

[INSERT NAME OF SUPPLIES]STANDING OFFER FOR GOODS

DEED NO: (INSERT NUMBER)

DETAILS SCHEDULE

**PARTIES**

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

|  |  |  |
| --- | --- | --- |
| Commonwealth Representative: | **(INSERT DETAILS)** | |
| Notice Details: | 1. Address: | **(INSERT ADDRESS)** |
| 1. Fax: | **(INSERT FAX NUMBER)** |
| 1. Email: | **(INSERT EMAIL ADDRESS)** |

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

|  |  |  |
| --- | --- | --- |
| Contractor Representative: | **(INSERT DETAILS)** | |
| Notice Details: | 1. Address: | **(INSERT ADDRESS)** |
| 1. Fax: | **(INSERT FAX NUMBER)** |
| 1. Email: | **(INSERT EMAIL ADDRESS)** |

**INFORMATION TABLE**

| **Item** | **Information** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Item 1** (clause 1.3.1) | **Initial Term:**  (Core) | **Effective Date:** | | | **(INSERT DATE)** | | | |
| **Expiry Date:** | | | **(INSERT DATE)** | | | |
| Note to drafters: ASDEFCON (Standing Offer for Goods) has been drafted on the basis that each standing offer would generally be in place for three years, with an option for two additional 12-month extensions. | | | | | | | |
| **Item 2** (clause 1.3.2) | **Options to Extend:** (Core) | Number of Options: | | | **[INSERT NUMBER]** | | | |
| Option Period: | | | **[INSERT PERIOD OF EACH OPTION]** | | | |
| **Item 3** (Clause 3.5) | **Base Date:**  (Core) | **[INSERT DATE]**  Note to drafters: The Base Date is ordinarily one month before the Closing Time. | | | | | | |
| **Item 4** (clause 8.3) | **Limitation Amount:** (Optional) | Liability for warranties and obligations under clause 9:  (clause 8.3.1a) | | | | $**[INSERT AMOUNT]** million | | |
| Loss of, or damage to, the Supplies  (clause 8.3.1b) | | | | $**[INSERT AMOUNT]** million | | |
| Loss of, or damage to, Defence Property (including CMCA)  (clause 8.3.1c) | | | | $**[INSERT AMOUNT]** million | | |
| Breach of contract or negligent act or omission not mentioned in clauses 8.3.1a to 8.3.1c  (clauses 8.3.1d) | | | | $**[INSERT AMOUNT]** million | | |
| **Item 5** (clause 8.4)  Note to drafters: Delete insurance policies if they do not apply. | **Approved Contractor Insurance Program Status**  (Core) | **❑ Yes / ❑ No** | | | |  | | |
| **Limits of indemnity for required insurances:**  (Core) | Public liability:  (clause 8.4.4a) | | | | **$[INSERT AMOUNT]**million | | |
| Products liability  (clause 8.4.4b) | | | | $**[INSERT AMOUNT]** million | | |
| Professional indemnity insurance  (clause 8.4.5) | | | | $**[INSERT AMOUNT]** million | | |
| Motor vehicle insurance  (clause 8.4.8b) | | | | $**[INSERT AMOUNT]**million | | |
| **Item 6** (clause 9.2) | **Warranty Period:**  (Core) | **[INSERT PERIOD]** after the date of Acceptance of the Supplies. | | | | | | |
| **Item 7** (clause 10.9) | **Defence Security:**  (Core) | Security Classification of information, assets and work to be performed under the Contract:  (Clause 10.9.3) | | **[INSERT CLASSIFICATION]** | | | | |
|  | |  | | | | |
| DISP membership required:  (clause 10.9.4 or 10.9.5)  Note to Drafters: Delete DISP Governance Level, DISP Personnel Security Level, DISP Physical Security Level and DISP Information / Cyber Security Level if DISP membership is not required. | | **❑ Yes / ❑ No** | | | | |
| DISP Governance Level:  Note to Drafters: In accordance with Control 16.1 of the DSPF, the DISP membership level required for the Governance element must equal the highest DISP membership level required for the other elements. | | **[INSERT LEVEL]]**  **[INSERT SPECIFIC DETAILS IF REQUIRED]** | | | | |
| DISP Personnel Security Level: | | **[INSERT LEVEL]]**  **[INSERT SPECIFIC DETAILS IF REQUIRED]** | | | | |
| DISP Physical Security Level: | | **[INSERT LEVEL]]**  **[INSERT SPECIFIC DETAILS IF REQUIRED]** | | | | |
| DISP Information / Cyber Security Level: | |  | | | | |
| Security Classification and Categorisation Guide required:  (clause 10.9.7) | | | | | **❑ Yes / ❑ No** | |
| COMSEC material:  (clause10.9.9) | ❑  transmitted in Australia | | | | | ❑  transmitted overseas |
| **Item 8** (clause 11.1) | **Governing Law:** | **[INSERT RELEVANT STATE OR TERRITORY]** | | | | | | |

PART Two - DRAFT DEED OF STANDING OFFER

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11. DEED FRAMEWORK
    1. Definitions (Core)
       1. In the Deed and in any Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meanings given to them by the Details Schedule or by the Glossary at Attachment F. The Glossary also contains a list of documents referred to in the Deed and details of the version that is applicable to the Deed and any Contract.
    2. Interpretation (Core)
       1. In the Deed and in any Contract, unless the contrary intention appears:
          1. headings are for the purpose of convenient reference only and do not form part of the Deed or any Contract;
          2. the singular includes the plural and vice-versa;
          3. a reference to one gender includes any others;
          4. a reference to a person includes a body politic, body corporate or a partnership;
          5. 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;
          6. 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;
          7. a reference to a clause includes a reference to a subclause of that clause;
          8. a reference to a ‘dollar’, ‘$’, ‘$A’ or ‘AUD’ means the Australian dollar unless otherwise stated;
          9. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date specified in the Details Schedule and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
          10. the word ‘includes’ in any form is not a word of limitation;
          11. a reference to a party includes that party’s administrators, successors, and permitted assignees, including any person to whom that party novates any part of the Deed or any Contract; and
          12. a provision stating that a party ‘may’ agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval
       2. All information delivered as part of the Supplies under the Deed and any Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or, if Supplies are imported, units of measurement as agreed by the Commonwealth Representative.
    3. Term (Core)

Note to drafters: ASDEFCON (Standing Offer for Goods) has been drafted on the basis that each standing offer would generally be in place for three years, with an option for two additional 12 month extensions.

* + 1. The Deed is legally binding from the Effective Date specified in the Details Schedule. Unless terminated earlier and subject to this clause 1.3, the Deed expires on the Expiry Date specified in the Details Schedule.
    2. The Commonwealth may extend the Term for 12 months by giving the Contractor notice in writing not less than 30 days before the date on which the Deed would otherwise expire.
    3. The Commonwealth may extend the Term for a second period of 12 months by giving the Contractor notice in writing not less than 30 days before the date on which the Deed would otherwise expire under clause 1.3.2.
    4. Without affecting the extensions to the Term made by a notice under clause 1.3.2 or 1.3.3, the Commonwealth shall specify in that notice the adjustments which shall be made to the Deed to give effect to the extension of the Deed and each party shall amend its copy of the Deed in accordance with that notice.

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| Option: For when price adjustments will be allowed and Option B is selected at clause 2 of Annex C to the conditions of tender.   * + 1. Any adjustments, including any adjustments to reflect fluctuations in the cost of labour and materials, that result from the operation of this clause 1.3, shall be calculated in accordance with the formula set out in clause 1.1 of Attachment D. |

* + 1. The Contractor shall fulfil all Contracts entered into during the Term on the conditions current at the time the Contract is made notwithstanding that completion of the Contract may occur after the date on which the Deed has expired.
  1. Entire Agreement (Core)
     1. To the extent permitted by law, the Deed, and each Contract, represents the parties’ entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
  2. Precedence of Documents (Core)
     1. If there is any inconsistency between the terms of any documents that form part of the Deed, a descending order of precedence shall be accorded to:
        1. the COD (including the Details Schedule) and the Glossary (other than the referenced documents in the Glossary);
        2. the attachments to the Deed, other than the Glossary; and
        3. any document incorporated by express reference as part of the Deed;

so that the term in the higher ranked document, to the extent of the inconsistency, shall prevail.

* 1. Formation, Scope and Operation of Deed (Core)
     1. The Deed constitutes a standing offer for the Term during which the Commonwealth may require the Contractor to provide Supplies as and when required by the Commonwealth in accordance with clause 1.7.

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| Option: For when a standing offer panel arrangement is being established.   * + 1. The Contractor acknowledges that:        1. the Commonwealth has established the Panel; and        2. it is one of a number of suppliers on the Panel which may be requested to provide Supplies. |

* 1. Ordering Supplies (Core)
     1. The range of Supplies which the Contractor offers the Commonwealth and the terms on which those Supplies are to be delivered are set out in the Price and Delivery Schedule at Attachment A. If the Commonwealth requires any Supplies an Authorised Officer shall deliver an Official Order to the Contractor which specifies the Supplies it requires from those listed in the Price and Delivery Schedule.

Note to drafters: Clause 1.7.2 permits Defence to seek competitive Quotations from one of more suppliers on the Panel, but does not give additional guidance as to the circumstances in which Quotations would be requested. Drafters could consider including a further provision setting out such circumstances, e.g. a threshold amount above which competitive Quotations would be sought. If so, one option could be to include the following text after the first sentence in clause 1.7.2: ‘It is expected that the Commonwealth would normally seek a competitive Quotation from other suppliers if the value of the particular Supplies are likely to exceed $[…INSERT AMOUNT…] (including GST)’. Drafters would need to insert an appropriate threshold amount.

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| Option: For when a standing offer panel arrangement is being established.   * + 1. The Authorised Officer may seek competitive Quotations from one or more suppliers on the Panel. |

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| Option: For when a standing offer arrangement is being established with a single supplier.   * + 1. If the Commonwealth requires any Supplies, the Authorised Officer may invite the Contractor to submit Quotations on the basis of the Price and Delivery Schedule or on any other basis as required by the Commonwealth including on a fixed price basis. |

* + 1. The Contractor shall provide either a Quotation in writing or a notice declining the invitation, in writing within five Working Days from receipt of the request. The Quotation shall contain all the information required by the Price and Delivery Schedule.

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| Option: For when a standing offer panel arrangement is being established.   * + 1. If the Authorised Officer seeks competitive Quotations under clause 1.7.2, the Commonwealth may:        1. seek Quotations on a fixed price or other basis; and        2. give other suppliers on the Panel and the Contractor the opportunity to provide a Quotation on the basis of refining their Unit Prices. |

* + 1. Quotations will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies. Neither the lowest priced Quotation nor any Quotation will necessarily be accepted by the Commonwealth.
    2. If the Authorised Officer is agreeable to the Quotation submitted by the Contractor, an Authorised Officer may deliver an Official Order to the Contractor for the Supplies at the prices in the Quotation.
    3. If the Commonwealth wishes to order Supplies on terms different to those specified in the Price and Delivery Schedule, it shall provide a draft Official Order to the Contractor listing the varied terms. The Contractor shall advise the Commonwealth of its acceptance or rejection of the varied terms within 30 days from receipt of the request. Where the Contractor advises its agreement to the varied terms, an Authorised Officer may deliver an Official Order to the Contractor for the Supplies on the agreed terms.
    4. If the Authorised Officer delivers an Official Order to the Contractor:
       1. the Official Order shall form the Contract for the Supplies required by the Commonwealth. Any Contract so formed is effective from the date on which the Commonwealth submits the Official Order to the Contractor in accordance with clause 2.4.2;
       2. unless otherwise agreed in the Contract, the terms of each Contract so formed will be those set out in the following documents, in a descending order of precedence:
          1. the COD as applicable to the Contract;
          2. the attachments to the COD;
          3. the Official Order; and
          4. any documents incorporated by express reference as part of the Contract.
    5. No Supplies shall be delivered by the Contractor, and no amount shall become payable to the Contractor in respect of the Supplies unless and until:
       1. a Quotation has been submitted by the Contractor to the Authorised Officer in relation to a relevant Price and Delivery Schedule; and
       2. an Official Order has been issued by the Authorised Officer for the provision of the Supplies to which the Quotation relates.
    6. The Contractor shall provide Supplies in accordance with any Contract, and fulfil all other obligations as specified in that Contract.
    7. The Contractor is not to respond to any directions in relation to Official Orders unless those directions are issued by the Authorised Officer or Commonwealth Representative.
  1. No Assurance of Orders (Core)
     1. The Commonwealth does not make any representation nor in any way binds itself to placing any specific number of orders, or any orders at all, during the Term.
     2. Subject to clause 1.7, the Deed or any Contract is not to be interpreted as providing that the:
        1. Contractor has the right to be the sole provider of the Supplies, or any part of the Supplies, to the Commonwealth; or
        2. Commonwealth is prevented from seeking the Supplies from other members of the Panel or from other suppliers.
  2. Supplies (Core)
     1. If the Contractor cannot perform its obligations under any Contract, the Contractor shall notify the Authorised Officer, within 24 hours of receipt of an Official Order, of its breach of that Contract. Notwithstanding such a breach by the Contractor, the Contractor may request an amendment to that Contract under clause 10.1 in regard to delivery times or to substitution of Supplies and the Authorised Officer may:
        1. agree to delivery of the Supplies at a later time or date agreed between the parties; or
        2. agree to different Supplies of an equivalent standard being supplied by the Contractor.
     2. The Contractor acknowledges that the Commonwealth is under no obligation to agree to the amendment of any Contract and that the Commonwealth may procure the Supplies or their equivalent from any other supplier.
     3. The Contractor agrees that the Authorised Officer's decision under clause 1.9.1 does not affect or limit the Commonwealth's rights in relation to the Contractor’s breach of the Contract.
     4. The Contractor shall package all Supplies so as to ensure their safe delivery, and if the Commonwealth sets out in an Official Order, requirements for packing, marking or labelling, the Contractor shall comply with those requirements.
  3. Multi Agency Access (Optional)

Note to drafters: Include this clause if clause 1.8 of the COT is included.

* + 1. The Contractor acknowledges and agrees that other Commonwealth agencies (**‘Permitted Agencies’**) may order Services under this Deed. The Commonwealth Representative shall nominate Authorised Officers from Permitted Agencies in accordance with clause 2.2.

1. ROLES AND RESPONSIBILITIES
   1. Commonwealth Representative (Core)
      1. The Commonwealth Representative is responsible for administering the Deed on behalf of the Commonwealth.
      2. The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of the Deed.
      3. If given orally, a direction shall be confirmed in writing within 10 Working Days. Unless otherwise specified in the Deed, the Commonwealth Representative has no authority to waive any provision of, or release the Contractor from, its obligations under the Deed except in accordance with clause 10.3.
      4. Unless authorised by this Deed or any Contract, any work performed or cost incurred by the Contractor in response to a communication from the Commonwealth Representative is at the Contractor’s sole risk.
   2. Authorised Officer (Core)
      1. The Commonwealth Representative may nominate by written notice to the Contractor from time to time any Authorised Officers for the purposes of the Deed. The written notice shall include the address, facsimile number and email at which notice or communication under the Deed or any Contract is to be delivered to the Authorised Officer.
      2. An Authorised Officer is responsible for placing and administering Contracts on behalf of the Commonwealth. The Contractor shall comply with the reasonable directions of the Authorised Officer made within the scope of the administration of any Contract. All directions by an Authorised Officer will be provided in writing. The Authorised Officer shall have no authority to waive any provision of, or release the Contractor from, its obligations under any Contract except in accordance with clause 10.3.
      3. Unless authorised by this Deed or any Contract, any work performed or cost incurred by the Contractor in response to a communication from the Authorised Officer is at the Contractor’s sole risk.
   3. Contractor Representative (Core)
      1. The Contractor shall on or before the Effective Date specified in the Details Schedule nominate in writing the person with the authority to represent the Contractor for the purposes of the Deed and any Contract. Any communication passed by the Commonwealth to this person in accordance with clause 2.4 shall be deemed to have been delivered to the Contractor.
   4. Notices (Core)
      1. Unless the contrary intention appears, any notice under the Deed, (not including Official Orders), shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or Contractor’s Representative, in accordance with the Notice Details specified in the Details Schedule.
      2. A notice given in accordance with this clause 2.4 shall be deemed to have been delivered:
         1. 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;
         2. if hand delivered, when received at the address, or by the addressee if sooner;
         3. 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
         4. if sent as an email, when the email enters the addressee’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 addressee,
         5. 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.
2. PRODUCTION OF THE SUPPLIES
   1. Quality Management (Core)

Note to drafters: Low risk, low value Supplies can generally rely on these Quality Management clauses, as common law protection should be sufficient. Where more complex Supplies are being purchased which require more substantial Quality Assurance protection, please review ASDEFCON (Complex Materiel) Volume One, Statement of Work, clause 6 for possible incorporation.

* + 1. The Contractor shall ensure that the Supplies to be provided are to the industry’s best standard.
    2. Any discrepancies in quantity or quality or any damage to the Supplies or packaging found at the time of receipt shall be corrected by the Contractor at no cost to the Commonwealth.
  1. Authorisations (Core)
     1. The Contractor shall, and shall ensure that its Subcontractors: 
        1. obtain and maintain in full force all Authorisations (other than Export Approvals) required to perform all of the work under the Deed or any Contract and for the provision of the Supplies;
        2. take all reasonable steps to obtain and maintain in full force all Export Approvals required for the provision of the Supplies;
        3. provide a copy of any Authorisations to the Commonwealth within five Working Days of request by the Commonwealth; and
        4. ensure that all work under the Deed or any Contract is performed and the Supplies are provided in accordance with all Authorisations.
     2. The Contractor shall notify the Commonwealth Representative within five Working Days after:
        1. the application for an Export Approval in relation to the Deed or any Contract;
        2. the grant of, or a new requirement for, an Export Approval in relation to the Deed or any Contract; or
        3. receiving notification of refusal to grant, or an intent to revoke or qualify, an Authorisation required for provision of the Supplies.
     3. The Commonwealth Representative shall, on request by the Contractor, give the Contractor all assistance reasonably required to facilitate the provision of an Export Approval in relation to the Deed or any Contract, including the provision of a certificate by the Commonwealth as to the end use of the Supplies
     4. If a party becomes aware of a breach of an Export Approval, it shall promptly notify the other party and co-operate with any investigation or disclosure to the relevant government authorities in relation to the breach.
  2. Contractor Managed Commonwealth Assets (Core)
     1. The Contractor shall take all reasonable care of CMCA and shall provide facilities to store and handle all CMCA as they are received.
     2. The Contractor shall, within five Working Days of becoming aware that any CMCA are lost, destroyed, damaged, defective or deficient, notify the Authorised Officer of the event in writing.
     3. The Contractor shall be liable for loss or destruction of, damage to or defects or deficiencies in, the CMCA, except to the extent that the loss, destruction, damage, defects or deficiencies result from any unlawful or negligent act or omission on the part of the Commonwealth or Commonwealth Personnel. Subject to clause 3.3.4, or an agreement by the parties to replace the CMCA, the Contractor shall compensate the Commonwealth for the loss or destruction of, damage to or defects or deficiencies in, the CMCA and the Commonwealth may recover an amount equivalent to the value of the compensation under clause 12.4 as a debt due to the Commonwealth.
     4. If, in the opinion of the Commonwealth Representative, the Contractor has the necessary capacity, the Commonwealth Representative may require the Contractor, by notice in writing, to transport, dispose of or repair damaged, defective or deficient CMCA. If the Contractor is liable under clause 3.3.3 for the damage, defect or deficiency, the work performed by the Contractor under this clause 3.3.4 shall discharge or partially discharge the Contractor’s liability. If the Contractor is not liable under clause 3.3.3 for the damage, defect or deficiency, the Contractor shall, if the parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.
  3. Stocktaking of Contractor Managed Commonwealth Assets (Core)
     1. The Contractor shall:
        1. institute, maintain and apply a system for, the accounting for and control, handling, preservation, protection and maintenance of CMCA;
        2. undertake quarterly stocktakes of CMCA; and
        3. develop and deliver quarterly CMCA stocktaking reports that include the following information:
           1. the stocktake number;
           2. the storage location of all goods included in the stocktake;
           3. all stocktake codes;
           4. stocktake start and end dates; and
           5. statistical data including the quantity and value of all discrepancies, shelf stock held, shelf stock stocktaked, surpluses and deficiencies.
     2. The Contractor shall promptly conduct investigations into every discrepancy arising from stocktakes of CMCA.
     3. The Contractor shall immediately notify the Authorised Officer of any deficiencies that are discovered through a stocktake of CMCA.
  4. Imports and Customs Entry (Core)
     1. The Contractor shall, within the Contract Price, arrange customs entry and the payment of any customs duty applicable to the Supplies, except as provided in this clause 3.5.
     2. The Contractor shall give the Commonwealth Representative a notice in writing, including supporting evidence, of any variation to the rate of customs duty applicable to the Supplies between the Base Date specified in the Details Schedule and the date of entry into Australia of the item and:
        1. in the case of an increase, the Contractor may claim reimbursement of an amount equivalent to the extra customs duty payable as a consequence of the increase; or
        2. in the case of a decrease, an amount equivalent to the reduction in the customs duty payable as a consequence of the decrease becomes a debt due to the Commonwealth under clause 12.4.
     3. The Commonwealth shall not be liable to reimburse the Contractor for any fines or penalties imposed on the Contractor under Australian customs legislation.

1. Australian Industry Capability (Optional)

Note to drafters: The below clauses should be used for procurements where the expected value of a Contract under any resultant Deed will be between $4 million and $20 million (GST inclusive).

If the expected value of a Contract under any resultant Deed is $20 million or more, more extensive Australian Industry Capability (AIC) clauses (including the requirement for an AIC Plan) will be required. In this case drafters should refer to the AIC provisions contained in the ASDEFCON (Strategic Materiel) template.

For drafting guidance and support drafters should consult with CASG Commercial Division at [defence.procurement@defence.gov.au](mailto:defence.procurement@defence.gov.au).

Note to tenderers: Tenderers should refer to the Australian Industry Capability (AIC) policy, plans and programs at: <http://www.defence.gov.au/SPI/Industry/AIC.asp> for information relating to the AIC program and other Defence industry programs.

* + 1. The Contractor shall comply with the Australian Industry Activities (AIA) Schedule at Attachment G.
    2. The Contractor acknowledges that:
       1. compliance with the AIA Schedule shall not relieve the Contractor from its liabilities or obligations under the Deed or any Contract; and
       2. Acceptance of the Supplies shall not relieve the Contractor from meeting its obligations under the AIA Schedule.
    3. The Contractor shall maintain the accuracy, completeness and currency of the AIA Schedule.
    4. Where the Contractor proposes an update to the AIA Schedule, the Contractor shall submit a change proposal in accordance with clause 10.1.

1. TECHNICAL DATA, SOFTWARE AND CONTRACT MATERIAL
   1. Ownership of Intellectual Property (Core)

Note to drafters: If Commonwealth ownership of IP or broader IP rights for Defence Purposes is required (for example, if the Commonwealth will be funding the development of existing IP or the creation of new IP), or the Contractor will be provided with TD or Software as GFM, use of the ASDEFCON (Complex Materiel) Volume 2 template should be considered or appropriate clauses from that template should be included.

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

* + 1. Nothing in this Deed or under any Contract affects the ownership of Intellectual Property (IP), except as expressly provided for in this clause 5.
    2. All IP created under this Deed or under any Contract in respect of TD, Software or Contract Material is assigned to the Contractor (or its nominee) immediately upon its creation.
  1. TD and Software (Core)
     1. This clause 5.2 applies to all TD and Software delivered or required to be delivered to the Commonwealth or any other person under this Deed or under any Contract, other than Commercial TD or Commercial Software to which clause 5.3 applies.
     2. The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 5.2 applies, to Use the TD or Software for any Defence Purpose, and to grant a sublicence to:
        1. a Commonwealth Service Provider to Use the TD or Software to enable it to perform its obligations, functions or duties to the Commonwealth;
        2. any person to Use the TD or Software, and to grant a further sublicence to Use the TD or Software, for:
           1. installing, configuring, operating, maintaining, removing, uninstalling or disposing of the Supplies, integrating the Supplies with other systems or rectifying defects or undertaking training in relation to the Supplies; or
           2. any other purpose, subject to any restrictions specified in the Technical Data and Software Rights (TDSR) Schedule; or
        3. any person for a purpose referred to in clause 10.4.3.
  2. Commercial TD and Commercial Software (Core)
     1. The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial TD and all Commercial Software delivered or required to be delivered to the Commonwealth or any other person under this Deed or under any Contract, on the best commercial terms available to the Contractor.
     2. The Contractor shall ensure that any licence granted to the Commonwealth in respect of Commercial TD and Commercial Software under this clause 5.3 does not require the Commonwealth to pay a Royalty or other fee (not otherwise included in the Contract Price) unless the Commonwealth has agreed in writing to the payment.
  3. Contract Material (Core)
     1. The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material to Use the Contract Material for any Defence Purpose, and to grant a sublicence to:
        1. a Commonwealth Service Provider to Use the Contract Material to enable it to perform its obligations, functions or duties to the Commonwealth;
        2. any person to Use the Contract Material, or to grant a further sublicence to Contract Material, for a Defence Purpose; and
        3. any person for a purpose referred to in clause 10.4.1.
  4. No Commercialisation (Core)
     1. A Licence or sublicence granted in accordance with this clause 5 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the TD, Software or Contract Material.
     2. For the avoidance of doubt, clause 5.5.1 does not prevent the Commonwealth from granting a sublicence in accordance with the rights granted in this clause 5 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.
  5. TDSR Schedule (Core)
     1. The Contractor shall take all reasonable steps (including by submitting a proposal to change a Deed or a Contract in accordance with clause 10.1) to ensure the TDSR Schedule is up to date and contains an accurate description of all restrictions applicable to the Commonwealth’s rights in respect of TD or Software, delivered or required to be delivered under the Contract.
  6. TD and Software required to be delivered (Core)
     1. The Contractor shall deliver all TD and Software required to be delivered under this Deed or under any Contract to the recipients at the times and locations, and in the manner, specified in this Deed or under any Contract.
     2. If the time, location or manner of delivery of any item of TD or Software required to be delivered under the Contract is not specified in this Deed or under any Contract, the Contractor shall deliver the relevant item in accordance with a notice given by the Commonwealth.
  7. Markings (Core)
     1. Where markings are used by the Contractor or a Subcontractor in relation to TD, Software or Contract Material, the Contractor:
        1. shall ensure that those markings accurately reflect the rights and obligations of the Commonwealth, the Contractor or any other person; and
        2. acknowledges that the markings are not determinative as to the rights and obligations of the parties.
  8. TD and Software Warranties (Core)
     1. The Contractor warrants and shall ensure that:
        1. the TD and Software delivered under any Contract shall include all TD and Software necessary to enable:
           1. the relevant requirements of the Specification to be satisfied; and
           2. the Commonwealth to use and support the Supplies for the purposes contemplated under the Contract;
        2. the rights granted to the Commonwealth in accordance with this clause 5 will not prevent the Supplies from being used and supported for the purposes contemplated under this Deed or under any Contract;
        3. all Software delivered to the Commonwealth under this Deed or under any Contract is free from Malware at the time of delivery to the Commonwealth; and
        4. no Malware will be installed on the Supplies or any other Commonwealth system as a result of an act or omission of any of the Contractor Personnel.
  9. Intellectual Property Warranties (Core)
     1. The Contractor warrants and shall ensure that, in respect of all IP licensed to the Commonwealth under or in connection with this Contract, at all times:
        1. the relevant licensor has the right, title or authority to license, and has been made aware of, the rights granted in respect of IP under this clause 5; and
        2. as at the time of delivery and after making diligent enquiries, the Contractor has no notice of any challenge, claim or proceeding in respect of any such IP.
     2. The Contractor shall notify the Commonwealth if it becomes aware of any challenge, claim or proceeding referred to in clause 5.10.1 arising in respect of any IP licensed to the Commonwealth under or in connection with this Contract.
  10. Patents, Registrable Designs and Circuit Layouts (Core)
      1. The Contractor warrants and shall ensure that a licence is granted or obtained under this Deed or under any Contract for the Commonwealth to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use and support the Supplies for the purposes contemplated under this Deed or under any Contract.

1. DELIVERY, ACCEPTANCE AND OWNERSHIP
   1. Delivery (Core)
      1. The Contractor shall deliver the Supplies to the delivery point specified in any Contract, and in accordance with the Deed and any Contract, including the Price and Delivery Schedule at Attachment A.
   2. Acceptance (Core)
      1. The Contractor shall, in accordance with Attachment A (including the delivery points and dates specified in that attachment), offer to the Commonwealth Representative, Supplies for Acceptance that conform with the requirements of the Deed and any Contract.
      2. The Contractor shall, when offering the Supplies for Acceptance;
         1. complete and present a signed Supplies Acceptance Certificate, certifying that the Supplies listed on the Supplies Acceptance Certificate conform with the requirements of the Deed and any Contract; and
         2. provide any other supporting evidence required by the Authorised Officer.
      3. The Authorised Officer shall, within 15 Working Days after an delivery of Supplies for Acceptance:
         1. accept the Supplies by signing the Supplies Acceptance Certificate; or
         2. reject the Supplies, in which case the Authorised Officer shall notify the Contractor in writing of the reasons for the rejection and the extent of the non-conformance.
      4. The Contractor acknowledges and agrees that:
         1. the specification of the requirements for the Supplies in any Contract is the result of resource-intensive Commonwealth definition, approval and procurement processes;
         2. the Commonwealth has relied on the Contractor’s representations about time (including as reflected in any Contract);
         3. the Commonwealth has determined that any Contract is value for money on the basis that full Acceptance of all Supplies is achieved with no delay; and
         4. it is reasonable that the Commonwealth at all times during the period of the Deed and any Contract has current knowledge and is advised by the Contractor of:
            1. progress under any Contract;
            2. risks to achievement of Acceptance including potential minor omissions and defects;
            3. any other potential or actual non-compliance with the Deed or any Contract;
            4. risk management by the Contractor including of emerging risks; and
            5. any potential delay in meeting any timing obligation in the Deed or any Contract, for any reason, and whether the delay was foreseeable or has been previously identified.
      5. The Contractor shall:
         1. proactively ensure that the Commonwealth is kept informed of matters relevant to the issues set out in clause 6.2.4, using the communication channels and reporting processes in the Deed and any Contract; and
         2. comply with any directions by the Commonwealth or the exercise of any other Commonwealth powers under or in relation to the Deed or any Contract in dealing with other matters.
      6. If the Commonwealth agrees that Acceptance may be achieved despite any minor omissions or defects or other non-compliance, the Commonwealth may, after consultation with the Contractor:
         1. determine a revised Contract Price reflecting the reduction in value for money of the non-complying Supplies (**‘Reduction Amount’**);
         2. direct the Contractor to provide a Application for a Deviation in accordance with Attachment J that is consistent with this clause; and
         3. exercise its rights under clause 12.4 in respect of the Reduction Amount.
      7. The Authorised Officer may require the Contractor to retake possession of any item of Supplies within five Working Days when a notice rejecting the Supplies is issued under clause 6.2.3b. Repossession of Supplies shall not affect the obligation of the Contractor to provide conforming Supplies.
      8. The Contractor shall bear all costs associated with replacing or rectifying rejected Supplies and of complying with the directions of the Authorised Officer.
      9. Any action of the Contractor in correcting or replacing the Supplies and in complying with the directions of the Authorised Officer under this clause 6.2 shall not entitle the Contractor to claim postponement of the date of delivery of the Supplies, or relieve the Contractor from performing its obligations under any Contract.
   3. Ownership and Risk (Core)
      1. Subject to clause 4, ownership of Supplies shall pass to the Commonwealth upon payment of a claim relating to those Supplies in accordance with clause 7.2.
      2. The Contractor shall ensure that, at the time title of any Supplies passes to the Commonwealth, those Supplies shall be free of any registered or unregistered charge, lien, mortgage or other encumbrance.
      3. Risk of loss of or damage to the Supplies resides with the Contractor until the Supplies have been delivered to the Commonwealth in accordance with the Deed and any Contract.
      4. If the Authorised Officer rejects Supplies as not conforming to the requirements of any Contract, or if the Contractor retakes possession of the Supplies in accordance with any Contract, risk of loss of, or damage to, those Supplies shall revert to the Contractor on repossession or five Working Days after issue of a notice under clause 6.2.7, whichever is earlier.
2. PRICE AND PAYMENT
   1. Price and Price Basis (Core)
      1. The Contract Price and Unit Prices, subject to clauses 7.4, 7.5 and 10.1, are unalterable.
      2. The Contract Price will be as set out in the Official Order, and is payable in accordance with the Deed and the relevant Contract.
   2. Payment (Core)

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

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

* 5 days, where the Commonwealth and the Contractor both have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or

20 days where the PEPPOL framework does not apply.

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

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

* + 1. The Contractor shall submit a claim for payment in accordance with clause 7.3.
    2. On receipt of a claim for payment the Authorised Officer shall either:
       1. Approve the claim if it is submitted in accordance with clause 7.3.2 and the Commonwealth has Accepted the Supplies under clause 6.2.3a; or
       2. reject the claim if it is not submitted in accordance with clause 7.3.2 or the Commonwealth has rejected the Supplies under clause 6.2.3b.

Note to tenderers: The option selected below will depend on the tenderer’s response to clause 1.5 of Annex C to the Conditions of Tender.

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| Option A: For when the use of the PEPPOL framework has been agreed by the Commonwealth and the Contractor.   * + 1. The Commonwealth and the Contractor shall use electronic invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework for the purposes of the delivery and receipt of payment claims under the Contract..     2. When a claim is Approved under clause7.2.2a, the Commonwealth shall make payment within 5 days of Approval of the claim. |

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| Option B: For when the use of the PEPPOL framework has not been agreed by the Commonwealth and the Contractor.   * + 1. When a claim is Approved under clause 7.2.2a, the Commonwealth shall make payment within 20 days of Approval of the claim. |

* + 1. If the Authorised Officer rejects the claim under clause 7.2.2b, the Authorised Officer shall, within 10 Working Days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.
    2. Upon receipt of a notice issued pursuant to clause 7.2.6, the Contractor shall promptly take all necessary steps to make the claim for payment conform to the requirements of the Deed and the relevant Contract and shall submit a revised claim to the Authorised Officer when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.
  1. Claims for Payment (Core)
     1. The Contractor shall be entitled to submit claims for payment in accordance with the Deed and the relevant Contract.
     2. All claims for payment submitted by the Contractor shall:
        1. subject to clause 6.2.6, be correctly addressed and calculated in accordance with the Deed and the relevant Contract and meet the requirements of the relevant Contract;
        2. be accompanied by the Supplies Acceptance Certificate(s) at Attachment B signed by the Contractor that relate to the Supplies listed in the claim for payment;
        3. be in the form of a valid tax invoice in accordance with clause 7.6;
        4. contain the following information:
           1. the title of the Supplies and the name of the Contractor’s Representative;
           2. the name and phone number of the Authorised Officer;
           3. the Official Order number and purchase order number;
           4. the date and, task item; and
           5. the amount of the claim; and
        5. be accompanied by any documentation requested by the Authorised Officer for the purposes of clause 6.2 or in order to establish that the claim is in accordance with the Deed and the relevant Contract.
     3. All claims for payment are to be submitted to the Authorised Officer in accordance with clause 2.2.
  2. Adjustments (Core)
     1. From the second anniversary of the Effective Date specified in the Details Schedule, the Unit Prices shall be subject to annual adjustments to reflect changes in the cost of labour and materials in accordance with the Adjustment Formula at Attachment D.
     2. The Contractor shall submit a proposed change to the Deed to adjust the Unit Prices in accordance with Attachment D no earlier than 30 days prior to, and no later than 30 days after, the Adjustment Date. If the proposed change:
        1. is determined by the Commonwealth as being in accordance with the Deed, the Commonwealth shall issue an amendment to the Deed pursuant to clause 10.1 to amend the Unit Prices; or
        2. is determined by the Commonwealth as not being in accordance with the Deed, the Commonwealth shall make any adjustments to the change proposed by the Contractor as the Commonwealth thinks necessary and shall issue an amendment to the Deed pursuant to clause 10.1 to amend the Unit Prices.
     3. Subject to clause 7.4.2, the adjusted price or payment amount shall apply on and from the applicable Adjustment Date. However, unless stated otherwise in an Official Order, the Adjustment Formula at Attachment D shall not be applied to the Official Order.
  3. Adjustments for Option to Extend (Core)
     1. If the Commonwealth exercises its option to extend the Term pursuant to clause 1.3, then the Unit Prices shall be subject to adjustment in accordance with the Adjustment Formula at Attachment D on the Expiry Date specified in the Details Schedule.
  4. Taxes and Duties (Core)
     1. All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Deed or any Contract shall be met by the Contractor and shall be included within the Contract Price.
     2. The Contract Price set out in the Official Order includes GST for Supplies to be delivered under any Contract which are taxable supplies within the meaning of the GST Act.
     3. The Contractor shall submit each claim for payment under this clause 7 in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.
     4. If the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
     5. If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Contractor under or in connection with the Deed or any Contract, the Commonwealth shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
     6. If an amount calculated in accordance with clause 7.6.5 is to the credit of the Commonwealth, the amount is a debt due to the Commonwealth for the purposes of clause 12.4.
  5. Late Payments (RFT Core)

Note to tenderers: This clause will only be used if any Official Orders entered into under standing offer arrangements are valued up to and including $1 million (GST inclusive).

* + 1. If payment of an amount due to the Contractor under a Contract is made late, the Commonwealth shall pay interest on the unpaid amount, whether or not the Contractor has submitted a separate invoice for the interest.
    2. Interest payable by the Commonwealth under this clause 7.7 shall be calculated in accordance with the following formula:

Interest payment = .

Where:

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

"P" means the amount of the late payment.

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

* + 1. Interest shall only be payable in accordance with this clause 7.7 if the interest amount exceeds A$100.
  1. Cost Principles (Core)
     1. Without in any way affecting or overriding the other terms of the Deed or any Contract, the Commonwealth may apply the Defence Cost Principles when considering any:

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| Option: For use when Defence Cost Principles are applied  Note to drafters: Use unless not required as per cl 2.31. of the Defence Cost Principles   * + - 1. price for any change proposal to the Deed or any Contract under clause 10.1 or |

* + - 1. claim for costs if the Deed or any Contract is terminated.

1. INSURANCE AND LIABILITY
   1. Indemnity (Core)
      1. The Contractor shall indemnify the Commonwealth and the Commonwealth Personnel against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel. The Contractor’s liability to indemnify the Commonwealth shall be reduced proportionally to the extent that any unlawful or negligent act or omission on the part of the Commonwealth or any person through whom the Commonwealth is acting (but not including the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel) contributed to the liability, loss, damage, costs or expenses.
   2. Intellectual Property Indemnity (Core)
      1. The Contractor shall indemnify the Commonwealth, Commonwealth Personnel, licensees or sub-licensees 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 which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
         1. infringement or alleged infringement of that third party’s IP rights including Moral Rights when the infringement or alleged infringement arises out of any activity permitted under any licence or assignmentreferred to in clause 4 or otherwise under the Deed or any Contract; or
         2. breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission on the part of the Contractor or any Contractor Personnel, Subcontractors or Subcontractor Personnel (whether or not such act or omission constitutes a breach of the Deed or any Contract).
      2. For the purposes of this clause 8.2, ‘infringement’ includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.
   3. Limitation of Liability (Optional)

Note to drafters: A liability risk assessment is to be undertaken by the Commonwealth in accordance with the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at <http://drnet.defence.gov.au/casg/commercial/UndertakingProcurementinDefence/Pages/Liability-Risk-Management.aspx> The liability risk assessment provides the basis for determining the liability caps in this clause 8.3 and the insurance requirements in clause 8.4.

Note to tenderers: The liability caps were determined by the Commonwealth based on a liability risk assessment conducted in accordance with the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:

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

* + 1. Subject to clause 8.3.2, the liability of the Contractor to the Commonwealth arising out of the Contractor’s performance of the Deed and any Contract will be limited to the amounts specified in the Details Schedule as follows:
       1. for liability for obligations and warranties under clause 9, in aggregate to the amount specified in the Details Schedule
       2. for loss of, or damage to, the Supplies, in aggregate to the amount specified in the Details Schedule;
       3. for loss of, or damage to, Defence property, including CMCA, in aggregate to the amount specified in the Details Schedule; and
       4. for a breach of Contract or negligent act or omission not mentioned in clauses 8.3.1a to 8.3.1c in aggregate to the amount specified in the Details Schedule.
    2. The limitation in clause 8.3.1 do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:
       1. personal injury and death;
       2. loss of, or damage to, third party property or Commonwealth property (other than Defence property);
       3. breach of IP rights, confidentiality, privacy or security obligations;
       4. fraud or Wilful Default;
       5. unlawful (not including breach of Deed or any Contract) or illegal acts; or
       6. the IP indemnity provided by the Contractor under clause 8.2.
    3. To avoid doubt if more than one limitation specified in clauses 8.3.1a to 8.3.1d is capable of applying to a particular liability, and the cap under one limitation is reached, the Commonwealth may recover from the Contractor for the remainder of the liability under the other limitation up to the cap applicable to the other limitation.
  1. Insurance (Core)

Note to drafters: This clause is a shortened version of the long form insurance clause contained in the ASDEFCON Strategic Materiel and Complex Materiel Volume 2 templates. If the limit of indemnity for any one of the required liability, transit or contract works insurance policies in this clause meets (or exceeds) the monetary threshold nominated in DMI(PROC) 13-0-004 (ie $25m) or any type of aviation or marine insurance policy is required drafters should use the long form clause or consult with the ACIP Management Team about tailoring this short form clause.

Drafters are to tailor this clause by selecting only those insurance policies actually required for the draft Deed and by inserting the required limit of indemnity for the relevant insurances. (Note: the LRA provides the basis for determining the insurance requirements). As a guide, insurance policy indemnity limits should be based on the Maximum Probable Loss (MPL) determined by the LRA. The MPL represents the financial consequence of a risk event occurring after taking into account any risk treatments that mitigate consequence – it is NOT to be discounted by multiplying consequence x likelihood.

The ACIP Initiative applies to CASG procurements in accordance with [CASG Policy (COMM) 002 - Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative](https://objective/id:AB10851747). Drafters should refer to the ASDEFCON Insurance Handbook for guidance to assist with understanding and tailoring this clause. In accordance with paragraphs 23 to 26 of CASG Policy (COMM) 002, material changes to this clause must be approved by the ACIP Management Team at [ACIP.ManagementTeam@defence.gov.au](mailto:ACIP.ManagementTeam@defence.gov.au). Information on the ACIP Initiative is available at: <http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-ACIP-Initiative.aspx>. For non-CASG procurements, drafters may seek approval to apply the ACIP Initiative from the [ACIP.ManagementTeam@defence.gov.au](mailto:ACIP.ManagementTeam@defence.gov.au).

Drafters using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, must delete the Note to tenderers below and also delete clause 8.4.15 and its associated Note to tenderers.

Note to tenderers: The operation of clause 8.4 will vary depending on whether the Contractor has Approved Contractor Insurance Program (ACIP) status and, where a Contractor has ACIP status, to the extent any of the policies required by clause 8.4 are within the Contractor’s ACIP.

As per clause 8.4.15, for Contractors with ACIP status, the Contractor will be deemed compliant with relevant requirements of this clause where the policy is within the scope of the Contractor’s ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at: <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/acip-initiative>.

* + 1. The Contractor shall effect and maintain (or be insured under) the insurances for the times and in the manner specified in this clause 8.4, except to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 8.4.
    2. The Contractor shall use its reasonable endeavours to ensure that its Subcontractors are insured as required by this clause 8.4, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Contractor.

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| Option: For use if workers compensation insurance is required.   * + 1. **(workers compensation)** The Contractor shall effect and maintain workers compensation insurance or registrations as required by law, in respect of the Contractor's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Deed or any Contract. |

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| Option: For use if public and/or products liability insurance is required.   * + 1. (**public and products liability**) The Contractor shall effect and maintain public and products liability insurance on an occurrence basis with a limit of indemnity of not less than:        1. the amount specified in the Details Schedule for each and every occurrence for public liability claims; and        2. the amount specified in the Details Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period for products liability claims,   which covers the Contractor and Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Deed or any Contract by the Contractor or Contractor Personnel, Subcontractors or Subcontractor Personnel. [**The following sentence is optional and should be used where the acquired items will not be used outside of Australia.**] This insurance shall have a territorial limit which includes Australia. [**The following sentence is optional and should be used where the acquired items may be used outside of Australia.**] This insurance shall have a worldwide territorial limit.  Note to drafters: Alternative clause 7.4.4 to be used where only products liability insurance is required. If this alternative clause is used, the clause number in this clause 7.4.4 will need to be automated and automatic cross-references elsewhere in clause 8.4 to this clause will need to be reinserted.  7.4.4 **(products liability)** The Contractor shall effect and maintain products liability insurance written on an occurrence basis with a limit of indemnity not less than the amount specified in the Details Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period, which covers the Contractor and Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with, the negligent manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product by the Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel. [**The following sentence is optional and should be used where the acquired items will not be used outside of Australia.**] This insurance shall have a territorial limit which includes Australia. [**The following sentence is optional and should be used where the acquired items may be used outside of Australia.**]This insurance shall have a worldwide territorial limit. |

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| Option: For use if professional indemnity insurance is required.   * + 1. (**professional indemnity**) The Contractor shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than the amount specified in the Details Schedule for any one claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity. Such insurance shall have a retroactive date of no later than the earlier of the commencement of the work under the Deed or any earlier preparatory work by the Contractor. [Such insurance shall also:   Note to drafters: Paragraphs a and b are optional depending on the services and risks. Where a or b is selected, c should also be included.   * + - 1. extend to cover claims related to software and IT risks;       2. extend to cover claims for unintentional breaches of IP rights; and       3. have worldwide territorial and jurisdictional limits.] |

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| Option: For use if property insurance is required.   * + 1. (**property**) The Contractor shall effect and maintain all risks property insurance covering:        1. the tangible Supplies unless and to the extent that the Commonwealth has expressly retained the risk of such property;        2. GFE and any other property of the Commonwealth in the care, custody or control of the Contractor or its Subcontractors unless and to the extent that the Commonwealth has expressly retained the risk of such property; and        3. all other property, plant and equipment in the care, custody or control of the Contractor material to the Contractor's ability to perform its obligations under Deed or any Contract,   against the risks of loss, damage or destruction by all commercially insurable risks, for the full replacement or reinstatement value of such insured property. |

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| Option: For use if transit insurance is required.   * + 1. (**transit**) The Contractor shall effect and maintain insurance covering any tangible property referred to in clause 8.4.6, against the risks of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transit and during loading or unloading and storage during transit where such transits are at the risk of the Contractor. |

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| Option: For use if motor vehicle insurance is required.   * + 1. (**motor vehicle**) The Contractor shall effect and maintain:        1. compulsory third party motor vehicle liability insurance as required by law; and        2. motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each and every occurrence covering:           1. third party property loss or damage arising out of the use by the Contractor and Contractor Personnel of any registered or unregistered plant or vehicles; and           2. third party bodily injury, disease, illness or death arising out of the use by the Contractor or Contractor Personnel of any unregistered plant or vehicles and, any registered vehicles not required to be insured under compulsory third party insurance in a foreign jurisdiction,   in connection with the work under the Deed or any Contract by the Contractor or Contractor Personnel, Subcontractors or Subcontractor Personnel. |

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| Option: For use if contract works insurance is required.  Note to drafters: ‘Construction works’, ‘site’ and ‘defects correction period’ are in square brackets in case there is a more appropriate defined or undefined term.   * + 1. (**contract works**) The Contractor shall effect and maintain all risks insurance covering the whole of the [construction works] (including any temporary works), plant and equipment and any other property on [site] (including while in storage off [site] and while in transit to or from the [site]) for use in performing or incorporation into the [construction works] against the risks of loss, damage or destruction by all commercially insurable risks, for the full replacement or reinstatement value of such insured property. |

* + 1. The insurances and registrations referred to in:
       1. the following clauses shall be effected before the Contractor commences work under the Deed, and thereafter be maintained until all work under the Deed and any Contract is completed [**include the following words in brackets only if contract works insurance has been selected**] (and all applicable [defects corrections periods] in respect of any works have expired):
          1. clause 8.4.3 (workers compensation); and
          2. clause 8.4.6 (property);
       2. clause 8.4.4 (public and products liability [or products liability]) shall be effected before the Contractor commences work under the Deed, and thereafter be maintained until all work under the Deed and any Contract is completed [**include the rest of this sentence only if the products supplied have a life which exceeds the contract period**][and, in respect of product liability for [insert period sufficient to cover the life of the product if it extends beyond the Contract term or, where this is commercially too long, some reasonable period eg 7/10] years following completion of the work under any Contract];
       3. clause 8.4.5 (professional indemnity) shall be effected before the Contractor commences work under the Deed, and thereafter be maintained until the earlier of:
          1. [7/10] years following completion of the work under the Deed and any Contract; or
          2. [7/10] years following an earlier termination of the Deed and all Contracts extant at the date of termination of the Deed;
       4. clause 8.4.7 (transit) shall be effected on or before the start of each conveyance and maintained until the end of each conveyance by delivery at the [site];
       5. clauses 8.4.8 (motor vehicle) shall be effected on or before the date the plant or vehicle is used in connection with the work under the Deed or any Contract and maintained until such plant or vehicle ceases to be so used; and
       6. clause 8.4.9 (contract works) shall be effected on or before the [construction works] commence and maintained until the expiry of any [defects correction period] in relation to the [construction works] to which the insurance relates.
    2. To the extent that the Contractor's insurances and registrations required by clause 8.4 of this Deed are in fact written on a claims made basis (notwithstanding any requirements of this Deed for such insurances to be written on an occurrence basis) then the Contractor must maintain those insurances and registrations until the earlier of:
       1. [7/10] years following completion of the work under the Deed and any Contract; or
       2. [7/10] years following an earlier termination of the Deed and all Contracts extant at the date of termination of the Deed.
    3. With the exception of statutory insurances, the insurances referred to in this clause 8.4 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably.
    4. The Contractor shall, on request, produce evidence satisfactory to the Commonwealth Representative or Authorised Officer (as applicable), acting reasonably, of the currency and terms of the insurances referred to in this clause 8.4.
    5. In respect of each insurance referred to in this clause 8.4, the Contractor shall:
       1. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Deed or any Contract, if requested to do so in writing by the Commonwealth; and
       2. do everything reasonably required by the Commonwealth to enable the Commonwealth to claim and to collect or recover monies due under any insurance policy.

Note to drafters: When using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, delete clause 8.4.15 and its associated Note to tenderers.

Note to tenderers: Clause 8.4.15 will only be included if the Contractor has an ACIP and may require amendment to only apply to those insurances to be covered by the ACIP.

* + 1. The Contractor shall be:
       1. deemed compliant with the requirements of the following clauses:
          1. clause 8.4.1;
          2. clause 8.4.3 (workers compensation);
          3. clause 8.4.4(public and products liability [or products liability]);
          4. clause 8.4.5 (professional indemnity);
          5. clause 8.4.6 (property);
          6. clause 8.4.7 (transit);
          7. clause 8.4.8 (motor vehicle);
          8. clause 8.4.9 (contract works); and
          9. clauses 8.4.10, 8.4.11 and 8.4.12; and
       2. relieved of its obligations under clauses 8.4.13 and 8.4.14,

in respect of a particular insurance listed in clause 8.4.15a for any period during which the Contractor's insurance program holds ACIP status under CASG’s centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether the Contractor’s ACIP status extends to that type of insurance). The Contractor shall advise the Commonwealth Representative within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

* + 1. In addition to any other rights the Commonwealth may have under clause 12.2, the Commonwealth reserves the right to withhold payments under the Deed or any Contract if the Contractor has failed to remedy a breach of this clause 8.4.

1. WARRANTIES
   1. Fitness for Purpose (Core)
      1. The Contractor shall ensure and warrants that any Supplies provided under any Contract shall be fit for the purpose or purposes for which Supplies of that kind would be reasonably expected to be applied by the Commonwealth.
   2. Warranty (Core)
      1. The Contractor warrants that the design, materials and workmanship in the Supplies conform with, and that the Supplies meet the requirements of any Contract.
      2. The Contractor shall remedy by repair, replacement or modification, defects in design, materials or workmanship in the Supplies if the defect is notified to the Contractor by the Authorised Officer during the Warranty Period specified in the Details Schedule.
      3. The Contractor shall remedy by repair, replacement or modification any other Supplies which are affected by the corrective actions taken by the Contractor to address a warranty claim notified to the Contractor under clause 9.2.2.
      4. The liability of the Contractor to remedy defects under the warranty provided by the Contractor under clause 9.2.1 shall not apply to the extent that the defect arises from the Commonwealth’s negligent or wilful damage of the Supplies.
      5. The Contractor, unless the Authorised Officer otherwise allows, shall meet all costs of, and incidental to, the performance of remedial work under this clause 9.2, including any packing, freight (not exceeding the freight cost between the delivery point and the Contractor’s nominated repair facility and return), disassembly and re-assembly costs.
      6. If the Contractor fails within 30 days after notification by the Authorised Officer, to rectify a defect pursuant to this clause 9.2, the Commonwealth may, without limiting the Contractor’s warranties and obligations under this clause 9, perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt due to the Commonwealth in accordance with clause 12.4.
      7. The rights and remedies provided in this clause 9.2 are in addition to, and shall not limit, any other rights of the Commonwealth under the Deed, any Contract or otherwise.
2. DEED MANAGEMENT
   1. Change to the Deed or any Contract (Core)
      1. Either party may propose a change to the Deed or any Contract.  The Deed may only be changed in writing and signed by the Commonwealth Representative and the Contractor.
      2. A Contract may only be changed in writing and signed by the Authorised Officer and the Contractor.
      3. A change to the Deed or any Contract shall take effect on the date on which the change is signed by the parties in accordance with clauses 10.1.1 and 10.1.2, or if signed on separate days, the date of the last signature.
      4. The Commonwealth Representative may issue an amendment to the Deed to incorporate any changes that have taken effect under clause 10.1.1. The amendment does not affect the legal status of the Deed change as determined under clause 10.1.1
      5. The Authorised Officer may issue an amendment to any Contract to incorporate any changes that have taken effect under clause 10.1.2. The amendment does not affect the legal status of any Contract change as determined under clause 10.1.2.
      6. The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the variation is in accordance with this clause 10.1.
   2. Measurement and Reporting (Optional)
      1. The Contractor shall provide to the Commonwealth Representative on a quarterly basis, a written report which details:
         1. all Official Orders submitted for the previous quarter;
         2. the total value of the Official Orders;
         3. any rejected Supplies and the reasons for the rejection;
         4. any failures to deliver the Supplies in accordance with the Deed or a Contract and the reasons for that failure; and
         5. **[…INSERT ADDITIONAL DETAILS REQUIRED, IF ANY…]**.
   3. Waiver (Core)
      1. Failure by either party to enforce a term of the Deed or any Contract shall not be construed as in any way affecting the enforceability of that term, or the Deed or any Contract as a whole.
   4. Confidential Information (Core)
      1. If, in connection with the Deed or any Contract, Confidential Information is provided or produced by any person, the relevant party shall ensure that any person receiving or producing the information protects the confidential nature of the information except:
         1. if disclosure of the information is required by law or statutory or portfolio duties; or
         2. to the extent that the Commonwealth would be prevented from exercising any of its IP rights under the Deed or any Contract.
      2. If it is necessary to disclose Confidential Information, provided or produced by or on behalf of the other party, to a third party, other than a legal adviser, or for a purpose within an exception listed in clause 10.4.1, the party wishing to make the disclosure shall obtain the written consent of the other party to the Deed.
      3. The Contractor shall, if required by the Commonwealth, ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel engaged in the performance of a Contract give a written undertaking in a form required by the Commonwealth prior to the disclosure of Confidential Information.
      4. The parties agree that only the Deed clauses listed in Attachment E are Confidential Information for the relevant party. The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term ‘Confidential Information’ or the Contractor’s equivalent. The marking of information as ‘Confidential Information’ or equivalent is not determinative as to whether the information is Confidential Information for the purposes of the Deed.
      5. The parties agree that any provisions of any Contract that vary or add to the COD, and that are Confidential Information to a party at the time any Contract is created, shall be listed in an attachment to any Contract in the form of Attachment E.
      6. The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
         1. demand by the Commonwealth; or
         2. the time the documents and other material are no longer required for the purposes of the Deed or any Contract.
      7. If the Commonwealth makes a demand under clause 10.4.6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then the Contractor shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
      8. The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information.
      9. Return or destruction of the documents referred to in this clause 10.4 does not release the Contractor from its obligations under the Deed or any Contract.
   5. Assignment and Novation (Core)
      1. Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Deed or any Contract.
      2. If the Contractor proposes to enter into any arrangement which will require the novation of the Deed or any Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.
      3. The Commonwealth may refuse to consent to an arrangement proposed by the Contractor under clause 10.5.2.
   6. Negation of Employment and Agency (Core)
      1. The Contractor shall not represent itself, and shall ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth
      2. The Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel shall not by virtue of the Deed or any Contract, be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.
   7. Commonwealth Access (Core)
      1. During the Term or during the performance of any Contract, the Contractor shall permit the Commonwealth Representative or any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts relevant to or impacting on the performance of work under the Deed or any Contract. The Commonwealth may copy any records or accounts for the purposes of the Deed or any Contract.
      2. Without limiting clauses 10.7.1, and 10.7.3, the Contractor acknowledges and agrees that:
         1. the Auditor-General has the power under the *Auditor-General Act* *1997* (Cth) to conduct audits (including performance audits) of the Contractor and Subcontractors in relation to the Deed and any Contract;
         2. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Deed and any Contract to any person (including a Minister) or anybody who, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract;
         3. the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 10.7.1 or 10.7.2.
      3. Without limiting the generality of clause 10.7.1 or 10.7.4, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:
         1. inspecting CMCA, attending, checking or conducting stocktakes of CMCA, including viewing and assessing the Contractor’s inventory control and stocktaking systems, or removing CMCA that are no longer required for the performance of the Contract;
         2. validating the Contractor's progress in meeting the AIC Schedule at Attachment G;
         3. investigating the reasonableness of proposed prices or costs in relation to the Deed or any Contract;
         4. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
         5. validating the Contractor's compliance with clause 5 and the TDSR Schedule;
         6. monitoring the Contractor’s WHS and environmental compliance in connection with the provision of the Supplies;
         7. assessing the financial viability of the Contractor to perform and complete any Contract; and
         8. monitoring and assessing compliance with the Commonwealth Supplier Code of Conduct in accordance with clause 11.8.1.
      4. If the Contractor enters into a Subcontract in accordance with clause 10.8, the Contractor shall ensure the Subcontracts require Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Subcontractors’ premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
      5. The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.
   8. Subcontracts (Core)
      1. The Contractor shall not Subcontract the whole of the work under the Deed or any Contract.
      2. The Contractor, by subcontracting any part of the work for any Contract or by obtaining the Commonwealth Representative’s approval of a Subcontractor, shall not be relieved of its liabilities or obligations, and shall be responsible for all Subcontractors.
      3. Without limiting the Contractor's obligations under the Contract, the Contractor shall ensure that:
         1. the requirements of clauses 3.2, 5.2.2,10.6,11.1,11.2 and 11.6, are included in all Subcontracts;
         2. each Subcontractor that requires access to any Commonwealth Premises or to security classified information is subject to the requirements of clause 10.9;
         3. the requirements of clauses 10.7, 10.9 and 10.10, are included in all Subcontracts; and
         4. the Contractor obtains rights, in each Subcontract, that are equivalent to the rights of the Commonwealth under clause 12.3.
      4. The Contractor shall not enter into a Subcontract for any Contract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
      5. The Contractor, if requested by the Commonwealth Representative, shall provide the Commonwealth Representative with names of all Subcontractors and a copy of any Subcontract, which copy need not contain prices. The Contractor acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractors’ participation in the performance of any Contract.

***Note to drafters: These clauses 10.8.6 to 10.8.10 must be included in the draft RFT when a procurement will be subject to the Payment Times Procurement Connected Policy (PT PCP). The PT PCP applies to procurements of new standing offers where the estimated value of all anticipated orders awarded under the standing offer is expected to exceed $4 million (GST inclusive). If the value of the procurement is not known, it should be assumed for the purposes of the PT PCP, that the procurement is valued above $4 million (inc GST), unless it is reasonable to assume otherwise.***

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

Note to tenderers: The Payment Times Procurement Connected Policy (PT PCP) imposes obligations on large businesses who enter into a contract with the Commonwealth to pay invoices under their new Subcontracts (up to $1 million (inc GST)) within 20 days. Late payments of invoices in scope will incur interest. Further information about the Payment Times Procurement Connected Policy is available from the Department of Treasury at https://treasury.gov.au/small-business/payment-times-procurement-connected-policy. The PT PCP complements the Government Supplier Pay on Time or Pay Interest Policy.

The following clauses will be included in the COD if:

• the Tenderer is a Reporting Entity as at the date of its tender response; and

***• the estimated value all anticipated orders awarded under the standing offer is expected to exceed $4 million (GST inclusive).***

* + 1. The Contractor shall comply with the Payment Times Procurement Connected Policy (PT PCP), including the obligation to provide and comply with a PT PCP Remediation Plan (as defined in the PT PCP) when required to do so by the PT PCP Policy Team.
    2. If the Contractor enters into a PT PCP Subcontract, the Contractor shall include in that subcontract:
       1. a requirement for the Contractor to pay the PT PCP Subcontractor:
          1. within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice provided that this does not affect any other obligation to comply with applicable legislation that provides for a shorter payment period; and
          2. subject to clause 10.8.9, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with the formula for late payments at clause 7.7;
       2. a statement that the PT PCP applies to that subcontract;
       3. a statement that the subcontractor may make a complaint to the PT PCP Policy Team in accordance with the PT PCP if there has been non‑compliance with the requirements of this clause 10.8.6;
       4. a statement that the Contractor must respond to any complaint of non-compliance made by the subcontractor under clause 10.8.7c; and
       5. a statement that, if requested by the PT PCP Policy Team, the Contractor must complete a questionnaire in the form of Appendix C to the PT PCP.
    3. If the Contractor enters into a Reporting Entity Subcontract, the Contractor:
       1. shall include in that subcontract obligations equivalent to those in clause 10.8.6; and
       2. use reasonable endeavours to include in that subcontract a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
          1. obligations equivalent to those in clause 10.8.6; and
          2. obligations equivalent to this clause 10.8.8b (such that the obligations in this clause 10.8.8b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
    4. The Contractor is not required to pay interest in accordance with clause 10.8.7a(ii) if either:
       1. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
       2. the amount of the interest that would otherwise be payable is less than $100 (inc GST).
    5. The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clauses 10.8.6 to 10.8.9, or the associated payment provisions of a PT PCP Subcontract, the Contractor shall:
       1. not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
       2. cooperate in good faith with the PT PCP Policy Team in connection with any investigation or inquiry and any attempt to resolve the complaint.
  1. Defence Security (Core)

Note to drafters: Where the procurement involves weapons or explosive ordnance, drafters must obtain the DSVS’s approval for the security-related aspects of the request documentation prior to release.

* + 1. If the Contractor requires access to any Commonwealth Premises under the control or responsibility of Defence, the Contractor shall:
       1. comply with any security requirements (including those contained in the DSPF) notified to the Contractor by the Commonwealth Representative from time to time; and
       2. ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel are aware of and comply with the Commonwealth's security requirements.
    2. The Contractor shall:
       1. ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
       2. promptly notify the Commonwealth Representative of any changes to circumstances which may affect the Contractor's capacity to provide the Supplies in accordance with the Commonwealth's security requirements; and
       3. provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.

Note to drafters: For further information on personnel security clearances and types of accreditation, refer to Principles 23, 40 and 73 of the DSPF. Facility accreditations will be required for certain Business Impact Levels. For information on the types of Business Impact Levels and required accreditations, refer to the Australian Government’s Protective Security Principles Framework at:

<https://www.protectivesecurity.gov.au/physical/physical-security-entity-resources/Pages/default.aspx>

or contact the relevant Regional DSVS Office.

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

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

<https://www.protectivesecurity.gov.au/physical/physical-security-entity-resources/Pages/default.aspx>.

* + 1. The security classification of the information and assets accessible to the Contractor and work to be performed under the Deed will be up to and including the level specified in the Details Schedule. The Contractor shall:
       1. comply with the classification and protection of official information requirements of Principle 10 of the DSPF; and
       2. ensure that all required personnel (if any) possess a personnel security clearance at the level specified in the Details Schedule, and comply with the requirements and procedures of Principle 40 of the DSPF.

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

• a contractor is working on classified information or assets, storing or transporting Defence weapons or explosive ordnance, providing security services for Defence bases and facilities;

• the procurement involves weapons or explosive ordnance; or

• as a result of a Defence business requirement..

For further assistance and guidance in relation to determining whether DISP membership is required, refer to DISP Factsheet here:

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

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

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| Option A: If the Contractor will require DISP membership in accordance with Control 16.1 of the DSPF.   * + 1. The Contractor shall obtain and maintain all elements of DISP membership at the levels specified in the Details Schedule (or an equivalent international agreement or arrangement) in accordance with Control 16.1 of the DSPF for the purposes of the Deed. |

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| Option B: If the Contractor will not require DISP membership in accordance with Control 16.1 of the DSPF.   * + 1. The Contractor is not required to hold DISP membership within the meaning of Control 16.1 of the DSPF for the purposes of the Deed. |

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

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

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

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| Option: If work is to be performed overseas and will involve security classified information and/or assets (as identified in the Details Schedule).   * + 1. Where work under the Contract is performed overseas, the Contractor shall hold a Facility Security Clearance at the relevant level verified by DS&VS through a bilateral security instrument in accordance with Principle 16 of the DSPF. |

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| Option: For when the procurement involves classified information or security protected assets (as identified in the Details Schedule).   * + 1. The Contractor shall classify all information in its possession relating to the performance of the Deed or any Contract according to the Security Classification and Categorisation Guide in Attachment I and shall ensure that such information is safeguarded and protected according to its level of security classification. |

* + 1. With respect to security classified information, the Contractor shall:
       1. ensure that no security classified information furnished or generated under the Deed or any Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative;
       2. promptly report to the Commonwealth Representative any security incident, as defined by the DSPF, including instances in which it is known or suspected that security classified information furnished or generated under the Deed or any Contract has been lost or disclosed to unauthorised parties, including a representative of another country; and
       3. ensure that all security classified information transmitted between the parties or a party and a Subcontractor in Australia, whether generated in Australia or overseas, shall be subject to the terms of Principle 71 of the DSPF.

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

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| Option: For when COMSEC material is transmitted in Australia (as identified in the Details Schedule).   * + 1. Where COMSEC materiel is transmitted in Australia, the Contractor shall ensure that:        1. without limiting clause 10.9.8c, all COMSEC material transmitted between the parties or a party and a Subcontractor, in Australia shall, in addition to the terms of clause 10.9.8c, be subject to the special security provisions of Principle 13 of the DSPF; and        2. all security classified information transmitted between the parties or a party and a Subcontractor located overseas whether generated in Australia or by another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country. |

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

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| Option: For when COMSEC material is transmitted overseas (as identified in the Details Schedule).   * + 1. Where COMSEC materiel is transmitted overseas, the Contractor shall ensure that:        1. all COMSEC material transmitted between the parties or a party and a Subcontractor located overseas shall be subject to approval in the first instance by the Director ASD in respect of Australian COMSEC material and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries.        2. once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director DSD and to any bilateral security instrument between Australia and the overseas country. |

* + 1. If there has been a breach by the Contractor, Contractor Personnel a Subcontractor, or any of Subcontractor Personnel, of clause 10.9, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 12.2.1.
  1. Conflict of Interest (Core)
     1. The Contractor:
        1. warrants that, to the best of its knowledge after making diligent inquiries at the Effective Date specified in the Details Schedule, no conflict of interest exists or is likely to arise in the performance of its obligations under the Deed or any Contract by itself or by any Contractor Personnel, Subcontractors or Subcontractor Personnel; and
        2. shall promptly notify the Commonwealth in writing if such a conflict of interest arises, or appears likely to arise.
     2. Within five Working Days after giving notice under clause 10.10.1, the Contractor shall notify the Commonwealth in writing of the steps the Contractor will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth.
     3. If the Contractor fails to notify the Commonwealth in accordance with clauses 10.10.1 or 10.10.2 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate the Deed and any Contract in accordance with clause 12.2.
  2. Post Defence Separation Employment (Core)
     1. Except with the prior written Approval of the Commonwealth Representative, the Contractor shall not permit any Defence Personnel or Defence Service Providers who, at any time during the preceding 12 month period was engaged or involved in:
        1. the preparation or management of the Deed or any Contract;
        2. the assessment or selection of the Contractor; or
        3. the planning or performance of the procurement or any activity relevant or related to the Deed or any Contract,

to perform or contribute to the performance of the Deed or any Contract.

* + 1. To avoid doubt, the 12 month period referred to in clause 10.11.1 applies from the date which is 12 months before the date on which the Contractor proposes that the person start performing or contributing to the performance of the Deed or any Contract.
    2. The Commonwealth Representative shall not unreasonably withhold approval of a person under clause 10.11.2 and shall consider:
       1. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
       2. any information provided by the Contractor about the character and duration of the services proposed to be performed by the person under the Deed or any Contract;
       3. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Deed or any Contract in the manner proposed under 10.11.3b, and the arrangements which the Contractor proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
       4. any information provided by the Contractor concerning any significant effect that withholding approval will have on the person’s employment or remuneration opportunities or the performance of the Deed or any Contract; and
       5. the policy requirements set out in DI ADMINPOL Annex C AG5 and the *Integrity Policy Manual*, as applicable.

1. POLICY AND LAW
   1. Governing Law (Core)
      1. The laws of the jurisdiction specified in the Details Schedule shall apply to the Deed and any Contract. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed or any Contract.
      2. The Contractor shall, in the performance of the Deed or any Contract, comply with and ensure Contractor Personnel, Subcontractors and Subcontractor Personnel comply with, the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.
      3. The Contractor shall provide to the Commonwealth Representative within 10 Working Days after a request by the Commonwealth written confirmation that, to the best of the Contractor’s knowledge and based on reasonable enquiries undertaken by the Contractor, the Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel are compliant with all laws (including foreign anti-corruption legislation) regarding the offering of unlawful inducements in connection with the performance of the Deed and any Contract and Subcontracts.
      4. The Contractor:
         1. shall take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under the Deed, any Contract or any Subcontract; and,
         2. acknowledges and agrees that its obligation in clause 11.1.4a extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by Contractor Personnel.

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

* + 1. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to the Deed or any Contract.
  1. Policy Requirements (Core)

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

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

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

<https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>; and

* + - 1. **[DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES]**.

Note to tenderers: It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. The Commonwealth Indigenous Procurement Policy is available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>

* + 1. The Contractor shall use its reasonable endeavours to increase its:
       1. purchasing from Indigenous enterprises; and
       2. employment of Indigenous Australians,

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

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| --- | --- |
| |  | | --- | | Option: For when a procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.  Note to drafters: If the procurement is at or above the relevant procurement threshold and does not meet the exemptions set out at Appendix A to the CPRs or a Defence specific exemption, the procurement will still be subject to the Workplace Gender Equality Procurement Principles and the following clauses must be used. . A list of Defence specific exemptions is found in the factsheet ‘Exemptions from Division 2 of the Commonwealth Procurement Rules’ which is available here: <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>  Note to tenderers: These clauses 11.2.3 and 11.2.4 apply only to the extent that the tenderer has identified itself as a Relevant Employer for the purposes of the Workplace Gender Equality Procurement Principles. The Workplace Gender Equality Procurement Principles will only apply to overseas based contractors to the extent that they have 100 or more employees in Australia. |  * + 1. The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act).     2. If the Contractor becomes non-compliant with the WGE Act during the period of the Contract, the Contractor shall notify the Commonwealth Representative. |

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| Option: For when a procurement is subject to the Shadow Economy Procurement Connected Policy.  Note to drafters: A procurement will be subject to the Shadow Economy Procurement Connected Policy where the procurement is conducted by open tender, subject to the CPRs and is valued at over $4 million (inc GST). In the context of a standing offer, the estimated value of the procurement is the collective total value of all potential orders under the standing offer.  Note to tenderers: The Shadow Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain from contractors satisfactory and valid STRs and to require contractors to obtain and hold STRs in respect of certain Subcontractors. Further information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at <https://treasury.gov.au/publication/p2019-t369466>.  The Contractor will be required to obtain and hold copies of satisfactory and valid STRs for any Subcontractors that the Contractor directly engages (i.e. first tier Subcontractors) where the contract value will be over $4 million (inc GST). Any STRs obtained from these Subcontractors must be provided to the Commonwealth upon request.   * + 1. The Contractor shall not enter into a Subcontract with a proposed direct Subcontractor (or agree to a novation of a direct Subcontract) if the total value of all work under the Subcontract is expected to exceed $4 million (inc GST), unless the Contractor has obtained and holds any the following STRs, as applicable to the proposed direct Subcontractor:  |  |  | | --- | --- | | **If the proposed Subcontractor to enter into the Subcontract is:** | **STRs required:** | | **(a)** | **(b)** | | * 1. a body corporate or natural person; | a satisfactory and valid STR in respect of that body corporate or person; | | * 1. a partner acting for and on behalf of a partnership; | a satisfactory and valid STR:   * + 1. on behalf of the partnership; and     2. in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract; | | * 1. a trustee acting in its capacity as trustee of a trust; | a satisfactory and valid STR in respect of the:   * + 1. trustee; and     2. the trust; | | * 1. a joint venture participant; | a satisfactory and valid STR in respect of:   * + 1. each participant in the joint venture; and     2. if the operator of the joint venture is not a participant in the joint venture, the joint venture operator; | | * 1. a member of a Consolidated Group; | a satisfactory and valid STR in respect of:   * + 1. the relevant member of the Consolidated Group; and     2. the head company in the Consolidated Group; | | * 1. a member of a GST Group; | a satisfactory and valid STR in respect of the:   * + 1. the GST Group member; and     2. the GST Group representative. |  * + 1. The Contractor shall obtain and hold additional STRs in the following circumstances within 10 Working Days of the Contractor becoming aware of the circumstances arising:  |  |  | | --- | --- | | **If the Contractor or Subcontractor is:** | **Additional STRs required:** | | **(a)** | **(b)** | | * 1. a partner acting for and on behalf of a partnership; | a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Deed or Subcontract (as applicable); | | * 1. a trustee acting in its capacity as trustee of a trust; | a satisfactory and valid STR in respect of any new trustee appointed to the trust; | | * 1. a joint venture participant; | a satisfactory and valid STR in respect of:   * + 1. any new participant in the joint venture; and     2. any new joint venture operator if the new operator is not already a participant in the joint venture; | | * 1. a member of a Consolidated Group; | a satisfactory and valid STR in respect of any new head company of the Consolidated Group; and | | * 1. a member of a GST Group; | a satisfactory and valid STR in respect of any new representative for the GST Group. |  * + 1. The Contractor shall provide the Commonwealth with copies of the STRs referred to in clause 11.2.5 or 11.2.6 within 5 Working Days after a written request by the Commonwealth.     2. For the purposes of the Contract, an STR is taken to be:        1. ***satisfactory*** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and        2. ***valid*** if the STR has not expired as at the date on which the STR is required to be held. |



* 1. Work Health and Safety (Core)
     1. The Commonwealth and the Contractor:
        1. shall, where applicable, comply with, and the Contractor shall ensure that all Subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth, the Contractor or the Subcontractors (as the case may be) and any other person who, concurrently with the Commonwealth, the Contractor or the Subcontractor (as the case may be), has a WHS duty under the WHS Legislation in relation to the same matter; and
        2. acknowledge that they have a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
        3. Commonwealth Personnel;
        4. Contractor Personnel and Subcontractor Personnel; and
        5. other persons,
        6. in connection with the Supplies or work performed under the Deed or any Contract.
     2. The Contractor represents and warrants that:
        1. it has given careful, prudent and comprehensive consideration to the WHS implications of the work to be performed by it under the Deed and any Contract; and
        2. the proposed method of performance of that work complies with, and includes a system for identifying and managing WHS risks which complies with, all applicable legislation relating to WHS including the applicable WHS Legislation.
     3. The Contractor shall:
        1. provide the Supplies in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Supplies (such as in relation to testing or auditing); and
        2. ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the Supplies for the purposes for which they are intended, and to maintain, support and develop the Supplies,

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

* + 1. Without limiting the Contractor’s obligations under the Deed or any Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Supplies or the work performed under the Deed or any Contract, provide, and shall use its reasonable endeavours to ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Contractor or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.
    2. Subject to clause 10.9 and any relevant foreign government restrictions, the Commonwealth shall provide to the Contractor in a timely manner any information or copies of documentation reasonably requested by the Contractor and held by the Commonwealth to enable the Contractor to comply with its obligations under the applicable WHS Legislation in relation to the Deed or any Contract.
    3. Where the Supplies include plant which requires registration of design under the WHS Legislation or an OHS Law (in the case of an OHS Law, as a result of a licence being granted to the ADO - see Regulation 743 of the *Work Health and Safety Regulations 2011* (Cth)), the Contractor shall:
       1. obtain the registration of design from a relevant regulator (or where this is not possible, from the ADO pursuant to a licence granted under the OHS Law) and provide this to the Commonwealth at the time the Contractor provides the Supplies to the Commonwealth;
       2. attach a data plate to the relevant item (or items) of plant with the design registration details (or in a circumstance where it is not practicable to attach the data plate to the relevant item of plant, the data plate is to be affixed in a prominent place in the vicinity of the plant), which includes:
          1. the Design Registration Number (DRN);
          2. the date of issue of the DRN; and
          3. the name of the Commonwealth, State or Territory regulator that issued the DRN; and
       3. provide maintenance documentation that details all mandatory maintenance activities and inspections required to ensure the plant is without risks to health and safety, including those required by an OHS Law or the WHS Legislation at the time the Contractor provides the Supplies to the Commonwealth.
    4. The Contractor shall not provide Supplies containing ACM and shall not take any ACM onto Commonwealth Premises in connection with providing the Supplies.

Note to drafters: Clauses 11.3.8 and 11.3.9 do not contemplate that the Contractor will use, handle (except to deliver) or store a Problematic Substance on Commonwealth Premises in relation to the work carried out under the Deed or any Contract. This template also does not contemplate that the Supplies to be procured will include a problematic source. Problematic sources are 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 Authority.

To the extent that the Contractor will use, handle (except to deliver) or store a Problematic Substance on Commonwealth Premises or where the Supplies to be procured will include problematic sources, drafters must seek advice from the WHS in Procurement Advisory Cell for the inclusion of necessary clauses.

* + 1. Unless the Commonwealth Representative otherwise agrees in writing, the Contractor shall ensure that the Supplies do not contain or emit a Problematic Substance where:
       1. the Problematic Substance may affect the health or safety of persons who may be exposed to the Problematic Substance; or
       2. a person’s health or safety may be affected by the Problematic Substance when conducting any of the activities referred to in clause 11.3.11a to 11.3.11c.
    2. Where the Commonwealth Representative agrees that the Supplies may contain a Problematic Substance, the Contractor shall ensure that:
       1. full details of the Problematic Substances are provided to the Commonwealth Representative in the format of a SDS, except where the applicable SDS exists within the Australian ChemAlert database and the Contractor identifies that SDS to the Commonwealth Representative by reference to its unique record within that database; and
       2. the Problematic Substance is correctly labelled and packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Supplies clearly identifies the nature of the substance and its associated hazards.
    3. If a Notifiable Incident occurs in connection with work carried out under the Deed or any Contract;
       1. on Commonwealth Premises;
       2. which involves Commonwealth Personnel; or
       3. which involves a Commonwealth specified system of work,

the Contractor shall:

* + - 1. immediately report the incident to the Commonwealth Representative;
      2. promptly provide the Commonwealth Representative with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
      3. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
      4. provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.
    1. The Contractor shall ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who:
       1. use the Supplies for a purpose for which they were designed or manufactured;
       2. handle or store the Supplies;
       3. carry out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which they were designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; or
       4. may be exposed to the Supplies or whose health or safety may be affected by a use or activity referred to in this clause 11.3.11a to 11.3.11c.
    2. The Contractor shall carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary to comply with clause 11.3.11.
    3. The Contractor shall provide adequate information to the Commonwealth at the time the Contractor provides the Supplies to the Commonwealth concerning:
       1. each purpose for which the Supplies were designed or manufactured;
       2. the results of any calculations, analysis, testing or examination referred to in clause 11.3.12, including any hazardous properties identified by testing; and
       3. any conditions necessary to ensure that the Supplies are without risks to health and safety when used for a purpose for which they were designed or manufactured or when carrying out any activity referred to in clauses 11.3.11a to 11.3.11c.
    4. The Contractor shall, on request, so far as is reasonably practicable, give current relevant information on the matters referred to in clause 11.3.13 to the Commonwealth.
  1. Environmental Obligations (Core)
     1. The Contractor shall perform its obligations under the Deed and any Contract in such a way that:
        1. the Commonwealth is not placed in breach of; and
        2. the Commonwealth is able to support and to make full use of the Supplies for the purposes for which they are intended without being in breach of,

any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act* *1999* (Cth).

* 1. Severability (Core)
     1. If any part of the Deed or any Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Deed or any Contract, as applicable, shall not be affected and shall be read as if that part had been severed.
  2. Privacy (Core)
     1. The Contractor shall:
        1. if it obtains Personal Information in the course of performing the Deed or any Contract, use or disclose that Personal Information only for the purposes of the Deed or that Contract subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
        2. comply with its obligations under the *Privacy Act 1988* (Cth); and
        3. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.
     2. The Contractor shall notify the Commonwealth as soon as reasonably practicable if:
        1. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 11.6, whether by the Contractor, Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Deed or any Contract; or
        2. in relation to Personal Information obtained in the course of performing the Deed or any Contract:
           1. it becomes aware that a disclosure of such Personal Information may be required by law; or
           2. it is approached by the Privacy Commissioner.
     3. The Contractor shall ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel who deal with Personal Information for the purposes of the Deed or any Contract are aware of, and comply with, this clause 11.6.
  3. Modern Slavery (Optional)



***Option: For when a potential contractor has a consolidated revenue of at least AU$100 million over its 12-month reporting period and is either an Australian entity at any time in that reporting period or a foreign entity carrying business in Australia at any time in that reporting period (as set out in the Modern Slavery Act 2018 (Cth)).***

***Note to drafters: If the procurement is subject to the Modern Slavery Act 2018 (Cth), drafters must use the model clauses to be inserted into relevant Defence procurements using the ASDEFCON Suite of Tendering and Contracting Templates, the model clauses can be found here:***

***http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.asp***x

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

***procurement.asdefcon@defence.gov.au.***

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

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

* 1. Commonwealth Supplier Code of Conduct (Core)

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

Drafters must consider the interaction and alignment of this clause with clauses 3.2, 10.4, 10.7, 10.10, 11.1, 11.2, 11.3 12.2 prior to RFT release and prior to any resultant Contract.

* + 1. The Contractor shall (and shall ensure that all Contractor Personnel) comply with the Commonwealth Supplier Code of Conduct in the performance of the Contract.
    2. The Contractor shall notify the Commonwealth Representative immediately after becoming aware of any potential or actual non-compliance with the Commonwealth Supplier Code of Conduct, including:
       1. a description of the non-compliance,
       2. the date that the non-compliance occurred, and
       3. whether any Contractor Personnel engaged in the performance of the Contract were or may have been involved in the non-compliance.
    3. If the Commonwealth considers that a potential or actual non-compliance with the Commonwealth Supplier Code of Conduct has occurred, the Commonwealth may by notice to the Contractor, without limiting any of its other rights under the Contract, require that the Contractor:
       1. provide a response to the Commonwealth Representative within 3 Working Days on whether a potential or actual non-compliance has occurred; and
       2. comply with its obligations under clause 11.8.
    4. The Commonwealth Representative may request, and the Contractor shall provide, further information on any matter relating to:
       1. the policies, frameworks, or systems the Contractor has established to monitor and assess compliance with the Commonwealth Supplier Code of Conduct;
       2. the Contractor’s compliance with the Commonwealth Supplier Code of Conduct; or
       3. an actual or potential non-compliance with the Commonwealth Supplier Code of Conduct, including its obligations under clauses 11.8.1 or 11.8.3a.

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

* + 1. The Contractor acknowledges and agrees that compliance with the Commonwealth Supplier Code of Conduct and the obligations under clause 11.8 shall not relieve the Contractor from its liabilities or other obligations under the Contract or at law.
    2. The Contractor’s performance of its obligations under this clause will be at no additional cost to the Commonwealth.
    3. If the Contractor fails to comply with the Commonwealth Supplier Code of Conduct in accordance with clause 11.8.1, the Commonwealth may give the Contractor a notice of termination for default under clause 12.2.1.

1. DISPUTES AND TERMINATION
   1. Resolution of Disputes (Core)
      1. If a dispute arising between the Commonwealth and the Contractor cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
      2. The parties shall continue to perform under the Deed and any Contract when there is a dispute.
   2. Termination for Contractor Default (Core)
      1. The Commonwealth may, in addition to any other right or remedy it may have, terminate the Deed or any Contract by notice in writing to the Contractor, if:
         1. an Insolvency Event occurs, except to the extent the exercise of a right under this clause 12.2.1a is prevented by law;
         2. the Contractor fails to obtain or maintain any Authorisation required to enable it to comply with its obligations under the Deed or any Contract, except to the extent that the failure was outside of the Contractor’s reasonable control;
         3. the Contractor commits a Default for which the Deed or any Contract provides a notice of termination for default may be given;
         4. the Contractor fails to take action to remedy a default by the Contractor of another obligation to be performed or observed under the Deed or any Contract within 10 Working Days of being given notice in writing by the Commonwealth Representative or the Authorised Officer, to do so or, if action is taken within 10 Working Days, the Contractor fails to remedy the default within the period specified in the notice;
         5. the Contractor breaches any of its obligations under clause 11.3; or

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| --- |
| Option: For when a limitation of liability is included at clause 8.3   * + - 1. the Contractor would have, except for the operation of clause 7.3, been liable for Commonwealth loss in relation to the caps provided for in clause 7.3 to an amount equal to or greater than the amount of the liability cap. |

* + 1. If the Deed or any Contract is terminated under this clause 12.2 or otherwise:
       1. the Contractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of Contractor Personnel or Subcontractors and Subcontractor Personnel, which contain or relate to any Confidential Information or which are security classified;
       2. subject to clause 12.5, the parties shall be relieved from future performance, in respect of the Deed or any Contract, without prejudice to any right of action that has accrued at the date of termination;
       3. [**subject to the liability caps in clause 7.3**], rights to recover damages, including full contractual damages, shall not be affected;
       4. the Contractor shall deliver to the Commonwealth the TD for Supplies provided prior to the date of termination, within 30 days of receipt of the notice of termination or other period agreed between the parties; and
       5. the Contractor shall return to the Commonwealth all CMCA in its possession, power or control or in the possession, power or control of Contractor Personnel or Subcontractors and Subcontractor Personnel.
    2. The Commonwealth may also terminate the Deed and any Contract by written notice if:
       1. the Contractor has persistently failed to meet its obligations under the Deed, or any Contract; or
       2. in the Commonwealth's reasonable opinion, even though any breaches may have been remedied on each occasion, the cumulative effect of these breaches is sufficient for the Commonwealth to conclude that the Contractor cannot be relied upon to provide the Supplies required by the Commonwealth and the relationship between the parties is no longer workable.
  1. Termination for Convenience (Core)
     1. In addition to any other rights it has under the Deed or any Contract, the Commonwealth may at any time terminate the Deed or any Contract by notifying the Contractor in writing.
     2. If the Commonwealth Representative issues a notice under clause 12.3.1, the Contractor shall:
        1. stop or reduce work in connection with any current Contracts in accordance with the notice;
        2. comply with any directions given to the Contractor by the Commonwealth; and
        3. mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction, including those arising from affected Subcontracts.
     3. The Commonwealth shall only be liable for:
        1. payments under the payment provisions of the Deed or Contract for work conducted before the date the termination or reduction takes effect; and
        2. any reasonable costs incurred by the Contractor that are directly attributable to the termination or reduction,

if the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative.

* + 1. The Contractor shall not be entitled to any profit anticipated on any part of the Contract terminated or reduced for convenience.
  1. Right of Commonwealth to Recover Money (Core)
     1. Without limiting the Commonwealth’s other rights or remedies under the Deed or any Contract or at law, if the Contractor owes any debt to the Commonwealth in relation to the Deed or any Contract, the Commonwealth may:
        1. deduct the amount of the debt from payment of any claim; or
        2. give the Contractor a written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.
     2. If any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor shall pay to the Commonwealth interest at the General Interest Charge Rate current at the date the payment was due for each day the payment is late.
  2. Survivorship (Core)
     1. Any provision of the Deed or any Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Deed or any Contract and any rights arising on termination or expiration shall survive, including provisions relating to Confidential Information, Privacy, Intellectual Property and the Right of Commonwealth to Recover Money, Defence Security and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Deed or any Contract.

EXECUTED AS A DEED by

SIGNED, SEALED and DELIVERED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

.................................................. . ............................................……………….

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

In the presence of:

.................................................. .............................................……………….

(signature) (print name) (date)

EXECUTED AS A DEED

SIGNED, SEALED and DELIVERED for and on behalf 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 Contractor’s execution of the Deed. The Contractor should seek its own independent legal advice on its execution of the Deed.

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