not apply to all Non-RIs, then the applicable Stock Items need to be identified, usually by a specific column within the table in SOW Annex A, section 2.

- 2.2 **KPI-1: [...INSERT KPI NAME...] is defined as [...INSERT DESCRIPTION...]. For KPI-1:**
- a. the parameters and measurement data used to determine the Contractor's Achieved Performance shall be measured [...INSERT REQUIREMENT, EG AS THE AVERAGE RI REPAIR TIME FROM THE (TIME SUBMITTED FOR REPAIR) UNTIL (FINISH). PERFORMANCE IS MEASURED FOR TWO DEMAND PRIORITIES...];
 - b. the Contractor's Achieved Performance, for the Review Period, shall be calculated as [...INSERT CALCULATION FOR FULL REVIEW PERIOD, EG, "the (mean) average result for all events that were completed during the Review Period (including for any demands placed before the start of the Review Period)" ...];
 - c. the Required Performance Level is [...INSERT REQUIRED PERFORMANCE LEVEL AND UNIT OF MEASURE...] and;
 - d. the Contractor's Adjusted Performance Score for the Review Period shall be calculated in accordance with clause 4.
- 2.3 **KPI-2: [...INSERT KPI NAME...] is defined as [...INSERT DESCRIPTION...]. For KPI-2:**
- a. the parameters and measurement data used to determine the Contractor's Achieved Performance shall be measured [...INSERT REQUIREMENT, EG THE AVERAGE FOR ALL DEMANDS PLACED FOR NON-RIS FROM (START) TO (FINISH)...];

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- b. the Contractor’s Achieved Performance, for the Review Period, shall be calculated as **[...INSERT CALCULATION FOR FULL REVIEW PERIOD ...]**;
- c. the Required Performance Level is **[...INSERT REQUIRED PERFORMANCE LEVEL AND UNIT OF MEASURE...]**; and
- d. the Contractor’s Adjusted Performance Score for the Review Period shall be calculated in accordance with clause 4.

3. PERFORMANCE MEASUREMENT AND REPORTING

- 3.1 The Review Periods, over which time the KPI(s) are measured and assessed, shall be the reporting periods for the Services Summary Report, as required by clause 3.2 of the SOW.
- 3.2 The first Review Period shall be concurrent with reporting period for the second Services Summary Report or as otherwise notified, in writing, by the Commonwealth Representative.
- 3.3 The performance results achieved against the KPI(s), including the Achieved Performance and the Adjusted Performance Score for each KPI, shall be reported in the Performance Measurement Report (within the Services Summary Report) and delivered in accordance with clause 3.2 of the SOW.
- 3.4 The Contractor shall, upon request, provide the Commonwealth Representative with all supporting information required to verify the performance results reported against the KPI(s).

4. ADJUSTED PERFORMANCE SCORES

- 4.1 The Adjusted Performance Score (APS) for each KPI shall be determined from the Achieved Performance for the KPI (as reported and verified in accordance with clause 2) for the Review Period, in accordance with the following look-up tables:

Note to drafters: Replace the following examples with look-up tables appropriate to the Contract’s KPIs. Refer to the PBC CoE for assistance in developing the look-up tables.

Note: In Table B-E1, the APS is located at the intersection of the column and row for the Achieved Performance results from high and routine priority demands, respectively.

Table B-E1: KPI-1 [...INSERT KPI NAME...] Adjusted Performance Scores

		Average turn-around time for high priority demands (days)										
		>12	≤12	≤11	≤10	≤9	≤8	≤7	≤6	≤5	≤4	≤3
Average turn-around time for routine priority demands (days)	>15	0%	11%	22%	34%	45%	56%	59%	62%	64%	67%	70%
	≤15	5%	16%	27%	38%	50%	61%	64%	66%	69%	72%	75%
	≤14	10%	21%	32%	43%	54%	66%	68%	71%	74%	77%	80%
	≤13	14%	26%	37%	48%	59%	70%	73%	76%	79%	82%	84%
	≤12	19%	30%	42%	53%	64%	75%	78%	81%	84%	86%	89%
	≤11	24%	35%	46%	58%	69%	80%	83%	86%	88%	91%	94%
	≤10	25%	36%	48%	59%	70%	81%	84%	87%	90%	92%	95%
	≤9	26%	38%	49%	60%	71%	82%	85%	88%	91%	94%	96%
	≤8	28%	39%	50%	61%	72%	84%	86%	89%	92%	95%	98%
	≤7	29%	40%	51%	62%	74%	85%	88%	90%	93%	96%	99%
≤6	30%	41%	52%	64%	75%	86%	89%	92%	94%	97%	100%	

ANNEX G TO ATTACHMENT B

Note: In Table B-E2, the APS appears in the cell directly below the Achieved Performance result.

Table B-E2: KPI-2 [...INSERT KPI NAME...] Adjusted Performance Scores

KPI-2 Achieved Performance (days):	≥10	<10	<8	<6	<4	<3.5	<3	<2.5	≤2
Adjusted Performance Score:	0	20	40	60	80	85	90	95	100

Note to drafters: Amend the following note to use values from the tailored tables above.

Note: As an example, an Achieved Performance (average order response time) of more than 2.5 days but less than 3 days, for KPI-2 for a Review Period, results in an APS of 90%.

5. PERFORMANCE PAYMENTS

Note to drafters: The Performance Payment is a portion of the Recurring Services Fee that may be fully earned, partially earned, or forfeit, in response to Contractor performance. Refer to the ASDEFCON (Support Short) PBC Guide for guidance when tailoring the following clauses.

- 5.1 The *maximum performance payment amount* is [...INSERT PERCENTAGE, EG ten percent (10%)...] of the Recurring Services Fee (refer Annex A to Attachment B) for the applicable Review Period, representing the portion that is placed at-risk and either fully earned or reduced relative to the Contractor’s performance in providing Services that are measured by KPIs over the Review Period.
- 5.2 The *maximum performance payment amount* (in dollars) as determined under clause 5.1, for the applicable Review Period, is allocated against each KPI as follows (*KPI maximum payments*):

Note to drafters: Allocation of percentages to KPIs in the following clauses provides a method for weighting the value of performance against each KPI. If all KPIs are of equal importance, the percentage amounts should be the same. Delete or add KPIs as applicable to the draft Contract. The percentages in the following subclauses must sum to 100%.

- a. *KPI-1 maximum payment* = [...INSERT PERCENTAGE, EG sixty percent (60%)...] of the *maximum performance payment amount*; and
 - b. *KPI-2 maximum payment* = [...INSERT PERCENTAGE, EG forty percent (40%)...] of the *maximum performance payment amount*.
- 5.3 A Performance Payment in respect of each KPI, for a Review Period, is to be calculated in accordance with the following formula:
- $$P = A \times B$$
- where:
- P is the Performance Payment for the KPI for the Review Period;
 - A is the APS for the KPI for the Review Period, from clause 4; and
 - B is the applicable *KPI maximum payment*, from clause 5.2.
- 5.4 For a Review Period, the Contractor shall be entitled to all of, or a portion of, the *maximum performance payment amount*, being the sum of the Performance Payments in respect of each KPI for that Review Period and as calculated in accordance with this annex.
 - 5.5 Within 10 Working Days after receipt of the Services Summary Report, and any supporting information provided in accordance with clause 3, the Commonwealth shall determine the amount of Performance Payments for the Review Period.
 - 5.6 To avoid doubt, Performance Payments are not calculated for any period of the Contract prior to the first Review Period and, subject to the other provisions of the Contract, the Contractor will be entitled to the full Recurring Services Fee applicable prior to the first Review Period.

ANNEX G TO ATTACHMENT B

6. PROVISIONAL PAYMENTS

Note to drafters: If each Review Period is two months or more, then provisional payments are to be paid to the Contractor. If not required (ie, Review Periods are one month only), the following clauses may be replaced by a single 'Not used'. Refer to the ASDEFCON (Support Short) PBC Guide for further information.

- 6.1 Unless a payment is adjusted in accordance with clause 6.3 or otherwise under the Contract, the Contractor shall be entitled to make a claim for payment each month for a provisional payment of a pro rata portion of the *maximum performance payment amount* for the Review Period (as specified in clause 5.1), on account of the Contractor's potential entitlement to a Performance Payment for that Review Period.
- 6.2 Following each Review Period, and review by the Commonwealth of the Services Summary Report, and any supporting information required, the Commonwealth shall calculate and notify the Contractor of the Contractor's entitlement to a Performance Payment for the Review Period in accordance with clause 5.3, and if the Performance Payments for all KPIs is:
- more than the sum of the provisional payments made under clause 6.1, then the Contractor is entitled to submit a claim for the amount of the difference; or
 - less than the sum of the provisional payments made under clause 6.1, then the amount of the difference shall be a debt owed by the Contractor to the Commonwealth, which the Commonwealth may elect to recover in accordance with clause 13.6 of the COC.
- 6.3 When the Performance Payment is to reduce, as determined in accordance with clause 6.2, the Commonwealth Representative may notify the Contractor that:
- the invoice for the last month of the Review Period is to be adjusted to account for any reduction to the Performance Payment; or
 - to facilitate prompt payment, the Commonwealth will pay a provisional payment for the last month of a Review Period and that that the Performance Payment reduction is to be deducted from a subsequent claim.
- 6.4 No amount shall be owing to the Commonwealth under clause 6.2 until the Commonwealth elects to recover the amount under clause 6.3 above or clause 13.6 of the COC.

7. SUSPENSION OF THE PERFORMANCE ASSESSMENT OF A KPI

- 7.1 The Commonwealth Representative may notify the Contractor that the assessment of the Contractor's performance, against one or more KPIs, will be suspended for a Review Period or part of a Review Period.
- 7.2 Unless otherwise notified by the Commonwealth Representative, the Contractor shall be entitled to claim the *KPI maximum payment* amount (as specified in clause 5.2) attributable to a KPI for the duration of the suspension of assessment of that KPI in accordance with clause 7.1.
- 7.3 If the Commonwealth Representative suspends a requirement to assess a KPI for a given period, the Contractor shall continue to measure and report against any KPI that is time-based (eg, measures a response, delivery or turn-around time) during that period, unless otherwise notified by the Commonwealth Representative.

ATTACHMENT C

GLOSSARY (CORE)

Note to drafters: Definitions, acronyms and abbreviations that are not used in a particular 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.

All acronyms, abbreviations, definitions and referenced documents (if included in definitions), should be reviewed for currency prior to both the RFT release and the Effective Date.

1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
ABN	Australian Business Number
ACM	Asbestos Containing Material
ACN	Australian Company Number
ACICA	Australian Centre for International Commercial Arbitration
ACIP	Approved Contractor Insurance Program
ADF	Australian Defence Force
ANZ	Australian and New Zealand
AIC	Australian Industry Capability
APS	Adjusted Performance Score
ARPANSA	Australian Radiation Protection and Nuclear Safety Agency
ASD	Australian Signals Directorate
ATO	Australian Taxation Office
CASG	Capability Acquisition and Sustainment Group
CASR	Commonwealth Assets Stocktaking Report
CASP	Commonwealth Asset Stocktaking Plan
CCP	Contract Change Proposal
CCSF	Commonwealth Child Safe Framework
CMCA	Contractor Managed Commonwealth Assets
COC	Conditions of Contract
COMSEC	Communications Security
CPI	Consumer Price Index
CPR	Contract Performance Review
CPRs	Commonwealth Procurement Rules
CSERPW	Complex Services Pricing Workbook
CSRL	Contract Services Requirements List
CSR	Contract Status Report
DEFLOGMAN	Defence Logistics Manual
DID	Data Item Description
DIP	Defence Industry Participation
DISP	Defence Industry Security Program
DOF	Department of Finance
DSD	Detailed Service Description

Abbreviation	Description
DSPF	Defence Security Principles Framework
ED	Effective Date
ENVMP	Environmental Management Plan
ENVMS	Environmental Management System
ERP	Enterprise Resource Planning
ESCM	Electronic Supply Chain Manual
GFD	Government Furnished Data
GFE	Government Furnished Equipment
GFF	Government Furnished Facilities
GFI	Government Furnished Information
GFM	Government Furnished Material
GFS	Government Furnished Services
GST	Goods and Services Tax
ICT	Information and Communications Technology
IP	Intellectual Property
IPP	Australian Government Indigenous Procurement Policy
IPPRS	Indigenous Procurement Policy Reporting Solution
IT	Information Technology
KPI	Key Performance Indicator
LMP	Learning Management Package
MPL	Maximum Probable Loss
MEC	Multiple Entry Consolidated
MILIS	Military Integrated Logistics Information System
NIAA	National Indigenous Australian Agency
NTE	Not To Exceed
ODS	Ozone Depleting Substances
OEM	Original Equipment Manufacturer
QMS	Quality Management System
PBC	Performance Based Contracting
PEPPOL	Pan-European Public Procurement On-Line
PHIP	Phase In Plan
PHOP	Phase Out Plan

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Abbreviation	Description
POD	Planned Operative Date
PT PCP	Note to drafters: Include if clauses 10.9.13 to 10.9.17 (regarding PT PCP) are included in the COC. Payment Times Procurement Connected Policy
QMS	Quality Management System
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RI	Repairable Item
S&Q	Survey and Quote
S&TE	Support and Test Equipment
SADL	Systems Approach to Defence Learning
SCCG	Security Classification and Categorisation Guide

Abbreviation	Description
SDS	Safety Data Sheet
SOW	Statement of Work
SGGs	Synthetic Greenhouse Gasses
SMP	Services Management Plan
SME	Small to Medium Enterprise
SSMP	Support Services Management Plan
SSR	Services Summary Report
STR	Statement of Tax Record
TD	Technical Data
TDL	Technical Data List
TDSR	Technical Data and Software Rights
WHS	Work Health and Safety
VET	Vocational Education and Training

2. DEFINITIONS

2.1 In the Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them in this Glossary or in the Details Schedule.

Term	Status	Definition
Acceptance	(Core)	means acceptance of Deliverables delivered in the course of providing the Services in accordance with clause 5.6 of the COC, signified by the Commonwealth Representative's signature (or by an Authorised Person's signature) of the Supplies Acceptance Certificate; and 'Accept' has a corresponding meaning.
Achieved Performance	(Optional)	for a KPI for a Review Period, means a number representing the Contractor's performance against the KPI in the Review Period, as determined in accordance with Annex G to Attachment B.
Adjusted Performance Score	(Optional)	for a KPI for a Review Period, means the percentage score determined, in accordance with Annex G to Attachment B, as the Contractor's Adjusted Performance Score, representing the relative value of the Achieved Performance to the Commonwealth.
Adjustment Date	(Core)	<p>Note to drafters: This definition is drafted on the assumption that the Adjustment Dates will align with financial years, but it may be amended to suit the individual draft contract. If the preference is to align the Adjustment Dates with each anniversary of the Effective Date then this definition could be replaced with the following:</p> <p>means each anniversary of the Effective Date.</p> <p>means:</p> <ul style="list-style-type: none"> a. in respect of the first application of the formula in clause 6.2 of Attachment B, 1 July immediately following the Effective Date; and b. in respect of any subsequent application of the formula in clause 6.2 of Attachment B, each anniversary of the date referred to in paragraph a.
Adjustment Note	(Core)	has the same meaning as in the GST Act.
Adjustment Payment	(Core)	has the meaning given by clause 6.3.4 of the COC.
Allowable Costs	(Core)	means a cost incurred by the Contractor that is an allowable cost in accordance with the meaning in the Defence Cost Principles.
Application for a Deviation	(Core)	means an Application for a Deviation in the form of the annex to DID-PM-MGT-AFD.
Approval	(Core)	<ul style="list-style-type: none"> a. for a data item, has the meaning given by clause 2.3 of the SOW; and b. in every other context, means the act of the Commonwealth Representative approving a particular claim, proposal or course of action as a basis for further work under the Contract. <p>Approval in either case does not constitute Acceptance; 'Approve' has a corresponding meaning.</p>

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Term	Status	Definition
Approved Subcontractor	(Core)	means a Subcontractor listed in Attachment I or the Approved Subcontractor section of an S&Q Order; and 'Approved Subcontract' means a contract between the Contractor and an Approved Subcontractor.
Approved Substance	(Core)	means a Problematic Substance that is: <ul style="list-style-type: none"> a. specified for use by the Commonwealth in writing, including a Problematic Substance used for a purpose(s) stated in Technical Data that has been specified by the Commonwealth for use in providing the Services; b. Approved and used for the purpose(s) specified in an Approved Application for a Deviation; or c. Approved and used for the purpose specified in the Approved SMP.
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Assets Register	(Core)	means the log used by the Contractor for recording Contractor Managed Commonwealth Assets.
Associated Parties	(Core)	means other entities (including other contractors and Commonwealth organisations) performing activities related to the Services or otherwise having a connection with the Services.
Attachment	(Core)	means an Attachment to the Contract.
Audit	(Core)	means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
Australian Privacy Principles	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Australian Industry	(Core)	means: <ul style="list-style-type: none"> a. Australian business entities that perform work in Australia with Australian-based employees and have an Australian Business Number (ABN); b. New Zealand business entities that perform work in New Zealand with New Zealand-based employees (consistent with the Closer Economic Relationship agreement between Australia and New Zealand) and have a New Zealand Business Number (NZBN); and c. Australian Industry includes subsidiaries of overseas companies (eg, equipment manufacturers) based in Australia or New Zealand, that meet the above criteria.
Authorisation	(Core)	means a licence, accreditation, permit, registration, regulatory approval, Export Approval or other documented authority (however described), required by law and necessary for the provision of Services or the performance of the Contract.
Authorised Person	(Core)	means a person who is delegated a function or authorised to carry out a function on behalf of the Commonwealth Representative in accordance with the Contract.
Defence Cost Principles	(Core)	means the Defence Cost Principles, as amended from time to time.

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Term	Status	Definition
Certification	(Core)	for clause 9 of the SOW, has the meaning given by clause 9 of the SOW. 'Certified' has a corresponding meaning.
Change of Control	(Core)	means: a. a body corporate or entity that Controls the Contractor or the Guarantor ceases to Control the Contractor or the Guarantor; or b. a body corporate or entity that does not Control the Contractor or the Guarantor comes to Control the Contractor or the Guarantor.
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 an item or service that is: a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and b. able to be used for its intended purpose under the Contract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item or use the service), but does not include an item created, manufactured or produced by the Contractor or a Related Body Corporate of the Contractor.
Commercial Software	(Core)	means Software that is: a. a Commercial Item; b. supplied without further development or modification in conjunction with a Commercial Item, under the standard commercial terms applicable to that item; or c. Free and Open Source Software.
Commercial TD	(Core)	means TD that is: a. a Commercial Item; or b. supplied, without further development or modification, in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or Software.
Commercialise	(Core)	means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in TD, Contract Material or Software 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.

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Term	Status	Definition
Commonwealth Funded Resources	(Core)	has the meaning set out in clause 3.16 of the COC.
Commonwealth Mandated GFM	(Optional)	means GFE or GFD identified as 'Commonwealth Mandated GFM' in: <ul style="list-style-type: none"> a. Attachment G; or b. the GFM section of a S&Q Order.
Commonwealth Mandated GFS	(Optional)	means GFS identified as 'Commonwealth Mandated GFS' in: <ul style="list-style-type: none"> a. Annex B to Attachment G; or b. the GFS section of a S&Q Order.
Commonwealth Material	(Optional)	means any of the following IP created under the Contract owned by the Commonwealth: <ul style="list-style-type: none"> a. any TD or Software of the type described in Annex B to Attachment D (TDSR Schedule); b. any TD or Software described as such in an S&Q Order; and c. any developments, modifications or improvements to that TD or Software.
Commonwealth Officer	(Core)	means any of the following: <ul style="list-style-type: none"> a. a Minister of State for the Commonwealth; 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); c. a person who is included in Defence Personnel; and d. a member of the Australian Federal Police.
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"> a. an area of land or any other place (whether or not it is enclosed or built on); b. a building or other structure; and c. a vehicle, a vessel (including a submarine) or an aircraft.
Commonwealth Property	(Core)	means property of any kind (including GFM) owned or leased by, or in the possession of, the Commonwealth.
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"> a. professional, administrative, contract management or project management services to Defence; or b. technical management or assurance services, including verification and validation, safety, certification, security or capability development.

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Term	Status	Definition
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.
Confidential Information	(Core)	<p>means:</p> <p>a. any information in the Contract that is identified in Attachment E or in the Confidential Information section of an S&Q Order; or</p> <p>b. any other information that:</p> <p style="padding-left: 20px;">(i) is commercially sensitive (not generally known or ascertainable);</p> <p style="padding-left: 20px;">(ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and</p> <p style="padding-left: 20px;">(iii) was provided with an express understanding that it would remain confidential,</p> <p>but does not include information which:</p> <p>c. is or becomes public knowledge other than by breach of the Contract;</p> <p>d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or</p> <p>e. has been independently developed or acquired by the receiving party.</p>
Configuration Management or CM	(Optional)	means a process for establishing and maintaining the consistency of an item of equipment's performance, functional, and physical attributes with its specified requirements, design and operational information, throughout its life.
Consolidated Group	(Optional)	means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Contamination	(Core)	means the presence in, on or under land, air or water of a substance or emission (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under the land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any statutory requirement for the protection of the Environment.
Contract	(Core)	means the COC (including the Details Schedule), the Attachments including the SOW, any S&Q Order and any document expressly incorporated as part of the Contract.
Contract Change Proposal	(Core)	has the meaning given by clause 10.1 of the COC.
Contract Material	(Core)	means information, other than TD 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 Performance Review	(Core)	means a review conducted in accordance with clause 3.3 of the SOW.

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Term	Status	Definition
Contractor Default	(Core)	means a Default in relation to the Contract by the Contractor or Contractor Personnel.
Contractor Maintained Licensed Fittings	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>for a GFF Licensed Area, means the Licensed Fittings identified in the list titled 'Contractor Maintained Licensed Fittings' included in Appendix 2 of the relevant annex to Attachment K.</p>
Contractor Managed Commonwealth Asset	(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)	means each of the following: <ul style="list-style-type: none"> a. an employee, officer or agent of the Contractor; b. a Subcontractor; and c. an employee, officer or agent of a Subcontractor.
Contractor Premises	(Core)	means any of the following: <ul style="list-style-type: none"> a. premises owned by the Contractor, a Related Body Corporate of the Contractor or a Subcontractor; and b. premises: <ul style="list-style-type: none"> (i) that is leased by, or licensed to, the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; and (ii) where the Contractor, Related Body Corporate or the Subcontractor is responsible for controlling physical access to the premises.
Control	(Core)	means, in relation to the Contractor or the Guarantor, any of the following: <ul style="list-style-type: none"> a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Contractor or the Guarantor; b. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Contractor or the Guarantor; c. the ability to appoint or remove a majority of the directors of the Contractor or the Guarantor; d. the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the Contractor or the Guarantor; or e. any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Contractor or the Guarantor.
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

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Term	Status	Definition
		whether stored electronically or otherwise in which copyright subsists and may subsist in the future.
Correctly Rendered Invoice	(Optional)	<p>Note to drafters: Include if clauses 10.9.13 to 10.9.17 (regarding PT PCP) are included in the COC.</p> <p>for the purposes of clause 10.9.14 of the COC, means an invoice which is:</p> <ol style="list-style-type: none"> a. rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and b. for amounts that are correctly calculated and due for payment and payable under the terms of the relevant PT PCP Subcontract.
Dangerous Goods	(Core)	has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail (as amended from time to time).
day	(Core)	means a calendar day.
Default	(Core)	<p>means any of the following:</p> <ol style="list-style-type: none"> a. a breach of an express or implied provision of the Contract by a party to the Contract; and b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following: <ol style="list-style-type: none"> (i) the Commonwealth or Commonwealth Personnel; (ii) a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor; and (iii) the Contractor or Contractor Personnel. <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>
Default Notice	(Core)	means a notice given to the Contractor requiring the Contractor to remedy a Default within the period specified in the notice.
Defect	(Core)	<p>means:</p> <ol style="list-style-type: none"> a. in respect of a Deliverable, any fault, defect, damage, omission or deficiency in design, materials, workmanship or quality (other than fair wear and tear), which: <ol style="list-style-type: none"> (i) results in the Deliverable not conforming to a requirement of this Contract or applicable legislation or recognised standards of practice; or (ii) renders the Deliverable unfit for its intended use; and b. in respect of any other Service, the provision of the Service otherwise than in accordance with this Contract, applicable legislation or recognised standards of practice.
Defence	(Core)	means the Department of Defence and/or the Australian Defence Force.

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Term	Status	Definition
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)	means a purpose related to any of the following: <ul style="list-style-type: none"> a. the defence and defence interests of Australia; b. the national security of Australia; c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and d. peacekeeping or peace enforcement activities.
Defence Service Provider	(Core)	means a person, other than Defence Personnel, involved in Defence work or engaged by Defence.
Deliverable(s)	(Core)	means any information (including Technical Data), document (including reports, manuals, designs, drawings and the like), hardware, Software or other thing, which is, or is required by the Contract to be, delivered or provided by the Contractor or its agents to the Commonwealth or its agents in the course of the performance of the Services.
Deviation	(Optional)	means written authorisation to depart from the specified requirements for a Service or Deliverable. An Application for a Deviation is submitted before the event, when a condition is identified as not being able to be achieved, such as any of the following: <ul style="list-style-type: none"> a. test requirement; b. process requirement; c. material requirement; and d. quality system requirement.
DIP Activity	(Core)	means an activity required to be undertaken by ANZ industry as set out in Attachment J.
DIP Activity Value	(Core)	means the value of an activity required to be undertaken by ANZ industry as set out in Attachment J.
DIP Obligation	(Core)	means the obligations under the Contract relating to DIP and for the avoidance of doubt includes the obligations on the Contractor under clause 4 of the COC, clause 3.15 of the SOW and Attachment J.
Dispute	(Core)	means any dispute, difference or disagreement between the parties arising out of or in connection with this Contract, including any dispute or difference as to the formation, validity, existence or termination of this Contract.
document	(Core)	includes: <ul style="list-style-type: none"> 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

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Term	Status	Definition
		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.
Engineering Services	(Optional)	means those Services associated with performing activities of an engineering nature, including design management, technical-integrity management, Configuration Management and Software support, as well as the management of these engineering activities.
Environment	(Optional)	in the context of environmental management, means any of the following: <ul style="list-style-type: none"> a. ecosystems and their constituent parts; b. natural and physical resources; c. the qualities and characteristics of locations, places and areas; d. noise; and e. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraph a, b or c.
Environmental Harm	(Optional)	means any actual or threatened adverse impact on, or damage to, the Environment.
Environmental Incident	(Optional)	means any Environmental Harm or Contamination caused by or in relation to the Contractor's activities.
Environmental Management System	(Core)	has the meaning given to that term in AS/NZS ISO 14001:2015.
Excepted Risk	(Core)	means an event or circumstance that is any of the following: <ul style="list-style-type: none"> a. an act of God, including a natural disaster (such as a bushfire, an earthquake, a flood, a landslide or a cyclone); 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; c. confiscation by governments or public authorities; or d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels, except to the extent that the event or circumstance (or any resulting delay, loss or damage): <ul style="list-style-type: none"> e. arose out of or as a consequence of a Contractor Default; or f. could have been prevented or mitigated, by reasonable care on the part of the Contractor or Contractor Personnel.
Export Approval	(Core)	means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Services.
Extension Notice	(Core)	means a notice in the form of Annex B to Attachment F.
Facilities	(Core)	means all mobile, fixed, permanent and semi-permanent buildings, structures, installations, and the associated utilities for the operating,

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		supply, Training, and administrative elements used under or in connection with the Contract.
Facilities Condition Report	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licensed Area, means the report at Appendix 3 of the relevant annex to Attachment K.</p>
Failure	(Optional)	means the inability of a system or component to perform its required functions within specified performance requirements.
Free and Open Source Software	(Core)	<p>means Software that:</p> <ul style="list-style-type: none"> a. is distributed on a free to use basis without a requirement to pay a royalty or other fee; and b. may be used, modified, developed or adapted by any person subject to specified conditions, <p>and includes open source Software, public domain Software, shareware, community source Software and freeware.</p>
General Interest Charge	(Core)	means the Australian Taxation Office sourced rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) expressed as a decimal rate per day.
GFF Common Area	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means an area of a GFF Licensed Area or the Commonwealth Premises in which the GFF is located, identified in the plans in Appendix 1 of the relevant annex to Attachment K as a GFF Common Area.</p>
GFF Delay Event	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means any of the following:</p> <ul style="list-style-type: none"> a. the Commonwealth excludes the Contractor or Contractor Personnel from the GFF (or a substantial part of it) other than as reasonably necessary for the normal operation and maintenance of the Commonwealth Premises in which the GFF is located; b. the Commonwealth requires the Contractor to relocate from the GFF to another location; c. the GFF Licence is terminated by the Commonwealth; and d. the Contractor cannot exercise (or fully exercise) a right granted under the GFF Licence due to a Commonwealth Default or a breach of a general law duty or an applicable law by an Unrelated Party, <p>other than as a result of a Contractor Default or an Excepted Risk.</p>
GFF Licence	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the licence granted by clause 3.7 of the COC.</p>

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GFF Licence Application Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licensed Area, means the date specified in the annex to Attachment K for that GFF Licensed Area as the date on which the GFF Licence applies to the GFF Licensed Area.</p>
GFF Licence Commencement Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence for a GFF Licensed Area, means the date specified in the relevant annex to Attachment K as the date on which the GFF Licence applies to that GFF Licensed Area.</p>
GFF Licence Expiry Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence for a GFF Licensed Area, means the date specified in the relevant annex to Attachment K as the date on which the GFF Licence ceases to apply to that GFF Licensed Area.</p>
GFF Licence Fee		means [INSERT AMOUNT] adjusted as provided in clause 8.2 of Attachment K.
GFF Licence Term	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licence, means the period determined in accordance with clause 1.1 of Attachment K.</p>
GFF Licensed Area	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licence, means the area forming part of a Commonwealth Premises and identified as such in Appendix 1 of the relevant annex to Attachment K, including all buildings in that area and all Licensed Fittings in that area or those buildings.</p>
GFF Permitted Purpose	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means any of the following:</p> <ol style="list-style-type: none"> a. the purpose of performing the Contractor's obligations under and in connection with the Contract; and b. if the Commonwealth Representative consents in writing to the use of a GFF Licensed Area for a purpose under or in connection with another contract to which the Commonwealth is a party, the other purpose.
Goods and Services Tax	(Core)	has the same meaning as in the GST Act.
Government Agency	(Core)	<p>means a person or body performing governmental functions, including any of the following:</p> <ol style="list-style-type: none"> a. a body politic; b. a government or government department or other body; c. a governmental, semi-governmental or judicial person; and d. a person (whether autonomous or not) charged with the administration of a law.

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Term	Status	Definition
Government Furnished Data or GFD	(Optional)	means the data (if any) identified as Government Furnished Data in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Equipment or GFE	(Optional)	means the equipment (if any) identified as Government Furnished Equipment in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Facilities or GFF	(Optional)	Note to drafters: Include this if a GFF Licence is to be provided to the Contractor. means the GFF Licensed Area(s) identified in: a. Attachment K; or b. the GFF section of an S&Q Order.
Government Furnished Information or GFI	(Optional)	means the information (if any) identified as Government Furnished Information in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Material or GFM	(Optional)	is the collective name for the GFE, GFD and GFI.
Government Furnished Services or GFS	(Optional)	means the services identified as 'Government Furnished Services' in: a. Annex B to Attachment G; or b. the GFS section of an S&Q Order.
GST Act	(Core)	means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
GST Group	(Optional)	means a GST group formed in accordance with Division 48 of the GST Act.
Guaranteed Agreement	(Optional)	Note to drafters: Include this if optional clause 6.8.2 is used in the COC. means an agreement listed at Attachment 1 to the Master Deed of Guarantee and Indemnity.
Guarantor	(Core)	means the guarantor (if any) specified in the Deed of Guarantee and Indemnity, as identified in Item 10 of the Contract Details.
Hazardous Chemical	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Help Desk Services	(Optional)	means the Services as set out in clause 6 of the SOW.
Indigenous Enterprise	(Core)	means an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Participation Plan	(Optional)	Note to drafters: Include this if the contract is subject to the Mandatory Minimum Requirements and will require an Indigenous Participation Plan. Attachment M will be based on the plan

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Term	Status	Definition
		<p>submitted in response to Annex H to Attachment A to the Conditions of Tender</p> <p>means the plan at Attachment M detailing how the Contractor will meet the Mandatory Minimum Requirements for the Indigenous Procurement Policy.</p>
Indigenous Procurement Policy	(Core)	<p>means the policy of that name, as amended from time to time, available as of the Effective Date at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp</p>
Indigenous Procurement Policy Reporting Solution	(Optional)	<p>means the online portal where the Contractor is to report on their progress against their Mandatory Minimum Requirements under the Indigenous Procurement Policy.</p>
Insolvency Event	(Core)	<p>means, in respect of a person, any of the following:</p> <ol style="list-style-type: none"> a. the person: <ol style="list-style-type: none"> (i) becoming insolvent; (ii) ceasing to carry on all or a material part of its business; or (iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; 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; c. the person becoming subject to external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth); d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the <i>Personal Property Securities Act 2009</i> (Cth)); e. the person being taken under section 459F(1) of the <i>Corporations Act 2001</i> (Cth) to have failed to comply with a statutory demand; f. an order or resolution for the winding up or deregistration of the person; 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 h. any analogous event under the law of any applicable jurisdiction.
Intellectual Property or IP	(Core)	<p>means all present and future rights conferred by law in or in relation to any of the following:</p> <ol style="list-style-type: none"> a. Copyright; b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world, whether registered or unregistered.

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Key Performance Indicator	(Optional)	means a performance measure specified at Annex E to Attachment B as a KPI, being a measure that is used to determine the Contractor's entitlement to Performance Payments.
Key Person	(Optional)	means a person filling a Key Staff Position.
Key Staff Position	(Optional)	means a position that requires a person with highly specialised skills or such capabilities that are crucial to the success of the Contract, as identified in accordance with clause 3.11 of the COC.
Latent Defect	(Optional)	means a Defect that: <ul style="list-style-type: none"> a. was not discoverable by reasonable test, inspection or other methods of assurance before Acceptance of the Deliverables or Services; and b. other than in relation to Software, falls outside the incidence of random failures to be expected of the Deliverables or Services of the relevant kind.
Licence	(Core)	means a non-exclusive licence of IP in respect of TD, Software or Contract Material, being a licence that: <ul style="list-style-type: none"> a. is fully paid-up and does not require any additional payment by the licensee, including by way of royalty or any other fee; b. cannot be revoked or terminated by the licensor for any reason except on expiration of a statutory protection term; c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence; d. operates on a world-wide basis; and e. binds each successor in title to the owner of the IP in respect of the TD, Software or Contract Material.
Licensed Fittings	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the following items in a GFF Licensed Area:</p> <ul style="list-style-type: none"> a. fixed internal partitioning and panelling; b. floor coverings, window blinds and awnings; c. cabling and connection points of any installed telecommunication systems; d. lines, conduits, connections, taps, outlets, controls and regulatory and safety devices of any reticulated electricity, gas or water supply; e. sinks and basins, f. fire sprinkler systems; g. light, heating and air-conditioning fittings; h. installed warning or alarm systems; i. signage supporting the function or the intended function of the GFF; j. hoses and compressor units; k. other fixed plant and equipment (not being GFE), including that listed in an appendix to an annex to Attachment K; and

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		<p>i. any other items made available in a GFF Licensed Area by the Commonwealth for the Contractor's use,</p> <p>and any items that replace those while the GFF Licence is in force, but does not include items that are GFE.</p> <p>Note to drafters: This list should be reviewed and updated depending on the actual licensed fittings. If a fitting which is being licensed does not appear on the list above, you will need to include it. Conversely, if an item is listed as being a 'licensed fitting' above, but is not being licensed to the Contractor, it should be deleted from the list above.</p>
Local Business	(Core)	Note to tenderers: This definition will be included from the successful tenderer's response to TDR G.
Loss	(Core)	<p>means any liability, loss (including economic loss), damage, compensation, costs and expenses.</p> <p>'Losses' has a corresponding meaning.</p>
Maintenance	(Optional)	means all actions taken to retain material in, or restore it to, a specified condition or to restore it to serviceability; and 'Maintain' has a corresponding meaning. It includes inspection, condition monitoring, servicing, repair, overhaul, testing, calibration, rebuilding, reclamation, upgrades, modification, recovery, classification and the salvage of technical equipment. Maintenance includes both Corrective Maintenance and Preventive Maintenance.
Malware	(Core)	means software or Source Code the intent or effect of which is malicious (ie, software that may appear to be dormant or perform a useful or desirable function, but that actually gains unauthorised access to system resources or induces the user to execute other malicious logic). Malware is a generic term for a number of different types of malicious code including adware, spyware, bots, ransomware, rootkits, trojans, viruses and worms.
Mandatory Minimum Requirements	(Optional)	<p>Note to drafters: Include this if the contract is subject to the Mandatory Minimum Requirements and will require an Indigenous Participation Plan.</p> <p>means the mandatory minimum Indigenous participation requirements imposed for high value contracts by the Indigenous Procurement Policy.</p>
Maintenance Services	(Optional)	means those Services associated with performing Maintenance, including the management of Maintenance activities.
Market Review Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means each of the following dates:</p> <p>a. [INSERT DATES].</p>
Master Deed of Guarantee and Indemnity	(Optional)	<p>Note to drafters: Include this if optional clause 6.8.2 is used in the COC. Contact the ASDEFCON and Contracting Initiatives Team at procurement.asdefcon@defence.gov.au for information on the relevant Master Deed of Guarantee and Indemnity.</p> <p>means the [INSERT NAME OF THE DEED] between the Commonwealth and the Guarantor dated [INSERT DATE].</p>

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Milestone	(Optional)	means an event specified as a Milestone in Annex B to Attachment B.
Milestone Date	(Optional)	in relation to a Milestone, means the date for achievement of the Milestone as set out in Annex B to Attachment B.
Milestone Payment	(Optional)	in relation to a Milestone, means the amount set out in Annex A to Attachment B in respect of the Milestone.
Milestone Payment Schedule	(Optional)	means the schedule set out in Annex A to Attachment B.
Mobilisation Payment	(Optional)	means the payment identified as a Mobilisation Payment in Annex A to Attachment B.
Month	(Core)	means a calendar month.
Moral Rights	(Core)	means: a. a right of attribution of authorship; b. a right not to have authorship falsely attributed; and c. a right of integrity of authorship.
Not-To-Exceed	(Core)	means a price (inclusive of any extra fees) that shall not be exceeded for the provision and completion of a Service, a Deliverable or of an approved work activity.
Notifiable Incident	(Core)	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
Objectives	(Core)	has the meaning given in clause 1.3.1 of the COC.
Off Ramp Date	(Optional)	means the date that is [INSERT OFF RAMP PERIOD IN YEARS E.G. TWO YEARS] before the end of the current Term, or such other date as is determined in accordance with the Contract.
Operating Expenses	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor. This list should be reviewed and amended to ensure completeness and accuracy.</p> <p>means the total of all costs, charges, fees, expenses, taxes and other outgoings paid or payable, charged or chargeable, assessed or assessable upon or otherwise incurred by the Commonwealth in respect of the Commonwealth Premises in which the GFF is located or in managing, supervising, operating, cleaning, painting, maintaining and keeping secure the Commonwealth Premises in which the GFF is located and not otherwise recouped by the Commonwealth under the GFF Licence, including all of the following:</p> <p>a. all amounts paid or payable to any Government Agency in respect of the Commonwealth Premises in which the GFF is located (not including a GFF Licence fee, if any);</p> <p>b. all insurance premiums payable in respect of the insurances effected by the Commonwealth in respect of the Commonwealth Premises in which the GFF is located against risks referable to the Commonwealth Premises in which the GFF is located or to the Commonwealth in relation to the Commonwealth's ownership or</p>

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		<p>interest in the Commonwealth Premises in which the GFF is located;</p> <p>c. amounts incurred in respect of the maintenance, operation, renovation, repair, upgrade and upkeep of the Commonwealth Premises in which the GFF is located (other than those parts of the Commonwealth Premises in which the GFF is located from which the Contractor derives no benefit from a right of access);</p> <p>d. amounts incurred in respect of cleaning, lighting, maintaining and servicing common areas;</p> <p>e. amounts incurred in respect of caretaking, security and other expenses associated with facilities provided on or from the Commonwealth Premises in which the GFF is located;</p> <p>f. amounts incurred in respect of control and security (including fees payable to the Commonwealth's security contractors, car parking attendants and traffic supervisors) in connection with the Commonwealth Premises in which the GFF is located (including amounts incurred in respect of salaries and wages, labour on costs and accident compensation insurance premiums);</p> <p>g. amounts incurred in respect of maintenance, repair and testing of firefighting and protection equipment (including sprinkler installations, hydrants, fire extinguishers, smoke detectors and other firefighting equipment) installed by the Commonwealth on the Commonwealth Premises in which the GFF is located, including amounts paid or payable to a Government in respect of the supply, maintenance, servicing and monitoring of fire alarms;</p> <p>h. amounts incurred in respect of any other services (including IT services) provided in respect of the Commonwealth Premises in which the GFF is located, including:</p> <p style="padding-left: 20px;">(i) amounts payable to specialist contractors;</p> <p style="padding-left: 20px;">(ii) wages paid to permanent staff employed; and</p> <p style="padding-left: 20px;">(iii) the cost of materials used by the Commonwealth, in connection with those services;</p> <p>i. amounts that the Commonwealth incurs in respect of the management and supervision of the Commonwealth Premises in which the GFF is located and arrangements for use or occupation of or access to the Commonwealth Premises in which the GFF is located;</p> <p>j. amounts incurred in complying with any requirement of a Government Agency in relation to the Commonwealth Premises in which the GFF is located (other than those parts of the Commonwealth Premises in which the GFF is located, to which there is no access or use by the public or the Contractor) but excluding requirements which are the responsibility of a particular tenant, licensee or occupier of the Commonwealth Premises in which the GFF is located; and</p> <p>k. any other expenditure reasonably and properly incurred by the Commonwealth in the operation and maintenance of the Commonwealth Premises in which the GFF is located,</p> <p>but excluding any of the following:</p> <p>l. costs of capital repairs (provided these are not needed because of Contractor Default);</p>

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		<p>m. amounts that the Commonwealth is not permitted by law to recover from the Contractor;</p> <p>n. amounts of GST in respect of the GFF Licence; and</p> <p>o. any other amounts payable or to be borne by the Contractor under Attachment K.</p>
Operating Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes, and Technical Data needed to enable each Mission System to be competently operated throughout its life.
Operating Support Services	(Optional)	<p>means those Services associated with:</p> <p>a. operating a Mission System;</p> <p>b. performing activities that directly enable the operation of a Mission System (eg refuelling, fire-fighting and ordnance loading); and</p> <p>c. managing Operating Support activities,</p> <p>but excludes Maintenance of a Mission System and the provision of the associated Supply Services at the operational level.</p>
Operative Date	(Core)	means the date specified in a notice under clause 1.5.4 of the COC.
Ozone Depleting Substance	(Core)	means any substance identified as having ozone depleting potential in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or any regulations made under that Act.
Patent	(Core)	means the rights and interests in any registered, pending or restored standard or innovation patent under the <i>Patents Act 1990</i> (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.
Performance Event	(Core)	means an event or circumstance which prevents the Contractor from complying with clauses 6.1.1d or 6.1.1e of the COC.
Performance Measure	(Core)	means a unit or standard of measurement pertaining to a particular Service, action or deed, measured either from the process itself or the impact on the resultant outcomes.
Performance Payment	(Optional)	means each amount determined in accordance with clause 5 of Annex G to Attachment B in respect of the Contractor's performance against each KPI in the Review Period.
Performance Relief	(Optional)	means relief from compliance with clauses 6.1.1d and 6.1.1e of the COC for a period specified by the Commonwealth, including agreement by the Commonwealth Representative to allow a value that is different to the measured value to be used when calculating the Adjusted Performance Score for a KPI for a Review Period.
Personal Information	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Personnel	(Core)	means all staff involved in the provision of the Services, including Commonwealth Personnel, Contractor Personnel and Subcontractor Personnel.

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Phase In	(Optional)	means the set of activities to be undertaken by the Contractor and Commonwealth, in respect of, and to prepare for, the commencement of the provision of the Services, which culminates in, and concludes on, the achievement of the Operative Date.
Phase Out	(Optional)	means the set of activities undertaken by the Contractor and Commonwealth in respect of, and to prepare for, the expiry or earlier termination of the Contract or where there is a reduction in scope of the Contract.
Postponement	(Core)	means the postponement of a due date for the provision of a Service.
Postponement Event	(Core)	means an event or circumstance which prevents the Contractor from complying with clauses 6.1.1 a, 6.1.1b or 6.1.1c of the COC.
Prescribed Activities	(Core)	means: <ul style="list-style-type: none"> a. the use, handling or storage of any of the following Hazardous Chemicals: <ul style="list-style-type: none"> (i) a prohibited carcinogen, restricted carcinogen or lead, each as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth); or (ii) hazardous chemicals the use of which is restricted under regulation 382 of the <i>Work Health and Safety Regulations 2011</i> (Cth) including polychlorinated biphenyls; b. the use, handling or storage of a Problematic Source; c. high risk work as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth); d. electrical work on energised electrical equipment as contemplated by the <i>Work Health and Safety Regulations 2011</i> (Cth); or e. remote or isolated work as defined in subregulation 48(3) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Privacy Commissioner	(Core)	means any person performing any 'privacy function' within the meaning of the <i>Australian Information Commissioner Act 2010</i> (Cth)
Problematic Source	(Core)	means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licensed with the Australian Radiation Protection and Nuclear Safety Agency.
Problematic Substance	(Core)	means an Ozone Depleting Substance, Synthetic Greenhouse Gas, Dangerous Good or Hazardous Chemical.
Project of Concern	(Core)	means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.
Proportionate Liability Law	(Core)	means any of the following: <ul style="list-style-type: none"> a. <i>Civil Liability Act 2002</i> (NSW) – Part 4; b. <i>Wrongs Act 1958</i> (Vic) – Part IVAA; c. <i>Civil Liability Act 2002</i> (WA) – Part 1F; d. <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2; e. <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A;

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		f. <i>Proportionate Liability Act 2005</i> (NT); g. <i>Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001</i> (SA) – Part 3; h. <i>Civil Liability Act 2002</i> (Tas) – Part 9A; i. <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA; j. <i>Corporations Act 2001</i> (Cth) – Part 7.10, Div 2A; and k. <i>Australian Securities & Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.
PT PCP	(Optional)	<p>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</p> <p>means the Commonwealth’s ‘Payment Times Procurement Connected Policy’.</p>
PT PCP Policy Team	(Optional)	<p>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</p> <p>means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.</p>
PT PCP Subcontract	(Optional)	<p>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</p> <p>means a Subcontract between a Reporting Entity and another party (‘Other Party’) where:</p> <ol style="list-style-type: none"> a. the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract; b. both parties are carrying on business in Australia; and c. the component of the Subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (inc GST) during the period of the Subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the Subcontract, <p>but does not include the following Subcontracts:</p> <ol style="list-style-type: none"> a. Subcontracts entered into prior to the Reporting Entities’ tender response for the Contract; b. Subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or c. Subcontracts for the purposes of: <ol style="list-style-type: none"> (i) procuring and consuming goods or services overseas; or (ii) procuring real property, including leases and licences.
PT PCP Subcontractor	(Optional)	<p>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</p> <p>means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.</p>

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PTR Act	(Optional)	Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC. means the <i>Payment Times Reporting Act 2020</i> (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.
Quality	(Core)	means the degree to which a set of inherent characteristics fulfils requirements.
Quality Assurance	(Core)	means that part of Quality Management focused on providing confidence that Quality requirements will be fulfilled.
Quality Management	(Core)	means coordinated activities to direct and control an organisation with regard to Quality.
Quality Management System	(Core)	means the management system implemented by the Contractor in accordance with clause 9.1 of the SOW for the purposes of Quality Management.
Rate of Effort	(Optional)	means the work loading to be undertaken by the Contractor based on the set level of operations conducted by the Commonwealth during a period nominated in the Contract.
Recurring Services	(Core)	means all of the Services, other than any S&Q Services [and Task-Priced Services] , required to be provided by the Contractor under the Contract.
Recurring Services Fee	(Core)	means, in respect of a given period, the amount determined in accordance with Annex C to Attachment B as the Recurring Services Fee.
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.
Related Body Corporate	(Optional)	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).
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 Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.
Remediation Plan	(Core)	means a plan required by clause 6.9 of the COC.
Remote Area	(Optional)	Note to drafters: Include this if the contract is subject to the Mandatory Minimum Requirements and will require an Indigenous Participation Plan. means the areas identified in the Remote Indigenous Procurement Policy Map on the Indigenous Procurement Website (available as of the Effective Date at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp), as updated from time to time.
Repairable Item	(Core)	means a Stock Item that, when unserviceable, can be reconditioned or economically repaired to a serviceable state for further use.
Reporting Entity	(Optional)	Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC. has the meaning given to this term in the <i>PTR Act</i> .

Term	Status	Definition
Reporting Entity Subcontractor	(Optional)	<p>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</p> <p>means any person that:</p> <ol style="list-style-type: none"> is a Reporting Entity; and provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (inc GST). <p>'Reporting Entity Subcontract' has a corresponding meaning.</p>
Requirements Determination	(Optional)	means the process which establishes the quantity of Stock Items to be procured, and comprises the assessment, requirement computation, and procurement determination based on historical use/consumption data.
Required Performance Level	(Optional)	for a KPI, means the level of performance that enables a fully effective contribution to Defence-required outcomes, as specified for the KPI in Annex G of Attachment B.
Review Period	(Optional)	means the period for measurement and assessment of the Contractor's performance against KPIs, as specified in Annex G to Attachment B.
S&Q Quote	(Core)	has the meaning given in clause 3.14.2 of the COC.
S&Q Order	(Core)	has the meaning given in clause 3.14.3 of the COC.
S&Q Request	(Core)	means a request issued by the Commonwealth in respect of a proposed S&Q Service in the form of Part 1 of Annex A to DID-CSER-S&Q.
S&Q Services	(Core)	means the Services identified as S&Q Services in the SOW and such other services requested by the Commonwealth in accordance with clause 3.14 of the COC that are directly related to the Services.
Security Interest	(Core)	means any of the following: <ol style="list-style-type: none"> a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; a 'security interest' as defined in section 12(1) or (2) of the <i>Personal Property Securities Act 2009</i> (Cth); and an agreement to create any of these or allow any of these to exist.
Services	(Core)	means services and goods (including Deliverables, Technical Data, Software and Contract Material) required to be provided under the Contract and includes items acquired in order to be incorporated in the Services.
Services being Phased Out	(Core)	has the meaning given in clause 14.1.1 of the COC.
Sewerage Treatment Plant	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor. Ensure the Sewerage Treatment Plant is identified on the plan.</p> <p>means the facility so identified on the plan at Appendix 1 of an Annex to Attachment K.</p>

OFFICIAL
ATTACHMENT C

Term	Status	Definition
Shared Facilities	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence, means:</p> <p>a. if a part of a GFF Licensed Area is identified in a plan at Appendix 1 to an annex to Attachment K as Shared Facilities, that part of the GFF Licensed Area; and</p> <p>b. any part of a GFF Licensed Area specified as Shared Facilities in a notice by the Commonwealth Representative under clause 4 of Attachment K.</p>
Significant Event	(Core)	<p>means:</p> <p>a. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or Contractor Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation;</p> <p>b. any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or Contractor Personnel, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.</p>
Small to Medium Enterprise	(Optional)	means an Australian Entity which has up to 200 full-time equivalent employees.
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.
Source Code	(Core)	means the expression of Software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that Software.
Statement of Tax Record or STR	(Optional)	has the same meaning as in the Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019.
Statement of Work or SOW	(Core)	means Attachment A, including the annexes to the SOW and any specifications referred to in the SOW.
Stop Payment Milestone	(Optional)	means a Milestone identified as a Stop Payment Milestone in Annex B to Attachment B.
Stock Item	(Optional)	means an item which is either repairable or a non-repairable and held in inventory by the Commonwealth or the Contractor to support the provision of the Services. Stock Items include spares.
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 includes Approved Subcontractors; and "Subcontract" has a corresponding meaning.
Subcontractor Personnel	(Core)	means any officers, employees or agents of a Subcontractor.

ATTACHMENT C

Term	Status	Definition
Supplies Acceptance Certificate	(Core)	means a certificate in the form of Annex A to DID-PM-MGT-SAC or other form agreed between the parties.
Supply	(Optional)	means the comprehensive function of providing Products and Services needed by users at the time and place required, and includes identification, requirement determination, procurement, receipt, inspection, storage, distribution, stock recording and accounting, reclamation and disposal.
Supply Services	(Optional)	means those Services associated with performing Supply activities, including the management of those Supply activities.
Support and Test Equipment	(Core)	means equipment needed to support the operation, support and disposal of other items of equipment, as and when required. S&TE includes tools, personal protective equipment, test equipment and automated test equipment. S&TE does not include Training Equipment.
Support Resources	(Core)	means the physical products, including spares, equipment, materials, facilities, Technical Data, personnel and any other physical resources required to enable the Services to be provided, as the case requires.
Surveillance	(Core)	means continual monitoring and Verification of the status of an entity and analysis of records to ensure that specified requirements are being fulfilled (the entity could be a system, process, project, contract etc).
Synthetic Greenhouse Gas	(Core)	means any gas identified as a Synthetic Greenhouse Gas in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or in any regulations made under that Act.
System Audit	(Core)	means a systematic, independent and documented review of a system (a system being a set of interrelated or interacting elements) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the system and its associated processes, documentation and records comply with stated requirements. The review may include any elements of the system.
Task-Priced Services	(Optional)	means the Services provided in accordance with clause 3.13 of the COC.
Tax Invoice	(Optional)	has the same meaning as in the GST Act.
taxable supply	(Core)	has the same meaning as in the GST Act.
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, Deliverables, equipment and other products, and includes 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.
Technical Data and Software Rights Schedule	(Core)	means Attachment D to the Contract.

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ATTACHMENT C

Term	Status	Definition
or TDSR Schedule		
Term	(Core)	means the period referred to in clause 1.9 of the COC
Trade Mark	(Core)	means a trade mark protected under the <i>Trade Marks Act 1995</i> (Cth) or corresponding laws of any other jurisdiction.
Trade Waste Treatment Plant	(Optional)	Note to drafters: Include this if a GFF Licence is to be provided to the Contractor. means the facility so identified on the plan at Appendix 1 of Annex [INSERT ANNEX #] to Attachment K.
Training	(Optional)	means the processes, systems, materials, resources and Services for bringing Commonwealth Personnel to the required standard of competency by instruction, practice or other prescribed methodology.
Training Equipment	(Optional)	means any item of equipment required to perform Training.
Training Materials	(Optional)	means material, including reference manuals and publications under or in connection with the Contract that were not principally developed for Training, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of Training and/or assessment given a body of students who meet the defined entry requirements. This material includes lesson plans, lesson guides, presentation materials, assessment tools (including plans, exams and/or question sets, checklists and reporting sheets), Training aids and other Training Equipment, student précis, mass briefs, mission plans, and, if applicable, computer-based training Software and manuals.
Training Services	(Optional)	means those Services associated with performing Training activities, including the management of those Training activities.
Training Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes and Technical Data needed to enable Training to be competently provided under or in connection with the Contract.
Verification	(Core)	means confirmation by examination and provision of objective evidence that specified requirements to which a Service or Deliverable, or aggregation of Services and Deliverables (including TD and Software), is built, coded, assembled and provided have been fulfilled; and "Verify" has a corresponding meaning.
Unrelated Party	(Core)	means any person other than any of the following: a. the Commonwealth and Commonwealth Personnel; b. the Contractor and Contractor Personnel; c. a Related Body Corporate of the Contractor; and d. an employee, officer or agent of a Related Body Corporate of the Contractor.
Use	(Core)	means, in relation to a licence of any TD, Software or Contract Material granted to a licensee, to: a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and

OFFICIAL
ATTACHMENT C

Term	Status	Definition
		b. disclose, transmit and communicate the TD, Software or Contract Material: <ul style="list-style-type: none"> (i) to the licensee's employees, officers and agents; and (ii) to a sublicensee under a sublicense granted in accordance with the licence.
WHS Legislation	(Core)	means: <ul style="list-style-type: none"> a. the <i>Work Health and Safety Act 2011 (Cth)</i> and the <i>Work Health and Safety Regulations 2011 (Cth)</i>; and b. any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011 (Cth)</i>.
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 act in a place, means any day in that place other than: <ul style="list-style-type: none"> a. a Saturday, Sunday or public holiday; or b. any day within the two-week period that starts on: <ul style="list-style-type: none"> (i) the Saturday before Christmas Day; or (ii) if Christmas Day falls on a Saturday, Christmas Day.

OFFICIAL
ATTACHMENT D

TECHNICAL DATA AND SOFTWARE RIGHTS SCHEDULE (CORE)

- 1.1 Attachment D consists of the following annexes:
- a. Sublicence Restrictions on Use of TD and Software (Core);
 - b. Commonwealth Material (Optional).

ANNEX A TO ATTACHMENT D

SUBLICENCE RESTRICTIONS ON USE OF TD AND SOFTWARE (CORE)

Note to tenderers: Annex A defines any restrictions on the Commonwealth's TD and Software sublicencing rights (clause 5.2.2b(v) of the COC) granted under any resultant Contract. Annex A will consist of an amalgamation of information contained in this Attachment D, the successful tenderer's response to TDR C-5 and any negotiated adjustments.

Unique Line Item Description	Owner or Licensor	System / Subsystem / Component / CI Name	Description of TD or Software	Restrictions on Commonwealth's rights to sublicense the TD or Software (Clause 5.2.2b(v) of the COC)	Justification for Restriction(s)
(a)	(b)	(c)	(d)	(e)	(f)
<i>Example: D-1-1</i>	<i>Contractor</i>		<i>Training Materials / Manual / Learning Management Package</i>		
<i>Example: D-1-2</i>	<i>Contractor</i>		<i>Design Data / Software Code</i>		

ANNEX B TO ATTACHMENT D

COMMONWEALTH MATERIAL (OPTIONAL)

Note to drafters: The Commonwealth's default position is to not own IP created under the Contract or a Subcontract. However, in limited cases for national security and/or strategic interest reasons (where the Commonwealth wishes to prevent the Contractor from using and/or sharing Commonwealth Material with a third party), the Commonwealth can require ownership of IP in specific items of TD or Software.

In the Complex Services context, the Commonwealth may elect to own training material that describes a Defence capability and how it is used by the Commonwealth

For any TD or Software that is listed in this Annex B, any new IP in that TD or Software ownership is assigned to the Commonwealth or its nominee under clause 5.1.3 of the draft COC. Column (c) should describe the class or type in sufficient detail as to enable the identification of TD or Software that comes within the relevant class or type. Column (b) is to include a cross reference to the Contract document or Deliverable, where the relevant TD or Software is to be listed in greater detail.

Note to tenderers: Tenderers are to describe in column (c) of Table 2, the classes or types of TD or Software (if not already specified by the Commonwealth) that will be created as part of the Services being provided. For each item of TD or Software that falls within the class or type listed in column (c), the ownership of IP relating to that item will be assigned to the Commonwealth. The relevant TD or Software is referred to as Commonwealth TD or Commonwealth Software (as applicable).

If any Commonwealth TD or Commonwealth Software contains IP owned by the Tenderer or a proposed subcontractor (being IP in existence prior to the Effective Date or created outside the Contract and Subcontracts), the Contractor is to grant a licence to the Commonwealth of that IP under clause 5.2 of the draft COC (subject to any proposed restrictions listed in Table 1). Tenderers should note that such restrictions should not prevent the use of the Commonwealth TD or Commonwealth Software as provided for in the Contract under clause 5.11.1b.

This Table 2 does not deal with licences for GFM that are provided by the Commonwealth to the Contractor (see clause 5.6 of the draft COC and Attachment G).

Unique Line Item Description	Item Reference as specified in TDL Detailed Requirements	Equipment/ System/ Subsystem/ Component/CI Name	Description of TD or Software	Name of Assignee	Restrictions on non-Commonwealth owned IP (refer Unique Line Item Description from Table 1 if required)	Restrictions on licences granted by the Commonwealth under clause 5.6.2 of the COC
(a)	(b)	(c)	(d)	(e)	(f)	(g)
Example: D-B-1	ABC#1003	[INSERT]	Training Supplement for Defence Security Course No. 1234	Commonwealth	Nil	The Contractor may not sublicense the TD to any party without Commonwealth Representative approval.

CONFIDENTIAL INFORMATION AND REPORTING (CORE)

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

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 (eg 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 Attachment E 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 E. Only the information in Attachment E 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
Confidentiality (Contract)				
COC, for example				
Clause 10.7 (i.e. if not standard template liability regime)	Liability Caps		Commonwealth / Contractor	
Any tailored clauses or any confidential clauses inserted in the contract additional to the template clauses	(Insert any clauses which are not standard template clauses and that meet the DoF Confidentiality Test)			
Attachments, for example				
Attachment B	Pricing and Payments (Identify specific clause, table or section)		Contractor	

ATTACHMENT E

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
Confidentiality (Contract)				
<i>Attachment D</i>	<i>Technical Data & Software Schedule</i>		Contractor	
Confidentiality (Outputs)				
<i>Information obtained or generated in performing the contract</i>	<i>(Insert name of document, including specific section/s)</i>		Contractor / Commonwealth	

OFFICIAL
ATTACHMENT F

AGREED DEEDS (CORE)

Note to tenderers: Attachment F will consist of the following annexes:

- A. Contract Change Proposal Deed (Core);
- B. Extension Notice (Optional);
- C. Bank Guarantee (RFT Core); and
- D. Deed of Guarantee and Indemnity (RFT Core).

ANNEX A TO ATTACHMENT F

CONTRACT CHANGE PROPOSAL (CCP) (CORE)

(CONTRACT NUMBER: (INSERT CONTRACT NUMBER))

Note to Contractors: Contract Change Proposals which involve consideration may be executed in the form of an agreement rather than a deed and the CCP execution clause needs to be tailored accordingly.

For the purposes of the CCP, consideration may include a change in the contract price or the delivery of additional goods or services (even if at no cost to the Commonwealth).

A CCP shall identify separately the cost of preparation of the CCP and any proposed variation to the payments required under the Contract, and where approved in accordance with clause 11.1 of the COC, the reasonable cost of preparation shall be taken into account in calculating the varied payments under the Contract.

If this CCP relates to changes of an administrative nature which have no impact upon the payments required under the Contract or on the Statement of Work, the Contractor may provide minimal details of the change. Responses are only required for headings denoted as mandatory.

This CCP is made on [INSERT DATE]

Between

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

and

(INSERT CONTRACTOR...ACN/ARBN AND ABN IF APPLICABLE) having its registered office at (INSERT DETAILS) ('the Contractor')

RECITALS:

- A. The Commonwealth has entered into a contract (INSERT CONTRACT NUMBER) dated (INSERT DATE) ('the Contract') for the supply of (INSERT BRIEF DESCRIPTION OF THE SERVICES).
- B. The Contract provides that changes are to be dealt with by CCP.
- C. The Commonwealth or the Contractor proposes a change to the Contract as set out in CCP.

AGREED TERMS:

CCP Number (Mandatory):

Date Raised (Mandatory):

Validity period for CCP (Mandatory):

Originator (Mandatory):

Reference in Contract (Mandatory): (INSERT CLAUSE NUMBER)

1. **Details of Proposed Change (Mandatory):**
 - a. **Old Text:**
 - b. **New Text:**
2. **Justification for Proposed Change (Mandatory):**
3. **Effect of Proposed Change (If applicable):**

Note to Contractors: This should include a description of the effect of the change on the scope of work, including where appropriate: Quality, DIP, technical/functional specification, warranty, training, documentation, WBS and whether it is for S&Q Services.

- a. **Payments Required under the Contract:**
 - (i) **Milestone Payments:**
 - (ii) **Recurring Services:**

ANNEX A TO ATTACHMENT F

- (iii) Task Priced Services:
- (iv) New or Revised Key Performance Indicators:
- (v) Cost of Preparation of CCP:

- b. Delivery:
 - (i) Location:
 - (ii) Date:

c. Scope of Work:

Option: For when the parties intend this CCP to take effect on a date other than the date of signature:

4. Date of effect of this CCP:

5. Warranty:

- a. In signing this CCP the Contractor warrants that the submitted cost of preparation of this CCP is true and correct.

6. Approval:

- a. The CCP and its attachments are Approved. The Contract shall be changed on the date specified in this CCP or when this CCP has been properly executed by both parties.

SIGNED (INSERT EITHER "AS AN AGREEMENT" OR "AND DELIVERED AS A DEED" AS APPROPRIATE)

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA

By:

.....
 (signature) (print name and position of authorised signatory) (date)

In the presence of:

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

SIGNED for and on behalf of

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

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

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

THE CONTRACTOR:

([INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE])

ANNEX B TO ATTACHMENT F

EXTENSION NOTICE (OPTIONAL)

To: (INSERT NAME OF CONTRACTOR AND ACN/ARBN AND ABN AS APPLICABLE), having its registered office at (INSERT DETAILS) ('the Contractor').

Re: [INSERT NAME OF PROCUREMENT/SERVICES] Complex Services Contract – Contract No: (INSERT NUMBER) ('Contract')

In this notice, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them by the Contract.

In accordance with clause 1.10 of the COC, the Commonwealth exercises its option to extend the Contract for (INSERT PERIOD) ('Option Period') to expire on (INSERT DATE).

Option: Use the clause below if any changes to the Scope of the Services are proposed in accordance with clause 1.10.2b of the COC:

The following changes to the scope of the Services (ie, an increase or reduction) will apply for the period of the proposed extension:

[...INSERT CHANGES IN SCOPE...]

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....

(signature) (print name and position of authorised signatory) (date)

In the presence of:

.....

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

ANNEX C TO ATTACHMENT F

BANK GUARANTEE

Note to tenderers: If under the Master Guarantee Program, Defence and the tenderer have pre-agreed amendments to the template Bank Guarantee Deed, the tenderer should submit that pre-agreed varied version as part of its tender, indicating the alterations that were pre-agreed. Defence will then verify whether the alterations are consistent with pre-agreed amendments. If there are any further proposed amendments beyond those that were pre-agreed, these will be assessed on a case by case basis.

This DEED is made on **(INSERT DATE)**

For the benefit of the Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth')

by **(INSERT NAME OF COMPANY)**, **(ACN/ARBN and ABN if applicable)** whose registered office is **(INSERT DETAILS)** ('the Promisor').

RECITALS

- A. The Commonwealth has a Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** ('the Contract') with **(INSERT NAME OF CONTRACTOR)**, **(ACN/ARBN and ABN if applicable)** having its registered office at **(INSERT DETAILS)** (the 'Contractor') for the supply of **(INSERT BRIEF DESCRIPTION)**.
- B. The Contractor is required by the Contract to obtain this undertaking for the Commonwealth.

OPERATIVE PART

1. The Promisor undertakes to pay on demand to the Commonwealth any amount or amounts which may be demanded by the Commonwealth from time to time, up to a maximum of **\$(INSERT AMOUNT)** (the 'Sum'). This undertaking is unconditional.
2. To make a demand, the Commonwealth shall give the Promisor a written notice setting out the amount demanded and the time within which it is to be paid.
3. The Promisor shall not make any inquiry in relation to the demand.
4. This undertaking continues in force until the earlier of:
 - a. the Promisor has received written notice from the Commonwealth that the undertaking is no longer required; and
 - b. the Commonwealth has received from the Promisor the whole of the Sum, or the balance after any part payment of the Sum.
5. Any payments made by the Promisor to the Commonwealth under this undertaking are to be made by electronic funds transfer with the Commonwealth of Australia identified as the payee.
6. This undertaking cannot be varied or waived under any circumstances. To avoid doubt, this undertaking is not affected if the Contract is varied, the Contractor is granted an extension of time to perform the Contract, or the Commonwealth waives a breach, failure or default of the Contractor.
7. Unless the contrary intention appears, any notice under this undertaking shall be effective if it is in writing and sent from and delivered to the Commonwealth or Promisor, as the case may be, as detailed below:
[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL];
(INSERT PROMISOR ADDRESS, FAX NUMBER AND EMAIL).
8. A notice given in accordance with clause 7 is delivered:
 - a. if sent by pre-paid post, when received at the address; or
 - b. if hand delivered, when received at the address,
 but if the receipt 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.

ANNEX C TO ATTACHMENT F

Day. For the purpose of this clause, 'Working Day' in relation to the doing of an action in a place, means any day other than a Saturday, Sunday or public holiday in that place.

9. The laws of the **(INSERT STATE OR TERRITORY)** apply to this undertaking. The courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this undertaking.

SIGNED AS A DEED:

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

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

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

(INSERT THE PROMISOR'S USUAL SEALING CLAUSE)

ANNEX D TO ATTACHMENT F

Note to tenderers: If the tenderer has a Master Guarantee and Indemnity Deed with Defence and elects to apply that deed to the Contract, this Attachment will be marked 'Not Used'.

DEED OF GUARANTEE AND INDEMNITY (RFT CORE)

This DEED is made on **(INSERT DATE)**

BETWEEN

The Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth')

AND

(INSERT NAME OF COMPANY) (INSERT ACN/ARBN AND ABN IF APPLICABLE), having its registered office at **(INSERT DETAILS)** ('the Guarantor').

RECITALS

- A. The Commonwealth and the Contractor are a party to the Guaranteed Agreements.
- B. The Guarantor has agreed to guarantee to the Commonwealth all of the Relevant Obligations and to indemnify the Commonwealth on the terms and conditions in this Deed.

AGREED TERMS

ANNEX D TO ATTACHMENT F

1 DEFINITIONS AND INTERPRETATION (CORE)**1.1 Definitions (Core)**

1.1.1 In the interpretation of this Deed, unless the contrary intention appears:

“Authorisation” means a licence, accreditation, permit, registration, regulatory approval, or other documented authority (however described), required by law.

“Contractor” means **(INSERT NAME OF COMPANY) (INSERT ACN/ARBN AND ABN IF APPLICABLE)**.

“Constitution” means, in relation to any person, the constitution, or similar governing document(s), of that person (if any).

“Corporations Act” means the *Corporations Act 2001* (Cth).

“Event of Default” means any event which entitles the Commonwealth to terminate a Guaranteed Agreement for Contractor default.

“Event of Insolvency” means, in respect of a person:

- a. the person:
 - (i) becoming insolvent;
 - (ii) ceasing to carry on all or a material part of its business; or
 - (iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- b. the appointment of a Controller (as defined in the *Corporations Act 2001* (Cth)) , a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- c. the person becoming subject to external administration provided for in Chapter 5 of the *Corporations Act 2001* (Cth);
- d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the *Personal Property Securities Act 2009* (Cth));
- e. the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- f. an order or resolution for the winding up or deregistration of the person;
- 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; or
- h. any analogous event under the law of any applicable jurisdiction.

Note to drafters: Drafters to consider whether any additional agreements should be included in this definition.

“Guaranteed Agreements” means:

- a. the contract no. **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** between the Commonwealth and the Contractor for the supply of **(INSERT REQUIREMENT)**; and
- b. **(INSERT DETAILS)**.

“Guaranteed Money” means all amounts the payment or repayment of which from time to time forms part of the Relevant Obligations and includes any amount recoverable as a debt to the Commonwealth in relation to the Guaranteed Agreement.

“Obligor” means the Contractor or the Guarantor.

“Power” means any right, power, authority, discretion, remedy or privilege.

ANNEX D TO ATTACHMENT F

“Relevant Obligations” means all of the liabilities and obligations of the Contractor to the Commonwealth under or by reason of the Guaranteed Agreements and includes any liabilities or obligations of the Contractor which:

- a. are liquidated or unliquidated;
- b. are present, prospective or contingent;
- c. are in existence before or come into existence on or after the date of this Deed; or
- d. relate to the payment of money or the performance or omission of any act.

“Security Interest” means each of the following:

- a. a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- b. a “security interest” as defined in section 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); and
- c. an agreement to create any of these or allow any of these to exist.

“Unpaid Sum” means any sum due and payable by the Guarantor under this Deed but unpaid.

“Working Day” in relation to the doing of an action in a place, means any day in that place other than:

- a. a Saturday, Sunday or public holiday; and
- b. any day within the two-week period that starts on:
 - (i) the Saturday before Christmas Day; or
 - (ii) if Christmas Day falls on a Saturday, Christmas Day.

1.2 Interpretation (Core)

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- 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 sub-clause 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 date of this Deed, 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 this Deed; and
- l. a reference to a document (including any Guaranteed Agreement) is to that document as varied, novated, ratified, replaced or restated from time to time.

ANNEX D TO ATTACHMENT F**1.3 Joint and Several Liability (Optional)**

Note to drafters: Include this clause where the Guarantor comprises more than one party.

- 1.3.1 The expression "Guarantor" refers to each person identified as a Guarantor, and the obligations of the Guarantors under this Deed bind each person identified as a Guarantor, jointly and severally.

1.4 Liability as Guarantor and Indemnifier (Core)

- 1.4.1 Any reference in this Deed to the obligations or liabilities of the Guarantor shall be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this Deed.

1.5 Principal Obligation (Core)

- 1.5.1 Each obligation of the Guarantor under this Deed constitutes a principal, not a secondary or ancillary obligation, such that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.

1.6 No Bias against Drafting Party (Core)

- 1.6.1 No term or provision of this Deed shall be construed against a party on the basis that this Deed or the term or provision in question was put forward or drafted by that party.

2 GUARANTEE (CORE)**2.1 Guarantee (Core)**

- 2.1.1 Subject to clause 2.4, the Guarantor irrevocably and unconditionally guarantees to the Commonwealth the due and timely performance by the Contractor of all the Relevant Obligations.

2.2 Performance of Relevant Obligations (Core)

- 2.2.1 Subject to clause 2.4, if the Contractor fails to perform any of the Relevant Obligations in accordance with the relevant Guaranteed Agreement, the Guarantor shall, in addition to its obligations under clause 2.3, on demand from time to time by the Commonwealth, immediately cause to be performed, such Relevant Obligations required to be performed by the Contractor in accordance with that Guaranteed Agreement.

2.3 Payment by Guarantor (Core)

- 2.3.1 Subject to clause 2.4, if the Contractor does not pay the Guaranteed Money when due in accordance with the terms of the relevant Guaranteed Agreement, the Guarantor shall within three Working Days following demand by the Commonwealth, pay to the Commonwealth the Guaranteed Money which is then due and unpaid.

2.4 Limitation of Liability (Core)

- 2.4.1 Subject to clause 7.1.1, the Guarantor's liability pursuant to this Deed in respect of any Guaranteed Agreement shall be no greater than the aggregate of the remaining Relevant Obligations of the Contractor as they exist from time to time pursuant to or arising out of that Guaranteed Agreement and the Guarantor shall be entitled to all defences and limitations of liability to which the Contractor is entitled under that Guaranteed Agreement. The total sum recoverable from the Guarantor under this Deed in respect of any Guaranteed Agreement shall not exceed the liability the Contractor would otherwise have for the Relevant Obligations under that Guaranteed Agreement.

3 INDEMNITY (CORE)

- 3.1.1 Subject to clause 2.4, the Guarantor, as a separate additional and primary liability, shall irrevocably and unconditionally indemnify the Commonwealth against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor

ANNEX D TO ATTACHMENT F

and own client basis), compensation or expense sustained or incurred by the Commonwealth arising out of or as a consequence of:

- a. any failure by the Contractor to perform the Relevant Obligations in accordance with the Guaranteed Agreements; or
- b. any obligation or liability that would otherwise form part of the Relevant Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason (including the insolvency of the Contractor), whether or not the Commonwealth knew or ought to have known of that reason.

4 NATURE AND PRESERVATION OF LIABILITY (CORE)**4.1 Absolute and Unconditional Liability (Core)**

4.1.1 Subject to clause 2.4, the liability of the Guarantor under this Deed:

- a. is absolute and is not subject to the performance of any condition precedent or subsequent; and
- b. shall not be affected by any act, omission, matter or thing which may release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this Deed) including any of the following:
 - (i) the occurrence before, on or at any time after, the date of this Deed of any Event of Insolvency in relation to any Obligor;
 - (ii) any Guaranteed Agreement or any payment or other act, the making or doing of which would otherwise form part of the Relevant Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
 - (iii) the Commonwealth granting time, waiver or other concession to, or making any composition, arrangement or compromise with any other Obligor (including to or with the Contractor in respect of the liability of the Guarantor) or any other person;
 - (iv) the Commonwealth not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of any Guaranteed Agreement or any Relevant Obligation;
 - (v) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Commonwealth or any other Obligor of any Guaranteed Agreement or any Relevant Obligation;
 - (vi) any variation to any Guaranteed Agreement or any Relevant Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Obligor;
 - (vii) the full, partial or conditional release or discharge by operation of law of any other Obligor from any Guaranteed Agreement or any Relevant Obligation;
 - (viii) the transfer, assignment or novation by the Commonwealth or any Obligor of all or any of its rights or obligations under any Guaranteed Agreement;
 - (ix) any person, whether named as a party or not, does not execute any Guaranteed Agreement or the execution of any Guaranteed Agreement by any person is invalid, forged or irregular in any way; or
 - (x) any failure by the Commonwealth to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Commonwealth relating to or affecting any Obligor at any time before or during the term of any Guaranteed Agreement, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Commonwealth was under a duty to disclose that fact, circumstance, event or thing to any Obligor.

ANNEX D TO ATTACHMENT F**4.2 No Merger (Core)**

- 4.2.1 The guarantee and indemnity from the Guarantor under this Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any Guaranteed Agreement or any other Power of the Commonwealth.

4.3 No Obligation to Gain Consent (Core)

- 4.3.1 The Guarantor has no right or entitlement to consent to or be made aware of any event referred to in clause 4.1.1b, any transaction between the Commonwealth and any Obligor or any particulars concerning any obligation or liability that forms part of the Relevant Obligations.

4.4 Appropriation (Core)

- 4.4.1 The Commonwealth is under no obligation to marshal or appropriate in favour of the Guarantor, or to exercise, apply, transfer or recover in favour of the Guarantor, any Security Interest or any funds or assets which the Commonwealth holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Commonwealth determines in its discretion.

4.5 Void or Voidable Transactions (Core)

- 4.5.1 If a claim that a payment to the Commonwealth in connection with this Deed or any Guaranteed Agreement is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld by a court of competent jurisdiction or conceded or compromised then the Commonwealth is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed if the payment had not occurred.

4.6 Claim or Demand on the Guarantor (Core)

- 4.6.1 Where any Guaranteed Agreement obliges the Commonwealth to deliver a notice or demand to the Contractor or to comply with an obligation (including observing time periods for performance and Contractor opportunities to cure defaults) prior to the Commonwealth exercising a right under that Guaranteed Agreement in respect of a failure by the Contractor to comply with a Relevant Obligation, the Commonwealth shall deliver that notice or demand to the Contractor or comply with that obligation (including observing time periods for performance and Contractor opportunities to cure defaults) before making a demand under this Deed in respect of a failure by the Contractor to comply with that Relevant Obligation.
- 4.6.2 Subject to the Commonwealth complying with clause 4.6.1, the Guarantor agrees that the Commonwealth is not required to make any claim or demand on any Obligor, or to otherwise enforce any Guaranteed Agreement or any other right, power or remedy against any other Obligor, before making any demand or claim on the Guarantor.

4.7 Waiver of Rights (Core)

- 4.7.1 The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of any other Obligor before the Relevant Obligations are satisfied in full and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have before the Relevant Obligations are satisfied in full.

5 REPRESENTATIONS AND WARRANTIES (CORE)**5.1 General Representations and Warranties (Core)**

- 5.1.1 The Guarantor represents and warrants to the Commonwealth that:
- a. this Deed constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
 - b. the execution, delivery and performance of this Deed and each transaction contemplated by this Deed does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;

ANNEX D TO ATTACHMENT F

- c. all Authorisations required to be obtained by it in connection with the execution, delivery and performance of this Deed, the transactions contemplated by this Deed and the legality, validity and enforcement of this Deed have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Authorisations or aware of any fact or circumstance which may cause any of those Authorisations to be suspended, forfeited, cancelled or rendered void;
- d. no Event of Default has occurred which has not been remedied or waived in accordance with the terms of the relevant Guaranteed Agreement;
- e. it is not the trustee of any trust; and
- f. it does not enjoy immunity from suit or execution in relation to its obligations under this Deed.

5.2 Corporate Representations and Warranties (Core)

- 5.2.1 The Guarantor represents and warrants to the Commonwealth that:
- a. it is duly registered and remains in existence;
 - b. its execution, delivery and performance of this Deed does not (and the transactions contemplated by this Deed do not) violate its Constitution nor, if the Guarantor is listed on a stock exchange, any listing requirements or business rules of the applicable stock exchange;
 - c. it has the power to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed;
 - d. it has taken all corporate action required to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed; and
 - e. the entry into and the performance of its obligations under this Deed is in its best interests and for a proper purpose.

5.3 Representations and Warranties Repeated (Core)

- 5.3.1 Each representation and warranty in clauses 5.1 and 5.2 shall be repeated on each day while any of the Relevant Obligations remain outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.

6 PAYMENTS (CORE)**6.1 Payments on Demand (Core)**

- 6.1.1 All payments by the Guarantor under this Deed are to be made to the Commonwealth in Australian dollars in immediately available funds and on the due date specified in the notice to the Guarantor or if no due date is specified, within three Working Days following receipt of demand by the Commonwealth.

6.2 Payments of Interest on Unpaid Sums (Core)

- 6.2.1 The Guarantor shall pay default interest on all Unpaid Sums. Default interest shall be calculated:
- a. where a Guaranteed Agreement provides for the payment of default interest for late payment by the Contractor, in accordance with the relevant provisions of the Guaranteed Agreement; and
 - b. otherwise in accordance with clause 6.2.2.
- 6.2.2 Where this clause 6.2.2 applies, default interest shall be calculated in accordance with the following formula:

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

Where:

ANNEX D TO ATTACHMENT F

"I%" means the Australian Taxation Office sourced General Interest Charge rate current at the due date of payment of the Unpaid Sum expressed as a percentage;

"P" means the amount of the Unpaid Sum; and

"n" means the number of days after the due date for payment that the payment of the Unpaid Sum is made.

- 6.2.3 Notwithstanding any of the terms of any Guaranteed Agreement, default interest accruing under this clause 6.2 shall be immediately payable by the Guarantor on demand by the Commonwealth.

6.3 No Set-off or Counterclaim (Core)

- 6.3.1 All payments by the Guarantor under this Deed shall be without any set off or counterclaim, and the Guarantor irrevocably waives any rights of set-off or counterclaim which it may have against the Commonwealth.

6.4 Merger (Core)

- 6.4.1 If the liability of the Guarantor to make any payment under this Deed becomes merged in any judgment or order, the Guarantor shall as an independent obligation pay to the Commonwealth interest at the rate which is the higher of that payable under clause 6.2 and that fixed by or payable under the judgment or order.

6.5 No Deduction for Taxes (Core)

- 6.5.1 All payments by the Guarantor under this Deed shall be without deduction or withholding for any present or future taxes, unless the Guarantor is compelled by law to deduct or withhold the same.
- 6.5.2 If the Guarantor is compelled by law to make any deduction or withholding from any payment under this Deed on account of taxes, the Guarantor shall on demand by the Commonwealth pay to the Commonwealth any additional amounts necessary to ensure that the Commonwealth receives (after all deductions and withholdings for taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made.

7 EXPENSES (CORE)**7.1 Reimbursement (Core)**

- 7.1.1 The Guarantor shall reimburse the Commonwealth on demand for, and shall indemnify the Commonwealth against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth arising out of or as a consequence of the Commonwealth exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any rights under this Deed. The limitation of liability in clause 2.4 does not apply to this clause.

8 GOODS AND SERVICES TAX (CORE)**8.1 Goods and Services Tax (Core)**

- 8.1.1 In this clause, 'GST' means the Commonwealth tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999*, and 'adjustment event', 'input tax credits', 'taxable supply' and 'tax invoice' have the respective meanings given to them by that Act.
- 8.1.2 If a party (the 'Supplier') makes a taxable supply to another party in relation to this Deed or any matter or thing occurring under this Deed (the 'Recipient'), and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled to recover from the Recipient the amount of any GST on the taxable supply, in addition to any other consideration recoverable for the taxable supply.
- 8.1.3 If the amount paid by the Recipient to the Supplier for GST differs from the actual amount of GST payable for the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), the following adjustments apply:

ANNEX D TO ATTACHMENT F

- a. if the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier will refund the excess to the Recipient; or
 - b. if the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient will pay the balance to the Supplier.
- 8.1.4 If a party is entitled to recover or be compensated for all or a proportion of its costs in relation to this Deed or any matter or thing occurring under this Deed, the amount of the recovery or compensation is reduced by the amount of (or the same proportion of the amount of) any input tax credits available in relation to those costs.
- 8.1.5 A party is not required to pay any amount for GST to another party unless a valid tax invoice has been issued for that GST.

9 NO REPRESENTATION BY OR RELIANCE (CORE)

- 9.1.1 The Guarantor acknowledges that:
- a. the Commonwealth does not have any duty to supply it with information in relation to or affecting the Contractor or the Commonwealth before the date of this Deed or during the term of any Guaranteed Agreement;
 - b. it has relied on its own inquiries as to the Contractor, the nature and extent of the entire relationship between the Contractor and the Commonwealth (whether or not recorded in the Guaranteed Agreements) and the nature and effect of the Guaranteed Agreements; and
 - c. it does not enter into this Deed in reliance on any representation, promise, statement, conduct or inducement by or on behalf of the Commonwealth, except for any inducement expressly set out in this Deed.

10 ASSIGNMENT AND NOVATION (CORE)

- 10.1.1 Neither party may, without the prior written consent of the other party, assign, novate or otherwise transfer any of its rights or obligations under this Deed.

11 RESOLUTION OF DISPUTES (CORE)

- 11.1.1 A party shall not commence court proceedings relating to any dispute arising from this Deed except when that party seeks urgent relief from a court or when dispute resolution has failed under this clause 11. If a party fails to comply with this clause 11, the other party is not required to undertake dispute resolution for the dispute in accordance with clause 11.
- 11.1.2 The parties shall negotiate in good faith to settle a dispute arising between them and, if the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) within **(INSERT PERIOD)** days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 11.1.3 The parties shall at all times during the dispute continue to fulfil their obligations under this Deed.

12 MISCELLANEOUS (CORE)**12.1 Notices (Core)**

- 12.1.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing and sent from and delivered to the Commonwealth or Guarantor, as the case may be, at the following address:

[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL]

(INSERT GUARANTOR ADDRESS, FAX NUMBER AND EMAIL)

- 12.1.2 A notice or communication is deemed to be delivered:
- a. 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;

ANNEX D TO ATTACHMENT F

- b. if hand delivered, when received at the address, or by the recipient if sooner;
- c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- d. 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,

12.1.3 but if the receipt, transmission 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.

12.2 Laws (Core)

12.2.1 The laws of **(INSERT RELEVANT STATE OR TERRITORY)** apply to this Deed, and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.

12.3 Entire Agreement (Core)

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

12.4 Further Assurances (Core)

12.4.1 Each party shall take the steps, sign the documents, and do all other acts and things as may be reasonably required by the other party to give effect to this Deed and to perfect the Powers afforded or created by this Deed.

12.5 Powers Cumulative (Core)

12.5.1 The Powers conferred by this Deed on the Commonwealth are cumulative and in addition to all other Powers available to the Commonwealth by law or under any Guaranteed Agreement.

12.6 Form of Demand (Core)

12.6.1 A demand on the Guarantor for payment under this Deed may be in any form and contain any information as the Commonwealth determines.

12.7 Severability (Core)

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

12.8 Waiver (Core)

12.8.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power provided by law or under this Deed by the Commonwealth does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power provided by law or under this Deed.

12.8.2 A waiver or consent given by the Commonwealth under this Deed is only effective and binding if it is given or confirmed in writing by the Commonwealth.

12.8.3 No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

12.9 Consents (Core)

12.9.1 A consent required under this Deed from the Commonwealth may be given or withheld, or may be given subject to any conditions, as the Commonwealth (in its discretion) thinks fit, unless this Deed expressly provides otherwise.

ANNEX D TO ATTACHMENT F

12.10 Moratorium Legislation (Core)

12.10.1 To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, are expressly waived.

12.11 Binding on each Signatory (Core)

12.11.1 This Deed binds and is enforceable against the Guarantor despite:

- a. any other person not executing this Deed or its execution being defective in any way; or
- b. any obligation or liability of any other party under this Deed not being binding or enforceable against that party for any reason.

12.12 Counterparts (Core)

12.12.1 This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

SIGNED AS A DEED

SIGNED, SEALED AND DELIVERED

by the COMMONWEALTH OF AUSTRALIA

.....

in the presence of

.....

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

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

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

(INSERT EXECUTION CLAUSE OF THE GUARANTOR)

OFFICIAL
ATTACHMENT G

GOVERNMENT FURNISHED MATERIAL AND GOVERNMENT FURNISHED SERVICES (RFT CORE)

Note to Drafters: This Attachment G consists of the following annexes:

- a. GFM; and***
- b. GFS.***

ANNEX A TO ATTACHMENT G

GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

Note to drafters: Drafters should provide details including dates of any Commonwealth Mandated or proposed GFM prior to release of the RFT. The first line under 'Commonwealth Mandated GFM-GFE' is provided as an example only, to illustrate the linkages between Table G-A-1 and Table G-A-2. This example must be deleted and replaced with project-specific detail as appropriate.

If, in addition to the licence terms provided under clause 5.4 of the draft COC, further restrictions apply to:

- c. the use of Technical Data and Software within the GFM, due to restrictions or limitations on the relevant IP rights (such as those restrictions established under an acquisition contract for the development of the relevant GFM) - these are to be identified in column (g) of Table G-A-1 and in Table G-A-2; and**
- d. GFM that is subject to Export Approvals (ie, foreign export controls such as International Traffic in Arms Regulations) - these are to be identified in column (h).**

To determine the circumstances in which the Commonwealth may consider the Contractor (or its nominee) obtaining ownership of the IP developed under the Contract with respect to new GFM, refer to the ASDEFCON TD/IP Commercial Handbook at:

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/A0841422-C25A-4D54-9020-87FC33242AED>.

GFE provided to the Contractor must be accompanied by safety related information sufficient to enable safety risk assessments to be performed. Refer to CASSafe Requirement 10.2 'Supply safe plant, structures, substances and radiation sources' for further information. Where safety-related information is not intrinsically captured in the Technical Data provided with GFE, that information must be provided as additional GFI or GFD (as applicable).

Note to tenderers: Attachment G will consist of an amalgamation of information contained in this draft Attachment G, the successful tenderer's response to TDR E-6 and any negotiated adjustments.

- 1.1 The table below sets out the Government Furnished Material (GFM) provided by the Commonwealth to the Contractor under the Contract, divided into:
 - a. Commonwealth Mandated GFM (Government Furnished Equipment (GFE) and Government Furnished Data (GFD)) that the Contractor is required to use in the provision of the Services in accordance with the Contract; and
 - b. non-mandated GFM (Government Furnished Information (GFI) and all other GFM that is not Commonwealth Mandated GFM).

ANNEX A TO ATTACHMENT G

Table G-A-1: GOVERNMENT FURNISHED MATERIAL

Item Description	Reference/ Part Number	Quantity	Delivery Date and Location	Return Date and Location	Time Period for Inspection	Technical Data and Software Restrictions (Yes/No) (if Yes, include Unique Line Item Description)	Export Approval Restrictions (if applicable)	Comments/ Intended Purpose
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Commonwealth Mandated GFM - GFE								
<i>EXAMPLE ONLY: Training Equipment</i>								
Commonwealth Mandated GFM - GFD								
<i>EXAMPLE ONLY: Learning Management Packages</i>								
Non-mandated GFM - GFI								
All other non-mandated GFM								

ANNEX A TO ATTACHMENT G

Notes Table G-A-1:

- a. Item Description:** A description of the item of GFM.
- b. Reference/Part Number:** A reference, part number, document number, or other identifier that clearly identifies the item of GFM.
- c. Quantity:** The quantity of the item of GFM to be delivered by the Commonwealth.
- d. Delivery Date and Location:** The date on and location at which the item of GFM is to be delivered by the Commonwealth.
- e. Return Date and Location:** The date on and location at which the item of GFM is to be returned to the Commonwealth.
- f. Time Period for Inspection:** The period within which the Contractor is required to inspect the item of GFM and notify the Commonwealth in accordance with clause 3.10.4 of the SOW.
- g. TD and Software Restrictions:** Indicates if there are restrictions on the Technical Data or Software within an item of GFM that are in addition to the licence terms granted by the Commonwealth under clause 5.4 of the COC (if applicable). The nature of the restrictions on the relevant TD or Software is set out in Table G-A-2.
- h. Export Approvals Restrictions:** Any restrictions derived from Export Approvals to which an item of GFM is subject (if applicable).
- i. Comments/Intended Purpose:** The purpose for which the item of GFM is provided to the Contractor and any comments that are supplementary to the information provided in columns (a) to (h).

ANNEX A TO ATTACHMENT G

Note to drafters: Drafters should set out any restrictions that apply to the Contractor's Use and sublicensing of the GFM. The first line is provided as an example only, and must be deleted and replaced with project-specific detail as appropriate.

For TD or Software that is listed in this table, ownership in any new IP created by the Contractor or a Subcontractor is assigned to the Commonwealth or its nominee under clause 5.1 of the COC. Column (c) should describe the category in sufficient detail so as to enable the identification of TD or Software that comes within the relevant category.

Table G-A-2: RESTRICTIONS

Unique Line Item Description	Equipment/ System/ Subsystem/ Component/ CI Name	Description of TD or Software	Owner or Licensor	Restrictions on Use or sublicense of the TD or Software
(a)	(b)	(c)	(d)	(e)
<i>EXAMPLE ONLY: E-R-1</i>	<i>Learning Management System</i>	<i>ABC QuickLearn Software</i>	<i>ABC Pty Ltd</i>	<i>The ABC QuickLearn Software shall not be installed on the Contractor's or Contractor Personnel systems. The ABC QuickLearn Software shall not be decompiled, reverse engineered or modified by the Contractor or Contractor Personnel.</i>

ANNEX B TO ATTACHMENT G

GOVERNMENT FURNISHED SERVICES (OPTIONAL)

Note to drafters: Drafters should provide details of any Commonwealth Mandated or non-Mandated GFS prior to release of the RFT.

Note to tenderers: Annex B will consist of an amalgamation of TDR E-8, this draft Annex and the successful tenderer's response.

1. GOVERNMENT FURNISHED SERVICES

1.1 The following GFS shall be used by the Contractor for the provision of the Services and, where specified, only for the intended purpose:

COMMONWEALTH MANDATED GFS

Proposed GFS	Dates of Delivery of GFS	Comments / Conditions of Access / Intended Purpose

Note to tenderers: Non-mandated GFS will include GFS proposed by the Commonwealth and included in the RFT and GFS proposed by the Contractor and included in TDR E-8, as negotiated between the Commonwealth and the successful tenderer.

NON MANDATED GFS

Proposed GFS item	Dates of Delivery of GFS	Comments / Conditions of Access / Intended Purpose

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 and a template for developing a SCCG refer to the Defence Security and Vetting Service website for Project Security at:

- <http://drnet/AssociateSecretary/security/advice/Pages/project-security.aspx>

The SCCG and a Project Identification Document are to be forwarded for review by the Defence Security and Vetting Service Project Security team at DSA.ProjectSecurity@defence.gov.au.

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

OFFICIAL
ATTACHMENT I

SCHEDULE OF APPROVED SUBCONTRACTORS (RFT CORE)

Note to drafters: In finalising the preparation of Attachment I, drafters should specifically capture where the Commonwealth has agreed that Approved Subcontractor status does not require compliance with certain Contract provisions for certain Approved Subcontractors. For instance, where an Approved Subcontractor is not involved in any Prescribed Activity, the following amended format might be used to capture specific exclusions and rationale in Attachment I.

Note to tenderers: This Attachment will consist of an amalgamation of Table TDR A-3, this draft Attachment and the successful tenderer's response.

Table I-1: Schedule of Approved Subcontractors

Subcontractor	ABN/ ACN (if applicable)	Work to be Subcontracted (including technical significance)	Services / Deliverables (inc. Equipment)	Prescribed Activity as referenced at 11.9.4(b)(i) of the COC	Subcontract Value (\$A) (per annum)	Location of work to be performed (incl. postcode)	Comments
e.g. ABC Pty Ltd		Training services for delivery of X course	For delivery in providing X Services		\$xxx	123 Soldier Ave, Bandiana	

OFFICIAL
ATTACHMENT J

DEFENCE INDUSTRY PARTICIPATION (OPTIONAL)

Note to drafters: This Attachment is to be included when the Contract is to include an DIP program (ie, the value of the Contract (including Recurring Services and Milestone Payments) for the Initial Term is likely to exceed A\$4m, including GST, and an exemption has not been approved – refer to the Defence Policy for Industry Participation 2019 regarding exemptions). If this Attachment is not required, it may be deleted or annotated as 'Not used'.

Note to Tenderers: Attachment J will consist of the successful tenderer's response to Table G-1 at Annex G to Attachment A to the Conditions of Tender and any negotiated changes.

ATTACHMENT K - SUPPLEMENT

GFF ADDITIONAL CLAUSE BANK

Note to drafters: This clause bank contains additional clauses for use in Attachment K (GFF Licence) and other provisions of the Contract. The formatting in this document is designed to preserve cross referencing within the clauses where possible, as such the paragraph numbering does not align with what it should be once the paragraphs are copied and pasted into Attachment K. Drafters should refer to the drafting instructions for guidance on where to insert the additional clauses, and further should review and check the numbering and cross references once the clauses have been incorporated into Attachment K.

Directorate of Property Leasing, Property Services Branch, Infrastructure Division, Estate and Infrastructure Group will notify drafters of which of these additional requirements are to be included in Attachment K as well as any other tailored clauses to be included.

A. Contractor has maintenance obligations

Note to drafters: If the Contractor is to be obliged to maintain more than the Contractor Maintained Licensed Fittings (i.e. the GFF itself or the Licensed Fittings), replace clause 6.3 in Attachment K.

1 OBLIGATIONS**1.1 Contractor to Maintain GFF**

- 1.1.1 The Contractor shall undertake maintenance in accordance with clause 3.17 of the SOW.
- 1.1.2 If the Contractor fails to comply with clause 1.1.1, the Commonwealth may undertake the required maintenance itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such maintenance shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.1.2 until the Commonwealth elects to recover the amount.

B. Commonwealth has maintenance obligations

Note to drafters: Include clauses 6.4.5 and 6.4.6 if the Contractor is to be required to contribute towards maintenance costs.

1.2 Commonwealth to Maintain GFF

- 1.2.1 The Commonwealth Representative may, by notice to the Contractor, determine that the Contractor is to make a contribution specified in the notice to the cost of maintenance for a GFF Licensed Area. If the Commonwealth Representative does this:
- a. the amount of the contribution is to be reasonable, having regard to the period of the Contractor's use of and access to, and the nature and extent of the use by Contractor Personnel of, the GFF Licensed Area; and
 - b. the amount so determined is payable by the Contractor to the Commonwealth on demand.
- 1.2.2 To avoid doubt:
- a. the Commonwealth Representative may give more than one such notice; and
 - b. a notice may specify the times at which contributions are payable.

ATTACHMENT K - SUPPLEMENT

C. Use of Sewerage System

Note to drafters: If the Contractor is permitted to discharge trade waste through the sewerage system interface to the Commonwealth's Sewerage Treatment Plant on the Commonwealth Premises in which the GFF is located, replace clause 6.5 of Attachment K with the following and insert definitions for capitalised terms in the Glossary.

1.3 Sewerage and trade waste

- 1.3.1 The Contractor may discharge trade waste from the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment K, after processing through the Trade Waste Treatment Plant, through the sewerage system interface to the Sewerage Treatment Plant, subject to the following conditions:
- a. the Commonwealth Representative may, at any time, by notice to the Contractor, suspend or terminate the Contractor's rights under clause 1.3.1;
 - b. the Contractor shall at its cost maintain the effective operation of the Trade Waste Treatment Plant and the sewerage system interface to the Sewerage Treatment Plant. The Contractor is entitled to reasonable access to the Sewerage Treatment Plant for that purpose;
 - c. in maintaining the effective operation of the sewerage system interface to the Sewerage Treatment Plant, the Contractor shall:
 - (i) repair any damage that it causes to the Commonwealth's Sewerage Treatment Plant;
 - (ii) cause as little interference to the Commonwealth's activities on the Commonwealth Premises in which the GFF Licensed Area is located as reasonably possible;
 - (iii) comply with any directions of the Commonwealth; and
 - (iv) comply with all applicable laws and Authorisations;
 - d. the Contractor shall ensure that any discharge of material through the sewerage system interface will not adversely affect the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property in any way;
 - e. if the Commonwealth Representative so requires, the Contractor shall make good, as soon as practicable and at its cost, any damage to the GFF or the Commonwealth Premises in which the GFF Licensed Area is located resulting from:
 - (i) the repair or removal of the sewerage interface or the Sewerage Treatment Plant; or
 - (ii) the connection to the Sewerage Treatment Plant,
 except to the extent that the Contractor is not liable for any such damage in accordance with clause 10.4.2 of the COC;
 - f. the Contractor shall notify the Commonwealth Representative of any breach of standards for discharge quality from the Trade Waste Treatment Plant no later than one Working Day after it becomes aware of the breach; and
 - g. the Contractor shall provide to the Commonwealth every three months (or otherwise as agreed by the Commonwealth Representative):
 - (i) reports regarding the testing and performance of the Trade Waste Treatment Plant; and
 - (ii) copies of all laboratory reports prepared as a result of such testing.
- 1.3.2 If the Contractor discharges trade waste from the GFF Licensed Area that, in the Commonwealth's opinion, adversely affects the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property:

ATTACHMENT K - SUPPLEMENT

- a. the Commonwealth Representative may direct the Contractor to cease discharging such waste;
 - b. if the Contractor fails to comply with the direction, the Commonwealth may sever the sewerage system interface itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.3.2b until the Commonwealth elects to recover the amount; and
 - c. the Contractor agrees that it is not entitled to damages or compensation for any Loss it suffers resulting from, and is not entitled to a Postponement of a date for delivery under the Contract or a Milestone Date, or Postponement costs on account of, complying with a direction under clause 1.3.2a or the Commonwealth severing the sewerage system interface.
- 1.3.3 The Commonwealth shall use its reasonable endeavours to keep the Sewerage Treatment Plant in operation.
- 1.3.4 If the Commonwealth exercises its rights under clause 1.3.1a, the Contractor shall immediately make its own arrangements for the safe removal and disposal of all its trade waste from the GFF Licensed Area.

and include a new clause 8.4 into Attachment K...

2 GFF LICENCE FEE AND RELATED ARRANGEMENTS

2.1 Sewerage and trade waste

- 2.1.1 The Contractor shall meet the cost of upgrading the processing of the Trade Waste Treatment Plant and the Commonwealth's Sewerage Treatment Plant to the extent that the upgrade is required due to the Contractor's increased use of the sewerage interface for the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment K.
- 2.1.2 If separate metering of the Contractor's interface to the Sewerage Treatment Plant is not available:
- a. the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amount of the charges incurred that, in the opinion of the Commonwealth Representative, is attributable on a pro-rata basis to the Contractor's use of the Sewerage Treatment Plant under the Contract; and
 - b. the Commonwealth may elect to recover the amount of those charges under clause 13.6 of the COC within 30 days after the date of the notice. No amount shall be owing to the Commonwealth under this clause 2.1.2b until the Commonwealth elects to recover the amount.
- 2.1.3 If separate metering of the Contractor's interface to the Sewerage Treatment Plant is available, the Contractor shall pay the charges incurred in respect of the Contractor's use of the Sewerage Treatment Plant.
- 2.1.4 If the Contractor breaches clause 1.3.1d, the Commonwealth may repair the resultant damage to the Sewerage Treatment Plant or the Commonwealth Premises in which the GFF Licensed Area is located itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 2.1.4 until the Commonwealth elects to recover the amount.

and insert an additional subparagraph 6.4.4d of the COC ...

- a. as provided in clause 1.3.2c of Attachment K.

ATTACHMENT K - SUPPLEMENT

and include the following definitions in the Glossary in their appropriate alphabetical positions ...

Trade Waste Treatment Plant means the facility so identified on the plan at Appendix 1 of Annex [INSERT ANNEX #] to Attachment K.

D. Fire protection equipment

Note to drafters: If the Commonwealth is not providing and maintaining fire protection equipment in the GFF and the Contractor is required to install and maintain its own fire protection equipment, add new clause 6.6 after clause 6.5 of Attachment K ...

3 OBLIGATIONS

3.1 Fire Protection Equipment

- 3.1.1 The Contractor shall, for the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment K, do the following:
- a. install and maintain fire protection equipment which is adequate for the GFF Licensed Area and the conduct of a GFF Permitted Purpose; and
 - b. maintain the fire protection equipment for the GFF Licensed Area in accordance with applicable laws and any applicable requirements of Government Agencies.

E. GFF Licence Fee

Note to drafters: If the Contractor is permitted to do non-contract work in a specific GFF Licensed Area (ie, the conduct of specified non-contract work has been provided for in the GFF Licence), it will be required to pay a market-based GFF Licence Fee. Replace clause 8 of Attachment K with the following (with the exception of clause 8.4 if already included as set out above in item C of this Clause Bank).

4 GFF LICENCE FEE AND RELATED ARRANGEMENTS

4.1 GFF Licence Fee

- 4.1.1 The Contractor shall pay the Commonwealth the GFF Licence Fee in respect of the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment K, without set off or deduction, on or before each due date for payment, which is [INSERT DAY OF MONTH].
- 4.1.2 No demand for payment is necessary.
- 4.1.3 No fee is payable by the Contractor in respect of any other GFF Licensed Area.

4.2 GFF Licence Fee Review

- 4.2.1 The Commonwealth may, in the period from 2 months before and at any time after a Market Review Date, give the Contractor a notice:
- a. specifying an adjusted GFF Licence Fee with effect from the Market Review Date; and
 - b. requiring the Contractor to submit a CCP to incorporate the adjusted GFF Licence Fee into the Contract and to do so:
 - (i) within 20 Working Days after the date of the notice; or
 - (ii) if the Contractor objects to the specified adjusted GFF Licence Fee, within 10 Working Days after the parties agree on the adjustment, or the valuer makes a determination, under clause 4.2.2c(iii).
- 4.2.2 If the Contractor objects to the specified adjusted GFF Licence Fee:

ATTACHMENT K - SUPPLEMENT

- a. the Contractor shall give the Commonwealth a notice of objection within 20 Working Days after the date of the notice under clause 4.2.1;
- b. the parties shall negotiate in good faith to try to agree on the adjustment to the GFF Licence Fee;
- c. if the parties do not so agree within 20 Working Days after the Commonwealth receives the notice under clause 4.2.2a:
 - (i) within a further 20 Working Days, the parties shall jointly appoint a valuer and give the valuer instructions in accordance with this clause 4.2.2;
 - (ii) if, within that 20 Working Days, the parties have not agreed on the identity of the valuer, they shall request the President of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) in the jurisdiction in which the GFF Licensed Area is located to appoint an independent valuer; and
 - (iii) the valuer shall, in accordance with this clause 4.2 determine the adjusted GFF Licence Fee within 15 Working Days after appointment.

Each time limit in this clause 4.2.2 is of the essence.

- 4.2.3 The valuer shall be a member of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) and have at least five years experience in valuing similar premises in the location of the Commonwealth Premises in which the GFF Licensed Area is located.
- 4.2.4 The valuer shall act as an independent expert and not as an arbitrator, and shall give written reasons for the determination.
- 4.2.5 The Contractor and the Commonwealth shall share the valuer's costs equally.
- 4.2.6 In determining or agreeing upon an adjusted GFF Licence Fee, the Commonwealth and the Contractor shall (and shall require any valuer to):
 - a. assume that the Commonwealth is a willing but not anxious licensor and the Contractor is a willing but not anxious licensee; and
 - b. take into account all relevant matters as at the relevant Market Review Date, including:
 - (i) the licence fee value or equivalent rental value (other than values that have been escalated to a predetermined amount or in accordance with movements in the consumer price index or another index) at the Market Review Date of comparable premises in the locality in which the Commonwealth Premises in which the GFF Licensed Area is located is located, whether that value is in respect of new lettings with vacant possession or occupied premises;
 - (ii) the GFF Permitted Purpose for the GFF Licensed Area subject to the GFF Licence Fee;
 - (iii) the period Market Review Dates, or if there is no further Market Review Date, the remaining period of the GFF Licence Term;
 - (iv) the increased value of the GFF Licensed Area resulting from the Commonwealth upgrading or improving the GFF Licensed Area (or any part of it, including the Licensed Fittings) or any services available to the GFF Licensed Area;
 - (v) any increase in value in the GFF Licensed Area as a result of any structural alterations or other improvements made to the GFF Licensed Area (including repair or replacement of, and provision of additional, Licensed Fittings) by the Commonwealth (having regard to any contribution by the Contractor to the costs of those improvements, including by way of paying for outgoings);
 - (vi) the terms and conditions generally of the GFF Licence; and

ATTACHMENT K - SUPPLEMENT

- (vii) any period for which no GFF Licence Fee is payable, and any financial or capital contribution of the Commonwealth,

but not take into account:

- (viii) any partitions and other improvements installed in or made to the GFF Licensed Area by or for the Contractor, a permitted sublicensee or a predecessor of any of them during the term of the GFF Licence;
- (ix) any special interest of the Contractor;
- (x) goodwill occasioned by the Contractor, a permitted sublicensee or a predecessor of any of them during the GFF Licence Term;
- (xi) areas other than the GFF Licensed Area (except as provided for by clause 4.2.6b(i)); or
- (xii) amounts equivalent to GST paid or payable in respect of a taxable supply for which the Commonwealth is entitled to an input tax credit.

4.2.7 A determination of a valuer made in accordance with this clause 4.2 binds the parties.

4.3 Operating Expenses

4.3.1 If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor's obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in Operating Expenses that, in the opinion of the Commonwealth Representative, is attributable to that use.

4.3.2 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.3.1 within 20 Working Days after the date of the notice.

4.3.3 The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor in relation to a GFF Permitted Purpose.

4.4 Utilities and telecommunications facilities

4.4.1 If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor's obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in the costs of:

- a. Defence internal and external telephone and fax facilities and internal and external data link facilities; and
- b. electricity, gas, water, sewerage and drainage services,

that, in the opinion of the Commonwealth Representative, is attributable to that use.

4.4.2 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.4.1 within 20 Working Days after the date of the notice.

4.4.3 The Contractor shall pay to the Commonwealth an amount in respect of the costs of utilities or telecommunications facilities (to the extent not included in an amount referred to in clause 4.3), if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities by the Contractor in relation to a GFF Permitted Purpose.

and, if the Commonwealth requires the Contractor to install separate metering for a particular GFF Licensed Area, add ...

4.4.4 The Contractor shall, at its cost, install separate electricity, telecommunications or other metering to the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment K no later than three months after the GFF Licence Application Date for that area or a later time agreed by the Commonwealth Representative.

ATTACHMENT K - SUPPLEMENT

Note to drafters: Defence is obliged, under the Energy Efficiency in Government Operations Policy 2006 (EEGO) to install progressively sub-meters at relevant Commonwealth Premises used by Defence to measure and monitor energy usage and to identify efficiency opportunities, address problems and evaluate outcomes.

Advice should be sought from [Defence's environmental team] or the Australian Greenhouse Office before agreeing to deleting or modifying clause 8.4.4.

Please also consider the cost implications for Defence, as well as the broader EEGO requirements, before agreeing to pay the Contractor's costs of installing separate digital electricity metering.

and include the following definition in the Glossary in its appropriate alphabetical position ...

GFF Licence Fee	means [INSERT AMOUNT] adjusted as provided in clause 8.2 of Attachment K.
Market Review Date	means each of the following dates: a. [INSERT DATES] .

F. Airfield rights

Note to drafters: If a GFF Licensed Area includes airfield facilities, add the following clause as a new clause 3.3.

5 RIGHTS UNDER THE GFF LICENCE

5.1 Airfield rights

- 5.1.1 The Commonwealth shall provide the Contractor with reasonable access to and use of the Airfield and the navigational facilities, air traffic control, aviation rescue, firefighting facilities and meteorological services on the Commonwealth Premises in which the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment K is located to enable the Contractor to carry out its obligations under the Contract.
- 5.1.2 The Commonwealth Representative may, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amounts incurred by the Commonwealth in relation to the Airfield and the services referred to in clause 5.1.1 as, in the opinion of the Commonwealth Representative, is attributable to the Contractor's access to and use of the Airfield.
- 5.1.3 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 5.1.2 within 20 Working Days after the date of the notice.

and include the following definition in the Glossary in its appropriate alphabetical position ...

Airfield	means the area so identified on the plan at Appendix 1 of an annex to Attachment K.
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GOVERNMENT FURNISHED FACILITIES LICENCE

Note to drafters: This Attachment is to be used if a GFF Licence is to be provided to the Contractor (see COC clause 3.7).

All necessary approvals under the Lands Acquisition Act 1989 (Cth) (LAA) to grant a GFF Licence must be obtained before the Contract is signed. Failure to obtain the necessary LAA approvals before the Contract is signed will breach the LAA.

Drafters must engage with Directorate of Property Leasing, Property Services Branch, Infrastructure Division, Estate and Infrastructure Group to ensure the necessary approvals are in place before Contract signature.

Drafters should include details of any proposed or required GFF Licensed Area in an annex to the GFF Licence prior to release of the RFT.

Note to tenderers: This Attachment K will consist of an amalgamation of TDR E-8, the draft annex(es) to this GFF Licence, the successful tenderer's response and any negotiated adjustments. The date for provision of access to the GFF should be included in TDR E-8.

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- A. GFF Licensed Area #1
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APPENDIXES

- A-1 Plans
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- A-3 Facilities Condition Report
- [INSERT OTHER APPENDIXES]**

1 TERM**1.1 GFF Licence Term**

Note to drafters: The term of the GFF Licence must be within the Term of the Contract.

- 1.1.1 The GFF Licence commences on the GFF Licence Commencement Date and ends on the earlier of:
- a. the day on which the GFF Licence is terminated;
 - b. the GFF Licence Expiry Date; and
 - c. the day on which the Contract expires or is terminated.
- 1.1.2 The GFF Licence applies to a GFF Licensed Area from the relevant GFF Licence Application Date until the earlier of:
- a. the date specified in the annex as the date the GFF Licence ceases to apply to the GFF Licensed Area; and
 - b. the end of the GFF Licence Term in accordance with clause 1.1.1.

2 GFF**2.1 Use of GFF**

- 2.1.1 The Contractor shall only use a GFF Licensed Area for a GFF Permitted Purpose.

2.2 Licensed Fittings

- 2.2.1 The Contractor's right to occupy and use a GFF Licensed Area includes the right to use the Licensed Fittings in that area for a GFF Permitted Purpose.

2.3 State and Condition of the GFF

- 2.3.1 The Contractor acknowledges and agrees that the state and condition of a GFF Licensed Area, at the GFF Licence Application Date for that area, is as described in the Facilities Condition Report for that area and accepts the GFF Licensed Area in that state and condition subject to any works agreed to be carried out by either party and as recorded in the Facilities Condition Report.
- 2.3.2 The Commonwealth has not made, and the Contractor acknowledges and agrees that the Commonwealth has not made, any promise, representation or warranty as to the suitability of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located for a GFF Permitted Purpose or any other purpose.

2.4 Commonwealth Access

- 2.4.1 The Contractor acknowledges and agrees that, without limiting any other rights of the Commonwealth under the Contract, the Commonwealth may access a GFF Licensed Area at any time for the purposes of:
- a. exercising its rights and powers under this GFF Licence or the Contract;
 - b. monitoring or inspecting the performance of the Contractor of its obligations under this GFF Licence or the Contract; or
 - c. for any other reasonable purpose.
- 2.4.2 The Contractor acknowledges and agrees that Commonwealth Contractors may access a GFF Licensed Area in accordance with their contracts with the Commonwealth.
- 2.4.3 The Commonwealth shall comply with, and shall require any Commonwealth Contractors to comply with, any reasonable Contractor safety and security requirements for a GFF Licensed Area notified to, and approved by, the Commonwealth.

3 RIGHTS UNDER THE GFF LICENCE

Note to drafters: The purpose of the GFF Licence is to provide the Contractor with a non-exclusive right to access Defence premises. Defence does not intend to provide the Contractor

ATTACHMENT K

with a lease. Therefore, clause 3.1 must remain unchanged to ensure that Defence's intentions are carried into effect.

3.1 Contractor's Rights

3.1.1 The Contractor's rights under the GFF Licence:

- a. are personal rights in contract;
- b. do not create any interest or estate in a GFF Licensed Area;
- c. do not create the relationship of landlord and tenant between the Contractor and the Commonwealth; and
- d. do not confer exclusive possession of a GFF Licensed Area on the Contractor.

3.2 Access Arrangements for GFF

- 3.2.1 The Commonwealth shall provide access to a GFF Licensed Area for persons Approved under this clause 3.2, as necessary for the Contractor's carrying out a GFF Permitted Purpose.
- 3.2.2 Unless otherwise agreed, the Contractor shall seek written Approval from the Commonwealth Representative, at least five Working Days prior to entry being required, for each person the Contractor wishes to have access to a GFF Licensed Area.
- 3.2.3 The Commonwealth Representative may, by notice to the Contractor, exclude the Contractor and specified Contractor Personnel from a GFF Licensed Area, or any part of it, at any time and for any period.
- 3.2.4 The Contractor shall comply with, and require persons given access under clause 3.2.2 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour applicable to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.

4 SHARED FACILITIES**4.1 Shared Facilities**

- 4.1.1 The Contractor acknowledges and agrees that:
 - a. the Commonwealth Representative may, at any time, notify the Contractor that a specified part (or the whole) of a GFF Licensed Area is Shared Facilities; and
 - b. Shared Facilities may be used by the Commonwealth and other persons authorised by the Commonwealth.
- 4.1.2 The Commonwealth may, by direction to the Contractor, determine the priority of use of the Shared Facilities as between the Contractor and other users. The Commonwealth shall do this on the basis of the operational priority of the tasks requiring the use of the Shared Facilities. The Contractor shall act in accordance with, and give effect to, such a direction.

5 DEALINGS WITH THE GFF**5.1 Sublicensing**

- 5.1.1 The Contractor shall not sublicense or part with possession of any part of a GFF Licensed Area or any right or obligation under the GFF Licence without the prior written Approval of the Commonwealth.
- 5.1.2 The Contractor shall ensure that each sublicense of any part of a GFF Licensed Area or any right or obligation under the GFF Licence includes, as far as possible, terms corresponding to the terms on which the Contractor occupies the GFF Licensed Area (including terms limiting the purposes for which the sublicensee may use the sublicensed area to a GFF Permitted Purpose).

5.2 Security Interests

- 5.2.1 The Contractor shall not create or allow to be created any Security Interest in respect of any part of a GFF Licensed Area.

6 OBLIGATIONS**6.1 Occupation and Use of GFF**

- 6.1.1 The Contractor shall at all times comply with the laws in force in the locality in which a GFF Licensed Area is situated that relate to the use or occupation of the area and shall ensure that all persons whom it gives access to the area do the same.
- 6.1.2 The Contractor shall:
- a. keep all GFF Licensed Areas clean and tidy;
 - b. not do anything that is, or may be, dangerous, annoying, or offensive, or that may interfere with the Commonwealth or other persons using a GFF Licensed Area, the Commonwealth Premises in which a GFF Licensed Area is located or properties adjoining the Commonwealth Premises; and
 - c. comply with the requirements of the Commonwealth concerning the storage and removal of waste and debris.
- 6.1.3 The Contractor's obligation to keep a GFF Licensed Area clean and tidy only applies to the extent to which the uncleanliness or untidiness is not materially caused or contributed to by the Commonwealth or any other person using a GFF Licensed Area with the authority of the Commonwealth.
- 6.1.4 The Contractor shall not obstruct or permit the obstruction, in any way, of a GFF Common Area or a fire door or escape door of a GFF Licensed Area.

6.2 Altering the GFF

- 6.2.1 The Contractor shall not carry out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area without the prior written Approval of the Commonwealth.
- 6.2.2 The Contractor shall ensure that any such works are carried out:
- a. by:
 - (i) tradespersons nominated by the Commonwealth; or
 - (ii) if the Commonwealth Approves in advance of the works, by other suitably qualified and licensed tradespersons;
 - b. in accordance with applicable laws and any applicable requirements of Government Agencies;
 - c. in accordance with the terms of any Commonwealth Approval (which may include a requirement for the provision of security in respect of the proposed works); and
 - d. to the satisfaction of the Commonwealth.
- 6.2.3 All costs incurred by the Commonwealth in connection with any such works under clauses 6.2.1 and 6.2.2, including the costs of obtaining relevant professional advice, shall be met by the Contractor and the Commonwealth may elect to recover the amount of the costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 6.2.3 until the Commonwealth elects to recover the amount.
- 6.2.4 This clause 6.2 does not prevent the Commonwealth from carrying out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area.

6.3 Maintenance Obligations

- 6.3.1 For a GFF Licensed Area, the Contractor shall maintain any Contractor Maintained Licensed Fittings for that area in accordance with clause 3.17 of the SOW.
- 6.3.2 If the Contractor fails to comply with clause 6.3.1, the Commonwealth may undertake the required maintenance itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such maintenance shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 6.3.2 until the Commonwealth elects to recover the amount.

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- 6.4.1 Unless required by clause 3.17 of the SOW to maintain a GFF Licensed Area, if the Contractor becomes aware of a need for maintenance for the GFF Licensed Area (other than the Contractor Maintained Licensed Fittings), the Contractor shall report the matter to the Commonwealth Representative as soon as practicable and in any event:
- a. for maintenance required urgently, within 24 hours; and
 - b. otherwise, within five Working Days.
- 6.4.2 The Commonwealth shall undertake such maintenance as is necessary to keep a GFF Licensed Area (other than the Contractor Maintained Licensed Fittings) in good and functional repair and condition having regard to:
- a. the condition of the GFF Licensed Area as at the GFF Licence Application Date for the area (as evidenced in the relevant Facilities Condition Report); and
 - b. in the case of the fixed plant and equipment that are included in the Licensed Fittings in the GFF Licensed Area, the expected life of the plant and equipment as at the GFF Licence Application Date for the area.
- 6.4.3 The Commonwealth shall, other than in relation to urgent maintenance, provide prior reasonable notice to the Contractor of any proposed maintenance that may cause significant delay or disruption to the Contractor's use of a GFF Licensed Area for a GFF Permitted Purpose.
- 6.4.4 Nothing in this clause 6.4 affects or limits any liability of the Contractor under clause 10.4 of the COC in relation to loss of, or damage to, any GFF.

6.5 Sewerage and Trade Waste

- 6.5.1 The Contractor shall not, and shall ensure that Contractor Personnel do not, discharge trade waste from a GFF Licensed Area through the sewerage system interface to the Commonwealth's Sewerage Treatment Plant on the Commonwealth Premises in which the GFF Licensed Area is located.

7 RELOCATION**7.1 Relocation**

- 7.1.1 The Commonwealth may, by notice to the Contractor, require the Contractor to relocate from a GFF Licensed Area into another specified area no later than a date specified in the notice (which shall be no less than two months after the date of the notice).
- 7.1.2 The notice may require specified amendments to the provisions of this Attachment K (including the details of the GFF Licensed Area included in this GFF Licence) in relation to the relocation.
- 7.1.3 If the Commonwealth issues a notice under clause 7.1.1, the Contractor shall submit a CCP that is consistent with the notice.
- 7.1.4 The Contractor shall vacate the GFF Licensed Area by no later than the date specified in the notice.
- 7.1.5 The Contractor shall vacate the GFF Licensed Area in accordance with clause 10.5 and a reference to the expiry or termination of the GFF Licence in that clause shall be taken to be a reference to the date specified in the notice under clause 7.1.1.

8 GFF LICENCE FEE AND RELATED ARRANGEMENTS**8.1 GFF Licence Fee**

- 8.1.1 No fee is payable by the Contractor in respect of the GFF Licence.

8.2 Operating Expenses

- 8.2.1 No amount is payable by the Contractor under the Contract by way of contribution to the Operating Expenses of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.

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- 8.2.2 The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor.

8.3 Utilities and Telecommunications Facilities

- 8.3.1 No amount is payable by the Contractor under the Contract by way of contribution to the costs of utilities or telecommunications facilities in relation to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.
- 8.3.2 The Contractor shall pay to the Commonwealth an amount in respect of the costs of utilities or telecommunications facilities (to the extent not included in an amount referred to in clause 8.2.2) for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities in the GFF Licensed Area by the Contractor.

9 DAMAGE TO OR DESTRUCTION OF THE GFF**9.1 Damage or Destruction**

- 9.1.1 If the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located:
- a. subject to clause 7.1, the right of the Contractor to continue to use so much of the GFF Licensed Area as it is safe and practicable for it to use is not affected; and
 - b. the Commonwealth may (but is not required to), repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located.

10 TERMINATION AND MAKE GOOD**10.1 Commonwealth's Right to Terminate GFF Licence for Breach**

- 10.1.1 Without limiting clause 13 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, without terminating the Contract if the Contractor:
- a. fails to comply with a Default Notice under clause 13.3.1 of the COC in relation to a Contractor Default in respect of any GFF, or a direction under clause 13.3.2b of the COC issued in connection with such a Default Notice; or
 - b. fails to comply with any of the following by the relevant due date:
 - (i) **[LIST SPECIFIC REQUIREMENTS]**

10.2 Right to Terminate on Damage to, or Destruction of, the GFF or Commonwealth Premises

- 10.2.1 Either the Commonwealth or the Contractor may, by notice to the other, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas (without terminating the Contract), if:
- a. the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; and
 - b. either:
 - (i) the Commonwealth notifies the Contractor that it does not propose to repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; or
 - (ii) the Commonwealth notifies the Contractor that it will repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth

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Premises in which the GFF Licensed Area is located but does not complete that within a reasonable period,

and the Commonwealth does not, within a reasonable period after the notice, give a notice under clause 7.1.1.

10.3 Commonwealth's Right to Terminate GFF Licence for Convenience

- 10.3.1 In addition to clause 13.4 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, for convenience (without terminating the Contract).
- 10.3.2 None of the other provisions of the Contract limit the Commonwealth's ability to terminate the GFF Licence under this clause 10.3.

10.4 CCP to be Submitted

- 10.4.1 If the GFF Licence is terminated, or the GFF Licence ceases to apply to one or more GFF Licensed Areas (and the Contract has not been terminated), the Contractor shall, within 10 Working Days after the termination or cessation takes effect or such longer period agreed to by the Commonwealth, submit a CCP to amend the Contract to address the consequences of the termination or cessation.

10.5 Contractor to Vacate GFF

- 10.5.1 If the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall vacate the GFF Licensed Area and return it and any other Commonwealth Property on the GFF Licensed Area to the Commonwealth in the same condition as they were:
- a. at the GFF Licence Application Date for the GFF Licensed Area (as evidenced by the relevant Facilities Condition Report); or
 - b. in the case of Commonwealth Property brought onto the GFF Licensed Area after the GFF Licence Application Date for the area, at the time it was first brought onto the GFF.
- 10.5.2 Without limiting clause 10.5.1, except to the extent otherwise agreed by the Commonwealth Representative:
- a. by the date the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall remove from the GFF Licensed Area all of the Contractor's property and shall take down, remove and carry away, without causing any damage to the GFF Licensed Area or any Commonwealth Property, all removable items or equipment that the Contractor has fixed to or brought onto the GFF Licensed Area; and
 - b. if the Contractor causes any such damage, the Contractor shall immediately make good that damage.
- 10.5.3 If, after an inspection of the GFF Licensed Area in accordance with clause 3.17 of the SOW, any part of the GFF Licensed Area or Commonwealth Property is found not to be in the condition described in clause 10.5.1, then:
- a. the Contractor shall return the GFF Licensed Area or Commonwealth Property to the condition referred in clause 10.5.1; or
 - b. the Commonwealth may return the GFF Licensed Area or Commonwealth Property to that condition and the Commonwealth may elect to recover the amount of any reasonable costs incurred by the Commonwealth in doing so under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 10.5.3 until the Commonwealth elects to recover the amount.
- 10.5.4 Clause 10.5.3 does not apply to the extent that the difference in the condition of the GFF Licensed Area is due to:
- a. fair wear and tear;
 - b. alterations or improvements or other works made in accordance with clause 6.2; or
 - c. loss or damage of the type referred to in clause 10.4.2 of the COC.
- 10.5.5 Any items that the Contractor is required to remove under clause 10.5.2 that are not removed within five Working Days (or such other period agreed to in writing by the Commonwealth)

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after the date the GFF Licence ceases to apply to a GFF Licensed Area, are taken to be abandoned and become Commonwealth Property. Any costs incurred by the Commonwealth in removing or disposing them, and storing them for a reasonable period awaiting disposal, shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 10.5.5 until the Commonwealth elects to recover the amount.

- 10.5.6 The Contractor's obligations under this clause 10.5 are not affected by any decision by the Commonwealth as to the future use or disposal of any part of the GFF Licensed Area, whether or not the Commonwealth restores, continues in use unrestored, retains unused or disposes of the part of the area or Commonwealth Property to which the obligations relate.

ANNEX A TO ATTACHMENT K

DETAILS OF GFF LICENSED AREA #1 [INSERT DESCRIPTIVE TITLE]

Note to drafters: A separate annex should be included for each geographically distinct GFF Licensed Area to be covered by the GFF Licence. For example, a building on Garden Island and a building at a RAAF Base in Victoria to be supplied as GFF under the Contract would each require separate GFF Licensed Area annexes.

Drafters should complete the GFF Licence application and cessation dates for each GFF Licensed Area included in the GFF Licence. For a GFF Licensed Area that is to be covered by the GFF Licence during the whole term of the GFF Licence, drafters should include a reference to the GFF Licence Commencement Date in column 1 and the GFF Licence Expiry Date for column 2.

1. GFF LICENCE APPLICATION PERIOD

- 1.1 For the purposes of clause 1.1.2 of Attachment K, the GFF Licence applies to the GFF Licensed Area described in this annex as set out below:

Date the GFF Licence applies ...

(column 1)

[INSERT DATE]

Date the GFF Licence ceases to apply ...

(column 2)

[INSERT DATE]

APPENDIXES:

1. Plans
2. Licensed Fittings (including any Contractor Maintained Licensed Fittings)
3. Facilities Condition Report

CONTRACT GOVERNANCE FRAMEWORK**1 GOVERNANCE OVERVIEW****1.1 Scope**

- 1.1.1 This Attachment sets out the governance arrangements through which the Commonwealth and the Contractor will manage their bilateral relationship, oversee and guide performance of the Contract, and perform their respective obligations under the Contract to maximise achievement against the objectives specified in clause 1.4 of the COC ('the Objectives').
- 1.1.2 This Attachment addresses:
- a. the general principles and aims of the governance arrangements; and
 - b. the bilateral framework and governance bodies that will oversee and guide performance of the Contract.
- 1.1.3 Nothing in this Attachment, or agreements resulting from the application of this Attachment, changes the scope of the Contract without the change being implemented through a CCP or Approval, as applicable to the nature of the change.
- 1.1.4 For the purposes of this Attachment, 'Enterprise' refers to the combination of the systems program office or program office, capability manager, Contractor and Subcontractors, and other 'fundamental inputs to capability', that together deliver the most effective and efficient Capability outcome for Defence.

1.2 Aim

- 1.2.1 The aim of the governance arrangements is to facilitate the performance of the Contract, including the parties' obligations under the Contract, to achieve the Objectives and to promote 'best for Enterprise' decision making by:
- a. providing leadership, oversight and guidance on performance of the Contract;
 - b. facilitating informed, effective and timely decision making;
 - c. facilitating problem solving and Dispute resolution;
 - d. maximising the value of the skills and knowledge and experience available within the Commonwealth's and the Contractor's organisations by appointing or inviting (as applicable) suitably skilled, knowledgeable and experienced individuals to the governance bodies; and
 - e. ensuring the governance arrangements operate efficiently and effectively.

2 STEERING COMMITTEE GOVERNANCE ARRANGEMENTS**2.1 Membership**

- 2.1.1 The members of the Steering Committee are:

Note to drafters: Add details for members of the Steering Committee, consistent with the functions described below. Permanent members of the Steering Committee, including external parties, should have a long-term involvement with the Capability and/or Contract.

- a. the Senior Representatives specified in the Details Schedule;
- b. **[...INSERT Capability Manager or senior representative...]**; and
- c. **[...INSERT OTHER MEMBERS AS REQUIRED...]**.

2.2 Functions

- 2.2.1 The principal function of the Steering Committee is to be the most senior forum for the management of the relationship of the parties. Accordingly, the Steering Committee will provide the overarching, high level governance of the Contract in terms of providing strategic oversight and guidance and initiation of action within the Commonwealth and the Contractor to maximise the extent to which the Objectives are achieved through performance of the Contract.

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- 2.2.2 The functions of the Steering Committee include:
- a. to exchange views about key matters relevant to work under the Contract, particularly where the work may affect the achievement of the Objectives;
 - b. to provide guidance to the Leadership Team;
 - c. to provide guidance in relation to, and to prioritise and co-ordinate, any significant CCPs in a manner consistent with achievement of the Objectives;
 - d. to act as an advocate for the Enterprise;
 - e. to agree key messaging for external communications in relation to the Contract;
 - f. to act as the final internal point of Dispute resolution if the Dispute cannot be resolved by the Leadership Team, including by supporting the Senior Representatives to resolve a Dispute in accordance with the Dispute resolution procedure set out in clause 13.1 of the COC; and
 - g. to discharge any other function that the parties agree in writing is to be a function of the Steering Committee.

2.3 Meetings

- 2.3.1 The Steering Committee shall meet twice yearly, or at such other times as either party may require. At least 10 Working Days' prior notice shall be given for meetings. Reduced notice may be given, as is reasonable in the circumstances.
- 2.3.2 The Steering Committee may invite external advisers and observers to attend Steering Committee meetings from time to time.
- 2.3.3 The parties agree that meetings shall be conducted in accordance with the arrangements for ad hoc meetings set out in clause 3.6 of the SOW as if the Commonwealth is the party calling the meeting.

3 LEADERSHIP TEAM GOVERNANCE ARRANGEMENTS

3.1 Membership

- 3.1.1 The members of the Leadership Team are:

Note to drafters: Add details for members of the Leadership Team, consistent with the functions described below. Permanent members of the Leadership Team should have a long-term involvement with the Capability and/or Contract, and may include representatives from key Approved Subcontractors and Capability Manager's representatives from Other Capabilities.

- a. the Management Representatives specified in the Details Schedule; and
- b. [...INSERT OTHER MEMBERS AS REQUIRED...].

3.2 Functions

- 3.2.1 The principal functions of the Leadership Team are to:
- a. be a forum for the management of the relationship of the parties;
 - b. oversee and provide guidance on key concerns relevant to the performance of work under the Contract (including coordination with related programs, projects or sustainment activities); and
 - c. report to the Steering Committee on significant risks impacting the performance of the Contract or achievement against the Objectives.
- 3.2.2 The functions of the Leadership Team include:
- a. to exchange views about matters relevant to the work under the Contract;
 - b. to monitor performance of the Contract and identify and review key opportunities and risks;
 - c. to ensure that appropriate action is taken to mitigate risks and that such action is managed by Personnel best suited to do so;
 - d. to monitor the parties' progress towards achieving the Objectives;

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- e. to coordinate and collaborate with related programs, projects or sustainment activities, as needed, to ensure the effective performance of the Contract and any related programs, projects or sustainment activities;
- f. to assess the health of the relationship between the parties, and take rectification action, as necessary and appropriate;
- g. to give guidance to the Contract Team and to hold the Contract Team to account for the performance of its functions;
- h. to respond to matters referred for consideration by the Contract Team;
- i. to give advice to the Steering Committee, as required, including generally on the status of the Contract and Disputes that have not been resolved;
- j. to act as a further internal point of Dispute resolution if the Dispute is not resolved by the Contract Team, including by supporting the Management Representatives to resolve a Dispute in accordance with the Dispute resolution procedure set out in clause 13.1 of the COC; and
- k. to discharge any other function that the parties agree in writing is to be a function of the Leadership Team.

3.3 Meetings

- 3.3.1 The Leadership Team shall meet at least three times a year, or at such other times as the parties may agree, generally scheduled to coincide with a Services Performance Review, Contract Performance Review, or other significant review or Milestone.
- 3.3.2 The Leadership Team may invite the Commonwealth Representative and the Contractor Representative to attend meetings as advisers.
- 3.3.3 The Leadership Team may invite external advisers and observers to attend Leadership Team meetings from time to time.
- 3.3.4 The parties agree that meetings shall be conducted in accordance with the arrangements for ad hoc meetings set out in clause 3.6 of the SOW as if the Commonwealth is the party calling the meeting.

4 CONTRACT TEAM GOVERNANCE ARRANGEMENTS

4.1 Membership

- 4.1.1 The members of the Contract Team are:

Note to drafters: Add details for members of the Contract Team that will perform the functions described below. Permanent members of the Contract Team should have a long-term involvement with the Contract, and may include representatives from Approved Subcontractors, Other Capabilities, and other Associated Parties including ADF regulatory / assurance agencies and customer units.

- a. the Commonwealth Representative;
- b. the Contractor Representative; and
- c. **[...INSERT OTHER MEMBERS AS REQUIRED...]**.

4.2 Functions

- 4.2.1 The principal functions of the Contract Team are to:
 - a. be responsible for the day to day performance of the Contract; and
 - b. report to the Leadership Team on material risks impacting the performance of the Contract or achievement against the Objectives.
- 4.2.2 The functions of the Contract Team include:
 - a. to be informed and keep up to date about the progress of work under the Contract;
 - b. to exchange views about matters relevant to the work under the Contract;

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- c. to ensure the parties' obligations under the Contract are being appropriately monitored and managed, with prompt action taken as necessary and appropriate by the relevant party (eg, through reallocation of resources, closer management oversight, as necessary) to support performance of the Contract;
- d. to consider and implement, where appropriate, improvements to working level arrangements and activities between the parties to achieve efficiencies and improvements in the quality of performance of the delivery of the Capability;
- e. to identify and review opportunities and risks;
- f. to ensure that appropriate action is taken to give effect to opportunities and to mitigate risks, with such action managed by Personnel best suited to do so;
- g. to assess the health of the relationship between the parties, and take rectification action, as necessary and appropriate;
- h. to give advice to the Leadership Team, as required, including by promptly escalating risks appropriately, particularly those risks which may have a material impact on achievement against the Objectives;
- i. to act as the first internal point of Dispute resolution for the parties for the purposes of the Dispute resolution procedure set out in clause 13.1 of the COC; and
- j. to discharge any other function that the parties agree in writing is to be a function of the Contract Team.

4.3 Meetings

- 4.3.1 Without limiting the Contract (including any requirement to conduct periodic performance reviews or ad hoc meetings as required or permitted by the SOW), the Contract Team shall meet or otherwise communicate on an ongoing basis to ensure the effective performance of the Contract.
- 4.3.2 The Contract Team may invite external advisers and observers to attend Contract Team meetings from time to time.

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ATTACHMENT M

INDIGENOUS PARTICIPATION PLAN (OPTIONAL)

Note to Drafters: This Attachment is to be included when the Mandatory Minimum Requirements of the Indigenous Procurement Policy apply and clause 12.10 has been included in the COC. If this Attachment is not required, it may be deleted or annotated as 'Not used'.

Note to Tenderers: Attachment M will consist of the successful tenderer's response to Schedule 1 of Annex H to Attachment A to the Conditions of Tender and any negotiated changes.