

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:
- 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