

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 supply of [...INSERT REQUIREMENT...].
- B. The Contractor has offered to provide the Supplies 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:		Project ID:	
ROMAN ORDER No:		Cost Centre Code:	
Order Date:		WBS Element Code:	
Contractor A.B.N:		Cost Element:	
Vendor No:		Internal Order:	

**PART 2 - DRAFT CONDITIONS OF CONTRACT  
TABLE OF CONTENTS**

	<b>Page</b>
<b>1 CONTRACT FRAMEWORK.....</b>	<b>1</b>
1.1 Definitions (Core) .....	1
1.2 Interpretation (Core).....	1
1.3 Commencement of Operation (Core) .....	2
1.4 Entire Agreement (Core).....	2
1.5 Precedence of Documents (Core) .....	2
1.6 Contracted Requirement (Core) .....	2
1.7 Option for Further Quantities and Optional Extras (Optional) .....	2
<b>2 ROLES AND RESPONSIBILITIES.....</b>	<b>3</b>
2.1 Commonwealth Representative (Core) .....	3
2.2 Contractor Representative (Core).....	3
2.3 Notices (Core).....	3
<b>3 PRODUCTION OF THE SUPPLIES.....</b>	<b>4</b>
3.1 Language and Measurement (Core) .....	4
3.2 Export Approvals and Imported Supplies (Optional) .....	4
3.3 Contractor Managed Commonwealth Assets (Core).....	4
<b>4 INTELLECTUAL PROPERTY .....</b>	<b>5</b>
4.1 Ownership of Intellectual Property (Core) .....	5
4.2 Intellectual Property Licence (Core) .....	5
4.3 Provision of Technical Data (Core).....	5
4.4 Release to Third Parties (Core).....	5
4.5 Moral Rights (Core).....	5
<b>5 DELIVERY, ACCEPTANCE AND OWNERSHIP .....</b>	<b>6</b>
5.1 Delivery (Core).....	6
5.2 Acceptance (Core).....	6
5.3 Ownership and Risk (Core) .....	7
<b>6 PRICE AND PAYMENT .....</b>	<b>8</b>
6.1 Price and Price Basis (Core) .....	8
6.2 Payment (Core).....	8
6.3 Claims for Payment (Core) .....	8
6.4 Adjustments (Optional) .....	9
6.5 Time of Payment (Core).....	9
6.6 Taxes and Duties (Core).....	9
6.7 Late Payment (RFT Core).....	10

<b>7</b>	<b>INSURANCE AND LIABILITY .....</b>	<b>11</b>
7.1	Indemnity (Core) .....	11
7.2	Intellectual Property Indemnity (Core) .....	11
7.3	Limitation of Liability (Optional).....	11
7.4	Insurance (Core).....	12
<b>8</b>	<b>WARRANTIES .....</b>	<b>13</b>
8.1	Fitness for Purpose (Core) .....	13
8.2	Warranty (Core) .....	13
<b>9</b>	<b>CONTRACT MANAGEMENT.....</b>	<b>14</b>
9.1	Change to the Contract (Core) .....	14
9.2	Waiver (Core).....	14
9.3	Commercial-in-Confidence Information (Core).....	14
9.4	Assignment and Novation (Core).....	15
9.5	Negation of Employment and Agency (Core) .....	15
9.6	Commonwealth Access (Core) .....	15
9.7	Subcontracts (Core).....	15
9.8	Defence Security (Core) .....	16
<b>10</b>	<b>POLICY AND LAW .....</b>	<b>20</b>
10.1	Applicable Law (Core).....	20
10.2	Australian Industry Capability (Core) .....	20
10.3	Policy Requirements (Core).....	20
10.4	Occupational Health and Safety (Core) .....	21
10.5	Environmental Obligations (Core).....	22
10.6	Severability (Core) .....	22
10.7	Privacy (Core) .....	22
10.8	Public Announcements (Optional) .....	23
<b>11</b>	<b>DISPUTES AND TERMINATION .....</b>	<b>24</b>
11.1	Resolution of Disputes (Core).....	24
11.2	Contractor Default (Core) .....	24
11.3	Termination or Reduction for Convenience (Core).....	24
11.4	Right of Commonwealth to Recover Money (Core).....	25
11.5	Survivorship (Core) .....	25
 <b>ATTACHMENTS</b>		
A.	STATEMENT OF WORK (Core).....	A-1
B.	PRICE AND DELIVERY SCHEDULE (Core).....	B-1
C.	SCHEDULE OF PRICES FOR FURTHER QUANTITIES AND OPTIONAL EXTRAS (Optional).....	C-1
D.	INTELLECTUAL PROPERTY SCHEDULE (Core).....	D-1

- E. SUPPLIES ACCEPTANCE CERTIFICATE (Core)..... E-1
- F. SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (Optional)..... F-1
- G. COMMERCIAL-IN-CONFIDENCE INFORMATION (Core)..... G-1
- H. GLOSSARY (Core)..... H-1
- I. AUSTRALIAN INDUSTRY CAPABILITY (Core)..... I-1
- J. [...INSERT OTHER ATTACHMENTS...]..... J-1

## 1 CONTRACT FRAMEWORK

**Note to drafters: ASDEFCON (Complex Materiel) Volume 1 has been drafted for low-to-medium risk procurements where the supplies being acquired are COTS or MOTS products and require minimal or no design, development or integration activities, and where the contract is expected to be completed within 2 years. Where it is expected that any resultant contract will be of higher risk or take longer than 2 years to complete, additional issues will need to be considered and ASDEFCON (Complex Materiel) Volume 1 tailored accordingly. Drafters are to refer to the accompanying ASDEFCON (Complex Materiel) Handbook, the ASDEFCON Template Selection Guide and the DPPM for guidance.**

### 1.1 Definitions (Core)

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

### 1.2 Interpretation (Core)

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.

1.2.2 The objectives of the parties in entering into this Contract are:

- a. to ensure that the Contractor delivers the Supplies on time, on budget, to the required safety, quality and capability, in accordance with the Contract;
- b. to provide an effective capability to the Australian Defence Force (ADF) that:
  - (i) supports the ADF's mission to 'fight and win';
  - (ii) supports the Commonwealth's policy of Defence self-reliance; and
  - (iii) minimises the lifecycle costs to the Commonwealth;
- c. to develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the Contractor;
- d. to obtain value for money for the Commonwealth on an ongoing basis in relation to the delivery of [...INSERT CAPABILITY...];

- e. to obtain for the Contractor as a commercial entity a reasonable return on its investment when it performs the Contract efficiently and successfully, being a return that appropriately reflects the properly managed risks assumed by the Contractor in the performance of the Contract;
- f. to have appropriate Intellectual Property for acquisition, whole of life support and disposal;
- g. to facilitate the retention and enhancement of industry capabilities within Australia and New Zealand (ANZ);
- h. to ensure availability of necessary facilities (including any plant and systems) to develop and maintain (as appropriate) the [...INSERT CAPABILITY...];
- i. to encourage the most efficient possible use of resources for the achievement of the [...INSERT CAPABILITY...];
- j. to work within a framework that ensures personnel and materiel safety, and assures compliance with all laws and other regulatory requirements;
- k. to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication; and
- l. [...INSERT PROJECT SPECIFIC OBJECTIVES, IF ANY...].

1.2.3 Without in any way affecting or overriding the other terms of the Contract, each party agrees to perform its obligations and enforce its rights under the Contract having regard to, and with the aim of, satisfying the objectives described in clause 1.2.2.

### **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 the terms of the Contract, a descending order of precedence shall be accorded to:

- a. the conditions of contract and the Glossary;
- b. the SOW and its annexes;
- c. the Attachments other than the SOW and the Glossary; and
- d. any document incorporated by express reference as part of the Contract,

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

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

---

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

### **1.7 Option for Further Quantities and Optional Extras (Optional)**

---

1.7.1 The Contractor grants the Commonwealth the option to purchase additional quantities of the Supplies and optional extras as set out in Attachment C, at any time prior to (...INSERT DATE...) under the terms of the Contract, including those detailed in Attachment C.

1.7.2 The Commonwealth may exercise the option by providing written notice to the Contractor identifying the optional extras or quantity and type of additional quantities of the Supplies (as appropriate) to be purchased. The Contractor shall, within 30 days of receipt of the notice, submit a change proposal to the Contract in accordance with clause 9.1.

## **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.
- 2.1.2 The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of the Contract.
- 2.1.3 If given orally, a direction shall be confirmed in writing within 14 days. The Commonwealth Representative shall have no authority to waive any term of, or release the Contractor from, its obligations under the Contract except in accordance with clause 9.1 of these conditions of contract or clause 6.2 of the SOW.
- 2.1.4 Unless authorised by the Contract or a direction given under clause 2.1.2, any work performed or cost incurred by the Contractor in response to a communication from the Commonwealth Representative is at the Contractor's sole risk.

### **2.2 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 referred to in clause 2.2, as the case may be, at the following address:
- [...INSERT COMMONWEALTH REPRESENTATIVE POSTAL ADDRESS AND FACSIMILE NUMBER...]
- (...INSERT CONTRACTOR REPRESENTATIVE 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 PRODUCTION OF THE SUPPLIES**

#### **3.1 Language and Measurement (Core)**

---

- 3.1.1 All information delivered as part of the Supplies 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 Supplies are imported, units of measurement as agreed by the Commonwealth Representative.

#### **3.2 Export Approvals and Imported Supplies (Optional)**

---

- 3.2.1 The Contractor shall obtain all necessary valid export licences or other approvals to meet the requirements of the Contract. The Contractor shall provide, on request by the Commonwealth Representative, a copy of any licence or other approval, or proof that such licence or approval has been obtained.
- 3.2.2 The Contractor shall notify the Commonwealth Representative in writing within 10 days of becoming aware of the refusal, revocation, or any qualification of an export licence or other approval.
- 3.2.3 The Contractor shall provide the Commonwealth Representative with notice in writing, including supporting evidence, of any variation to the rate of customs duty applicable to the Supplies between the Base Date and the date of entry of the item and;
- a. in the case of an increase, the Contractor may claim reimbursement in the amount of such increase; or
  - b. in the case of a decrease, the Commonwealth may recover such money as a debt due recoverable under clause 11.4.

#### **3.3 Contractor Managed Commonwealth Assets (Core)**

---

- 3.3.1 The Contractor shall take all reasonable care of Contractor Managed Commonwealth Assets (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 The Contractor shall be liable for loss or destruction of, damage to or defects or deficiencies in, the CMCA, except to the extent that the loss, destruction, damage, defects or deficiencies result from any unlawful or negligent act or omission on the part of the Commonwealth, its officers, employees or agents. Subject to clause 3.3.4, or an agreement by the parties to replace the CMCA, the Contractor shall compensate the Commonwealth for the loss or destruction of, damage to or defects or deficiencies in, the CMCA and the Commonwealth may recover an amount equivalent to the value of the compensation under clause 11.4 as a debt due to the Commonwealth.
- 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 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 that is owned by the Contractor, including the right to sub-licence:
  - a. to use, maintain, modify, develop and dispose of the Supplies;
  - b. to complete the Supplies upon termination of the Contract; and
  - c. to remedy defects or omissions in the Supplies.
- 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.
- 4.2.3 The Contractor shall, as soon as possible, but no later than the submission of the final claim for payment under clause 6.2, provide a list of all Background IP, Foreground IP and Third Party IP to the Commonwealth in the format set out at Attachment D. The Commonwealth reserves the right to withhold payment of the final claim for payment under clause 6.2 until the Contractor complies with its obligations under this clause 4.
- 4.2.4 For the avoidance of doubt, Attachment D 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 D, clause 4 shall to the extent of the inconsistency prevail.

### **4.3 Provision of Technical Data (Core)**

---

- 4.3.1 The Contractor shall provide with the Supplies all Technical Data (TD) necessary for the Commonwealth to exercise its IP rights as defined in clause 4.1 or 4.2, including to use, maintain and dispose of, the Supplies.
- 4.3.2 The Contractor shall ensure that all TD delivered 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 4.1 or 4.2.

### **4.4 Release to Third Parties (Core)**

---

- 4.4.1 If the Commonwealth makes available to another person any IP rights that are owned by the Contractor and which is Foreground IP or Background IP, the Commonwealth shall obtain from that person a deed of confidentiality.

### **4.5 Moral Rights (Core)**

---

- 4.5.1 The Contractor represents and warrants that the use of the Supplies 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.
- 4.5.2 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 DELIVERY, ACCEPTANCE AND OWNERSHIP**

### **5.1 Delivery (Core)**

---

5.1.1 The Contractor shall deliver the Supplies in accordance with the Contract, including the Price and Delivery Schedule at Attachment B.

### **5.2 Acceptance (Core)**

---

5.2.1 All Supplies delivered by the Contractor shall be subject to Acceptance by the Commonwealth in accordance with this clause 5.2.

5.2.2 The Contractor shall, when seeking Acceptance, complete and present a signed Supplies Acceptance Certificate at Attachment E and provide any other supporting evidence required by the Commonwealth Representative.

5.2.3 The Commonwealth Representative shall within 21 days of the offer of Supplies for Acceptance:

- a. Accept the Supplies by signing the Supplies Acceptance Certificate; or
- b. reject the Supplies, in which case the Commonwealth Representative shall notify the Contractor in writing of the reasons for the rejection and the extent of the non-conformance.

5.2.4 The Contractor acknowledges and agrees that:

- a. the specification of the requirements for the Supplies in the Contract is the result of resource-intensive Commonwealth definition, approval and procurement processes;
- b. the Commonwealth has relied on the Contractor's representations about time (including as reflected in the Contract);
- c. the Commonwealth has determined that the Contract is value for money on the basis that full Acceptance of all Supplies is achieved with no delay; and
- d. it is reasonable that the Commonwealth at all times during the period of the Contract has current knowledge and be advised by the Contractor of:
  - (i) progress under the Contract;
  - (ii) risks to achievement of Acceptance or other milestones including potential minor omissions and defects;
  - (iii) any other potential or actual non-compliance with the Contract;
  - (iv) risk management by the Contractor including of emerging risks; and
  - (v) any potential delay in meeting any timing obligation in the Contract, for any reason, and whether or not the delay risk was foreseeable or has been previously identified.

5.2.5 The Contractor shall:

- a. proactively ensure that the Commonwealth is kept informed of matters relevant to the issues in clause 5.2.4, using the communication channels and reporting processes in the Contract; and
- b. comply with any directions by the Commonwealth or the exercise of any other Commonwealth powers under or in relation to the Contract in dealing with such matters.

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

- a. determine a revised Contract Price reflecting the reduction in value for money of the non-complying Supplies ('Reduction Amount');
- b. direct the Contractor to provide a SG2 Application for a Deviation that is consistent with this clause; and
- c. exercise its rights under clause 11.4 in respect of the Reduction Amount.

- 5.2.7 The Commonwealth Representative may require the Contractor to retake possession of any item of Supplies within seven days when a notice rejecting the Supplies is issued under clause 5.2.3b. Repossession of Supplies shall not affect the obligation of the Contractor to provide conforming Supplies.
- 5.2.8 The Contractor shall bear all costs associated with replacing or correcting rejected Supplies and of complying with the directions of the Commonwealth Representative.
- 5.2.9 Any action of the Contractor in correcting or replacing the Supplies and in complying with the directions of the Commonwealth Representative under this clause 5.2 shall not entitle the Contractor to claim postponement of the date of delivery of the Supplies, or relieve the Contractor from performing its obligations under the Contract.

### **5.3 Ownership and Risk (Core)**

---

- 5.3.1 Subject to clause 4, ownership of Supplies shall pass to the Commonwealth upon payment of a claim relating to those Supplies in accordance with clause 6.2.
- 5.3.2 The Contractor shall ensure that, at the time ownership of any item of Supplies passes to the Commonwealth, those Supplies shall be free of any registered or unregistered charge, lien, mortgage or other encumbrance.
- 5.3.3 Risk of loss of or damage to the Supplies resides with the Contractor until the Supplies have been delivered to the Commonwealth in accordance with Attachment B.
- 5.3.4 If the Commonwealth Representative rejects Supplies as not conforming to the requirements of the Contract, or if the Contractor retakes possession of the Supplies in accordance with the Contract, risk of loss of, or damage to, those Supplies shall revert to the Contractor on repossession or seven days after issue of a notice under clause 5.2.7, whichever is the earlier.

## 6 PRICE AND PAYMENT

### 6.1 Price and Price Basis (Core)

---

**Option A: For when the Contract is a firm price Contract and no adjustment claims will be allowed.**

6.1.1 The Contract Price is set out in Attachment B and, subject to clause 9.1, is unalterable.

**Option B: For when adjustment claims will be allowed.**

6.1.2 The Contract Price is set out in Attachment B and, subject to clauses 6.4 and 9.1, is unalterable.

6.1.3 The Contract Price is payable in accordance with the Contract.

### 6.2 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.**

6.2.1 The Contractor shall submit a claim for payment in accordance with clause 6.3.

6.2.2 On receipt of a claim for payment the Commonwealth Representative shall either:

- a. approve the claim if it is submitted in accordance with clause 6.2.1 and the Commonwealth has Accepted the Supplies under clause 5.2.3a; or
- b. reject the claim if it is not submitted in accordance with clause 6.2.1 or the Commonwealth has rejected the supplies under clause 5.2.3b.

6.2.3 When a claim is approved under clause 6.2.2a, the Commonwealth shall make payment within 30 days of receipt of the claim.

6.2.4 When the Commonwealth Representative rejects the claim under clause 6.2.2b, 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.

6.2.5 Upon receipt of a notice issued pursuant to clause 6.2.4, 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.

### 6.3 Claims for Payment (Core)

---

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

6.3.2 All claims for payment submitted by the Contractor shall:

- a. subject to clause 5.2.6, be correctly addressed and calculated in accordance with the Contract;
- b. be accompanied by the Supplies Acceptance Certificate(s) at Attachment E signed by the Contractor that relate to the Supplies listed in the claim for payment;
- c. be in the form of a valid tax invoice in accordance with clause 6.6;
- d. contain the following information:
  - (i) the title of the Supplies and the name of the Contractor's representative;
  - (ii) the name and phone number of the Commonwealth Representative;
  - (iii) the Contract number; and
  - (iv) the amount of the claim; and

- e. be accompanied by any documentation requested by the Commonwealth Representative for the purposes of clause 5.2 or in order to establish that the claim is in accordance with the Contract.

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

#### **6.4 Adjustments (Optional)**

**Note to drafters: These clauses should be used when adjustments for Exchange Rate fluctuations will be allowed.**

6.4.1 The element of a payment representing the purchase of imported items from overseas suppliers to form part of the Supplies shall be subject to adjustment to reflect fluctuations in Exchange Rate occurring between the Base Date and:

**Option A: For when the Contract will be completed within 12 months of the Base Date.**

- a. the date 14 days after the Effective Date.

**Option B: For when the Contract will not be completed within 12 months of the Base Date.**

- b. the relevant date for delivery of the Supplies as set out in Attachment B or the date on which the overseas supplier's account is settled, whichever occurs first.

6.4.2 For the purposes of this clause 6.4, 'Exchange Rate' means the spot selling rate of (...INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES...) relative to the dollar used by (...INSERT THE RELEVANT FINANCIAL INSTITUTION...).

6.4.3 If the amount calculated in accordance with this clause 6.4 is to the credit of the Contractor, the Contractor shall submit a separate claim for payment of that amount no later than three months after the end of the period referred to in clause 6.4.1.

6.4.4 If the amount calculated in accordance with this clause 6.4 is to the credit of the Commonwealth, the Contractor shall notify the Commonwealth in writing of the amount of the credit no later than three months after the end of the period referred to in clause 6.4.1.

6.4.5 The Commonwealth shall not be liable for any adjustment claims for payment under this clause 6.4 outside the period mentioned in clause 6.4.3.

6.4.6 On receipt of a claim for payment under clause 6.4.3, the Commonwealth Representative shall either:

- a. approve the claim if it is submitted in accordance with clauses 6.3 and 6.4 and make payment within 30 days of receipt of the claim; or
- b. reject the claim and notify the Contractor in writing, within 14 days of receipt of the claim, of the reasons for the rejection.

6.4.7 If a claim is rejected under clause 6.4.6b the Contractor may resubmit the claim no later than 30 days after receiving notice of the rejection. The Commonwealth shall deal with the resubmitted claim as if it were the original claim for the purposes of clause 6.4.6. If the Contractor fails to resubmit the claim within 30 days, or the Commonwealth rejects the resubmitted claim, the Commonwealth will not be liable for any adjustment claims in relation to the relevant period.

6.4.8 If an amount calculated in accordance with clause 6.4 is to the credit of the Commonwealth, the amount is a debt to the Commonwealth for the purposes of clause 11.4.

#### **6.5 Time of Payment (Core)**

6.5.1 The Commonwealth shall notify the Contractor of the date a payment in accordance with this clause 6 is made.

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

6.6.1 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.

- 6.6.2 The Contract Price set out in Attachment B includes Goods and Services Tax (GST) for Supplies to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.
- 6.6.3 The Contractor shall submit each claim for payment under clause 6 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.
- 6.6.4 If the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 6.6.5 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.
- 6.6.6 Any amount of GST to be paid by the Contractor under clause 6.6.5 shall be a debt recoverable by the Commonwealth in accordance with clause 11.4.

## **6.7 Late Payment (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).***

- 6.7.1 Subject to clause 6.7.3, 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 6.7.2.
- 6.7.2 Interest payable by the Commonwealth under this clause 6.7 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 payment is made.
- 6.7.3 The Contractor shall only be entitled to submit a claim for simple interest under clause 6.7.1 if the simple interest amount calculated in accordance with clause 6.7.2 is greater than \$10.

## 7 INSURANCE AND LIABILITY

### 7.1 Indemnity (Core)

---

7.1.1 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 expense.

### 7.2 Intellectual Property Indemnity (Core)

---

7.2.1 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).

7.2.2 For the purposes of this clause 7.2, '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.

### 7.3 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 7.3.**

**Note to tenderers: This clause will be included where tenderers propose and the Commonwealth agrees to limit liability under the Contract at clause 11 of Annex C to Attachment A of the conditions of tender.**

7.3.1 Subject to clause 7.3.2, the liability of the Contractor to the Commonwealth arising out of the Contractor's performance of the Contract will be limited as follows:

- a. for liability for obligations and warranties under clause 8, in aggregate [...INSERT AMOUNT...];
- b. for loss of, or damage to, the Supplies, in aggregate to [...INSERT AMOUNT...];
- c. for loss of, or damage to, Defence property, including CMCA, in aggregate to [...INSERT AMOUNT...]; and
- d. for a breach of contract, breach of statute or negligent act or omission not mentioned in clauses 7.3.1a to 7.3.1c in aggregate to [...INSERT AMOUNT...].

7.3.2 The limitation in clause 7.3.1 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 7.2.

7.3.3 To avoid doubt if more than one limitation mentioned in clauses 7.3.1a to 7.3.1d is capable of applying to a particular liability, and the cap under one limitation is reached, the Commonwealth may recover from the Contractor for the remainder of the liability under the other limitation up to the cap applicable to the other limitation.

#### 7.4 Insurance (Core)

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

7.4.1 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 to be taken out.**

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

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

7.4.3 The Contractor shall maintain the insurance or registration required under this clause 7.4 for the duration of the work under the Contract and for the obligations that survive expiry or termination of the Contract, or as otherwise specified in writing by the Commonwealth. The Contractor shall, on request, produce satisfactory evidence of the insurance or registration 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 been materially affected, or are likely to materially affect, the amount of cover available under the policy;
- f. deductible amounts; and
- g. period of insurance.

7.4.4 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.

## **8 WARRANTIES**

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

---

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

### **8.2 Warranty (Core)**

---

- 8.2.1 The Contractor warrants that the design, materials and workmanship in the Supplies conform with, and that the Supplies meet, the requirements of the Contract. The Contractor shall remedy by repair, replacement or modification, defects in design, materials or workmanship in the Supplies if the defect is notified to the Contractor by the Commonwealth Representative during the period of [...INSERT PERIOD...] starting from Acceptance of the Supplies.
- 8.2.2 The Contractor shall remedy by repair, replacement or modification any other Supplies which are affected by the corrective actions taken by the Contractor to address a warranty claim notified to the Contractor under clause 8.2.
- 8.2.3 The liability of the Contractor to remedy defects under the warranty provided by the Contractor under clause 8.2.1 shall not apply to the extent that the defect arises from the Commonwealth's negligent or wilful damage of the Supplies.
- 8.2.4 The Contractor, unless the Commonwealth Representative otherwise allows, shall meet all costs of, and incidental to, the performance of remedial work under this clause 8.2, including any packing, freight (not exceeding the freight cost between the Contract delivery point and the Contractor's nominated repair facility and return), disassembly and re-assembly costs.
- 8.2.5 If the Contractor fails, within the period of [...INSERT PERIOD...] after notification by the Commonwealth Representative, to rectify a defect pursuant to this clause 8.2, the Commonwealth may, without limiting the Contractor's warranties and obligations under this clause 8, 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 11.4.
- 8.2.6 The rights and remedies provided in this clause 8.2 are in addition to, and shall not limit, any other rights of the Commonwealth under the Contract or otherwise.

## **9 CONTRACT MANAGEMENT**

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

---

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

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

---

- 9.2.1 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.

### **9.3 Commercial-in-Confidence Information (Core)**

---

- 9.3.1 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.
- 9.3.2 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 9.3.1, the party wishing to make the disclosure shall obtain the written consent of the other party to the Contract.
- 9.3.3 The Commonwealth may require the Contractor to ensure that its officers, employees, agents, and Subcontractors engaged in the performance of the Contract give a written undertaking prior to the disclosure of Commercial-in-Confidence Information.
- 9.3.4 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.
- 9.3.5 The parties agree that the conditions of contract and Attachments, or the parts of them, listed in Attachment G are Commercial-in-Confidence Information for the relevant party as at the Effective Date.
- 9.3.6 The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Commercial-in-Confidence Information of the Commonwealth on the earlier of:
- a. demand by the Commonwealth; or
  - b. the time the documents and other material are no longer required for the purposes of the Contract.
- 9.3.7 If the Commonwealth makes a demand under clause 9.3.6, and the Contractor has placed or is aware that documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the Contractor shall provide full particulars of the whereabouts of the documents containing the Commercial-in-Confidence Information, and the identity of the person in whose custody or control they lie.
- 9.3.8 The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Commercial-in-Confidence Information.
- 9.3.9 Return or destruction of the documents referred to in this clause 9.3 does not release the Contractor from its obligations under the Contract.

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

---

- 9.4.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Contract.
- 9.4.2 If the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.

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

---

- 9.5.1 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.
- 9.5.2 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.

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

---

- 9.6.1 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.
- 9.6.2 Without limiting the generality of clause 9.6.1, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:
- a. 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;
  - b. conducting audits under the *Auditor-General Act 1997*;
  - c. performing Audit and Surveillance activities in relation to Quality in accordance with clause 6 of the SOW;
  - d. investigating the reasonableness of proposed prices or costs in any Contract Change Proposal (CCP) submitted in accordance with clause 9.1;
  - e. determining whether, and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
  - f. monitoring the Contractor's occupational health and safety and environmental compliance in connection with the provision of the Services; and
  - g. validating the Contractor's progress in meeting the AIC Schedule.
- 9.6.3 If the Contractor enters into a Subcontract in accordance with clause 9.7, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
- 9.6.4 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.

#### **9.7 Subcontracts (Core)**

---

- 9.7.1 The Contractor shall not Subcontract the whole of the work under the Contract.
- 9.7.2 The Contractor, by subcontracting any part of the work under the Contract or by obtaining the Commonwealth Representative's approval of a Subcontractor, shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 9.7.3 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*.

- 9.7.4 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.

## **9.8 Defence Security (Core)**

- 9.8.1 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.
- 9.8.2 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 the Supplies in accordance with the Commonwealth's security requirements; and
  - c. provide a written undertaking 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 2.5 of the conditions of tender.**

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

- 9.8.3 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.**

9.8.4 The security classification of work to be performed under the Contract will be up to and including [...INSERT CLASSIFICATION...] level. 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 are required.**

9.8.5 The security classification of work to be performed under the Contract will be up to and including [...INSERT CLASSIFICATION...] level. 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 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 or equivalent; and

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

9.8.6 For the purposes of clause 9.8.5, 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 are required.**

9.8.7 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.**

9.8.8 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.**

9.8.9 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.**

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

9.8.11 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.

9.8.12 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.

9.8.13 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.**

9.8.14 All COMSEC material transmitted between the parties or a party and a Subcontractor, in Australia shall, in addition to the provisions of clause 9.8.13 above, be subject to the special security provisions of Part 2:53 of the DSM, as amended from time to time.

9.8.15 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.**

9.8.16 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.

9.8.17 If there has been a breach by the Contractor, a Subcontractor, or any of their officers, employees or agents, of clause 9.8, the Commonwealth Representative may give the Contractor a notice of immediate termination for default under clause 11.2.1.

- 9.8.18 The Contractor shall ensure the requirements of clause 9.8 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to any security classified information in order to perform the obligations of the Subcontract.
- 9.8.19 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.

## 10 POLICY AND LAW

### 10.1 Applicable Law (Core)

---

- 10.1.1 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.
- 10.1.2 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.
- 10.1.3 The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to the Contract.

### 10.2 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.**

- 10.2.1 The Contractor shall comply with and achieve the AIC requirements set out in Attachment I.
- 10.2.2 The Contractor acknowledges that:
- a. compliance with the AIC Schedule shall not relieve the Contractor from responsibility to complete the Supplies, or from liability for any defect in the Supplies arising from the design, workmanship or materials provided by ANZ industry; and
  - b. Acceptance of the Supplies by the Commonwealth, shall not relieve the Contractor from meeting its obligations under the AIC Schedule.
- 10.2.3 The Contractor shall maintain, develop, deliver and update the AIC Schedule in accordance with the AIC Toolkit.
- 10.2.4 Where the Contractor proposes an update to the AIC Schedule, the Contractor shall propose a contract change in accordance with clause 9.1.

### 10.3 Policy Requirements (Core)

---

**Note to drafters: Prior to RFT release and prior to the execution of any resultant contract, the Glossary at Attachment H to 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. Version numbers need not be included in this clause as they are set out in the Glossary at Attachment H to the draft conditions of contract.**

- 10.3.1 Subject to clause 10.3.2, 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. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM,
  - d. Hazardous Substances policy as detailed in the DPPM; and
  - e. Ozone Depleting Substances policy as detailed in the DPPM.
- 10.3.2 Notwithstanding clause 1.5, if the SOW is inconsistent with a policy mentioned in clause 10.3.1, the Contractor shall comply with the SOW to the extent of the inconsistency.
- 10.3.3 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.**

10.3.4 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.**

10.3.5 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.

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

10.4.1 The Contractor shall take all reasonably practicable steps in the course of the provision of the Supplies 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 Supplies 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 Supplies under the Contract, are not exposed to risk to their health or safety arising from the Supplies or from the use or operation of the Supplies.

10.4.2 The Contractor shall:

- a. provide Supplies 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 Supplies 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 Supplies 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.

10.4.3 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 Supplies 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.

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

---

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

- a. the Commonwealth is not placed in breach of; and
- b. the Commonwealth is able to support and to make full use of the Supplies for the purposes for which they are intended without being in breach of,  
any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999*.

## **10.6 Severability (Core)**

---

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

## **10.7 Privacy (Core)**

---

10.7.1 The Contractor shall:

- a. use or disclose Personal Information obtained during the course of performing 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 an 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 an National Privacy Principle or an Approved Privacy Code, if 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 10.7

10.7.2 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 10.7, whether by the Contractor or a Subcontractor;
  - b. becomes aware that a disclosure of Personal Information may be required by law; or
  - c. receives a request or inquiry from the Privacy Commissioner, or by any individual to whom any Personal Information held by the Contractor or Subcontractors relates, in respect of Personal Information.
- 10.7.3 The Contractor shall ensure that all Subcontracts entered into for the purposes of fulfilling its obligations under the Contract contains provisions to ensure that each Subcontractor has the same awareness and obligations as the Contractor has under clause 10.7, including the requirement in relation to Subcontracts.

## **10.8 Public Announcements (Optional)**

---

- 10.8.1 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 Supplies, 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.

## 11 DISPUTES AND TERMINATION

### 11.1 Resolution of Disputes (Core)

---

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

### 11.2 Contractor Default (Core)

---

- 11.2.1 In addition to its other rights, the Commonwealth may immediately terminate the Contract or reduce the scope of the Contract by notice in writing to the Contractor, if 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;
  - 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; or

**Note to drafters: The following termination provisions should be amended in accordance with the options selected at clause 10.3.**

- e. commits a breach of clause 10.3.3, 10.3.4 or 10.3.5.
- 11.2.2 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 11.5, 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 Supplies produced prior to the date of termination, within 30 days of receipt of the notice of termination or other period agreed between 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, Subcontractors and their officers, employees, agents or subcontractors.
- 11.2.3 The Commonwealth may also terminate the Contract by written notice if:
- a. the Contractor has persistently failed to meet its obligations under the Contract; or
  - b. in the Commonwealth's reasonable opinion, even though any breaches may have been remedied on each occasion, the cumulative effect of these breaches is sufficient for the Commonwealth to conclude that the Contractor cannot be relied upon to provide the Supplies required by the Commonwealth and the relationship between the parties is no longer workable.

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

---

- 11.3.1 In addition to any other rights it has under the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing.
- 11.3.2 If the Commonwealth Representative issues a notice under clause 11.3.1, 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.
- 11.3.3 The Commonwealth shall only be liable for:
- a. payments under the payment conditions 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.
- 11.3.4 The Contractor shall not be entitled to profit anticipated on any part of the Contract terminated or reduced.
- 11.3.5 The Contractor shall, in each Subcontract, secure the right of termination and reduction and provisions for compensation functionally equivalent to that of the Commonwealth under this clause 11.3.

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

---

- 11.4.1 Without limiting the Commonwealth's other 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. provide the Contractor with written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.
- 11.4.2 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.
- 11.4.3 Nothing in this clause 11.4 shall affect the right of the Commonwealth to recover from the Contractor the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

#### **11.5 Survivorship (Core)**

---

- 11.5.1 Any term 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 terms relating to Commercial-in-Confidence Information, IP, Right of Commonwealth to Recover Money, Defence Security, Privacy and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Contract.

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) (print name) (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 (Complex Materiel) 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