



Australian Government

Department of Defence

ASDEFCON

(Services)

Incorporating:

Conditions of Tender

Draft Conditions of Contract

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GENERAL INFORMATION FOR USERS

PURPOSE OF ASDEFCON (SERVICES)

1. *ASDEFCON (Services)* is a proforma Request for Tender (RFT) for use in engaging professional service providers, consultants and other contractors to provide services to Defence. By using a standard template for all acquisitions of services, the Department of Defence aims to minimise the cost of tendering and the duration of negotiations.
2. *ASDEFCON (Services)* is designed to be used for procurements that are both covered and non-covered and subject to, and exempt from, the Mandatory Procurement Procedures (MPPs) for the purposes of the *Commonwealth Procurement Guidelines – December 2008*. For information on whether a procurement is covered or subject to the MPPs, refer to the Defence Procurement Policy Manual (DPPM).

FORMAT OF ASDEFCON (SERVICES)

3. *ASDEFCON (Services)* contains the following sections:
 - a. Preliminary pages, including covering letter;
 - b. Part 1: conditions of tender - including annexes; and
 - c. Part 2: draft conditions of contract - including attachments.
4. The clauses, annexes and attachments constituting *ASDEFCON (Services)* have been divided into three categories, “Core”, “RFT Core” and “Optional”. Any condition within *ASDEFCON (Services)* described as:
 - a. “Core” must be included in all RFTs and Contracts;
 - b. “RFT Core” must be included in all RFTs but depending upon the tenderer’s response may not be required in the Contract; and
 - c. “Optional” must be included in an RFT where required for the particular project.

Drafters may tailor the standard “Core”, “RFT Core” and “Optional” provisions to the extent permitted at paragraph 11 below. All references to “Core”, “RFT Core” and “Optional” should be deleted prior to RFT release.

5. Within certain sections of *ASDEFCON (Services)* the drafter is required to choose from a number of “Options” which cover different situations. Where such “Options” are provided, each is contained within a box and drafters must delete all boxes and those “Options” that are not applicable before releasing the RFT. A brief note describing the circumstances in which an “Option” must be used precedes the clause.
6. *ASDEFCON (Services)* contains “Notes to drafters” and “Notes to tenderers”, which provide guidance during the preparation of the RFT and tender responses. All “Notes to drafters” should be deleted prior to release of the RFT to industry. All “Notes to tenderers” should be deleted prior to Contract signature.
7. The structure of *ASDEFCON (Services)* should be retained regardless of whether clauses have been modified or deleted or whether new clauses have been inserted. If “Optional” clauses in *ASDEFCON (Services)* are not applicable to the particular procurement, the narrative should be replaced with “Not Used” and the numbering sequence should be retained. If new clauses are added they should be included at the end of the most relevant section of the document. If new clauses must be inserted between existing clauses an alpha suffix (e.g. clause 4.1, 4.1.A.1, 4.2 etc) or equivalent regime should be used.
8. There are instances in the conditions of tender and draft conditions of contract where additional details are required prior to the release of the RFT to industry. These are marked in the document with **square brackets** as follows:

[...BRIEF INDICATION OF INFORMATION REQUIRED TO BE INSERTED PRIOR TO RFT RELEASE...]

There are other instances where relevant input will not be able to be finalised until after selection of the preferred tenderer. These are marked in the document with **curved brackets** as follows:

(...INSERT AMOUNT...)

DISSEMINATION OF ASDEFCON (SERVICES)

9. *ASDEFCON (Services)* can be downloaded and printed from the DEFWEB DMO Home page via the 'ASDEFCON suite of tendering and contracting templates' at the following address:

<http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=21622&Title=ASDEFCON%20Templates>

or from the DMO internet site by following the 'Contracting' link to the following address:

http://www.defence.gov.au/dmo/DMO/function.cfm?function_id=45

TAILORING OF ASDEFCON (SERVICES) CLAUSES

10. The aim of developing standard tendering and contract documents, such as *ASDEFCON (Services)*, is to standardise, to the maximum extent practicable, the structure and the terms and conditions used by Defence when acquiring goods and services. This has the benefit of minimising risk to Defence, reducing administrative costs for both Defence and the tenderers and allows Defence to adopt a standard portfolio approach to contracting for goods and services in line with best practice.
11. Wherever possible, the form of the template should be adhered to and project specific tailoring of *ASDEFCON (Services)* should be kept to a minimum. However, when tailoring is necessary, clauses should only be added, modified or deleted after seeking specialist advice from the applicable legal and/or procurement advisor in the first instance, or from the Commercial Innovation and Practice Help Desk (see paragraph 13). "Core" clauses must not be amended or deleted except on specialist advice.

COMMERCIAL INNOVATION AND PRACTICE HELP DESK

12. Drafters requiring contracting advice or assistance should approach their Group or Divisional contracting support areas in the first instance. If the relevant support officer is not known, drafters should contact the relevant Executive Director Contracting (EDCON) in their respective Contracting Services area. EDCON details are available in the functional directory at: <http://intranet.defence.gov.au/dmoweb/sites/PCB/comweb.asp?page=79152&Title=Functional%20Directory>. For advice regarding the ASDEFCON templates, including proposed updates, please contact the Commercial Innovation and Practice Helpdesk.
13. Contact details for the Commercial Innovation and Practice Help Desk are:
Commercial Innovation and Practice Help Desk
e-mail: commercial.innovationandpractice@defence.gov.au

CONFIGURATION MANAGEMENT OF ASDEFCON (SERVICES)

14. *ASDEFCON (Services)* is a dynamic document that will be amended on an "as required" basis to reflect changes in legislation, policy and procurement practices. Template users are welcome to suggest changes to the template using a Document Change Proposal (DCP) proforma. A copy of the proforma may be downloaded from the address specified at paragraph 9.
15. *ASDEFCON (Services)* will be placed under configuration management in accordance with approved configuration management principles.

RELEASE OF AMENDMENTS TO ASDEFCON (SERVICES)

16. Amendments to *ASDEFCON (Services)* will be released through the issue of a new version of the template. All new versions of the template will be issued on the DEFWEB and internet sites listed in paragraph 9.



Australian Government
Department of Defence

FOREWORD

ASDEFCON (Services) is designed to be used to engage consultants, professional service providers and other contractors to provide services to Defence and DMO (where this is required to be done outside of the DMOSS Panel arrangements). The template is to be used where the services to be procured are low to medium risk services which may be categorised as Complex Procurements, of short to medium duration. Where the services to be procured are low risk or low value services, which may be categorised as Simple Procurement, ASDEFCON Shortform Services should be used.

Defence and DMO maintain a process of continuous improvement to the ASDEFCON suite of tendering and contracting templates to provide a best-practice procurement environment to ensure Defence contractors are able to deliver on time, on budget and to the required quality, safety and capability. The document is intended to reduce the time and effort taken by Defence and DMO personnel and potential tenderers when tendering and contracting with Defence and DMO.

Future changes to ASDEFCON (Services) will be released through the issue of new versions of the template and Departmental Procurement Policy Instructions on an 'as required' basis. This process will ensure the template remains current with legislation, policy and commercial practices.

Suggestions for changes to the document are welcomed and should be submitted in the form of a Document Change Proposal referred to in the General Information for Users section.

I trust you find ASDEFCON (Services) useful for your contracting needs.

A handwritten signature in black ink, appearing to read 'Harry Dunstall', written over a large, faint circular watermark or background mark.

Harry Dunstall

General Manager Commercial



Australian Government
Department of Defence

[...INSERT DEFENCE GROUP...]
[...INSERT DIVISION...]
[...INSERT ADDRESS...]
[...INSERT CONTACT DETAILS...]

[...INSERT TENDERER'S ADDRESS...]

You are invited to submit a tender in response to RFT [...INSERT RFT NUMBER...] to provide [...INSERT DESCRIPTION OF SERVICES...].

[...INSERT BACKGROUND INFORMATION AND PROJECT PHASE INFORMATION...].

This RFT has been prepared using *ASDEFCON (Services)*.

Tenders must be submitted by the tender closing time specified in clause 1.12 of the conditions of tender. Any questions in relation to this RFT should be directed to the Contact Officer specified in clause 1.6 of the conditions of tender.

Option: For when classified material forms part of the RFT

The following documents forming part of this RFT are classified as follows:

[...DRAFTER TO INSERT LIST OF RELEVANT DOCUMENTS AND THEIR CLASSIFICATION PRIOR TO RFT RELEASE...].

Separate provisions for receipt of or access to classified material will be made. Application to receive or view the documents is to be made in writing to the Contact Officer specified in clause 1.6 of the conditions of tender.

Subject to the conditions of tender, the proposed schedule for evaluation and negotiation is:

[...INSERT RELEVANT DATES...].

Tenderers should note that the above schedule is subject to change at any time and is not to be relied on by tenderers.

Yours sincerely

[...INSERT RELEVANT SIGNATORY...]

[...INSERT DATE IN FULL...]

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1 GENERAL INFORMATION AND TENDER LODGMENT

1.1 General (Core)

- 1.1.1 In conducting this RFT, the Commonwealth is seeking an outcome that will:
- a. provide the Commonwealth with value for money;
 - b. meet the Commonwealth's current and future defence capability requirements;
 - c. provide significant and sustainable benefits to the Commonwealth, defence industry and the successful tenderer; and
 - d. [...INSERT SPECIFIC OBJECTIVES IF ANY...].

1.2 Interpretation of Terms (Core)

- 1.2.1 Unless a contrary intention is indicated, this Request for Tender (RFT) is interpreted in the same manner, and its terms have the same meaning, as in the draft Contract.
- 1.2.2 This RFT is an invitation to treat, and must not be construed, interpreted, or relied upon, whether expressly or by implication, as an offer capable of acceptance by any person, or as creating any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.
- 1.2.3 No binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a tenderer unless and until any resultant Contract is signed by the Commonwealth and a successful tenderer.

Note to drafters: For information on whether a procurement is subject to the Mandatory Procurement Procedures see the DPPM.

Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.

- 1.2.4 Tenderers acknowledge that the Mandatory Procurement Procedures in the CPGs apply to this RFT process.

Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.

- 1.2.5 Tenderers acknowledge that the Mandatory Procurement Procedures in the CPGs do not apply to this RFT process.

1.3 Inconsistency (Core)

- 1.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence shall be accorded to the:
- a. conditions of tender;
 - b. Annexes to the conditions of tender;
 - c. draft conditions of contract;
 - d. draft Statement of Work (SOW); and
 - e. Attachments to the draft conditions of contract, other than the SOW,
- so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

1.4 Amendment of RFT (Core)

- 1.4.1 The Commonwealth may amend this RFT upon giving tenderers timely written notice of an amendment.
- 1.4.2 If the Commonwealth amends this RFT under clause 1.4.1 after tenders have been submitted, it may seek amended tenders.
- 1.4.3 Tenderers will have no claim against the Commonwealth or its officers, employees or advisers in connection with either the exercise of, or failure to exercise the Commonwealth's rights under this clause 1.4.

1.5 Termination, Suspension or Deferral of RFT (Core)

Option A: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.

- 1.5.1 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this RFT process at any time prior to the execution of a formal written Contract. The Commonwealth must notify tenderers to this effect.

Option B: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.

- 1.5.2 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this RFT process where:
- a. it is in the public interest to do so;
 - b. no tenderer represents value for money;
 - c. no tenderer meets the Conditions of Participation, if any, at clause 3.4;
 - d. no tenderer meets the Essential Requirements, if any, at clause 3.5; or
 - e. no tenderer is fully capable of undertaking the conditions of contract, and the Commonwealth must notify tenderers to this effect.

1.6 Contact Officer for RFT Inquiries (Core)

- 1.6.1 The Contact Officer for this RFT is:
[...INSERT CONTACT OFFICER DETAILS...]
- 1.6.2 Tenderers must direct any questions regarding this RFT to the Contact Officer in writing.
- 1.6.3 Tenderers may submit questions to the Contact Officer up until five Working Days prior to the Tender Closing Time.
- 1.6.4 Any question submitted by tenderers is submitted on the basis that the Commonwealth may circulate tenderers' questions and Commonwealth answers to all other tenderers without disclosing the source of the questions or revealing Commercial-in-Confidence Information or the substance of a proposed tender.

1.7 Industry Briefing (Optional)

- 1.7.1 An industry briefing will be conducted at [...INSERT PLACE...] commencing at [...INSERT TIME...] on [...INSERT DATE...]. Representatives of prospective tenderers at the briefing will be limited to [...INSERT NUMBER...] personnel. Nominations to attend the briefing shall be forwarded in writing to the Contact Officer specified in clause 1.6 by [...INSERT TIME/DATE...]. The following details are required:
- a. tenderer's name and location; and
 - b. full name of tenderer's representatives.

Option: For when a classified industry briefing is required

- 1.7.2 Representatives of prospective tenderers shall hold a current personnel security clearance at a minimum of [...INSERT CLASSIFICATION LEVEL...] level. Prospective tenderers shall provide the following additional details for their representatives:
- a. nationality;
 - b. date and place of birth; and
 - c. current personnel security clearance and the Department which issued the clearance.

- 1.7.3 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clauses 1.4.1 and 2.4.2a. Tenderers shall not rely on a statement made at the industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the Commonwealth in writing.

1.8 Part, Joint and Alternative Tenders (Core)

- 1.8.1 The Commonwealth will not consider a joint tender for the Services.
- 1.8.2 The Commonwealth will not consider a part tender for the Services.

Option A: For when alternative tenders will not be considered

- 1.8.3 The Commonwealth will not consider an alternative tender for the Services not meeting the draft SOW.

Option B: For when alternative tenders will be considered

- 1.8.4 The Commonwealth may, at its discretion consider a tender that does not comply with the draft SOW only if the tender:
- a. proposes a solution which satisfies the functionality of the draft SOW and any identified essential requirements in the draft SOW;
 - b. is otherwise a complete tender response;
 - c. fully describes the advantages, disadvantages, limitations and capabilities of the proposed solution; and
 - d. includes sufficient information to allow comparison of the alternative tender with tenders that comply with the draft SOW.
- 1.8.5 Failure to provide the information requested in clause 1.8.4 may result in the Commonwealth not considering the alternative tender.

1.9 Alterations, Erasures or Illegibility (Core)

- 1.9.1 Any alterations or erasures made to a tender by a tenderer shall be initialled by the tenderer. Tenders containing alterations or erasures that are not initialled, or pricing or other information that is not stated clearly and legibly, may be excluded from consideration.

1.10 Unintentional Errors of Form (Core)

- 1.10.1 If the Commonwealth considers that there are unintentional errors of form in a tender, the Commonwealth may request the tenderer to correct or clarify the error but will not permit any material alteration or addition to the tender.

1.11 Copies of Tenders (Core)

- 1.11.1 The tenderer must lodge the original and [...INSERT NUMBER OF COPIES...] hard copies of the tender and any supporting documentation (such as brochures, handbooks and sample drawings). The original shall be marked as the original and each copy sequentially marked with a copy number. In the event of any discrepancy between any copy and the original, the original takes precedence.

Option: For when an electronic copy of the tender may be requested.

- 1.11.2 Tenderers shall, in addition to lodging the hard copies required by clause 1.11.1, lodge with the original tender one electronically stored copy of the tender and supporting documentation, with read only access, which is machine readable in [...INSERT FORMAT...] format. In the event of any discrepancy between any electronically stored copy and the original, the original shall take precedence.

1.12 Lodgment of Tenders (Core)

- 1.12.1 Tenders shall be lodged in accordance with the Tender Lodgment Procedures and Late Tenders policy detailed in the DPPM, on or before 12.00 noon local time of the Tender Box Location on [...INSERT DATE...] ('the Tender Closing Time') at:
[...INSERT TENDER BOX ADDRESS...] (the 'Tender Box Location').
- 1.12.2 Tenders lodged after the Tender Closing Time may be excluded from consideration in accordance with the policy set out in the DPPM. The tenderer must include [...INSERT RFT NUMBER...] on the packaging of the tender.

1.13 Preparation and Transmission of Classified Tenders (Optional)**Note to tenderers: For information on preparation and transmission of classified tenders and for access to the Defence Security Manual (DSM), tenderers should contact the Contact Officer.**

- 1.13.1 Classified content in tenders shall be avoided where possible. If this cannot be achieved, tenders containing classified content shall be prepared and transmitted as follows:
- a. for Australian tenders, in accordance with Part 2:33 of the Defence Security Manual (DSM) as amended from time to time; and
 - b. for overseas tenders, in accordance with the applicable industry security information system regulations issued by the appropriate government security authority in their country. If transmission involves transmission by diplomatic bag, the overseas tenderer shall use the diplomatic bag of its own government.

Option: For when a Security Classification and Categorisation Guide is required.

- 1.13.2 Tenderers must classify information in their tenders in accordance with the Security Classification and Categorisation Guide at Attachment F to the draft conditions of contract.

- 1.13.3 If only part of a tender contains classified content, that part may be segregated from the remainder of the tender for separate transmission. However, both parts of the tender are subject to the Tender Closing Time specified in clause 1.12. Care should therefore be taken to ensure that sufficient time is allowed for tenders to be received by the Tender Closing Time when secure means of transmission are used.

1.14 Defence Security Clearance Requirements (Core)

- 1.14.1 On request by the Commonwealth, the tenderer shall comply with the Commonwealth personnel security clearance processes as detailed in Part 2:20 of the DSM as amended from time to time, including obtaining the level of security clearance required by the Commonwealth.

1.15 Australian Government Requirements (Core)**Note to drafters: Please ensure the references in this clause are to the version of the policy current at the date of release of the document.**

- 1.15.1 Tenderers should familiarise themselves with the following Commonwealth policies:
- a. Australian Government policy and guidance on Australian Industry Capability as detailed in the Defence Procurement Manual (DPPM);

- b. Conflict of Interest policy as detailed in the DPPM;
- c. Contract Publication policy as detailed in the DPPM;
- d. Defence and Industry policy as detailed in the *Defence and Industry Policy Statement*;
- e. Defence Equity and Diversity policy as detailed in DI(G) PERS 35-3;
- f. Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- g. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- h. Fraud Control policy as detailed in DI(G) FIN 12-1;

Option: For when the Services are valued over \$5million.

- i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM;
- j. Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;
- k. Hazardous Substances policy as detailed in the DPPM; and
- l. Ozone Depleting Substances Policy as detailed in DPPM.

Note to drafters: The Contact Officer is responsible for ensuring that copies of the relevant documents are either publicly available or available on request.

Note to tenderers: Electronic copies of relevant Defence documents are available on the internet. Any other documents required can be provided by the Contact Officer.

An electronic version of the DPPM can be accessed via the 'Contracting' link on the DMO internet site at <http://www.defence.gov.au/dmo/>. The AusTender website may be found at <http://www.tenders.gov.au>.

- 1.15.2 Tenderers acknowledge that as a Commonwealth agency, the Department of Defence is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFT process on the successful tenderer and information on any resultant Contract on the AusTender internet site. Any Contract resulting from this RFT process will also be subject to these requirements, including that contractual provisions (and related matters) may be disclosed to Parliament and its Committees.
- 1.15.3 In addition, tenderers acknowledge that if they are chosen to enter into a Contract, the resulting Contract will oblige the contractor to give the Commonwealth access to the contractor's premises, and access to records and accounts relevant to or impacting upon performance of work under the resulting Contract, and the Commonwealth will be entitled to copy these records and accounts. The purposes for which the Commonwealth will be entitled to obtain access and make copies may include audits under the *Auditor-General Act 1997*. The contractor will also be obliged to ensure that Subcontracts contain equivalent obligations and rights.
- 1.15.4 The tenderer agrees that the Department of Defence may provide any information collected or provided during the course of this process (including regarding breaches of workplace relations law, occupational health and safety law or workers' compensation law) to other Commonwealth agencies or regulatory bodies.
- 1.15.5 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer has not fully complied with a judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or

payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.

Note to drafters: A procurement is a covered procurement if the estimated value of the property or services being procured is above \$80,000 and it is not exempt in accordance with Annex A to the CPGs. If the procurement is specifically exempt from complying with the Mandatory Procurement Procedures as a result of a Defence or DMO specific exemption (a list of Defence and DMO specific exemptions is found at chapter 1.2 of the DPPM) the procurement will still be classed as a covered procurement (albeit exempt from the MPPs) and the following clauses must be used if the procurement involves:

- a. clothing and footwear; or
- b. cleaning services or building management services.

The Procurement Method Approver is responsible for determining whether a Defence or DMO specific exemption applies to the procurement.

Option: For when the procurement is a covered procurement involving clothing and footwear.

- 1.15.6 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer is not accredited or seeking accreditation with the [Homeworkers' Code of Practice](#) prior to signing the Contract. This clause does not apply to tenderers that do not have a commercial presence in Australia.

Option: For when the procurement is a covered procurement involving cleaning services or building management services.

- 1.15.7 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not, for its cleaning services within Australia:
- a. provide its cleaning employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - b. provide its cleaning employees with a written duty schedule at each site listing specific tasks to be completed; and
 - c. set fair and reasonable workloads for all cleaning employees and provide adequate staff to achieve the required performance levels.

1.16 Publishing and Downloading this RFT on AusTender (Optional)

Note to drafters: These clauses must be used if this RFT will be published or made available for download through the AusTender internet site at <https://www.tenders.gov.au>.

- 1.16.1 Tenderers acknowledge that access to and use of AusTender is subject to certain terms and conditions displayed on the AusTender internet site (<https://www.tenders.gov.au>). Tenderers must comply with those terms and conditions as well as any processes and procedures as advised on AusTender from time to time.
- 1.16.2 Tenderers should inform themselves of the security measures and other aspects of AusTender prior to using it for any matter related to this RFT. The Commonwealth makes no representations or warranties about the security or unauthorised access to any information transmitted via the internet to, or from, AusTender and accepts no responsibility arising from any use or attempted use of AusTender by a tenderer.
- 1.16.3 If the Commonwealth amends this RFT prior to the Tender Closing Time specified in clause 1.12, then the Commonwealth will issue an amendment to this RFT via

AusTender. The Commonwealth will endeavour to issue an electronic advice to tenderers who have registered with AusTender for that purpose. Tenderers acknowledge that it is their responsibility to ensure that their registration details are up to date and accurately recorded in order to receive notification of any amendment to this RFT.

- 1.16.4 The Commonwealth accepts no responsibility if a tenderer fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the AusTender internet site or from other information available from the Contact Officer specified in clause 1.6.
- 1.16.5 Tenderers acknowledge that it is their responsibility to download any amendment to this RFT via AusTender. The RFT or any amendment published through the AusTender internet site will take precedence over any other version of the RFT or amendment if there is any inconsistency.
- 1.16.6 All queries and requests for AusTender technical or operational support must be directed to the AusTender Help Desk, telephone: 1300 651 698, email: tenders@finance.gov.au. The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) Local Time, Monday to Friday (excluding ACT and national public holidays). Tenderers should note that all questions related to this RFT must be addressed to the Contact Officer in accordance with clause 1.6.

1.17 Public Announcements (Optional)

- 1.17.1 Tenderers must not make any public announcement or other statement which refers or is connected to the RFT process, including on any matter related to the Commonwealth's evaluation of tenders, the proposed contractual arrangements or the Services, without first consulting the Contact Officer, except as otherwise required by law or the rules of any stock exchange or similar body on which the tenderer is listed. This clause does not apply to routine marketing activities promoting a tenderer's product or to information that is public knowledge other than by breach of this clause.

2 MATTERS CONCERNING TENDER RESPONSE

2.1 Period of Tender (Core)

- 2.1.1 The Commonwealth requires that tenders submitted in response to this RFT remain open for acceptance for a period of not less than [...INSERT PERIOD...] after the Tender Closing Time.
- 2.1.2 The Commonwealth may request an extension of the period identified in clause 2.1.1.

2.2 Language of Tenders (Core)

- 2.2.1 The tender, including all attachments and supporting documentation, shall be written in English.
- 2.2.2 All measurements in the tender are to be expressed in Australian legal units of measurement unless otherwise specified by the Commonwealth.

2.3 Tender Preparation (Core)

- 2.3.1 Unless otherwise agreed in writing, tenderers are to complete and provide the information requested in the Annexes to these conditions of tender and must do so in the manner requested in the Annexes to the conditions of tender.

2.4 Tenderers to Inform Themselves (Core)

- 2.4.1 Tenderers are solely responsible for:
- a. examining this RFT, any documents referenced in or attached to this RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
 - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their tenders; and
 - c. satisfying themselves as to the accuracy and completeness of their tenders including tendered prices.
- 2.4.2 Tenderers prepare and lodge a tender on the tenderers' acknowledgment and agreement that:
- a. they do not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending these conditions other than amendments in accordance with clause 1.4;
 - b. they do not rely upon any warranty or representation made by or on behalf of the Commonwealth, except as are expressly provided for in this RFT, but they have relied entirely upon their own inquiries and inspection in respect of the subject of their tender;
 - c. the Commonwealth shall not be responsible for any costs or expenses incurred by tenderers in complying with the requirements of this RFT;
 - d. neither these conditions nor the tender give rise to contractual obligations between the Commonwealth and the tenderer;
 - e. they are aware of Part V of the *Trade Practices Act 1974*, and Division 137 of the *Criminal Code* under which giving false or misleading information is a serious offence; and
 - f. they are aware of the impact of the *Auditor General Act 1997* on their participation in the RFT and any resultant Contract.

2.5 Use of Tender Documents (Core)

- 2.5.1 Tenderers submit documents in response to this RFT on the basis that the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. evaluation, selection and preparation of any result Contract with respect to this RFT;
 - b. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth; and
 - c. the development of any other RFT process conducted by the Commonwealth.
- 2.5.2 In addition to clause 2.5.1, tenderers should note that the Commonwealth may provide the tender documentation, or any part of the tender documentation, to a third party for the purposes of assisting the Commonwealth in tender evaluation and in the preparation of any resultant Contract. The Commonwealth may, at its discretion, obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 2.5.3 Tenders will be treated by the Commonwealth as Commercial-in-Confidence Information. The Commonwealth may require a tenderer to execute a deed of confidentiality before being provided with some or all of the information included in the RFT. Whether or not such a deed is required, and without limiting a tenderer's obligations under the deed, tenderers must:
- a. treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as Commercial-in-Confidence Information;
 - b. not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT; and
 - c. not disclose that information to another tenderer.
- 2.5.4 Nothing in clause 2.5 affects the ownership of the Intellectual Property in the information contained in the tender documents.

2.6 Unconditional Tenders (Core)

- 2.6.1 Each tenderer must make an unconditional offer and, to the extent reasonably possible, obtain any necessary government or other approvals, consents or authorisations to enable it to enter into any resultant Contract on an unconditional basis. Before any tender is accepted, the tenderer may be required to confirm that its tender is unconditional and that it is able to enter into any resultant Contract on an unconditional basis.

2.7 Return of Information to the Commonwealth (Core)

- 2.7.1 Without limiting the provisions of any deed of confidentiality that may be required by the Commonwealth under clause 2.5.3, the Commonwealth may, at its discretion and at any stage during or after the RFT process, require that all information (whether Commercial-in-Confidence or otherwise) provided to tenderers in any tangible form (including all copies of the information) be:
- a. returned to the Commonwealth, and that tenderers promptly return all such information to the address identified by the Commonwealth; or
 - b. destroyed by the tenderer, in which case the tenderer must promptly destroy all such information and provide the Commonwealth with written certification of such destruction.

2.8 Collusive Tendering (Core)

- 2.8.1 Tenderers and their officers, employees, agents and advisers must not engage in any collusive tendering, anti-competitive conduct, or any other similar conduct in relation to:

- a. the preparation or lodgment of tenders;
 - b. the evaluation and clarification of tenders; and
 - c. the conduct and content of negotiations, including final Contract negotiations, in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.
- 2.8.2 For the purposes of clause 2.8.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is Commercial-in-Confidence to the Commonwealth or any other tenderer or any other person or entity.
- 2.8.3 In addition to any other remedies available under any law or any Contract, the Commonwealth may, at its discretion, immediately reject any tender lodged by a tenderer that, in the Commonwealth's reasonable opinion, has engaged in any collusive tendering, anti-competitive conduct, or any other similar conduct with any other tenderer or any other person in relation to the preparation or lodgment of tenders whether in respect of this RFT or RFT process or any other RFT process being conducted by the Commonwealth in respect of its defence capability requirements.

2.9 Unlawful Inducements (Core)

- 2.9.1 Tenderers and their officers, employees, agents and advisers must, at all times during the RFT process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of their tender.

2.10 Improper Assistance (Core)

- 2.10.1 Tenders that, in the opinion of the Commonwealth, have been compiled:
- a. with the improper assistance of employees of the Commonwealth or former employees of the Commonwealth, including its agency Department of Defence or contractors or former contractors of the Commonwealth;
 - b. with the utilisation of information unlawfully obtained from the Commonwealth;
 - c. in breach of an obligation of confidentiality to the Commonwealth; or
 - d. contrary to the conditions of tender in this RFT,
- may be excluded from further consideration.

2.11 Conflict of Interest (Core)

- 2.11.1 A tenderer must not, and must ensure that its officers, employees, agents and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Commonwealth and the tenderer's interests during the RFT process.
- 2.11.2 If during the RFT process a conflict of interest arises, or appears likely to arise, the tenderer must notify the Commonwealth immediately in writing and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the tenderer fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the tender may be excluded from further consideration.

3 EVALUATION OF TENDERS

3.1 Cost Investigation of Sole Source Tenders (Optional)

Note to drafters: This clause should only be included in sole source RFTs.

3.1.1 For the purposes of establishing, in respect of a sole source tender, that the tendered price is fair and reasonable and constitutes value for money for the Commonwealth, the Commonwealth's cost investigation staff may, prior to signature of any resultant Contract, conduct a cost investigation of the tendered price. On request by the Commonwealth the tenderer shall facilitate any such cost investigation.

3.2 Tender Evaluation (Core)

3.2.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies.

3.3 Minimum Content and Format Requirements (Optional)

Note to drafters: This clause should be used when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.

3.3.1 Subject to clause 1.10, the Commonwealth will exclude a tender from further consideration if the Commonwealth considers that:

- a. the tender does not meet the requirements set out in clause 2.2.1; or
- b. the tenderer has not provided a signed Declaration by Tenderer in the form required at Annex A to the conditions of tender.

3.4 Conditions of Participation (Optional)

Note to drafters: This clause should be used when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.

3.4.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with the Commonwealth's security requirements set out in clause 1.13 and 1.14.

3.5 Essential Requirements (Optional)

Note to drafters: Select option A or B where the tender includes essential requirements in the Statement of Work.

Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs and the SOW contains essential requirements.

3.5.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with an essential requirement identified in the draft SOW.

Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs and the SOW contains essential requirements.

3.5.2 The Commonwealth may exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with an essential requirement identified in the draft SOW.

3.6 Evaluation Criteria and Process (Core)

Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate.

Option A: For when the procurement is subject to the Mandatory Procurement Procedures in the CPGs.

3.6.1 Subject to clause 3.2 to 3.5 the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.

3.6.2 Subject to clause 3.2 the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

- a. the tenderer's degree of overall compliance with the RFT;
- b. the extent to which the tendered solution is assessed as meeting the draft SOW;
- c. the extent to which the tenderer is compliant with the draft conditions of contract and the assessed level of risk relating to the negotiation of a Contract acceptable to the Commonwealth;
- d. past performance of contractual obligations of the tenderer;
- e. the nature and extent to which the tender response proposes IP rights to the Commonwealth and the assessed level of risk relating to the negotiation of IP provisions acceptable to the Commonwealth;
- f. the proposed corporate structure and the financial and corporate viability and capability of the tenderer and Subcontractors to fulfil Contract obligations;
- g. the extent to which the tender response satisfies the AIC requirements contained within this RFT; and
- h. the tendered prices and pricing structure, including proposed payment schedule.

Option B: For when the procurement is not subject to the Mandatory Procurement Procedures in the CPGs.

3.6.3 Tenderers should note that the list of criteria in clause 3.6.2 is not exhaustive.

3.6.4 The Commonwealth may use material tendered in response to one evaluation criterion in the evaluation of other criteria and consider additional information related to any evaluation criteria.

3.6.5 The Commonwealth may, subject to its IP and Commercial-in-Confidence obligations, use material tendered by the tenderer in other RFT processes conducted by the Commonwealth for purposes consistent with the Commonwealth's procurement objectives.

3.6.6 Tender responses which are incomplete or clearly non-competitive may be excluded from consideration at any time during the evaluation process at the Commonwealth's discretion but the Commonwealth may still consider such tenders and seek clarification under clause 3.6.10.

3.6.7 The Commonwealth may develop a shortlist of tenders at any time during the evaluation process. Shortlisting will be conducted on the basis of an assessment of the tenders against the requirements of this RFT and tenders that are not included on any shortlist will not generally be considered further.

Note to tenderers: Tenderers should note in relation to clause 3.6.8 that most contractors are engaged subject to an obligation not to disclose information obtained through the services they provide to the Commonwealth.

- 3.6.8 Tenderers shall not use the improper assistance of employees, or former employees of the Commonwealth, or information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth in compiling their tenders. Tenderers should note the requirement in Annex A to provide a declaration to this effect. The Commonwealth may not further consider a tender that has been compiled using such assistance or information.
- 3.6.9 Nothing in this RFT nor in any tender received shall be construed as to give rise to contractual obligations, express or implied. Neither the lowest priced tender nor any tender will necessarily be accepted by the Commonwealth. No contract shall be created in relation to a tender until a formal Contract is executed between the Commonwealth and the tenderer.
- 3.6.10 The Commonwealth may seek clarification from, and enter into discussions with, any or all of the tenderers in relation to their tender. The Commonwealth may seek additional information in respect of any aspect of a tender at any time. The Commonwealth may request to visit the facilities of tenderers and their proposed Subcontractors to verify or clarify attributes of the tendered Services. The Commonwealth may use such information in interpreting the tender and in evaluating the cost and risk to the Commonwealth of accepting the tender. The Commonwealth is not under any obligation to take into account additional information provided by a tenderer in response to a request and will not do so where that would introduce unfairness into the evaluation process.
- 3.6.11 If a tenderer is found to have made a false, misleading or deceptive claim or statement, the Commonwealth may exclude the tender from further consideration at any time.

3.7 Use of Former Defence Personnel in Tender Preparation (Optional)

Note to drafters: the following clauses are to be used where the Services are commercially sensitive or are valued over \$5 million.

- 3.7.1 Without limiting the operation of clause 3.6.8, the tenderer shall not, without written approval from the Commonwealth, permit a person to contribute to, or participate in, any process relating to the preparation of the tenderer's tender or the RFT process, if:
- a. the person was involved at any time in the planning of the project to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
 - b. the person was at any time during the six months immediately preceding the date of issue of this RFT:
 - (i) employed by the Department of Defence;
 - (ii) a member of the ADF; or
 - (iii) a consultant or other service provider engaged by the Department of Defence or the ADF to provide services relating to Defence procurement processes.

3.8 Negotiation (Core)

- 3.8.1 The Commonwealth may conduct negotiations with one or more tenderers.

3.9 Debriefing of Tenderers (Core)

- 3.9.1 Tenderers may request an oral or written tender debriefing following the award of a Contract in relation to this RFT. Tenderers requiring a debriefing should contact the Contact Officer specified in clause 1.6.1.

- 3.9.2 Tenderers will be debriefed against the evaluation criteria contained in clause 3.6. In accordance with Commonwealth policy, a tenderer will not be provided with information concerning other tenders, except for publicly available information such as the name of the successful tenderer and the total price of the winning tender. No comparisons with other tenders will be made.

ANNEXES TO THE CONDITIONS OF TENDER

DECLARATION BY TENDERER (CORE).....1

STATEMENT OF NON-COMPLIANCE (CORE)4

INFORMATION TO BE PROVIDED BY TENDERERS (CORE).....5

EMPLOYER SPONSORED SUPERANNUATION (CORE)9

AUSTRALIAN INDUSTRY CAPABILITY (CORE)11

ANNEX A**DECLARATION BY TENDERER (CORE)****1. DECLARATION BY TENDERER (CORE)**

1.1 Tenderers must provide a declaration in the following format:

(...INSERT NAME OF TENDERER AND A.C.N./A.R.B.N. and A.B.N...) submits its tender to provide the Supplies solicited by this RFT [...INSERT RFT NUMBER...] at the prices tendered and, subject to the statement of non-compliance, in accordance with the draft Contract. In preparing this tender, the tenderer acknowledges that it is aware of Part V of the *Trade Practices Act 1974* and *Division 137* of the *Criminal Code* and that its tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.

By submitting its tender, the tenderer acknowledges and agrees:

- a. to the Commonwealth's rights in the RFT;
- b. that tenders are prepared in accordance with the RFT and are accurate, complete and not misleading;
- c. that the Commonwealth can utilise all relevant information about the tenderer's performance on Commonwealth procurement activities;
- d. that the tenderer conducted itself in a manner that is at least consistent with the Commonwealth's obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money;
- e. that the Commonwealth can rely on the tender in accurately assessing compliance with the RFT, risks and risk management options and value for money in accordance with the RFT;
- f. that representations made in the tender, when incorporated in any resultant Contract, will be fully complied with by the tenderer;
- g. that they have informed the Commonwealth about Services that contain any form of asbestos;
- h. that the tenderer has no judicial decisions against it (excluding decisions under appeal) relating to unpaid employee entitlements where the entitlements remain unpaid;
- i. that the tenderer has fully complied with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law;

ANNEX A

Note to drafters: A procurement is a covered procurement if the estimated value of the property or services being procured is above \$80,000 and it is not exempt in accordance with Annex A to the CPGs. If the procurement is specifically exempt from complying with the Mandatory Procurement Procedures as a result of a Defence or DMO specific exemption (a list of Defence and DMO specific exemptions is found at chapter 1.2 of the DPPM) the procurement will still be classed as a covered procurement (albeit exempt from the MPPs) and the following clauses must be used if the procurement involves:

- a. clothing and footwear; or**
- b. cleaning services or building management services.**

The Procurement Method Approver is responsible for determining whether a Defence or DMO specific exemption applies to the procurement.

Option: For when the procurement is a covered procurement involving clothing and footwear.

Note to tenderers: Delete this paragraph (j) if the tenderer does not have a commercial presence in Australia.

- j. that the tenderer is accredited or is seeking accreditation with the [Homeworkers' Code of Practice](#); and

Option: For when the procurement is a covered procurement involving cleaning services or building management services.

- k. for its cleaning services within Australia, that the tenderer:
 - (i) provides its cleaning employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - (ii) provides its cleaning employees with a written duty schedule at each site listing specific tasks to be completed; and
 - (iii) sets fair and reasonable workloads for all cleaning employees and provides adequate staff to achieve the required performance levels.

2. ACCEPTANCE (CORE)

2.1 This tender remains open for acceptance until (...INSERT DATE...), being (...INSERT NUMBER...) months from the Tender Closing Time.

3. IMPROPER ASSISTANCE (CORE)

3.1 This tender has been compiled without the improper assistance of employees or former employees of the Commonwealth, and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth.

REGISTERED OFFICE OR OTHER ADDRESS OF TENDERER:

POSTAL ADDRESS:

TELEPHONE NUMBER:

FACSIMILE NUMBER:

ANNEX A

Signature of tenderer of person authorised to sign the tender on behalf of the tenderer

SIGNATURE:

DATE OF SIGNATURE:

NAME (Block Letters):

POSITION HELD:

SIGNATURE OF WITNESS:

ADDRESS OF WITNESS:

NAME (Block Letters):

Company executive nominated to receive correspondence/inquiries

NAME (Block Letters):

TELEPHONE NUMBER:

FACSIMILE NUMBER:

ANNEX B

STATEMENT OF NON-COMPLIANCE (CORE)

1. STATEMENT OF NON-COMPLIANCE (CORE)

- 1.1 If tenderers are non-compliant with any clause of the RFT they must state their non-compliances in accordance with the Statement of Non-Compliance Format at Table 1. Responses must be in the order in which the clauses appear and refer to the relevant clause number, Annex or Attachment.
- 1.2 Tenderers are deemed to be compliant with all the clauses of the RFT, except where non-compliance is expressly stated in this Annex.
- 1.3 Responses to the effect of “partial compliance” will be evaluated by the Commonwealth as non-compliance.

Note to tenderers: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Part V of the Trade Practices Act 1974 or Division 137 of the Criminal Code.

Table 1: Statement of Non-Compliance Format

	Clause Number	Comments
Conditions of tender		
Annexes to the conditions of tender		
Draft conditions of contract		
Attachments to draft conditions of contract		

Note to tenderers: If appropriate, non-compliance may be indicated against groups of clauses e.g. clause 6.1 to 6.3 inclusive. If an offer does not comply with a particular clause, the tenderer must state:

- a. the extent, justification and impact of non-compliance;**
- b. full details of any alternative proposal, including for the draft conditions of contract an alternative clause; and**
- c. the location in the tender where non-compliance details and/or comments can be found.**

ANNEX C**INFORMATION TO BE PROVIDED BY TENDERERS (CORE)****1. TENDERER'S ABILITY TO SUPPLY (CORE)**

1.1 Tenderers must provide the following information:

- a. detail of how they would complete the Commonwealth's requirements as outlined in the Statement of Work at Attachment A to the draft Contract;
- b. details of the tenderer's background, experience and resources relevant to its ability to meet the requirement;
- c. the following details of the tenderer, as applicable:
 - (i) the full name of the tenderer;
 - (ii) any trading or business name;
 - (iii) if a company, the registered office, principal place of business and an outline of the company structure;
 - (iv) the date and place of incorporation;
 - (v) for a foreign firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its A.C.N./A.R.B.N. and its A.B.N. as applicable;
 - (vi) if an Australian company, its A.C.N./A.R.B.N. and its A.B.N. as applicable;
 - (vii) if the company has any third party quality certification (i.e. International Standards Organisation (ISO) compliance), details of that certification; and
 - (viii) if the tenderer is a Small Business;
- d. details of the personnel the tenderer proposes to use i.e. names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience; and
- e. information on other assignments or any other matter which the tenderer considers to be relevant to its competence.

2. TENDER PRICES AND PRICE BASIS (CORE)

- 2.1 Tenderers must provide a statement of proposed price based on the tenderer's intended approach and basis for pricing. To assist evaluation of the offer the statement should distinguish between service fees (that include overheads and profits) and other costs that might be associated with conduct of the assignment, such as travel and accommodation costs to which overhead and profit shall not be applied. These associated costs should be identified as separate line items. Separate line items should include the amount of GST associated with each item.
- 2.2 Prices are to be tendered in Australian dollars, and the Commonwealth will make contractual payments on that basis.
- 2.3 Tendered prices are to be inclusive of all costs of complying with the conditions of tender and associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the draft Contract. These include licence fees, royalty payments, arranging customs clearance and services of representatives. Prices and charging rates offered in the tender may not be modified during tender evaluation.

Note to tenderers: The successful tenderer will be responsible for ensuring that it is registered in accordance with the requirements of the GST Act (as amended). Tenderers who are non-residents of Australia and are not currently registered for GST, are advised to obtain independent advice on whether they will be required to be registered for GST purposes in accordance with the GST Act.

ANNEX C

If the successful tenderer fails to quote an A.B.N. in its dealings with the Commonwealth, the Commonwealth may be required to withhold a percentage of all payments under any resultant Contract in accordance with Australian taxation legislation.

- 2.4 The tenderer will be responsible for all overseas taxes and charges and all Australian (Federal, State and Local Government) taxes and charges.
- 2.5 A Goods and Services Tax (GST) is applicable to Services which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). Tender prices shall be GST inclusive.

3. INSURANCE (CORE)

Note to tenderers: On the basis of the details and pricing information provided by a tenderer, the Commonwealth may require the tenderer's current insurance policy be maintained or extended and any proposed insurance policies be obtained. The Commonwealth may also require that additional insurance policies be obtained following negotiation with the preferred tenderer.

- 3.1 Tenderers shall detail whether they are currently insured in respect of the requirements of the draft Contract. Such detail shall include:
- a. name of the insurance provider;
 - b. type of insurance;
 - c. terms and coverage of the insurance including conditions and exclusions;
 - d. limits of liability per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
 - e. for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the tenderer's ability to meet its obligations under any resultant Contract;
 - f. deductible amounts; and
 - g. period of insurance,
- and shall include evidence of such policies.

4. SUBCONTRACTORS (CORE)

- 4.1 Tenderers shall provide details of any Subcontractors that the tenderer proposes to use under the Contract where the value of the work to be subcontracted exceeds [...DRAFTER TO INSERT PRIOR TO RELEASE OF RFT...]. Such detail shall include (for each proposed Subcontractor) the name and A.C.N./A.R.B.N. and A.B.N. of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

5. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

- 5.1 Tenderers must provide details of any Government Furnished Material (GFM) they require for the performance of the Services. If the use of GFM is proposed, tenderers must provide details (including, but not limited to, the impact on the tendered price) of the effect of non-provision of GFM.
- 5.2 The decision as to whether or not GFM will be provided will be made at the sole discretion of the Commonwealth.)

6. INTELLECTUAL PROPERTY (CORE)

Note to tenderers: Tenderers should familiarise themselves with the Defence Intellectual Property Policy 2008, which can be accessed at <http://www.defence.gov.au/dmo/>.

ANNEX C

- 6.1 Tenderers must provide a list of Background IP, Foreground IP and Third Party IP that will be brought into or created under any resultant Contract.

7. COMMERCIAL-IN-CONFIDENCE INFORMATION (CORE)

- 7.1 Tenderers must provide a list of all Contract clauses and attachments considered to be Commercial-in-Confidence Information and which are therefore proposed for listing in Attachment D of the draft conditions of contract. For each clause or attachment tenderers must identify the reason the clause or attachment is considered to be Commercial-In-Confidence Information (with reference to the six reasons listed in Attachment D) and provide additional justification as to why the reason applies.

8. CONFLICT OF INTEREST (CORE)

- 8.1 Tenderers are to advise the Contact Officer (identified in conditions of tender clause 1.6):
- a. if they have any conflict of interest; or
 - b. if any conflict of interest arises in the course of tender evaluation or Contract negotiation;
- in relation to the subject matter of the tender.

9. COST INVESTIGATION OF SOLE SOURCE TENDERS (OPTIONAL)

Note to drafters: This clause should only be included in sole source RFTs.

- 9.1 To facilitate any cost investigation conducted by the Commonwealth for the purposes of establishing, in respect of a sole source tender, that the tendered price is fair and reasonable and constitutes value for money, tenderers are to provide a cost break-down showing all elements included in the tendered price.

10. LIABILITY (CORE)

Draft conditions of contract reference: clause 6.3

Option A: For when no limitation of liability will be accepted under any resultant Contract.

Note to tenderers: Tenderers should note that the Contractor's liability under any resultant Contract shall be assessed according to common law principles.

ANNEX C

Option B: For when limitation of liability may be accepted under any resultant Contract.

Note to drafters: Prior to RFT release, drafters must conduct a liability risk assessment in accordance with the standard Defence methodology described in the Liability Risk Management Process (LRMP) guide, which can be accessed at: <http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=74269&Title=Liability%20Risk%20Management>. The liability risk assessment provides the basis for determining the limitation of liability amounts in clause 6.3 of the conditions of contract.

Note to tenderers: The Commonwealth's preference is for liability under any resultant Contract to be assessed according to common law principles. If tenderers propose a limitation of liability, they must familiarise themselves with the Defence Liability Risk Management Process (LRMP) (which can be accessed at <http://www.defence.gov.au/dmo/>). The tenderer must provide a liability risk assessment which has been conducted in accordance with the LRMP, clear details of its proposed alternative liability regime and reasons for the approach. The Commonwealth will consider the tenderer's proposed alternative regime on its merits and in the context of value for money considerations, provided the tenderer furnishes the information requested in this clause.

- 10.1 Tenderers must specify the basis for Contractor liability that they propose will apply to the Contract.
- 10.2 If a tenderer proposes to limit its liability, or limit its liability on an alternative basis to that set out in clause 6.3 of the draft conditions of contract (eg. by proposing a liability limitation or exclusion additional to those set out in clause 6.3), the tenderer must provide the following details:
- a. the terms of the limitation on the tenderer's liability;
 - b. an explanation as to why the tenderer requires a limitation of its liability regime or requires a different to that proposed in clause 6.3 of the draft conditions of contract;
 - c. a detailed assessment of the risks associated with the procurement and the likelihood and consequences of each identified risk eventuating;
 - d. a cost/benefit analysis of the proposed limitation of liability; and
 - e. full pricing details for a liability regime based on the liability regime detailed in clause 6.3 of the draft conditions of contract.

ANNEX D

EMPLOYER SPONSORED SUPERANNUATION (CORE)

Note to drafters: Further advice on how to determine the Commonwealth's liability with respect to Superannuation may be found in the DPPM.

The Superannuation Guarantee (Administration) Act 1992 provides that employees not otherwise covered by employer-sponsored superannuation shall, from 1 July 1992, receive an appropriate level of employer contribution. If the tenderer is an individual they must provide information required for eligibility assessments. The Superannuation liability of the Commonwealth in respect of the Contractor will be considered as part of the tendered price.

A response to each question below is required to determine the liability of the Commonwealth to contribute to a Regulated Superannuation Fund.

Table 1: Questions to determine Eligibility

Questions to Determine Eligibility	Tenderer's Response
1. Are you contracting as a natural person rather than a company or trust?	
2. If you are contracting as a company or trust, how many employees are there in the company or trust?	
3. If you are a partner in a partnership, do you tender for the Contract in your own personal capacity rather than on behalf of the partnership?	
4. Is the value of the labour component of this tender more than 50% of the total value of this tender?	
5. Do you already have employer-sponsored superannuation of any type for this tender?	
6. Is the value of the labour component of the tender more than \$450 in any month when payments are made? Superannuation entitlements are only to be paid when the payment for a single calendar month equals or exceeds \$450. If the total payment is less than \$450 for a calendar month, the contractor is not eligible to receive superannuation entitlements for that month. Monthly payments of less than \$450 do not accumulate with successive monthly payments.	
7. What is the full name of the person to whom the superannuation benefit will accrue and into whose fund the benefit will be paid if a Contract is awarded in response to this tender?	
8. Please state that person's address.	
9.	
a. Are you a member of either the Commonwealth Superannuation	

ANNEX D

<p>Scheme or the Public Sector Superannuation Scheme, or are you eligible to have contributions made to either of these superannuation funds? Persons who are eligible to have contributions paid into either of the Commonwealth schemes should do so.</p> <p>b. Do you have an account with the Australian Government Employees Superannuation Trust (AGEST)? If the answer is yes please provide details. AGEST is the default fund for a person who does not make an election about where their Superannuation Guarantee contribution is to be placed.</p>	
<p>10. What is the name and business address of the preferred Regulated Superannuation fund into which the benefit is to be paid? Does the fund accept electronic transfer of contributions? The payment of contributions may not be acceptable to Defence unless they can be processed electronically.</p>	

I declare that the answers provided to the above questions are true and accurate.

Signature.....Name.....Date.....

ANNEX E

AUSTRALIAN INDUSTRY CAPABILITY (CORE)

1. AUSTRALIAN INDUSTRY CAPABILITY SCHEDULE

Note to drafters: if Industry Requirements are identified or if the expected value of the Contract exceeds \$50 million, more extensive AIC clauses will be required. In this case drafters should refer to the AIC provisions contained in the ASDEFCON (Support) template or contact the Director AIC Implementation for assistance.

An Industry Requirement exists where a Priority Industry Capability (PIC) applies to the procurement or the project identifies Project Specific Industry Capabilities (PSICs). Drafters can consult the PIC Fact Sheet at <http://www.defence.gov.au/dmo/> to identify if a PIC applies or contact the Director AIC Implementation for assistance.

Note to tenderers: Tenderers must refer to the Australian Industry Capability (AIC) Toolkit at <http://www.defence.gov.au/dmo/> to complete the requirements of this Annex.

Defence requires tenderers to market test local industry. Local industry means the local industries of Australia and New Zealand.

Other references detailing Defence policy for industry are collocated at the above web site and include:

- a. **the Defence and Industry Policy Statement;**
- b. **Doing Business with Defence; and**
- c. **the DPPM.**

The Commonwealth prefers that Local Industry Activities including those derived from commercial opportunities do not impose additional costs or time premiums over and above the costs or schedule that would be applicable if the work were to be performed overseas.

- 1.1 Tenderers must provide a draft AIC Schedule in accordance with Table 1 below.
- 1.2 Tenderers must provide evidence that they have market tested local industry.

TABLE 1: AIC SCHEDULE

LIA Number	Line Item Description	Line Item Value (AUD)	LIA Line Item Value (AUD)	Company Details	Value of Imported Content in line item (AUD)
	(a)	(b)	(c)	(d)	(e)
LIA-01		\$	\$		\$
LIA-02		\$	\$		\$
LIA-03		\$	\$		\$
TOTAL			\$		\$

When preparing this Schedule, include all items of Services. If necessary, break the AIC Schedule Line Item into sub line items to better describe the Local Industry Activities.

ANNEX E

- a. *Line item description – a description of the Services to be performed by local industry.***
- b. *Total value of the Line Item – from Attachment A to the draft conditions of contract.***
- c. *Value of LIA in the line item.***
- d. *Identify the local company performing the LIA. If more than one company, detail the value of the work to each company.***
- e. *Indicate value of Imported Content in the line item.***

The Contract made between the Commonwealth of Australia represented by the Department of Defence A.B.N. 68 706 814 312 (the "Commonwealth") and (...INSERT COMPANY NAME, COMPANY A.C.N./A.R.B.N. AND A.B.N. AS APPLICABLE...) and having its registered office at (...INSERT COMPANY'S REGISTERED OFFICE...) (the "Contractor").

RECITALS

- A. The Commonwealth has a requirement for the provision of Services for [...INSERT REQUIREMENT...].
- B. The Contractor has offered to provide the Services on the terms set out in the Contract.
- C. The Commonwealth has agreed to accept the offer by the Contractor on the terms set out in the Contract.

THE PARTIES AGREE AS FOLLOWS

FOR DEPARTMENTAL USE: For Systems Entries

Contract No:		Cost Centre Code:	
ROMAN ORDER No:		Contractor ABN:	
Order Date:		WBS Element Code:	
Order Value:		Consultants, Professional Service Providers or Contractors:	
		Vendor Number:	

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1 CONTRACT FRAMEWORK

1.1 Definitions (Core)

1.1.1 In the Contract, unless the contrary intention appears:

“Attachment” means an attachment to the Contract listed in the table of contents. (Core)

“Australian Industry Capability Schedule or AIC Schedule” means the schedule set out in Attachment E. (Core)

“Background IP” means IP, other than Third Party IP, that:

- a. is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Contract; and
- b. is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services. (Core)

“Commercial-in-Confidence Information” means information (whether or not owned by the Commonwealth) that:

- a. is by its nature confidential; or
- b. the receiving party knows or ought to know is confidential;

but does not include information which:

- a. is or becomes public knowledge other than by breach of the Contract;
- b. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- c. has been independently developed or acquired by the receiving party. (Core)

“Commonwealth Representative” means the person holding or performing the office of [...INSERT OFFICE...] or any other person appointed pursuant to the Contract as the Commonwealth Representative. (Core)

“Contract” means the conditions of contract, the Attachments including the Statement of Work, and any document expressly incorporated as part of the Contract. (Core)

“Contract Price” means the amount set out in Attachment B. (Core)

“Contractor Managed Commonwealth Assets” or “CMCA” means any item of goods owned by the Commonwealth which is in the care, custody or control of the Contractor, its officers, employees, agents or Subcontractors. CMCA may include, but is not limited to, Government Furnished Material, assets stored as spares, assets under repair, or assets loaned to the Contractor. (Core)

“day” means a calendar day. (Core)

“Defence Purposes” means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to those purposes. (Core)

Note to drafters: Prior to RFT release and prior to the execution of any resultant contract, this reference should be updated to reflect the version of the DPPM current at that time. Version number and update number, if applicable, are to be included.

“DPPM” means the Defence Procurement Policy Manual. (Core)

“document” includes:

- a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and

- b. any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device. (Core)

“Effective Date” means the date on which the Contract is signed by the parties, or if signed on separate days, the date of the last signature. (Core)

“Foreground IP” means IP which is created under or otherwise in connection with the Contract, other than Third Party IP. (Core)

“Government Furnished Material” or “GFM” means the material to be provided to the Contractor under the Contract and which is listed in Attachment A. (Core)

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions “adjustment note”, “taxable supply” and “tax invoice” have the meanings given to those expressions in the GST Act. (Core)

“Imported Content” means that part of the Services (measured by value) that is not Local Industry Activities (LIA) or Australian Government charges or duties, including GST. This includes that part of the Services that is of overseas (other than New Zealand) origin and comprises all associated costs incurred outside of Australia including, but not limited to, international freight and cartage (by other than Australian and New Zealand industry carriers), agent’s fees, and overseas storage. (Core)

“Information Privacy Principle” has the same meaning as in the *Privacy Act 1988*. (Core)

“Intellectual Property” or “IP” means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world. (Core)

“Key Persons” means the personnel specified in Attachment A as personnel required to undertake the Services or part of the work constituting the Services. (Core)

“Local Industry Activity” means the activities to be undertaken by Australian and New Zealand industry as set out in the AIC Schedule. (Core)

“month” means a calendar month. (Core)

“Moral Rights” means:

- a. a right of attribution of authorship;
- b. a right not to have authorship falsely attributed; or
- c. a right of integrity of authorship. (Core)

“Personal Information” has the same meaning as in the *Privacy Act 1988*. (Core)

“Services” means the services and goods to be provided under the Contract, including documents, equipment, reports, Intellectual Property, Technical Data, plans, charts, drawings, calculations, tables, schedules, models, software, goods, information and data stored by any means, that are:

- a. brought, or required to be brought into existence, as part of, or for the purposes of, performing the Services;
- b. incorporated in, supplied, or required to be supplied along with the Services; or
- c. copied or derived from the material provided. (Core)

“Small Business” means an enterprise that employs less than the full time equivalent of 20 persons on the Effective Date. If the enterprise forms part of a group, this test is applied to the group as a whole. (RFT Core)

“Statement of Work” (SOW) means the statement of the work at Attachment A and includes any specification referred to in the SOW. (Core)

“Subcontractor” means any person, other than the Commonwealth, that, for the purposes of the Contract, furnishes goods or services to the Contractor or indirectly to the Contractor through another person; and “Subcontract” in all its forms has a corresponding meaning. (Core)

“Technical Data” or “TD” means all technical know-how and information reduced to material form produced or acquired by the Contractor or Subcontractors in relation to the Services and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, source code, software design data, test results, software updates and other items describing or providing information relating to the Services or their operations. (Core)

“Third Party IP” means that IP which is owned by a party other than the Commonwealth or the Contractor and is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services, and is not limited to commercial off the shelf or military off the shelf items. (Core)

“Working Day” in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place. (Core)

1.2 Interpretation (Core)

1.2.1 In the Contract, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Contract;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a “dollar”, “\$”, “\$A” or AUD means the Australian dollar unless otherwise stated;
- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word “includes” in any form is not a word of limitation; and
- k. a reference to a party includes that party’s administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract.

1.3 Commencement of Operation (Core)

1.3.1 The Contract commences on the Effective Date.

1.4 Entire Agreement (Core)

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

1.5 Precedence of Documents (Core)

- 1.5.1 If there is any inconsistency between provisions of the Contract, a descending order of precedence shall be accorded to:
- a. the conditions of contract;
 - b. the Statement of Work;
 - c. the Attachments other than the Statement of Work; and
 - d. any document incorporated by express reference as part of the Contract,
- so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

1.6 Contracted Requirement (Core)

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

2 ROLES AND RESPONSIBILITIES

2.1 Commonwealth Representative (Core)

- 2.1.1 The Commonwealth Representative is responsible for administering the Contract on behalf of the Commonwealth. The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of the Contract. If given orally a direction shall be confirmed in writing within 14 days. Unless otherwise specified in the Contract, the Commonwealth Representative shall have no authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 8.1.

2.2 Contractor Representative (Core)

- 2.2.1 The Contractor shall on or before the Effective Date nominate in writing the person with the authority to represent the Contractor for the purposes of the Contract. Any communication passed by the Commonwealth to this person in accordance with clause 2.3 shall be deemed to have been delivered to the Contractor.

2.3 Notices (Core)

- 2.3.1 Unless the contrary intention appears, any notice or communication under the Contract shall be effective if it is in writing, signed and delivered to the Commonwealth Representative or Contractor's representative, as the case may be, at the following address:

[...INSERT COMMONWEALTH REPRESENTATIVE'S POSTAL ADDRESS AND FACSIMILE NUMBER...]

(...INSERT CONTRACTOR REPRESENTATIVE'S POSTAL ADDRESS AND FACSIMILE NUMBER...)

- 2.3.2 A notice or communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by facsimile, at the time recorded by the transmitting machine, unless within one Working Day the sender is informed that the transmission was received in incomplete or garbled form.

3 PROVISION OF THE SERVICES

3.1 Language and Measurement (Core)

- 3.1.1 All information delivered as part of the Services under the Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960*, or, if Services are imported, units of measurement as agreed by the Commonwealth Representative.

3.2 Government Furnished Material (GFM) (Optional)

- 3.2.1 The Commonwealth shall provide GFM to the Contractor as specified in Attachment A.
- 3.2.2 The Commonwealth grants or shall procure a royalty-free, non-exclusive licence for the Contractor to use, reproduce and adapt the GFM for the purposes of the Contract.
- 3.2.3 The Contractor shall ensure that all GFM is used strictly in accordance with any conditions or restrictions set out at Attachment A, and any direction by the Commonwealth.
- 3.2.4 Upon receipt of GFM, the Contractor shall:
- a. inspect GFM for physical damage, any defects or deficiencies which impact on, or are likely to impact on, the intended use of the GFM; and
 - b. report its satisfaction or dissatisfaction with the GFM in writing to the Commonwealth Representative.
- 3.2.5 The Contractor shall:
- a. take all reasonable care of, and be liable for loss of or damage to, GFM in its care, custody or control; and
 - b. utilise the GFM in performing the Services with a high degree of professional skill and care and in accordance with the relevant Contract.
- 3.2.6 The Contractor shall return GFM (other than consumable items of GFM) to the Commonwealth as required by the Contract or as directed by the Commonwealth Representative.
- 3.2.7 The Contractor acknowledges and agrees that the Commonwealth does not give any warranty or representation about the suitability or fitness of any GFM for any particular use or application.
- 3.2.8 The Contractor shall not:
- a. without the prior written approval of the Commonwealth Representative:
 - (i) use GFM other than for the purposes of the relevant Contract;
 - (ii) modify GFM;
 - (iii) transfer possession or control of GFM to any other party; or
 - (iv) communicate or divulge GFM to any other party; or
 - b. create or allow to be created any lien, charge, mortgage or encumbrance over any GFM.
- 3.2.9 The Commonwealth Representative may notify the Contractor of any Intellectual Property rights applicable to the GFM and the Contractor shall not act contrary to the existence of such rights.

3.3 Contractor Managed Commonwealth Assets (Core)

- 3.3.1 The Contractor shall take all reasonable care of CMCA and shall provide facilities to store and handle all CMCA as they are received.

- 3.3.2 The Contractor shall, within seven days of becoming aware that any CMCA are lost, destroyed, damaged, defective or deficient, notify the Commonwealth Representative of the event in writing.
- 3.3.3 Without limiting clause 6.1, the Contractor shall be liable to the Commonwealth for loss or destruction of, damage to or defects or deficiencies in, the CMCA, except to the extent that the loss, destruction, damage or defects or deficiencies results from any unlawful or negligent act or omission on the part of the Commonwealth, its officers, employees or agents. Subject to clause 3.3.4, or any 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 10.3.
- 3.3.4 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.

4 INTELLECTUAL PROPERTY

4.1 Ownership of Intellectual Property (Core)

- 4.1.1 Nothing in the Contract affects the ownership of Background IP or Third Party IP.
- 4.1.2 Ownership of all Foreground IP vests on its creation in the Contractor.

4.2 Intellectual Property Licence (Core)

- 4.2.1 The Contractor grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP and Foreground IP owned or controlled by the Contractor, including the right to sub-licence:
 - a. to use, maintain, modify, develop and dispose of the Services;
 - b. to complete the Services upon termination of the Contract; and
 - c. to remedy defects or omissions in the Services in accordance with clause 7.2.
- 4.2.2 The Contractor shall ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.

4.3 Provision of Technical Data (Core)

- 4.3.1 The Contractor shall provide with the Services, all Technical Data (TD) necessary to allow the Commonwealth to exercise its IP rights as defined in clause 4.
- 4.3.2 The Contractor shall ensure that all TD provided to the Commonwealth will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth in the exercise of its IP rights under clause 4.

4.4 IP Schedule (Core)

- 4.4.1 The Contractor shall maintain and update Attachment C.
- 4.4.2 The Contractor shall deliver updated versions of Attachment C by submitting Contract change proposals in accordance with clause 8.1, to reflect the changes to Attachment C.
- 4.4.3 Without limiting clauses 4.4.1 and 4.4.2, the Contractor shall, as soon as possible, but no later than the submission of the final claim for payment under clause 5.2, deliver an updated Attachment C to the Commonwealth.
- 4.4.4 The Commonwealth reserves the right to withhold payment of the final claim for payment under clause 5.2 until the Contractor complies with its obligations under clause 4.4.3.
- 4.4.5 For the avoidance of doubt, Attachment C is for record management purposes and does not in any way alter or limit this clause 4. If there is any inconsistency between this clause 4 and Attachment C, clause 4 shall to the extent of the inconsistency prevail.

4.5 Release to Third Parties (Core)

- 4.5.1 If the Commonwealth makes available to another person any Background IP owned by the Contractor, the Commonwealth shall obtain from that person a deed of confidentiality.

4.6 Moral Rights (Core)

- 4.6.1 The Contractor represents and warrants that the provision of the Services for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees or agents of the Contractor or its Subcontractors.
- 4.6.2 The Contractor shall ensure that none of its:
 - a. officers, employees or agents;

- b. Subcontractors; or
- c. Subcontractors' officers, employees or agents,
institute, maintain or support any claim or proceeding against the Commonwealth or
its officers, employees or agents for infringement of any of their Moral Rights.

5 PRICE AND PAYMENT

5.1 Price and Price Basis (Core)

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

5.2 Payment (Core)

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

- 5.2.1 The Contractor shall submit a claim for payment in accordance with clause 5.3.
- 5.2.2 On receipt of a claim for payment the Commonwealth Representative shall either:
- a. approve the claim if it is submitted in accordance with clause 5.2.1; or
 - b. reject the claim if it is not submitted in accordance with clause 5.2.1 or on the basis of clause 5.1.2.
- 5.2.3 When a claim is approved under clause 5.2.2a, the Commonwealth shall make payment within 30 days of receipt of the claim.
- 5.2.4 When the Commonwealth Representative rejects the claim under clause 5.2.2b, the Commonwealth Representative shall, within 14 days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.
- 5.2.5 Upon receipt of a notice issued pursuant to clause 5.2.4, the Contractor shall immediately take all necessary steps to make the claim for payment conform to the requirements of the Contract and shall submit a revised claim to the Commonwealth Representative when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.
- 5.2.6 If the Commonwealth agrees to accept the Services despite any minor omissions or defects or other non-compliance, the Commonwealth may, after consultation with the Contractor:
- a. determine a revised Contract Price reflecting the reduction in value for money of the omission, defect or non-compliance ('Reduction Amount'); and
 - b. exercise its rights under clause 10.3 in respect of the Reduction Amount.

5.3 Claims for Payment (Core)

- 5.3.1 The Contractor shall be entitled to submit claims for payment in accordance with Attachment B.
- 5.3.2 All claims for payment submitted by the Contractor shall:
- a. be correctly addressed and calculated in accordance with the Contract;
 - b. subject clause 5.2.6, only claim payment for Services that meet the requirements of the Contract;
 - c. be in the form of a valid tax invoice in accordance with clause 5.5;
 - d. contain the following information:

- (i) the title of the Services and the name of the Contractor's representative;
 - (ii) the name and phone number of the Commonwealth Representative;
 - (iii) the Contract number;
 - (iv) the date, task item, number of hours and hourly rate (if applicable); and
 - (v) the amount of the claim; and
- e. be accompanied by any documentation requested by the Commonwealth Representative in order to establish that the Services meet the requirements of the Contract or that the claim is in accordance with the Contract.

5.3.3 All claims for payment are to be submitted to the Commonwealth Representative in accordance with clause 2.3.1.

5.4 Ownership and Control of Services (Core)

5.4.1 Subject to clause 4, ownership of Services, or partially completed Services, shall pass to the Commonwealth upon payment of a claim relating to those Services in accordance with clause 5.

5.4.2 If ownership of the Services vests in the Commonwealth, the Contractor shall deliver to the Commonwealth all Services remaining in its possession upon expiration or termination of the Contract.

5.5 Taxes and Duties (Core)

5.5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract shall be met by the Contractor and shall be included within the Contract Price.

5.5.2 The Contract Price set out in Attachment B includes Goods and Services Tax (GST) for Services to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.

5.5.3 The Contractor shall submit each claim for payment pursuant to clause 5 in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.

5.5.4 Where the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.

5.5.5 If the Commonwealth makes, or is assessed by the Australian Taxation Office (ATO) as having made, a taxable supply to the Contractor under or in connection with the Contract, the Commonwealth shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.

5.5.6 Any amount of GST to be paid by the Contractor under clause 5.5.5 shall be a debt recoverable by the Commonwealth.

5.6 Investigation of Costs and Prices (Optional)

Note to drafters: This clause should be inserted where Basis of Payment Option A or Option B is selected (see Attachment B, clause 1).

5.6.1 The Commonwealth reserves the right to investigate all costs and pricing matters in relation to the Contract, including those associated with submissions of claims for payment.

5.6.2 In order to assist in the investigation of any costs and pricing matters, the Contractor shall provide, and ensure that any Subcontractors provide, the Commonwealth, or any person nominated by the Commonwealth Representative, with full access to the Contractor's or Subcontractor's records and accounts relating to the Contract. The

Commonwealth shall seek the prior written approval of the Contractor, which shall not be unreasonably withheld or delayed, for any person nominated by the Commonwealth Representative who is not an officer of the Commonwealth, prior to the Contractor granting access to the Contractor's or Subcontractor's records and accounts.

5.7 Late Payments (RFT Core)

Note to tenderers: This clause will only be used in the resultant contract if the preferred tenderer is a Small Business and the Contract Price is valued up to \$1million (GST inclusive).

- 5.7.1 Subject to clause 5.7.3, if payment of an amount due under the Contract is made late, the Contractor may submit a separate claim for payment of interest calculated in accordance with clause 5.7.2.
- 5.7.2 Interest payable by the Commonwealth under this clause 5.7 shall be calculated in accordance with the following formula:
- $$\text{Interest payment} = P \times I \times n.$$
- Where:
- "I" means the Australian Taxation Office sourced General Interest Charge rate determined under section 8AAD of the *Taxation Administration Act 1953* current at the due date of payment expressed as a decimal rate per day;
- "P" means the amount of the late payment; and
- "n" means the number of days from the day after payment was due up to and including the day that the payment is made.
- 5.7.3 The Contractor shall only be entitled to submit a claim for simple interest under clause 5.7.1 if the simple interest amount calculated in accordance with clause 5.7.2 is greater than \$10.

6 INSURANCE AND LIABILITY

6.1 Indemnity (Core)

6.1.1 The Contractor shall indemnify the Commonwealth, its officers, employees and agents 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, its officers, employees, agents or Subcontractors. 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, its officers, employees, agents or Subcontractors) contributed to the liability, loss, damage, costs or expenses.

6.2 Intellectual Property Indemnity (Core)

6.2.1 The Contractor shall indemnify the Commonwealth its officers, employees, agents, 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:

- a. 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 assignment referred to in clause 4 or otherwise under the Contract; or
- b. 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 of its Subcontractors, officers, employees or agents (whether or not such act or omission constitutes a breach of the Contract).

6.2.2 For the purposes of this clause 6.2, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990*, section 96 of the *Designs Act 2003*, section 183 of the *Copyright Act 1968*, and section 25 of the *Circuits Layout Act 1989*, constitute an infringement.

6.3 Limitation of Liability (Optional)

Note to drafters: A risk assessment should be undertaken by the Commonwealth prior to release of the RFT to determine appropriate caps for inclusion in clause 6.3.

Note to tenderers: This clause will be included where tenderers propose and the Commonwealth agrees to limit liability under the Contract at clause 10 of Annex C to Attachment A of the conditions of tender.

6.3.1 Subject to clause 6.3.2, the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of the Contract will be limited in aggregate to (...INSERT AMOUNT...).

6.3.2 The limitation in clause 6.3.1 does not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:

- a. personal injury and death;
- b. loss of, or damage to, third party property or Commonwealth property (other than Defence property);
- c. breach of IP rights, confidentiality, privacy or security obligations;
- d. fraud or dishonesty;
- e. unlawful or illegal acts; or

- f. the IP indemnity provided by the Supplier under clause 6.2.

6.4 Insurance (Core)

Note to drafters: The DPPM provides information on insurance requirements.

- 6.4.1 Before commencing work under the Contract, the Contractor shall:
- a. be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Contractor, including liability under statute and common law;
 - b. have public liability insurance for an amount of not less than [...INSERT AMOUNT...]; and

Option: For when the Commonwealth requires additional insurance policies e.g. professional indemnity insurance to be taken out.

- c. have [...DRAFTER TO INSERT...] insurance for an amount of not less than [...INSERTAMOUNT...].

- 6.4.2 The Contractor shall ensure each Subcontractor is insured against the Subcontractor's corresponding liabilities.

- 6.4.3 The Contractor shall maintain the insurance or registration required under this clause 6.4 for the duration of the work under the Contract and for the obligations that survive expiry or termination of the Contract, shall ensure that cover is maintained for the period that those obligations survive expiry or termination or for a period as otherwise specified by the Commonwealth. The Contractor shall, on request, produce satisfactory evidence of the insurance to the Commonwealth Representative including details of:

- a. name of the insurance provider;
- b. type of insurance;
- c. terms of the insurance, including any specific exclusions;
- d. limits of liability per claim or occurrence and details of any aggregate limits or relevant sub-limits that apply;
- e. whether any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover available under the policy;
- f. deductible amounts; and
- g. period of insurance.

- 6.4.4 The Contractor shall immediately notify the Commonwealth if the Contractor becomes aware or reasonably believes that, in relation to any policy of insurance relevant to the Contract:

- a. the policy:
 - (i) is or will be cancelled;
 - (ii) has not been or will not be renewed; or
 - (iii) has had or will have its coverage reduced in any material respect; or
- b. there has been non-compliance with any conditions to which the policy is subject.

7 WARRANTIES**7.1 Fitness for Purpose (Core)**

7.1.1 The Contractor shall ensure and warrants that the Services provided under the Contract shall be fit for the purpose or purposes for which Services of that kind would be reasonably expected to be applied by the Commonwealth.

7.2 Warranty (Core)

7.2.1 The Contractor warrants that it has the necessary expertise, experience, capacity and capability required to perform the Services in accordance with a standard of care, skill and diligence that would be exercised by a competent supplier of such services and that the Services shall conform with the requirements of the Contract.

7.2.2 The Contractor shall remedy any errors or defects in the Services that are notified to the Contractor by the Commonwealth Representative during the period of [...INSERT PERIOD...] starting from the delivery of Services.

7.2.3 The liability of the Contractor to remedy errors or defects in the Services under clause 7.2.2 shall not apply to the extent that the defect arises from the Commonwealth's negligent or willful damage of the Services.

7.2.4 The Contractor, unless the Commonwealth Representative otherwise allows, shall meet all costs of, and incidental to, the discharge of the warranties under this clause 7.2.

7.2.5 The Contractor acknowledges that the Commonwealth enters into the Contract in reliance on the Contractor's warranties in this clause 7.2, and the Contractor's skill and judgment in rendering the Services.

7.2.6 If the Contractor fails, within the period of [...INSERT PERIOD...] after notification by the Commonwealth Representative, to rectify a defect pursuant to this clause 7.2, the Commonwealth may, without limiting the Contractor's warranties and obligations under clause 7, 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 10.3.

7.2.7 The rights and remedies provided in this clause 7.2 are in addition to, and shall not limit, any other rights of the Commonwealth under the Contract or otherwise.

7.3 Conflict of Interest (Core)

7.3.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry at the Effective Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its officers, employees, agents or Subcontractors.

7.3.2 If during the term of the Contract a conflict of interest arises, or appears likely to arise, the Contractor shall notify the Commonwealth immediately in writing and shall take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the Contractor fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Commonwealth may terminate the Contract in accordance with clause 10.2.

7.3.3 The Contractor shall not, and shall ensure that any officer, employee, agent or Subcontractor of the Contractor does not, engage in any activity or obtain any interest during the course of the Contract that conflicts with or is likely to conflict with, or restrict the Contractor in providing the Services to the Commonwealth fairly and independently.

8 CONTRACT MANAGEMENT

8.1 Change to the Contract (Core)

8.1.1 Either party may propose a change to the Contract. The Contract may only be varied in writing and signed by both parties. Where both parties sign a change to the Contract the Commonwealth Representative shall issue an amendment to the Contract. The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the change is in accordance with this clause 8.1.

8.2 Waiver (Core)

8.2.1 Failure by either party to enforce a term of the Contract shall not be construed as in any way affecting the enforceability of that term or the Contract as a whole.

8.3 Commercial-in-Confidence Information (Core)

8.3.1 If in connection with the Contract, Commercial-in-Confidence 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:

- a. when disclosure of the information is required by law or statutory or portfolio duties; or
- b. to the extent that the Commonwealth would be prevented from exercising its IP rights under the Contract.

8.3.2 The Commonwealth may require the Contractor to ensure that its officers, employees, agents and Subcontractors engaged in performance of the Contract give written undertakings in a form required by the Commonwealth relating to the non-disclosure of specified material. The Contractor shall promptly arrange for such undertakings to be given.

8.3.3 If it is necessary to disclose Commercial-in-Confidence 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 8.3.1 the party wishing to make the disclosure shall obtain the written consent of the other party to the Contract.

8.3.4 The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term "Commercial-in-Confidence" or the Contractor's equivalent. The marking of information as "Commercial-in-Confidence" shall not affect the legal nature and character of the information.

8.3.5 The parties agree that the conditions of contract and Attachments, or the parts of them, listed in Attachment D are Commercial-in-Confidence Information to the relevant party as at the Effective Date.

8.4 Assignment and Novation (Core)

8.4.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Contract.

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

8.5 Negation of Employment and Agency (Core)

8.5.1 The Contractor shall not represent itself, and shall ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being employees, partners or agents of the Commonwealth.

8.5.2 Without limiting clause 8.5.1, the Contractor shall clearly identify itself, and shall ensure that its officers, employees, agents and Subcontractors clearly identify

themselves, as a contractor to the Commonwealth when communicating through telephone, facsimile, email or any other communication tool in the course of performing the Services.

- 8.5.3 The Contractor, its officers, employees, agents and Subcontractors shall not by virtue of the Contract be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.

8.6 Commonwealth Access (Core)

- 8.6.1 During the performance of the 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 Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.

- 8.6.2 Without limiting the generality of clause 8.6.1, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:

- a. investigating the reasonableness of proposed prices or costs in any Contract change proposal submitted in accordance with clause 8.1;
- b. conducting audits under the *Auditor-General Act 1997*;
- c. inspecting CMCA, attending, checking or conducting stocktakes of CMCA, including viewing and assessing the Contractor's inventory control and stocktaking systems, and removing CMCA that are no longer required for the performance of the Contract;
- d. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
- e. monitoring the Contractor's occupational health and safety and environmental compliance in connection with the provision of the Services; and
- f. validating the Contractor's progress in meeting the AIC Schedule.

- 8.6.3 If the Contractor enters into a Subcontract in accordance with clause 8.8, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.

- 8.6.4 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.

8.7 Contractor Access (Core)

- 8.7.1 The Commonwealth shall allow the Contractor or its Key Persons access to Commonwealth premises for the purpose of performing the Contract.

- 8.7.2 The Contractor shall comply with, and require persons afforded access under clause 8.7 to comply with, any relevant Commonwealth safety requirements, regulations, standing orders, or codes of behaviour for the Commonwealth premises.

- 8.7.3 The Commonwealth retains the right to deny access on occasions to the Contractor or its Key Persons because of safety and security arrangements or as a result of failure by the Contractor or Key Persons to comply with clause 8.9.

8.8 Subcontracts (Core)

- 8.8.1 The Contractor shall not Subcontract any part of the work under the Contract without the prior written approval of the Commonwealth Representative.

- 8.8.2 The Contractor, by subcontracting any part of the work under the Contract shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 8.8.3 The Contractor shall not enter into a Subcontract under the Contract with a Subcontractor named by the Director of Affirmative Action as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.
- 8.8.4 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 the Contract.

8.9 Defence Security (Core)

- 8.9.1 If the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence or the ADF, the Contractor shall:
- a. comply with any security requirements (including those contained in the DSM) notified to the Contractor by the Commonwealth Representative from time to time; and
 - b. ensure that its officers, employees, agents and Subcontractors are aware of and comply with the Commonwealth's security requirements.
- 8.9.2 The Contractor shall:
- a. ensure that its officers, employees, agents and Subcontractors, undertake any security checks, clearances or accreditations as required by the Commonwealth;
 - b. notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and
 - c. provide any written undertakings in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.

Note to drafters: The following optional clauses should be used when it is clear that personnel security clearances, facility accreditations or ICT system accreditations will be required under the Contract. For further information on personnel security clearances and types of accreditation, refer to Part 2:4 and 2:20 of the DSM.

Where an asset is not classified but is a key contributor to Defence capability and the achievement of its mission, its relative importance to capability is identified through allocation of a security categorisation. Facility accreditations will be required for certain asset security categorisations. For information on types of asset security categorisations and required accreditations refer to Part 2:64 of the DSM or contact the relevant Regional DSA Office (for contact information refer to DSM Part 1, Annex A). Where a facility accreditation is required for classified material (i.e. Option B and Option C below), the accreditation requirements for security categorised assets will automatically be satisfied, and drafters should write 'Not Used' next to Option A. Conversely, where Option A is used, drafter should write 'Not Used' next to Option B and Option C.

Note to tenderers: For information on security classification and categorisation, and required facility accreditations refer to Part 2:4, Part 2:30 and Part 2:64 of the DSM. For information on the Defence Industry Security Program refer to Part 2:42 of the DSM. For access to the DSM tenderers should contact the Contact Officer specified in clause 1.6 of the conditions of tender.

Option A: For when the Contract involves certain categorised assets and only unclassified material or hardcopy Restricted material.

- 8.9.3 The Contractor shall possess a facility accreditation to meet the requirements of protecting assets categorised as [...INSERT CATEGORISATION LEVEL...] or above.

Option B: For when the Contract is placed with an Australian Contractor and a facility accreditation only is required, or both facility accreditation and ICT system accreditation are required.

- 8.9.4 The security classification of work to be performed under the Contract will be up to and including [...INSERT CLASSIFICATION...]. The Contractor shall:

Option A: For when facility accreditation only is required.

- a. possess a facility accreditation to meet the requirements of: [...INSERT REQUIREMENTS (e.g. DOCUMENT STORAGE / EQUIPMENT / COMSEC ETC)...] up to and including [...INSERT CLASSIFICATION...] level.

Option B: For when facility accreditation and ICT system accreditation are required.

- b. possess a facility accreditation and an ICT system accreditation to meet the requirements of [...INSERT REQUIREMENTS (e.g. DOCUMENT STORAGE / INFORMATION SYSTEMS / EQUIPMENT / COMSEC)...] up to and including [...INSERT CLASSIFICATION...] level.

Option C: For when the Contract is placed with an overseas Contractor and a facility accreditation only is required, or both facility accreditation and ICT system accreditation is required

- 8.9.5 The security classification of work to be performed under the Contract will be up to and including [...INSERT CLASSIFICATION...]. The Contractor shall:

Option A: For when facility accreditation only is required.

- a. possess a facility accreditation to meet the requirements of [...INSERT REQUIREMENTS (e.g. DOCUMENT STORAGE / EQUIPMENT / COMSEC)...] up to and including [...INSERT CLASSIFICATION...] level, or equivalent; and

Option B: For when facility accreditation and ICT system accreditation is required.

- b. possess a facility accreditation and an ICT system accreditation to meet the requirements of [...INSERT REQUIREMENTS (e.g. DOCUMENT STORAGE / INFORMATION SYSTEMS / EQUIPMENT / COMSEC)...] up to and including [...INSERT CLASSIFICATION...] level or equivalent; and

- c. comply with the relevant overseas government industry security policy.

- 8.9.6 For the purposes of clause 8.9.5 accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the Defence Security Authority (DSA) (through a bilateral security instrument or otherwise).

Option: For when the Contract is placed with an Australian Contractor and a personnel security clearance is required.

8.9.7 The security classification of work to be performed under the Contract will be up to and including [...INSERT CLASSIFICATION...] level. The Contractor shall possess a personnel security clearance at [...INSERT CLASSIFICATION...] level and shall comply with the requirements and procedures of Part 2:20 of the DSM, as amended from time to time.

Option: For when Defence Industry Security Program membership is required.

Note to drafters: The following optional clause should be used when the Contractor is required to be a member of the Defence Industry Security Program (DISP).

Circumstances in which DISP membership will be required are detailed in Part 2:42 of the DSM.

8.9.8 The Contractor shall obtain and maintain membership of the Defence Industry Security Program in accordance with DSM Part 2:42.

Option: For when the Contract only involves hardcopy RESTRICTED information and the Contractor is not required to be a member of the Defence Industry Security Program.

8.9.9 The security classification of work to be performed under the Contract will be up to and including RESTRICTED level. The Contractor shall comply with the requirements of Part 2:30 (Enclosure 1) of the DSM, as amended from time to time.

Option: For when a Security Classification and Categorisation Guide is required.

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

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

8.9.12 The Contractor shall promptly report to the Commonwealth Representative any instance in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country.

8.9.13 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 Part 2:33 of the DSM, as amended from time to time.

Option: For when COMSEC material is transmitted in Australia.

8.9.14 All COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall, in addition to the terms of clause 8.9.13, be subject to the special security provisions of Part 2:53 of the DSM, as amended from time to time.

8.9.15 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.

Option: For when COMSEC material is transmitted overseas.

8.9.16 All COMSEC material transmitted between the parties or a party and Subcontractor located overseas, shall be subject to approval in the first instance by the Director Defence Signals Directorate (DSD), in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries. 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.

- 8.9.17 If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of clause 8.9, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 10.2.1.
- 8.9.18 The Contractor shall ensure the requirements of clause 8.9 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to security classified information, in order to perform the obligations of the Subcontract.
- 8.9.19 Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract.

8.10 Key Persons (Core)

- 8.10.1 The Contractor shall ensure that the Services are performed by personnel who:
- a. are suitably qualified, with appropriate skills and experience; and
 - b. hold an appropriate current certificate, authorisation or accreditation at all times during the provision of the Services.
- 8.10.2 The Contractor shall use the Key Persons detailed at Attachment A to deliver the Services under the Contract.
- 8.10.3 Where the Key Persons are unable to undertake work in respect of the Contract, the Contractor shall immediately notify the Commonwealth. The Contractor shall provide replacement personnel acceptable to the Commonwealth at no additional charge, and at the earliest opportunity.
- 8.10.4 The Commonwealth may, at its absolute discretion, give notice requiring the Contractor to remove a Key Person or other Contractor personnel from work in respect of the Services. The Contractor shall arrange for their replacement at the earliest opportunity with personnel of appropriate skills and experience.
- 8.10.5 If the Contractor is unable to provide a replacement with suitable skills or in a sufficient time to enable the Contractor to complete the Services, the Commonwealth may terminate the Contract in accordance with clause 10.2.
- 8.10.6 Any requirement to replace any of the Contractor's personnel during the course of a Contract (whether at the request of the Commonwealth or not) shall not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Contract.

8.11 Post Defence Separation Employment (Optional)

Note to drafters: drafters are to include the following clauses if it is expected that any resultant Contract will be valued at over \$5 million or valued at under \$5million but considered to be commercially sensitive.

- 8.11.1 The Contractor shall ensure that any employee who is a former Defence Employee complies with the requirements of Defence Workplace Relations Manual and DI(G) PERS 25-4 as applicable.
- 8.11.2 Except with the written approval of the Commonwealth Representative the Contractor shall not permit a person who:
- a. in a Relevant Period was an Employee of or a Service Provider to Defence engaged in the preparation or management of the Contract, the selection of the Contractor or the performance of the project or activity to which the Contract relates; or
 - b. in the 12 months immediately preceding the request for approval was an Employee,

to perform or contribute to the performance of the Contract.

8.11.3 The Commonwealth Representative shall not unreasonably withhold approval under clause 8.11.2 and shall consider:

- a. the character and duration of the engagement, services or work performed by the Employee or Service Provider in the period specified in clause 8.11.2a or b (as applicable);
- b. any information provided by the Contractor about the character and duration of the Services to be performed by the Employee or Service Provider under the Contract;
- c. the potential for real or perceived conflicts of interest or probity objections if the Employee or Service Provider performs or contributes to the performance of the Contract;
- d. any information provided by the Contractor concerning any significant effect which withholding approval will have on the Employee or Service Provider's employment opportunities or the performance of the Contract; and
- e. the policy set out in Defence Workplace Relations Manual and DI(G) PERS 25-4, as applicable.

8.11.4 In this clause 8.11:

- a. "Defence" means the Department of Defence and/or the Australian Defence Force;
- b. "Employee" means an employee of Defence or a member of the Australian Defence Force;
- c. "Relevant Period" means each of:
 - (i) 24 months;
 - (ii) 12 months; and
 - (iii) 6 months,before the request for the approval contemplated by clause 8.11.2a was made;
- d. each restriction created by clause 8.11.2a, by the operation of 8.11.4c (due to the 3 Relevant Periods applying), is separate and independent of the other (although they are concurrent in effect); and
- e. "Service Provider" means a person, other than an Employee, involved in Defence work or engaged by the Department of Defence or the Australian Defence Force.

9 POLICY AND LAW

9.1 Applicable Law (Core)

9.1.1 The laws of the [...INSERT RELEVANT STATE OR TERRITORY...] shall apply to the Contract. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.

9.1.2 The Contractor shall, in the performance of the Contract, comply with and ensure its officers, employees, agents and Subcontractors comply with, the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.

9.2 Australian Industry Capability (Core)

Note to drafters: if Industry Requirements are identified or if the expected value of the contract exceeds \$50 million, more extensive AIC clauses will be required. In this case drafters should refer to the AIC provisions contained in the ASDEFCON (Support) template or contact the Director AIC Implementation for assistance.

Note to tenderers: the Australian Industry Capability Toolkit is available at <http://www.defence.gov.au/dmo/> by following the 'Contracting' link.

9.2.1 The Contractor shall comply with and achieve the AIC requirements set out in Attachment E.

9.2.2 The Contractor acknowledges that:

- a. compliance with the AIC Schedule shall not relieve the Contractor from responsibility to provide the Services, or from liability for any defect in the Services arising from the design, workmanship or materials provided by Australian and New Zealand (ANZ) industry; and
- b. acceptance of the Services by the Commonwealth, or provision of Services by the Contractor, shall not relieve the Contractor from meeting its obligations under the AIC Schedule.

9.2.3 The Contractor shall maintain, develop, deliver and update the AIC Schedule in accordance with the Australian Industry Capability Toolkit, as in force from time to time.

9.2.4 Where the Contractor proposes an update to the AIC Schedule, the Contractor shall propose a contract change in accordance with clause 8.1.

9.3 Policy Requirements (Core)

Note to drafters: Prior to RFT release and prior to the execution of any resultant contract, clause 1.1 of the draft conditions of contract should be updated to reflect the version of the following documents and policies current at the time of RFT release and signature of any resultant Contract, as applicable.

9.3.1 The Contractor shall comply with and require its officers, employees, agents and Subcontractors to comply with the following Commonwealth policies of general application relevant or applicable to the Contract:

- a. Defence Equity and Diversity policy as detailed in DI(G) PERS 35-3;
- b. Defence Stocktaking policy as detailed in DI(G) LOG 4-3-014;
- c. Fraud Control policy as detailed in DI(G) FIN 12-1;
- d. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM;
- e. Hazardous Substances policy as detailed in the DPPM;

- f. Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;

Option: For when the Services are valued over \$5million

- g. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM; and
- h. Ozone Depleting Substances Policy as detailed in the DPPM.

- 9.3.2 The Contractor and its Subcontractors must fully comply with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.

Note to drafters: A procurement is a covered procurement if the estimated value of the property or services being procured is above \$80,000 and it is not exempt in accordance with Annex A to the CPGs. If the procurement is specifically exempt from complying with the Mandatory Procurement Procedures as a result of a Defence or DMO specific exemption (a list of Defence and DMO specific exemptions is found at chapter 1.2 of the DPPM) the procurement will still be classed as a covered procurement (albeit exempt from the MPPs) and the following clauses must be used if the procurement involves:

- a. clothing and footwear; or**
- b. cleaning services or building management services.**

The Procurement Method Approver is responsible for determining whether a Defence or DMO specific exemption applies to the procurement.

Option: For when a procurement is a covered procurement involving clothing and footwear.

- 9.3.3 The Contractor and its Subcontractors must be accredited [or seeking accreditation – *delete these words in square brackets if the Tenderer has accreditation at Contract signature*] with the [Homeworkers' Code of Practice](#) for the duration of the Contract. This clause does not apply to the Contractor or its Subcontractors if they do not have a commercial presence in Australia.

Option: For when a procurement is a covered procurement involving cleaning services or building management services.

- 9.3.4 In relation to any cleaning services provided under this Contract by employees in Australia, the Contractor and its Subcontractors must:
- a. provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently;
 - b. provide their employees with a written duty schedule at each site listing specific tasks to be completed; and
 - c. set fair and reasonable workloads for all its employees and provide adequate staff to achieve the performance levels required under this Contract.

9.4 Occupational Health and Safety (Core)

- 9.4.1 The Contractor shall take all reasonably practicable steps in the course of the provision of Services under the Contract:
- a. to protect the health and safety at work of:

- (i) Commonwealth employees (as defined in section 9(1) of the *Occupational Health and Safety Act 1991* ("OHS Act")); and
- (ii) the Contractor's Personnel;

in connection with the Services provided under the Contract; and

- b. to ensure that other persons who are at or near a workplace under the control (as defined in the OHS Act) of the Contractor and used in connection with, the Services under the Contract, are not exposed to risk to their health or safety arising from the Services or from the use of the Services.

9.4.2 The Contractor shall:

- a. provide Services under the Contract in such a way that the Commonwealth and its employees and officers are able to undertake any roles or obligations in connection with the Services provided under the Contract (such as in relation to testing or auditing); and
- b. ensure that the Commonwealth and its employees and officers are able to make full use of the Services for the purposes for which they are intended, and to maintain, support and develop them,

without the Commonwealth, or its employees or officers, contravening the OHS Act, any other applicable occupational health and safety statutory requirements or any Commonwealth or Defence policy related to occupational health and safety.

- 9.4.3 The Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons in connection with the provision of Services under the Contract. The Contractor shall comply with the direction. The Contractor will not be entitled to any performance relief merely because of compliance with the direction.

9.5 Environmental Obligations (Core)

- 9.5.1 The Contractor shall perform its obligations under the Contract in such a way that:

- a. the Commonwealth is not placed in breach of; and
- b. the Commonwealth is able to support and to make full use of the Services for the purposes for which they are intended without being in breach of,

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

9.6 Severability (Core)

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

9.7 Privacy (Core)

- 9.7.1 The Contractor shall:

- a. use or disclose Personal Information obtained during the course of providing Services under the Contract, only for the purposes of the Contract;
- b. not do any act, or engage in any practice that would breach an Information Privacy Principle contained in section 14 of the *Privacy Act 1988* (the Act), which if done or engaged in by an agency, would be a breach of that Information Privacy Principle;
- c. not use or disclose Personal Information, or engage in an act or practice that would breach section 16F of the Act, or a National Privacy Principle, particularly National Privacy Principles 7 through to 10 or an Approved Privacy Code, unless:

- (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
 - (ii) in the case of a National Privacy Principle or an Approved Privacy Code, the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract, and the activity or practice is inconsistent with the National Privacy Principle or Approved Privacy Code;
 - d. notify individuals whose Personal Information is held by the Contractor or Subcontractor, as the case may be, of the complaints mechanism outlined in the Act that may apply to the Contractor;
 - e. disclose in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with a National Privacy Principle or an Approved Privacy Code binding a party to the Contract;
 - f. carry out and discharge the obligations contained in the Information Privacy Principles as if it were an agency under the Act; and
 - g. ensure that any officer, employee or agent of the Contractor who is required to deal with Personal Information for the purposes of the Contract, is made aware of the obligations of the Contractor as set out in this clause 9.7.
- 9.7.2 The Contractor shall promptly notify the Commonwealth Representative if the Contractor:
- a. becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in clause 9.7, whether by the Contractor or Subcontractor;
 - b. becomes aware that a disclosure of Personal Information may be required by law; or
 - c. is approached by the Privacy Commissioner, or by any individual to whom any Personal Information held by the Contractor or Subcontractor relates, in respect of Personal Information.
- 9.7.3 The Contractor shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Contractor has under this clause 9.7, including the requirement in relation to Subcontracts.

9.8 Public Announcements (Optional)

- 9.8.1 The Contractor shall not make any public announcement or other statement which refers or is connected to the Contract, including on any matter related to the Services, without first consulting the Commonwealth Representative, except if prevented from doing so by any law or the rules of any stock exchange or similar body on which the Contractor is listed. This clause does not apply to routine marketing activities promoting a Contractor's product or to information that is public knowledge other than by breach of this clause.

10 DISPUTES AND TERMINATION

10.1 Resolution of Disputes (Core)

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

10.2 Contractor Default (Core)

- 10.2.1 The Commonwealth may, in addition to any other right or remedy it may have, by notice in writing to the Contractor, immediately terminate the Contract or reduce the scope of the Contract in the event that the Contractor:
- a. becomes bankrupt or insolvent;
 - b. becomes subject to any form of administration or assigns its rights otherwise than in accordance with the Contract;
 - c. commits any breach for which the Contract provides a notice of termination for default may be given; or
 - d. fails to take action to remedy a default by the Contractor of another obligation to be performed or observed under the Contract within 14 days of being given notice in writing by the Commonwealth Representative to do so or, where action is taken within 14 days, the Contractor fails to remedy the default within the period specified in the notice.

Note to drafters: The following termination provisions should be amended in accordance with the options selected at clause 9.3.

- e. commits a breach of clause 9.3.2, 9.3.3 or 9.3.4.
- 10.2.2 If the Contract is terminated under this clause or otherwise:
- a. 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 its officers, employees, agents or Subcontractors and personnel, which contain or relate to any Commercial-in-Confidence Information or which are security classified;
 - b. subject to clause 10.4, the parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - c. rights to recover damages, including full contractual damages, shall not be affected;
 - d. the Contractor shall deliver to the Commonwealth the TD for Services produced prior to the date of termination, within 30 days of receipt of the notice of termination, or other period agreed by the parties; and
 - e. the Contractor shall return to the Commonwealth all CMCA in its possession, power or control or in the possession, power or control of its officers, employees, agents or Subcontractors and personnel.

10.3 Right of Commonwealth to Recover Money (Core)

- 10.3.1 Without limiting the Commonwealth's rights or remedies under the Contract or at law, if the Contractor owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may at its discretion do one or both of the following:
- a. deduct the amount of the debt from payment of any claim; or

- b. give the Contractor written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.
- 10.3.2 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 Reserve Bank of Australia cash rate target current at the date the payment was due for each day the payment is late.
- 10.3.3 Nothing in this clause 10.3 shall affect the right of the Commonwealth to recover from the Contractor part of or the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

10.4 Survivorship (Core)

- 10.4.1 Any provision of the Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Contract and any rights arising on termination or expiration shall survive, including provisions relating to Commercial-in-Confidence Information, Privacy, Intellectual Property and the right of the Commonwealth to recover money, Defence Security and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Contract.

10.5 Termination or Reduction for Convenience (Core)

- 10.5.1 In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing.
- 10.5.2 If the Commonwealth Representative issues a notice under clause 10.5.1, the Contractor shall:
- a. stop or reduce work in accordance with the notice;
 - b. comply with any directions given to the Contractor by the Commonwealth; and
 - c. 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.
- 10.5.3 The Commonwealth shall only be liable for:
- a. payments under the payment terms of the Contract for work conducted before the effective date of termination or reduction; and
 - b. 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.
- 10.5.4 The Contractor shall not be entitled to any profit anticipated on any part of the Contract terminated or reduced.
- 10.5.5 The Contractor shall, in each Subcontract, secure the right of termination and reduction and terms for compensation functionally equivalent to that of the Commonwealth under clause 10.5.

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA

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

In the presence of:

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

SIGNED for and on behalf of

THE CONTRACTOR:

Note to drafters: Appropriate execution clauses, and instruction on their use, may be found in the ASDEFCON (Services) Handbook.

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

(Specify Company Name and ACN/ABN/ARBN)

(signature) (print name) (date)
Director/Secretary

In the presence of:

(signature) (print name) (date)
Director

ATTACHMENT A
STATEMENT OF WORK (CORE)

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

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

1. INTRODUCTION (CORE)

1.1 [...INSERT SUMMARY OF REQUIREMENT...]

1.2 [...INSERT BACKGROUND TO REQUIREMENT...]

2. STATEMENT OF WORK (CORE)

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

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

2.1 The Contractor shall undertake the work in the following phases:

- a. Phase 1: [...INSERT DETAILS...];
- b. Phase 2: [...INSERT DETAILS...];
- c. Phase 3: [...INSERT DETAILS...]; etc

2.2 Phase 1: [...INSERT DETAILS OF PHASE/NAME...]

- a. The Contractor shall.....
- b. The Contractor shall.....

2.3 Phase 2: [...INSERT DETAILS OF THE PHASE/NAME...]

- a. The Contractor shall.....
- b. The Contractor shall.....

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

2.4 The Contractor shall:

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

ATTACHMENT A

3. DELIVERABLES (CORE)

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

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

Table 1: Contract deliverables

No.	Deliverables	Location	SOW Ref	Delivery Date

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

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

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

Note to drafters: Care must be exercised here when specifying tasks to minimise the risk of the Contractor being deemed to be an employee of the Commonwealth. If necessary, drafters should consult the DPPM or seek assistance from the Contracting Help Desk.

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

4. MEETINGS AND REPORTING (OPTIONAL)

- 4.1 [...INSERT ANY SPECIFIC MEETING AND REPORTING REQUIREMENTS...].

5. KEY PERSONS (CORE)

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

Table 2: Personnel Identified for the Performance of the Contract

Name	Task Title/Duties	Labour category (if applicable)

ATTACHMENT A

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

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

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

6. GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

Note to drafters: In this instance, GFM includes items such as work areas.

6.1 The Commonwealth shall provide the following GFM to the Contractor at the times and places detailed below:

Table 3: Government Furnished Material

Item	Date Required	Location Required	Remarks/Intended Purpose

7. STOCKTAKING OF CONTRACTOR MANAGED COMMONWEALTH ASSETS (CORE)

7.1 The Contractor shall:

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

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

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

ATTACHMENT B
PAYMENT (CORE)

1. BASIS OF PAYMENT

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

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

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

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

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

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

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

Labour Category	Estimated Allowable Hours	Labour Rates (GST Inclusive)

- 1.5 The Contractor may submit a claim for payment of each progress payment following the last Working Day of the relevant month.
- 1.6 Notwithstanding clause 1.4 above, and subject to clause 8.1 of the conditions of contract, the Contractor shall provide the Services for a Contract Price which shall not exceed (...INSERT DOLLAR AMOUNT PRIOR TO CONTRACT SIGNATURE...).

ATTACHMENT B

2. REIMBURSABLE EXPENSES

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

Information on Travelling Allowances is contained within Departmental Personnel Instruction No 2/2009 Rates for Payment of Travel Costs - June 2009 Adjustments.

Option A: For when no expenses will be reimbursed.

2.1 No expenses shall be reimbursable under the Contract.

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

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

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

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

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

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

2.5 Travelling Allowance Rates provided to the Contractor under the Contract have been supplied to the Department of Defence under licence by the Department of Education, Employment and Workplace Relations for Defence Purposes only. The Travelling Allowance Rates are to be used only for the payment of allowances or for budgeting purposes. The Contractor shall not make public or disclose the Travelling Allowance Rates to other agencies, organisations or individuals without the prior written consent of the Department of Defence. This clause shall survive the expiration or termination of the Contract and shall apply regardless of whether the Travelling Allowance Rates are or become public knowledge.

ATTACHMENT C

INTELLECTUAL PROPERTY SCHEDULE (CORE)

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

1. BACKGROUND IP (CONTRACTOR)

Note to tenderers: List and/or describe in detail.

2. THIRD PARTY IP

Note to tenderers: List and/or describe in detail.

3. FOREGROUND IP

Note to tenderers: List and/or describe in detail.

ATTACHMENT D

COMMERCIAL-IN-CONFIDENCE INFORMATION (CORE)

Note to drafters: Drafters should review the examples provided below, prior to release of the RFT, and include them as appropriate.

Note to tenderers: Attachment D will consist of an amalgamation of this Attachment and the successful tenderer's response. Defence considers that there are six reasons why a clause may be considered to be Commercial-in-Confidence Information:

- a. contains commercially sensitive information, disclosure of which is not in the relevant party's best interest;
- b. contains details about commercially sensitive pricing information including profit margins and the underlying price basis;
- c. contains details about insurance and liability regimes that are commercially sensitive;
- d. contains details about intellectual property regimes that are commercially sensitive;
- e. contains details about the capability/services being delivered that are commercially sensitive; or
- f. contains details about contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive.

Guidance on the classification of provisions as Commercial-in-Confidence Information is contained in the DPPM.

Pricing and allowances provisions in Attachment B should only be listed in this Attachment if they contain information which is not publicly available, which is commercially sensitive and which is communicated and received in circumstances imposing an obligation of confidentiality.

Table 1: Commercial-In-Confidence Information

Clause number	Title of clause	Reason for classification	Party for whom the information is Commercial-in-Confidence
Conditions of contract, for example			
Clause 7.2 (if amended)	Warranties and Representations	Contains details about contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive	Insert name of party

ATTACHMENT D

Clause number	Title of clause	Reason for classification	Party for whom the information is Commercial-in-Confidence
Conditions of contract, for example			
Clause 4	Intellectual Property	Contains details about intellectual property regimes that are commercially sensitive	Insert name of party
Any Tailored clauses	(Insert any clauses which are not standard template clauses and which are by their nature confidential and which contain information communicated and received in circumstances imposing an obligation of confidentiality)	Insert relevant reason	Insert name of party
Indemnity and insurance provisions - add these provisions if modified from the template	(Insert indemnity and insurance clauses which are not standard template clauses and which contain information communicated and received in circumstances imposing an obligation of confidentiality)	Contains details about insurance and liability regimes that are commercially sensitive	Insert name of party
Other - any confidential clauses inserted in the contract add	(Insert any additional clauses which are not standard template clauses and which contain information communicated and received in circumstances imposing an obligation of confidentiality)	Insert relevant reason	Insert name of party
Attachment A: (List relevant parts of the SOW)	Statement of Work	Contains details about the capability/services being delivered that are commercially sensitive	Insert name of party
Attachment B:	Payment	Contains details about commercially sensitive pricing information including profit margins and the underlying price basis	Contractor
Attachment C	Intellectual Property Schedule	Contains details about intellectual property regimes that is commercially sensitive	Insert name of party

ATTACHMENT E

AUSTRALIAN INDUSTRY CAPABILITY (AIC) (CORE)

1 AIC REQUIREMENTS

Note to drafters: if Industry Requirements are identified or if the expected value of the Contract exceeds \$50 million, more extensive AIC clauses will be required. In this case drafters should refer to the ASDEFCON Support template and contact the Director AIC Implementation for assistance.

1.1 AIC Program Objectives

- 1.1.1 The AIC program has two objectives:
- a. the generation and sustainment of indigenous industrial capabilities essential to meeting Australia's sovereign military self reliance needs, as required in support of ADF operational capability; and
 - b. the creation of competitive opportunities for local industry to provide goods and services, domestically and internationally, as part of global supply chains, based on best value for money.
- 1.1.2 To meet these objectives the Contractor shall establish competitive commercial arrangements for Local Industry Activities (LIA) and management arrangements as set out in the AIC Schedule.

1.2 AIC Schedule

Note to tenderers: Attachment E will consist of an amalgamation of this Attachment, the AIC Schedule at Table 1 in Annex E to the conditions of tender and the successful tenderers response.

ATTACHMENT F

SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (OPTIONAL)

Note to drafters: For information on developing a SCCG refer to Part 2:64 of the DSM and contact the Project Operations and International Visits section of the Defence Security Authority (for contact information refer to DSM Part 1, Annex A).

Drafters should insert the Security Classification and Categorisation Guide prior to release of RFT.