



**Australian Government**

**Defence**

**[INSERT NAME OF SERVICES] STANDING OFFER FOR SERVICES**

**DEED NO: (INSERT NUMBER)**

**DETAILS SCHEDULE**

**PARTIES**

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

<b>Commonwealth Representative:</b>	<b>(INSERT DETAILS)</b>	
<b>Notice Details:</b>	Address:	<b>(INSERT ADDRESS)</b>
	Email:	<b>(INSERT EMAIL ADDRESS)</b>

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

<b>Contractor Representative:</b>	<b>(INSERT DETAILS)</b>	
<b>Notice Details:</b>	Address:	<b>(INSERT ADDRESS)</b>
	Email:	<b>(INSERT EMAIL ADDRESS)</b>

**INFORMATION TABLE**

Item	Information		
<b>Item 1</b> (clause 1.3.1)	<b>Initial Term:</b>	<b>Effective Date:</b>	<b>(INSERT DATE)</b>
	(Core)	<b>Expiry Date:</b>	<b>(INSERT DATE)</b>
	<b>Note to drafters: ASDEFCON (Standing Offer for Services) has been drafted on the basis that each standing offer would generally be in place for three years, with an option for two additional 12-month extensions.</b>		
<b>Item 2</b> (clause 1.3.2)	<b>Options to Extend:</b> (Core)	Number of Options:	<b>[INSERT NUMBER]</b>
		Option Period:	<b>[INSERT PERIOD OF EACH OPTION]</b>
<b>Item 3</b>	<b>Base Date:</b>	<b>[INSERT DATE]</b>	
	(Core)	Note to drafters: The Base Date is ordinarily one month before the Closing Time.	
<b>Item 4</b> (clause 7.3)	<b>Limitation Amount:</b> (Optional)	[\$ <b>[INSERT AMOUNT]</b> ] million	
<b>Item 5</b> (clause 7.4)	<b>Approved Contractor Insurance Program Status</b>	<input type="checkbox"/> Yes / <input type="checkbox"/> No	
<b>Note to drafters: Delete</b>			

Item	Information		
<p><b>insurance policies if they do not apply</b></p>	(Core)		
	<p><b>Limits of indemnity for required insurances:</b> (Core)</p>	<p>Public liability: (clause 7.4.4)</p>	<p>[\$[INSERT AMOUNT] million</p>
		<p>Professional indemnity: (clause 7.4.5)</p>	<p>[\$[INSERT AMOUNT] million</p>
<p><b>Item 6</b> (clause 8.2)</p>	<p><b>Warranty Period:</b> (Core)</p>	<p>[\$[INSERT PERIOD] after the date of acceptance of the Services.</p>	
<p><b>Item 7</b> (clause 9.10)</p>	<p><b>Defence Security:</b> (Core)</p>	<p>Security Classification of information, assets and work to be performed under the Contract: (clause 9.10.3)</p>	<p>[\$[INSERT CLASSIFICATION]</p>
		<p>DISP membership required: (clause 9.10.4 or 9.10.5)</p> <p><b>Note to Drafters:</b> <i>Delete DISP Governance Level, DISP Personnel Security Level, DISP Physical Security Level and DISP Information / Cyber Security Level if DISP membership is not required.</i></p>	<p><input type="checkbox"/> Yes / <input type="checkbox"/> No</p>
		<p>DISP Governance Level:</p> <p><b>Note to Drafters:</b> <i>In accordance with Section 16 of the DSPF, the DISP membership level required for the Governance element must equal the highest DISP</i></p>	<p>[\$[INSERT LEVEL]]</p> <p>[\$[INSERT SPECIFIC DETAILS IF REQUIRED]</p>

Item	Information	
	<p><b>membership level required for the other elements.</b></p> <p>DISP Personnel Security Level: [INSERT LEVEL] [INSERT SPECIFIC DETAILS IF REQUIRED]</p> <p>DISP Physical Security Level: [INSERT LEVEL] [INSERT SPECIFIC DETAILS IF REQUIRED]</p> <p>DISP Information / Cyber Security Level: [INSERT LEVEL] [INSERT SPECIFIC DETAILS IF REQUIRED]</p> <p><b>Note to Drafters: Delete this row if DISP membership is required.</b></p> <p>Personnel security clearance: [INSERT CLASSIFICATION] (clause 9.10.3b)</p> <p>Security Classification and Categorisation Guide required: <input type="checkbox"/> Yes / <input type="checkbox"/> No (clause 9.10.7)</p> <p>COMSEC material: <input type="checkbox"/> transmitted in Australia <input type="checkbox"/> transmitted overseas (clause 9.10.9)</p>	
<p><b>Item 8</b> (clause 10.1)</p>	<p><b>Governing Law:</b></p>	<p>[INSERT RELEVANT STATE OR TERRITORY]</p>

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## 1 DEED FRAMEWORK

### 1.1 Definitions (Core)

---

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

### 1.2 Interpretation (Core)

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1.2.1 In the Deed and in any Contract, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed or any Contract;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes any others;
- 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 specified at the Details Schedule and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word "includes" in any form is not a word of limitation;
- k. a reference to a party includes that party's administrators, successors, and permitted assignees, including any person to whom that party novates any part of the Deed or any Contract; and
- l. a provision stating that a party 'may' agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval.

1.2.2 All information provided as part of the Services under the Deed and any Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth) or, if Services are imported, units of measurement as agreed by the Commonwealth Representative specified in the Details Schedule.

### 1.3 Term (Core)

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

1.3.1 The Deed is legally binding from the Effective Date specified in the Details Schedule. Unless terminated earlier and subject to this clause 1.3, the Deed expires on the Expiry Date specified in the Details Schedule.

- 1.3.2 The Commonwealth may extend the Term for 12 months by giving the Contractor notice in writing not less than 30 days before the date on which the Deed would otherwise expire.
- 1.3.3 The Commonwealth may extend the Term for a second period of 12 months by giving the Contractor notice in writing not less than 30 days before the date on which the Deed would otherwise expire under clause 1.3.2.
- 1.3.4 Without affecting the extensions to the Term made by a notice under clause 1.3.2 or 1.3.3, the Commonwealth shall specify in that notice the adjustments which shall be made to the Deed to give effect to the extension of the Deed and each party shall amend its copy of the Deed in accordance with that notice.

**Option: For when price adjustments will be allowed and Option B is selected at clause 2 of Annex C to the conditions of tender.**

- 1.3.5 Any adjustments, including any adjustments to reflect fluctuations in the cost of labour and materials, that result from the operation of this clause 1.3, shall be calculated in accordance with the formula set out in clause 1.1 of Attachment E.

- 1.3.6 The Contractor shall fulfil all Contracts entered into during the Term on the conditions current at the time the Contract is made notwithstanding that completion of the Contract may occur after the date on which the Deed has expired.

#### **1.4 Entire Agreement (Core)**

- 1.4.1 To the extent permitted by law, the Deed, and each Contract, represents the parties' entire agreement in relation to the subject matter of the deed 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 any documents that form part of the Deed, a descending order of precedence shall be accorded to:
- a. the COD (including the Details Schedule) and the Glossary (other than the referenced documents in the Glossary);
  - b. the attachments to the COD, other than the Glossary; and
  - c. any document incorporated by express reference as part of the Deed,
- so that the term in the higher ranked document, to the extent of the inconsistency, shall prevail.

#### **1.6 Formation, Scope and Operation of Deed (Core)**

- 1.6.1 The Deed constitutes a standing offer for the Term during which the Commonwealth may require the Contractor to provide Services as and when required by the Commonwealth in accordance with clause 1.7.

**Option: For when a standing offer panel arrangement is being established.**

- 1.6.2 The Contractor acknowledges that:
- a. the Commonwealth has established the Panel; and
  - b. it is one of a number of suppliers on the Panel which may be requested to provide Services.

#### **1.7 Ordering Services (Core)**

- 1.7.1 The range of Services which the Contractor offers the Commonwealth are detailed at Attachment A to this Deed.

**Note to drafters: Clause 1.7.2 permits Defence to seek competitive Quotations from one or more suppliers on the Panel, but does not give additional guidance as to the circumstances in which Quotations would be requested. Drafters could consider including a further provision setting out such circumstances, e.g. a threshold amount above which competitive Quotations would be sought. If so, one option could be to include the following text after the first sentence in clause**

**1.7.2. 'It is expected that the Commonwealth would normally seek a competitive Quotation from other suppliers if the value of the particular Services are likely to exceed \$[INSERT AMOUNT] (including GST)'. Drafters would need to insert an appropriate threshold amount.**

**Option: For when a standing offer panel arrangement is being established.**

1.7.2 The Authorised Officer may seek competitive Quotations from one or more suppliers on the Panel in the form of a Tasking Statement in accordance with Attachment C.

**Option: For when a standing offer arrangement is being established with a single supplier.**

1.7.3 If the Commonwealth requires any Services, the Authorised Officer may invite the Contractor to submit Quotations on the basis of the Labour Rates at Attachment B or on any other basis as required by the Commonwealth including on a fixed price basis by issuing a Tasking Statement to the Contractor.

1.7.4 The Contractor shall provide either a Quotation in writing or a notice declining the invitation by the date that the Quotation is required as specified in the Tasking Statement. The Quotation shall contain all the information required by the Tasking Statement.

**Option: For when a standing offer panel arrangement is being established.**

1.7.5 If the Authorised Officer seeks competitive Quotations under clause 1.7.2, the Commonwealth may:

- a. seek Quotations on a fixed price or other basis; and
- b. give other suppliers on the Panel and the Contractor the opportunity to provide a Quotation on the basis of refining their Labour Rates.

1.7.6 Quotations will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies. Neither the lowest priced Quotation nor any Quotation will necessarily be accepted by the Commonwealth.

1.7.7 If the Authorised Officer is agreeable to the Quotation submitted by the Contractor, an Authorised Officer may deliver an Official Order to the Contractor for the Services at the prices in the Quotation.

1.7.8 If the Authorised Officer delivers an Official Order to the Contractor:

- a. the Official Order shall form the Contract for the Services required by the Commonwealth. Any Contract so formed is effective from the date on which the Commonwealth submits the Official Order to the Contractor in accordance with clause 2.4.2;
- b. unless otherwise agreed in the Contract, the terms of each Contract so formed will be those set out in the following documents, in a descending order of precedence:
  - (i) the COD as applicable to the Contract;
  - (ii) the attachments to the COD;
  - (iii) the Official Order; and
  - (iv) any documents incorporated by express reference as part of the Contract.

1.7.9 No Services shall be carried out by the Contractor, and no amount shall become payable to the Contractor in respect of the Services, unless and until:

- a. a Quotation has been submitted by the Contractor to the Authorised Officer in relation to a relevant Tasking Statement; and
- b. an Official Order has been issued by the Authorised Officer for the provision of the Services to which the Quotation relates.

1.7.10 The Contractor shall, for the Contract Price, and any other payment required under any Contract, provide the Services in accordance with any Contract, and fulfil all other obligations as specified in that Contract.



- 1.7.11 The Contractor is not to respond to any directions in relation to Tasking Statements or Official Orders unless those directions are issued by the Authorised Officer or Commonwealth Representative.

### **1.8 No Assurance of Orders (Core)**

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- 1.8.1 The Commonwealth does not make any representation nor in any way binds itself to placing any specific number of orders, or any orders at all, during the Term.
- 1.8.2 Subject to clause 1.7, the Deed or any Contract is not to be interpreted as providing that the:
- a. Contractor has the right to be the sole provider of the Services, or any part of the Services, to the Commonwealth; or
  - b. Commonwealth is prevented from seeking the Services from other members of the Panel or from other suppliers.

### **1.9 Services (Core)**

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- 1.9.1 The Contractor acknowledges and agrees that:
- a. the specification of the requirements for the Services 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 schedule (including as reflected in the Contract);
  - c. the Commonwealth has determined that the Contract is value for money on the basis that the provision of all Services is achieved in accordance with the Deed and the Contract and with no delay; and
  - d. it is reasonable that the Commonwealth at all times during the period of the Deed and any Contract has current knowledge and be advised by the Contractor of:
    - (i) progress under the Contract;
    - (ii) risks to the timely provision of the Services including potential minor omissions and defects;
    - (iii) any other potential or actual non-compliance with the Deed or any Contract;
    - (iv) risk management, including management of emerging risks; and
    - (v) any potential delay in meeting any timing obligation in the Deed or any Contract, for any reason, and whether or not the delay risk was foreseeable or has been previously identified.
- 1.9.2 The Contractor shall:
- a. proactively ensure that the Commonwealth is kept informed of matters relevant to the issues in clause 1.9.1, using the communication channels and reporting processes in the Deed and any Contract; and
  - b. comply with any directions by the Commonwealth or the exercise of any other Commonwealth powers under or in relation to the Deed or any Contract in dealing with such matters, including providing any additional information or knowledge that the Commonwealth requires.

### **1.10 Multi Agency Access (Optional)**

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

- 1.10.1 The Contractor acknowledges and agrees that other Commonwealth agencies ('Permitted Agencies') may order Services under this Deed. The Commonwealth Representative shall nominate Authorised Officers from Permitted Agencies in accordance with clause 2.2.

**2 ROLES AND RESPONSIBILITIES****2.1 Commonwealth Representative (Core)**

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- 2.1.1 The Commonwealth Representative is responsible for administering the Deed 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 Deed.
- 2.1.3 If given orally a direction shall be confirmed in writing within 10 Working Days. Unless otherwise specified in the Deed, the Commonwealth Representative shall have no authority to waive any provision of, or release the Contractor from, its obligations under the Deed except in accordance with clause 9.3.
- 2.1.4 Unless authorised by this Deed or any Contract, any work performed or cost incurred by the Contractor in response to a communication from the Commonwealth Representative is at the Contractor's sole risk.

**2.2 Authorised Officer (Core)**

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- 2.2.1 The Commonwealth Representative may nominate by written notice to the Contractor from time to time any Authorised Officers for the purposes of the Deed. The written notice shall include the address and email at which notice or communication under the Deed or any Contract is to be delivered to the Authorised Officer.
- 2.2.2 An Authorised Officer is responsible for placing and administering Contracts on behalf of the Commonwealth. The Contractor shall comply with the reasonable directions of the Authorised Officer made within the scope of the administration of any Contract. All directions by an Authorised Officer will be provided in writing. The Authorised Officer shall have no authority to waive any provision of, or release the Contractor from, its obligations under any Contract except in accordance with clause 9.3.
- 2.2.3 Unless authorised by this Deed or any Contract, any work performed or cost incurred by the Contractor in response to a communication from the Authorised Officer is at the Contractor's sole risk.

**2.3 Contractor Representative (Core)**

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- 2.3.1 The Contractor shall on or before the Effective Date specified in the Details Schedule nominate in writing the person with the authority to represent the Contractor for the purposes of the Deed and any Contract. Any communication passed by the Commonwealth to this person in accordance with clause 2.4 shall be deemed to have been delivered to the Contractor.

**2.4 Notices (Core)**

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- 2.4.1 Unless the contrary intention appears, any notice under the Deed, (not including Official Orders), shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or Contractor's Representative, as the case may be, in accordance with the Notice Details specified in the Details Schedule.
- 2.4.2 A notice given in accordance with this clause 2.4 is deemed to be delivered:
- a. if hand delivered, when received at the address, or by the addressee if sooner;
  - b. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
  - c. if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,
- but if the receipt or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is deemed to be delivered at 9.00am (recipient's local time) on the next Working Day.

### **3 PROVISION OF THE SERVICES**

#### **3.1 Authorisations (Core)**

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- 3.1.1 The Contractor shall, and shall ensure that its Subcontractors:
- a. obtain and maintain in full force all Authorisations required for provision of the Services;
  - b. provide a copy of any Authorisations to the Commonwealth within 10 Working Days of request by the Commonwealth; and
  - c. ensure that the Services are provided in accordance with all Authorisations.
- 3.1.2 The Contractor shall notify the Commonwealth Representative within 10 Working Days after receiving notification of refusal to grant, or an intent to revoke or qualify, an Authorisation required provision of the Services.

#### **3.2 Government Furnished Material (Optional)**

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- 3.2.1 If specified in and required under any Contract, the Commonwealth shall deliver or provide access to, and the Contractor shall manage, GFM in accordance with the Deed and any Contract at the place and times specified in that Contract or otherwise determined by the relevant Authorised Officer.
- 3.2.2 Unless otherwise notified to the Contractor by the Commonwealth, GFM remains the property of the Commonwealth. The Commonwealth is entitled to identify GFM as its property and the Contractor shall preserve any means of identification.
- 3.2.3 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 relevant Authorised Officer within five Working Days.
- 3.2.4 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.
- 3.2.5 The Contractor shall return GFM (other than consumable items of GFM) to the Commonwealth as specified in the relevant Contract or as directed by the relevant Authorised Officer.
- 3.2.6 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.
- 3.2.7 The Contractor shall not:
- a. without the prior written approval of the relevant Authorised Officer:
    - (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;
    - (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.
- 3.2.8 The Contractor shall not use GFE other than for a purpose for which the GFE was designed, manufactured or constructed.
- 3.2.9 The relevant Authorised Officer may notify the Contractor of any IP 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)**

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- 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 five Working Days of becoming aware that any CMCA is lost, destroyed, damaged, defective or deficient, notify the Authorised Officer of the event in writing.
- 3.3.3 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, defects or deficiencies result from any unlawful or negligent act or omission on the part of the Commonwealth or Commonwealth Personnel. Subject to clause 3.3.4, or an agreement by the parties to replace the CMCA, the Contractor shall compensate the Commonwealth for the loss or destruction of, damage to or defects or deficiencies in, the CMCA and the Commonwealth may recover an amount equivalent to the value of the compensation under clause 11.3 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 this clause 3.3.4 shall discharge or partially discharge the Contractor's liability. If the Contractor is not liable under clause 3.3.3 for the damage, defect or deficiency, the Contractor shall, if the parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.

**3.4 Stocktaking of Contractor Managed Commonwealth Assets (Core)**

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- 3.4.1 The Contractor shall:
- a. institute, maintain and apply a system for, the accounting for and control, handling, preservation, protection and maintenance of CMCA;
  - b. undertake quarterly stocktakes and other assurance checks of CMCA; and
  - c. develop and deliver quarterly CMCA stocktaking reports that include the following information:
    - (i) the stocktake number;
    - (ii) the storage location of all goods included in the stocktake;
    - (iii) all stocktake codes;
    - (iv) stocktake start and end dates; and
    - (v) statistical data including the quantity and value of all discrepancies, shelf stock held, shelf stock stocktaked, surpluses and deficiencies.
- 3.4.2 The Contractor shall promptly conduct investigations into every discrepancy arising from stocktakes of CMCA.
- 3.4.3 The Contractor shall immediately notify the Authorised Officer of any deficiencies that are discovered through a stocktake or other assurance checks of CMCA.

**3.5 Key Persons (Core)**

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- 3.5.1 The Contractor shall ensure that the Services are performed by Contractor 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.
- 3.5.2 The Contractor shall ensure that each Key Person named in the Official Order at Attachment D delivers the Services under the Contract identified in that attachment.
- 3.5.3 If the Contractor becomes aware that a Key Person will or may become unavailable for the performance of the work under the Contract, the Contractor shall:
- a. promptly notify the Commonwealth of the impending unavailability; and

- b. nominate, at its earliest opportunity, a suitable replacement for the Commonwealth's consideration.
- 3.5.4 The Commonwealth may, at any time, give notice in writing, including reasons, directing 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 Contractor Personnel of appropriate skills and experience.
- 3.5.5 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 in accordance with the Contract, the Commonwealth may terminate the Contract in accordance with clause 11.2.
- 3.5.6 Any requirement to replace any of the Contractor Personnel during the course of any 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.

#### 4 AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

**Note to drafters: If the expected value of any resultant Contract is less than \$4 million (including GST), or an exemption from the AIC program applies (refer to the 2019 Defence Policy for Industry Participation), then an AIC program is not required.**

**If an AIC program is not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading. This will preserve the clause numbering and cross references throughout the Contract.**

**If the expected value of any resultant Contract will be between \$4 million and \$20 million (GST Inclusive), then Australian Industry Capability (AIC) requirements will need to be inserted. Drafters should transfer the provisions from the ASDEFCON (Standing Offer for Goods) template.**

**If the expected value of any resultant Contract is at or above \$20 million for the initial term (including GST), then a more extensive AIC program, including an AIC Plan, will be required. Drafters will then need to transfer and tailor appropriate provisions from the higher level ASDEFCON templates into the draft Contract, and update the applicable tender data requirements. Drafters should contact their contracting officer for guidance on how to incorporate these requirements.**

**Drafters can consult with:**

**CASG AIC Division at [aic.delivery@defence.gov.au](mailto:aic.delivery@defence.gov.au); and**

**Strategy, Policy and Industry (SP&I) Group's AIC Directorate at [aic.info@defence.gov.au](mailto:aic.info@defence.gov.au) or visit:**

- **<http://drnet/strategy/DIPD/Australian-Industry-Capability/Pages/AIC.aspx>.**

#### 5 CONTRACT MATERIAL AND INTELLECTUAL PROPERTY (CORE)

##### 5.1 Ownership of Intellectual Property (Core)

**Note to drafters: The Commonwealth's default position as reflected in clause 5.1 is that the Contractor (or its nominee) will own all IP created under the Deed and any Contract or Subcontract. If Commonwealth ownership of IP is required (for example, if the Contractor will be developing Commonwealth-owned IP or for security reasons), further tailoring will be required.**

**Note to tenderers: The Commonwealth's default position is that the Contractor (or its nominee) will own all IP created under this Deed or any Contract or Subcontract. This position is reflected in clause 5.1.**

- 5.1.1 Nothing in the Contract affects the ownership of Intellectual Property (IP), except as expressly provided for in this clause 5.
- 5.1.2 **[Subject to clause 5.1.3]** IP created under this Deed or under any Contract in respect of Contract Material is assigned to the Contractor (or its nominee) immediately upon its creation.

**Option A: Include if GFM is to be provided to the Contractor.**

- 5.1.3 IP created under this Deed and the relevant Contract in respect of GFM is assigned to the Commonwealth (or its nominee) immediately upon its creation.

**5.2 Contract Material (Core)**

- 5.2.1 The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material (other than Commercial Material) to Use the Contract Material for any Defence Purpose and to grant a sublicense to:
- a. a Commonwealth Service Provider to Use the Contract Material to enable it to perform its obligations, functions or duties to the Commonwealth;
  - b. any person to Use the Contract Material, or to grant a further sublicense to Use the Contract Material, for a Defence Purpose but subject to any restrictions specified in the Contract Material Rights (CMR) Schedule for the relevant Contract Material; and
  - c. any person for a purpose referred to in clause 9.4.1.
- 5.2.2 The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial Material on the best commercial terms.

**Note to drafters: Include clause 5.3 if GFM is to be provided to the Contractor.**

**5.3 GFM Licence (Optional)**

- 5.3.1 The Commonwealth grants to the Contractor (or shall ensure the Contractor is granted), a non-exclusive, royalty-free licence in respect of TD or Software in GFM, to:
- a. Use the TD or Software for the purpose of enabling the Contractor to perform its obligations under the Deed;
  - b. grant a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
  - c. grant a sublicense to a person for a purpose referred to in clause 9.4.1,
- subject to any restrictions specified in Attachment A or as otherwise notified by the Commonwealth.
- 5.3.2 The licence under clause 5.3.1 (and any sublicense granted under clause 5.3.1b) expires upon the expiry or termination (whichever is the earlier) of this Deed.

**5.4 No Commercialisation (Core)**

- 5.4.1 A Licence or sublicense granted in accordance with this clause 5 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the Contract Material.
- 5.4.2 For the avoidance of doubt, clause 5.4.1 does not prevent the Commonwealth from granting a sublicense in accordance with the rights granted in this clause 5 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.

**5.5 Warranties (Core)**

- 5.5.1 The Contractor warrants that the rights granted to the Commonwealth in accordance with this clause 5, will not prevent the Commonwealth from:
- a. Using the Contract Material; or
  - b. otherwise obtaining the benefit of the Services as contemplated under the Contract.
- 5.5.2 The Contractor warrants and shall ensure that, in respect of all IP licensed to the Commonwealth under or in connection with this Contract:
- a. the relevant licensor has the right, title or authority to license, and has been made aware of, the rights granted in respect of IP under this clause 5; and
  - b. as at the time of delivery and after making diligent enquiries, the Contractor has no notice of any challenge, claim or proceeding in respect of any such IP.

- 5.5.3 The Contractor shall notify the Commonwealth if the Contractor becomes aware of any challenge, claim or proceeding referred to in clause 5.5.2b) arising in respect of any IP after the Contract Material is delivered to the Commonwealth.

## 6 PRICE AND PAYMENT

### 6.1 Price and Price Basis (Core)

- 6.1.1 Subject to clauses 6.6, 6.7 and 9.1, the maximum Labour Rates that shall apply to all work performed under this Deed and any Contract are set out in Attachment B and are unalterable.
- 6.1.2 The Contract Price will be as set out in the relevant Official Order, and is payable, subject to satisfactory performance of the Services, in accordance with the Deed and the relevant Contract. The parties may agree as an alternative to using the rates set out in Attachment B, a fixed fee which must be no worse than the rates or price arrangement in Attachment B and must be documented in the Official Order.
- 6.1.3 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 Authorised Officer, that part of the Services to which the claim relates.

### 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 Deed signature, provide the Commonwealth Representative with details of the bank account into which payments should be directed.**

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

- **5 days, where the Commonwealth and the Contractor both have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or**
- **20 days where the PEPPOL framework does not apply.**

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

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

- 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 Authorised Officer shall either:
- a. Approve the claim if it is submitted in accordance with clause 6.3.2; or
  - b. reject the claim if it is not submitted in accordance with clause 6.3.2, or on the basis of clause 6.1.3.

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

**Option A: For when the use of the PEPPOL framework has been agreed by the Commonwealth and the Contractor.**

- 6.2.3 The Commonwealth and the Contractor shall use electronic invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework for the purposes of the delivery and receipt of payment claims under the Contract.
- 6.2.4 When a claim is Approved under clause 6.2.2a, the Commonwealth shall make payment within 5 days of Approval of the claim.

**Option B: For when the use of the PEPPOL framework has not been agreed by the Commonwealth and the Contractor.**

- 6.2.5 When a claim is Approved under clause 6.2.2a, the Commonwealth shall make payment within 20 days of Approval of the claim.
- 6.2.6 When the Authorised Officer rejects the claim under clause 6.2.2b, the Authorised Officer shall, within 10 Working Days of receipt of the claim, notify the Contractor in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.
- 6.2.7 Upon receipt of a notice issued pursuant to clause 6.2.6, the Contractor shall promptly take all necessary steps to make the claim for payment conform to the requirements of the Deed and the relevant Contract and shall submit a revised claim to the Authorised Officer when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.
- 6.2.8 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 11.3 in respect of the Reduction Amount.

### **6.3 Claims for Payment (Core)**

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- 6.3.1 The Contractor shall be entitled to submit claims for payment in accordance with the Deed and the relevant Contract.
- 6.3.2 All claims for payment submitted by the Contractor shall:
- a. subject to clause 6.2.8, be correctly addressed, calculated in accordance with the relevant Contract and meet the requirements of the relevant Contract;
  - b. be in the form of a valid tax invoice in accordance with clause 6.5;
  - c. 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 Authorised Officer;
    - (iii) the Official Order number and purchase order number;
    - (iv) the date, task item, number of hours and hourly rate (if applicable); and
    - (v) the amount of the claim; and
  - d. be accompanied by any documentation requested by the Authorised Officer in order to establish that the Services meet the requirements of the relevant Contract or that the claim is in accordance with the relevant Contract.
- 6.3.3 All claims for payment are to be submitted to the Authorised Officer in accordance with clause 2.2.

### **6.4 Ownership and Control of Services (Core)**

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- 6.4.1 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 6.
- 6.4.2 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 Deed or Contract.

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

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



- 6.5.2 The Contract Price set out in the Official Order at Attachment D includes GST for Services to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.
- 6.5.3 The Contractor shall submit each claim for payment under this 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.
- 6.5.4 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.
- 6.5.5 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Contractor under or in connection with the 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.
- 6.5.6 Any amount of GST to be paid by the Contractor under clause 6.5.5 shall be a debt due to the Commonwealth in accordance with clause 11.3.

## 6.6 Adjustments (Core)

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- 6.6.1 From the first anniversary of the Effective Date specified in the Details Schedule, the Labour Rates at Attachment B shall be subject to annual adjustment to reflect changes in the cost of labour and materials in accordance with the Adjustment Formula at Attachment E.
- 6.6.2 The Contractor shall submit any proposed change to the Deed to adjust the Labour Rates in accordance with the Adjustment Formula no earlier than 30 days prior to, and no later than 30 days after, the Adjustment Date. If the proposed change:
- is determined by the Commonwealth as being in accordance with the Deed, the Commonwealth shall issue an amendment to the Deed pursuant to clause 9.1 to amend the Labour Rates; or
  - is determined by the Commonwealth as not being in accordance with the Deed, the Commonwealth shall make any adjustments to the change proposed by the Contractor as the Commonwealth thinks necessary and shall issue an amendment to the Deed pursuant to clause 9.1 to amend the Labour Rates.
- 6.6.3 Subject to clause 6.6.2, the adjusted price or payment amount shall apply on and from the applicable Adjustment Date. However, unless stated otherwise in an Official Order, the Adjustment Formula shall not be applied to the Official Order (including in relation to any unperformed Services).

## 6.7 Adjustments for Option to Extend (Core)

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- 6.7.1 If the Commonwealth exercises its option to extend the Term pursuant to clause 1.3, then the Labour Rates at Attachment B shall be subject to adjustment in accordance with the Adjustment Formula at Attachment E on the Expiry Date specified in the Details Schedule.

## 6.8 Late Payments (Core)

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**Note to drafters: In accordance with the Supplier Pay On-Time or Pay Interest Policy, the Commonwealth is obliged to pay interest when it does not make payment in full within the maximum payment terms. Refer to Resource Management Guide 417 for further information, including exceptions to the application of the policy:**

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

- 6.8.1 If payment of an amount due to the Contractor under a Contract is made late, the Commonwealth shall pay interest on the unpaid amount, whether or not the Contractor has submitted a separate invoice for the interest.
- 6.8.2 Interest payable by the Commonwealth under this clause 6.8 shall be calculated in accordance with the following formula:

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

where:

“1%” means the Australian Taxation Office (ATO) sourced General Interest Charge rate current at the due date of payment expressed as a percentage;

“P” = the amount of the late payment; and

“n” = the number of days that the payment was late up to and including the day that the payment is made.

6.8.3 Interest shall only be payable in accordance with this clause 6.8 if the interest amount exceeds A\$100.

## **6.9 Cost Principles (Core)**

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6.9.1 Without in any way affecting or overriding the other terms of the Deed or any Contract, the Commonwealth may apply the CASG Cost Principles when considering any:

- a. price for any change proposal to the Deed or any Contract under clause 9.1; or
- b. claim for costs if the Deed or any Contract is terminated.

## **7 INSURANCE AND LIABILITY**

### **7.1 Indemnity (Core)**

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7.1.1 The Contractor shall indemnify the Commonwealth and Commonwealth Personnel against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel. The Contractor’s liability to indemnify the Commonwealth shall be reduced proportionally to the extent that any unlawful or negligent act or omission on the part of the Commonwealth or any person through whom the Commonwealth is acting (but not including the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel) contributed to the liability, loss, damage, costs or expenses.

### **7.2 Intellectual Property Indemnity (Core)**

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7.2.1 The Contractor shall indemnify the Commonwealth, Commonwealth Personnel, licensees or sub-licensees against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:

- 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 Deed or any 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 Contractor Personnel, Subcontractors or Subcontractor Personnel (whether or not such act or omission constitutes a breach of the Deed or any 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* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

### 7.3 Limitation of Liability (Optional)

**Note to drafters:** A liability risk assessment is to be undertaken by the Commonwealth in accordance with the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:

- <http://drnet.defence.gov.au/casg/commercial/UndertakingProcurementinDefence/Pages/Liability-Risk-Management.aspx>.

**The liability risk assessment provides the basis for determining the liability caps in this clause 7.3 and the insurance requirements in clause 7.4.**

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

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

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 Deed and any Contract will be limited in aggregate to the amount specified in the Details Schedule.

7.3.2 The limitations in clause 7.3.1 do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:

- personal injury and death;
- loss of, or damage to, third party property or Commonwealth property (other than Defence property);
- breach of IP rights, confidentiality, privacy or security obligations;
- fraud or Wilful Default;
- unlawful (not including breach of Deed or any Contract) or illegal acts; or
- the IP indemnity provided by the Contractor under clause 7.2.

### 7.4 Insurance (Core)

**Note to drafters:** This clause is a shortened version of the long form insurance clause contained in the ASDEFCON Strategic Materiel, Complex Materiel Volume 2 and Support templates. If the limit of indemnity for any one of the required liability insurance policies in this clause meets (or exceeds) the monetary threshold nominated in Functional Policy (Procurement) – Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative (ie \$25m) or any type of aviation or marine insurance policy is required, drafters should use the long form clause or consult with the ACIP Management Team about tailoring this short form clause.

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

**The ACIP Initiative applies to CASG procurements in accordance with Functional Policy (Procurement) - Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative. Drafters should refer to the ASDEFCON Insurance Handbook for**

**guidance to assist with understanding and tailoring this clause. Information on the ACIP Initiative is available at:**

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/331E4CAE-EEBE-45A0-9DA6-9B2C24E1DE33>.

**For non-CASG procurements, drafters may seek approval to apply the ACIP Initiative from the**

- [ACIP.ManagementTeam@defence.gov.au](mailto:ACIP.ManagementTeam@defence.gov.au).

**Drafters using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, must delete the Note to tenderers below and also delete clause 7.4.11 and its associated Note to tenderers.**

**Note to tenderers: The operation of clause 7.4 will vary depending on whether the Contractor has Approved Contractor Insurance Program (ACIP) status and, where a Contractor has ACIP status, to the extent any of the policies required by clause 7.4 are within the Contractor's ACIP.**

**As per clause 7.4.11, for Contractors with ACIP status, the Contractor will be deemed compliant with relevant requirements of this clause where the policy is within the scope of the Contractor's ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at:**

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/acip-initiative>.

7.4.1 The Contractor shall effect and maintain (or be insured under) the insurances for the times and in the manner specified in this clause 7.4, except to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 7.4.

7.4.2 The Contractor shall use its reasonable endeavours to ensure that its Subcontractors are insured as required by this clause 7.4, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Contractor.

**Option: For use if workers compensation insurance is required.**

7.4.3 **(workers compensation)** The Contractor shall effect and maintain workers compensation insurance or registrations as required by law, in respect of the Contractor's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Deed or any Contract.

**Option: For use if public liability insurance is required.**

7.4.4 **(public liability)** The Contractor shall effect and maintain public liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each and every occurrence which covers the Contractor and Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Deed or any Contract by the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel.

**Option: For use if professional indemnity insurance is required.**

7.4.5 **(professional indemnity)** The Contractor shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than the amount specified in the Details Schedule for any one claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity by reason of any act or omission of the Contractor, Contractor Personnel, Subcontractors or Subcontractor Personnel. Such insurance shall:

- a. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel under the Deed or any Contract;

**Note to drafters: Paragraphs b, c and d are optional depending on the services and risks. Where b or c is selected, f should also be included.**

- b. extend to cover claims related to software and IT risks;
- c. extend to cover claims for unintentional breaches of intellectual property rights;
- d. extend to cover claims for unintentional breaches of trade practices laws;
- e. have a retroactive date of no later than the earlier of the commencement of the work under the Deed or any earlier preparatory work by the Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel; and
- f. have worldwide territorial and jurisdictional limits.

7.4.6 The insurances and registrations referred to in:

- a. the following clauses shall be effected before the Contractor commences work under the Deed, and thereafter be maintained until all work under the Deed and any Contract is completed:
  - (i) clause 7.4.3 (workers compensation); and
  - (ii) clause 7.4.4 (public liability);
- b. clause 7.4.5 (professional indemnity) shall be effected before the Contractor commences work under the Deed, and thereafter be maintained until the earlier of:
  - (i) [7/10] years following completion of the work under the Deed and any Contract; or
  - (ii) [7/10] years following an earlier termination of the Deed and all Contracts extant at the date of termination of the Deed.

7.4.7 To the extent that the Contractor's insurances and registrations required by clause 7.4 of this Deed are in fact written on a claims made basis (notwithstanding any requirements of this Deed for such insurances to be written on an occurrence basis) then the Contractor must maintain those insurances and registrations until the earlier of:

- a. [7/10] years following completion of the work under the Deed and any Contract; or
- b. [7/10] years following an earlier termination of the Deed and all Contracts extant at the date of termination of the Deed.

7.4.8 With the exception of statutory insurances, the insurances referred to in this clause 7.4 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably.

7.4.9 The Contractor shall, on request, produce evidence satisfactory to the Commonwealth Representative or Authorised Officer (as applicable), acting reasonably, of the currency and terms of the insurances referred to in this clause 7.4.

7.4.10 In respect of each insurance referred to in this clause 7.4, the Contractor shall:

- a. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Deed or any Contract, if requested to do so in writing by the Commonwealth; and
- b. do everything reasonably required by the Commonwealth to enable the Commonwealth to claim and to collect or recover monies due under any insurance policy.

**Note to drafters: When using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, delete clause 7.4.11 and its associated Note to tenderers.**

**Note to tenderers: Clause 7.4.11 will only be included if the Contractor has an ACIP and may require amendment to only apply to those insurances to be covered by the ACIP.**

7.4.11 The Contractor shall be:

- a. deemed compliant with the requirements of the following clauses:
  - (i) clause 7.4.1;
  - (ii) clause 7.4.3 (workers compensation);
  - (iii) clause 7.4.4 (public liability);
  - (iv) clause 7.4.5 (professional indemnity); and
  - (v) clauses 7.4.6, 7.4.7 and 7.4.8; and
- b. relieved of its obligations under clauses 7.4.9 and 7.4.10;
- c. in respect of a particular insurance listed in clause 7.4.11a for any period during which the Contractor's insurance program holds ACIP status under CASG's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether the Contractor's ACIP status extends to that type of insurance). The Contractor shall advise the Commonwealth Representative within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

7.4.12 In addition to any other rights the Commonwealth may have under clause 11.2, the Commonwealth reserves the right to withhold payments under the Deed or any Contract if the Contractor has failed to remedy a breach of this clause 7.4.

## **8 WARRANTIES**

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

8.1.1 The Contractor shall ensure and warrants that any Services provided under any 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.

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

8.2.1 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.

8.2.2 The Contractor shall remedy any errors or defects in the Services notified to the Contractor by the Authorised Officer during the Warranty Period specified in the Details Schedule.

8.2.3 The liability of the Contractor to remedy errors or defects under clause 8.2.2 by the Contractor shall not apply to the extent that the defect arises from the Commonwealth's negligent or wilful damage of the Services.

8.2.4 The Contractor, unless the Authorised Officer otherwise allows, shall meet all costs of, and incidental to, the discharge of the warranties under this clause 8.2.

- 8.2.5 The Contractor acknowledges that the Commonwealth enters into the Contract in reliance on the Contractor's warranties in this clause 8.2, and the Contractor's skill and judgement in rendering the Services.
- 8.2.6 If the Contractor fails, within 30 days after notification by the Authorised Officer, to rectify an error or a defect pursuant to this clause 8.2, the Commonwealth may, without limiting the Contractor's warranties and obligations under 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 11.3.
- 8.2.7 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 Deed, any Contract or otherwise.

## **9 DEED MANAGEMENT**

### **9.1 Change to the Deed or any Contract (Core)**

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

### **9.2 Measurement and Reporting (Optional)**

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- 9.2.1 The Contractor shall provide to the Commonwealth Representative on a quarterly basis, a written report which details:
- a. all Official Orders submitted for the previous quarter;
  - b. the total value of the Official Orders;
  - c. any rejected Services and the reasons for the rejection;
  - d. any failures to deliver the Services in accordance with the Deed or a Contract and the reasons for that failure; and
  - e. **[INSERT ADDITIONAL DETAILS REQUIRED, IF ANY].**

### **9.3 Waiver (Core)**

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

### **9.4 Confidential Information (Core)**

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- 9.4.1 If, in connection with the Deed or any Contract, Confidential Information is provided or produced by any person, the relevant party shall ensure that any person receiving or producing the information protects the confidential nature of the information except:
- a. if 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 any of its IP rights under the Deed or any Contract.

- 9.4.2 If it is necessary to disclose Confidential Information, provided or produced by or on behalf of the other party, to a third party, other than a legal adviser or for a purpose within an exception listed in clause 9.4.1, the party wishing to make the disclosure must obtain the written consent of the other party to the Deed.
- 9.4.3 The Contractor shall, if required by the Commonwealth, ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel engaged in the performance of a Contract give a written undertaking in a form required by the Commonwealth prior to the disclosure of Confidential Information.
- 9.4.4 The parties agree that only the Deed clauses listed in Attachment F are Confidential Information for the relevant party. The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term 'Confidential Information' or the Contractor's equivalent. The marking of information as 'Confidential Information' or equivalent is not determinative as to whether the information is Confidential Information for the purposes of the Deed.
- 9.4.5 The parties agree that any provisions of any Contract that vary or add to the COD, and that are Confidential Information to a party at the time any Contract is created, shall be listed in an attachment to the Contract in the form of Attachment F.
- 9.4.6 The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
- a. demand by the Commonwealth; or
  - b. the time the documents and other material are no longer required for the purposes of the Deed or any Contract.
- 9.4.7 If the Commonwealth makes a demand under clause 9.4.6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then the Contractor shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 9.4.8 The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information.
- 9.4.9 Return or destruction of the documents referred to in this clause 9.4 does not release the Contractor from its obligations under the Deed or any Contract.

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

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- 9.5.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Deed or any Contract.
- 9.5.2 If the Contractor proposes to enter into any arrangement that will require the novation of the Deed or any Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.
- 9.5.3 The Commonwealth may refuse to consent to an arrangement proposed by the Contractor under clause 9.5.2.

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

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- 9.6.1 The Contractor shall not represent itself, and shall ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 9.6.2 Without limiting clause 9.6.1, the Contractor shall clearly identify itself, and shall ensure that the Contractor Personnel, Subcontractors and Subcontractor Personnel clearly identify themselves, as a contractor to the Commonwealth when communicating through telephone, email or any other communication tool in the course of performing the Services.
- 9.6.3 The Contractor, Contractor Personnel, Subcontractors and Subcontractor Personnel shall not by virtue of the Deed or any Contract, be, or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth.



**9.7 Commonwealth Access (Core)**

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- 9.7.1 During the Term or during the performance of any Contract created under the Deed, the Contractor shall permit the Commonwealth Representative or any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts relevant to or impacting on the performance of work under the Deed or any Contract. The Commonwealth may copy any records or accounts for the purposes of the Deed or any Contract.
- 9.7.2 Without limiting clauses 9.7.1, and 9.7.3, the Contractor acknowledges and agrees that:
- a. the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the Contractor and Subcontractors in relation to the Contract;
  - b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
  - c. the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 9.7.1 or 9.7.2.
- 9.7.3 Without limiting the generality of clause 9.7.1 or 9.7.4, 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, or removing CMCA that are no longer required for the performance of the Contract;
  - b. validating the Contractor's progress in meeting the AIC Schedule at Attachment I;
  - c. investigating the reasonableness of proposed prices or costs in relation to the Deed or any Contract;
  - d. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
  - e. validating the Contractor's compliance with clause 5 and the CMR Schedule;
  - f. monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Services; and
  - g. assessing the financial viability of the Contractor to perform and complete any Contract.
- 9.7.4 If the Contractor enters into a Subcontract in accordance with clause 9.9, the Contractor shall ensure the Subcontracts require Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
- 9.7.5 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.

**9.8 Contractor Access (Core)**

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- 9.8.1 The Commonwealth shall allow the Contractor or its Key Persons access to Commonwealth Premises for the purpose of performing the Contract.
- 9.8.2 The Contractor shall comply with, and require persons afforded access under this clause 9.8 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth Premises.
- 9.8.3 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 9.10.

9.8.4 The Contractor acknowledges that it may be provided with the ability to access Commonwealth-held information in connection with its performance of the Services, including through access to Commonwealth information technology systems. Without limiting the Contractor's other obligations under this Contract or otherwise at law, the Contractor shall not seek to access or use Commonwealth-held information except to the extent strictly required for the provision of the Services.

## 9.9 Subcontracts (Core)

9.9.1 The Contractor shall not Subcontract the whole of the work under the Deed or any Contract. The Contractor shall not Subcontract any part of the work under the Contract without the prior written approval of the Commonwealth Representative.

9.9.2 The Contractor, by subcontracting any part of the work for any Contract or by obtaining the Commonwealth Representative's approval of a Subcontractor, shall not be relieved of its liabilities or obligations, and shall be responsible for all Subcontractors.

9.9.3 Without limiting the Contractor's obligations under the Contract, the Contractor shall ensure that:

- a. the requirements of clauses 3.1, 5.2.1, 9.6, 10.1, 10.2 and 10.6 are included in all Subcontracts;
- b. each Subcontractor that requires access to any Commonwealth Premises or to security classified information is subject to the requirements of clause 9.10;
- c. the requirements of clauses 9.8, 9.10 and 9.11, are included in all Subcontracts; and
- d. the Contractor obtains rights, in each Subcontract, that are equivalent to the rights of the Commonwealth under 11.3.

9.9.4 The Contractor shall not enter into a Subcontract for any Contract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).

9.9.5 The Contractor, if requested by the Commonwealth Representative, shall provide the Commonwealth Representative with names of all Subcontractors and a copy of any Subcontract, which copy need not contain prices. The Contractor acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractors' participation in the performance of any Contract.

**Note to drafters: These clauses 9.9.6 to 9.9.10 must be included in the draft RFT when a procurement will be subject to the Payment Times Procurement Connected Policy (PT PCP). The PT PCP applies to procurements of new standing offers where the estimated value of all anticipated orders awarded under the standing offer is expected to exceed \$4 million (GST inclusive). If the value of the procurement is not known, it should be assumed for the purposes of the PT PCP, that the procurement is valued above \$4 million (inc GST), unless it is reasonable to assume otherwise.**

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

**Note to tenderers: The Payment Times Procurement Connected Policy (PT PCP) imposes obligations on large businesses who enter into a contract with the Commonwealth to pay invoices under their new Subcontracts (up to \$1 million (inc GST)) within 20 days. Late payments of invoices in scope will incur interest. Further information about the Payment Times Procurement Connected Policy is available from the Department of Treasury at:**

- <https://treasury.gov.au/small-business/payment-times-procurement-connected-policy>.

**The PT PCP complements the Government Supplier Pay on Time or Pay Interest Policy.**

**The following clauses will be included in the COD if:**

- **the Tenderer is a Reporting Entity as at the date of its tender response; and**
- **the value of the Contract is above \$4 million (inc GST) as at contract execution.**

- 9.9.6 The Contractor shall comply with the Payment Times Procurement Connected Policy (PT PCP), including the obligation to provide and comply with a PT PCP Remediation Plan (as defined in the PT PCP) when required to do so by the PT PCP Policy Team.
- 9.9.7 If the Contractor enters into a PT PCP Subcontract, the Contractor shall include in that subcontract:
- a. a requirement for the Contractor to pay the PT PCP Subcontractor:
    - (i) within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice provided that this does not affect any other obligation to comply with applicable legislation that provides for a shorter payment period; and
    - (ii) subject to clause 9.9.9, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with the formula for late payments at clause 6.8;
  - b. a statement that the PT PCP applies to that subcontract;
  - c. a statement that the subcontractor may make a complaint to the PT PCP Policy Team in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 9.9.6;
  - d. a statement that the Contractor must respond to any complaint of non-compliance made by the subcontractor under clause 9.9.7c; and
  - e. a statement that, if requested by the PT PCP Policy Team, the Contractor must complete a questionnaire in the form of Appendix C to the PT PCP.
- 9.9.8 If the Contractor enters into a Reporting Entity Subcontract, the Contractor:
- a. shall include in that subcontract obligations equivalent to those in clause 9.9.6; and
  - b. use reasonable endeavours to include in that subcontract a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
    - (i) obligations equivalent to those in clause 9.9.6; and
    - (ii) obligations equivalent to this clause 9.9.8b (such that the obligations in this clause 9.9.8b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 9.9.9 The Contractor is not required to pay interest in accordance with clause 9.9.7a(ii) if either:
- a. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
  - b. the amount of the interest that would otherwise be payable is less than \$100 (inc GST).
- 9.9.10 The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clauses 9.9.6 to 9.9.9, or the associated payment provisions of a PT PCP Subcontract, the Contractor shall:
- a. not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
  - b. cooperate in good faith with the PT PCP Policy Team in connection with any investigation or inquiry and any attempt to resolve the complaint.

## **9.10 Defence Security (Core)**

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- 9.10.1 If the Contractor requires access to any Commonwealth Premises under the control or responsibility of Defence, the Contractor shall:
- a. comply with any security requirements (including those contained in the DSPF) notified to the Contractor by the Commonwealth Representative from time to time; and
  - b. ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel are aware of and comply with the Commonwealth's security requirements.

## 9.10.2 The Contractor shall:

- a. ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
- b. promptly notify the Commonwealth Representative 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 a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.

**Note to drafters:** For further information on personnel security clearances and types of accreditation, refer to Principles 23, 40 and 73 of the DSPF. Facility accreditations will be required for certain Business Impact Levels. For information on Business Impact Levels refer to:

- <http://drnet/eig/Defence-Security/Security-Risk-Management/Pages/BIL.aspx>  
or contact the relevant Regional DSVS Office.

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

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

- <https://www.protectivesecurity.gov.au/policies>.

## 9.10.3 The security classification of the information and assets accessible to the Contractor and work to be performed under the Deed will be up to and including the level specified in the Details Schedule. The Contractor shall:

- a. comply with the classification and protection of official information requirements of Principle 10 of the DSPF; and
- b. ensure that all required personnel (if any) possess a personnel security clearance at the level specified in the Details Schedule, and comply with the requirements and procedures of Principle 40 of the DSPF.

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

- a contractor is working on classified information or assets, storing or transporting Defence weapons or explosive ordnance, providing security services for Defence bases and facilities;
- the procurement involves weapons or explosive ordnance; or
- as a result of a Defence business requirement.

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

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

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

**Option 1: If the Contractor will require DISP membership in accordance with Control 16.1 of the DFSP.**

9.10.4 The Contractor shall obtain and maintain all elements of DISP membership at the levels specified in the Details Schedule (or an equivalent international agreement or arrangement) in accordance with Control 16.1 of the DSPF for the purposes of the Deed.

**Option 2: If the Contractor will not require DISP membership in accordance with Control 16.1 of the DFSP.**

9.10.5 The Contractor is not required to hold DISP membership within the meaning of Control 16.1 of the DSPF for the purposes of the Deed.

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

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

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

**Option: If work is to be performed overseas and will involve security classified information and/or assets (as identified in the Details Schedule).**

9.10.6 Where work under the Contract is performed overseas, the Contractor shall hold a Facility Security Clearance at the relevant level verified by DS&VS through a bilateral security instrument in accordance with Principle 16 of the DSPF.

**Option: For when the procurement involves classified information or security protected assets (as identified in the Details Schedule).**

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

9.10.8 With respect to security classified information, the Contractor shall:

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

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

**Option: For when COMSEC material is transmitted in Australia (as identified in the Details Schedule).**

- 9.10.9 Where COMSEC material is transmitted in Australia, the Contractor shall ensure that:
- a. without limiting clause 9.10.8c, all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall be subject to the special security provisions of Principle 13 of the DSPF; and
  - b. all security classified information transmitted between the parties or a party and a Subcontractor located overseas whether generated in Australia or by another country shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.

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

**Option: For when COMSEC material is transmitted overseas (as identified in the Details Schedule).**

- 9.10.10 Where COMSEC material is transmitted overseas, the Contractor shall ensure that:
- a. all COMSEC material transmitted between the parties or a party and a Subcontractor located overseas shall be subject to approval in the first instance by the Director ASD, in respect of Australian COMSEC material and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries; and
  - b. 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 ASD and to any bilateral security instrument between Australia and the overseas country.

- 9.10.11 If there has been a breach by the Contractor, Contractor Personnel, a Subcontractor, or Subcontractor Personnel, of clause 9.10, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 11.2.1.

## **9.11 Conflict of Interest (Core)**

9.11.1 The Contractor:

- a. warrants that, to the best of its knowledge after making diligent inquiries at the Effective Date specified in the Details Schedule, no conflict of interest exists or is likely to arise in the performance of its obligations under the Deed or any Contract by itself or by any Contractor Personnel, Subcontractors or Subcontractor Personnel; and
- b. shall promptly notify the Commonwealth in writing if such a conflict of interest arises, or appears likely to arise.

9.11.2 Within five Working Days after giving notice under clause 9.11.1, the Contractor shall notify the Commonwealth, in writing, of the steps the Contractor will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth.

9.11.3 If the Contractor fails to notify the Commonwealth in accordance with clauses 9.11.1 or 9.11.2 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate the Deed and any Contract in accordance with clause 11.2.

## **9.12 Post Defence Separation Employment (Core)**

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- 9.12.1 Except with the prior written Approval of the Commonwealth Representative, the Contractor shall not permit any Defence Personnel or Defence Service Providers who, at any time during the preceding 12 month period were engaged or involved in:
- a. the preparation or management of the Deed or any Contract;
  - b. the assessment or selection of the Contractor; or
  - c. the planning or performance of the procurement or any activity relevant or related to the Deed or any Contract,
- to perform or contribute to the performance of the Deed or any Contract.
- 9.12.2 To avoid doubt, the 12 month period referred to in clause 9.12.1 applies from the date which is 12 months before the date on which the Contractor proposes that the person start performing or contributing to the performance of the Deed or any Contract.
- 9.12.3 The Commonwealth Representative shall not unreasonably withhold approval under clause 9.12.1 and, in making a decision, shall consider:
- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
  - b. any information provided by the Contractor about the character and duration of the services proposed to be performed by the person under the Deed or any Contract;
  - c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Deed or any Contract in the manner proposed under 9.12.1, and the arrangements which the Contractor proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
  - d. any information provided by the Contractor concerning any significant effect that withholding approval will have on the person's employment or remuneration opportunities or the performance of the Deed or any Contract; and
  - e. the policy requirements set out in DI ADMINPOL Annex C AG5 and the *Integrity Policy*, as applicable.

## **10 POLICY AND LAW**

### **10.1 Governing Law (Core)**

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

- b. acknowledges and agrees that its obligation in clause 10.1.4a extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by Contractor Personnel.

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

- 10.1.5 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

## 10.2 Policy Requirements (Core)

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

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

- 10.2.1 The Contractor shall comply with, and require Contractor Personnel, Subcontractors and Subcontractor Personnel to comply with, the following Commonwealth policies of general application relevant or applicable to any Contract:

- a. DI ADMINPOL, and in particular:
- (i) Annex C, AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
  - (ii) Annex C, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy;
  - (iii) Annex J, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
- b. Financial Policy Gifts and Benefits (Including Hospitality) – Receiving;
- c. Financial Policy Gifts and Benefits (Including Hospitality) – Spending;
- d. Australian Defence Force alcohol policy as detailed in MILPERSMAN Part 4 Chapter 1;
- e. Public Interest Disclosure policy detailed at:  
<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>;  
and
- f. **[DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES]**

**Option: For use if the IPP mandatory minimum requirements are NOT included in the RFT.**

**Note to tenderers: It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. The Commonwealth Indigenous Procurement Policy is available at:**

- <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>

- 10.2.2 The Contractor shall use its reasonable endeavours to increase its:

- a. purchasing from Indigenous enterprises; and
- b. employment of Indigenous Australians,

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



**Option: For when a procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.**

**Note to drafters: If the procurement is at or above the relevant procurement threshold and does not meet the exemptions set out at Appendix A to the CPRs or a Defence specific exemption, the procurement will still be subject to the Workplace Gender Equality Procurement Principles and the following clauses must be used. A list of Defence specific exemptions is found in the factsheet 'Exemptions from Division 2 of the Commonwealth Procurement Rules' which is available here:**

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

**Note to tenderers: These clauses 10.2.3 and 10.2.4 apply only to the extent that the tenderer has identified itself as a Relevant Employer for the purposes of the Workplace Gender Equality Procurement Principles. The Workplace Gender Equality Procurement Principles will only apply to overseas based contractors to the extent that they have 100 or more employees in Australia.**

10.2.3 The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act).

10.2.4 If the Contractor becomes non-compliant with the WGE Act during the period of the Contract, the Contractor shall notify the Commonwealth Representative.

**Option: For when a procurement is subject to the Shadow Economy Procurement Connected Policy.**

**Note to drafters: A procurement will be subject to the Shadow Economy Procurement Connected Policy where the procurement is conducted by open tender, subject to the CPRs and is valued at over \$4 million (inc GST). In the context of a standing offer, the estimated value of the procurement is the collective total value of all potential orders under the standing offer.**

**Note to tenderers: The Shadow Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain from contractors satisfactory and valid STRs and to require contractors to obtain and hold STRs in respect of certain Subcontractors. Further information about the requirements arising under the Shadow Economy Procurement Connected Policy is available from the Department of Treasury at:**

- <https://treasury.gov.au/publication/p2019-t369466>.

**The Contractor will be required to obtain and hold copies of satisfactory and valid STRs for any Subcontractors that the Contractor directly engages (ie first tier Subcontractors) where the subcontract value will be over \$4 million (inc GST). Any STRs obtained from these Subcontractors must be provided to the Commonwealth upon request.**

10.2.5 The Contractor shall not enter into a Subcontract with a proposed direct Subcontractor (or agree to a novation of a direct Subcontract) if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST), unless the Contractor has obtained and holds any the following STRs, as applicable to the proposed direct Subcontractor:

If the proposed Subcontractor to enter into the Subcontract is:	STRs required:
(a)	(b)
a. a body corporate or natural person;	a satisfactory and valid STR in respect of that body corporate or person;
b. a partner acting for and on behalf of a partnership;	a satisfactory and valid STR: <ul style="list-style-type: none"> <li>(i) on behalf of the partnership; and</li> <li>(ii) in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract;</li> </ul>

c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust;
d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group;
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.

10.2.6 The Contractor shall obtain and hold additional STRs in the following circumstances within 10 Working Days of the Contractor becoming aware of the circumstances arising:

If the Contractor or Subcontractor is:	Additional STRs required:
(a)	(b)
a. a partner acting for and on behalf of a partnership;	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Deed or Subcontract (as applicable);
b. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of any new trustee appointed to the trust;
c. a joint venture participant;	a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture;
d. a member of a Consolidated Group;	a satisfactory and valid STR in respect of any new head company of the Consolidated Group; and
e. a member of a GST Group;	a satisfactory and valid STR in respect of any new representative for the GST Group.

10.2.7 The Contractor shall provide the Commonwealth with copies of the STRs referred to in clause 10.2.5 or 10.2.6 within 5 Working Days after a written request by the Commonwealth.

10.2.8 For the purposes of the Contract, an STR is taken to be:

- a. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
- b. **valid** if the STR has not expired as at the date on which the STR is required to be held.

**Option: These clauses must be included if a procurement is valued at over \$200,000 (GST Inclusive).**

**Note to tenderers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurement, tenderers for Australian Government contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. Each request for a Quotation may constitute a fresh request for tender as envisaged by the policy. To avoid the need to reaffirm this information with each Quotation sought under the standing offer, the draft conditions of deed includes the below requirement. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:**

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaustralianplan>; and
- <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.

**Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at:**

- [MNETaxTransparency@treasury.gov.au](mailto:MNETaxTransparency@treasury.gov.au).

10.2.9 The Contractor shall provide:

- a. a written update on the Contractor's country of tax residency; and
- b. a written update on the Contractor's ultimate parent entity's country of tax residency, within a reasonable period after becoming aware that this information has changed during the term of the Deed.

10.2.10 In complying with clause 10.2.9, if the Contractor or the Contractor's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.

10.2.11 Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining the Contractor's or the Contractor's ultimate parent entity's country of tax residency.

### 10.3 Work Health and Safety (Core)

10.3.1 The Commonwealth and the Contractor:

- a. shall, where applicable, comply with, and the Contractor shall ensure that all Subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth, the Contractor or the Subcontractors (as the case may be) and any other person who, concurrently with the Commonwealth, the Contractor or the Subcontractor (as the case may be), has a WHS duty under the WHS Legislation in relation to the same matter; and
- b. acknowledge that they have a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
- (i) Commonwealth Personnel;
  - (ii) Contractor Personnel and Subcontractor Personnel; and
  - (iii) other persons,
- in connection with the Services.

10.3.2 The Contractor represents and warrants that:

- a. it has given careful, prudent and comprehensive consideration to the WHS implications of the work to be performed by it under the Deed and any Contract; and
- b. the proposed method of performance of that work complies with, and includes a system for identifying and managing WHS risks which complies with, all applicable legislation relating to WHS including the applicable WHS Legislation.

10.3.3 The Contractor shall:

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

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

10.3.4 Without limiting the Contractor's obligations under the Deed or any Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Services, provide, and shall use its reasonable endeavours to ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Contractor or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.

10.3.5 Subject to clause 9.10 and any relevant foreign government restrictions, the Commonwealth shall provide to the Contractor in a timely manner any information or copies of documentation reasonably requested by the Contractor and held by the Commonwealth to enable the Contractor to comply with its obligations under the applicable WHS Legislation in relation to the Deed or any Contract.

10.3.6 To the extent not inconsistent with the express requirements of the Deed or any Contract, the Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable legislation relating to WHS including the WHS Legislation in relation to the provision of the Services. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the Commonwealth Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.

10.3.7 The Contractor shall not use ACM in providing the Services and shall not take any ACM onto Commonwealth Premises in connection with providing the Services.

10.3.8 Unless the Commonwealth Representative otherwise agrees in writing, the Contractor shall:

- a. ensure that any deliverable provided to the Commonwealth in connection with the Services does not contain a Problematic Substance; and
- b. not use, handle or store a Problematic Substance on Commonwealth Premises in connection with the Services.

10.3.9 Where the Commonwealth Representative agrees that a deliverable may contain a Problematic Substance or that the Contractor may use, handle or store a Problematic Substance on Commonwealth Premises, the Contractor shall ensure that:

- a. full details of the Problematic Substances are provided to the Commonwealth Representative in the format of a SDS, except where the applicable SDS exists within the Australian ChemAlert database and the Contractor identifies that SDS to the Commonwealth Representative by reference to its unique record within that database; and

- b. the Problematic Substance is correctly labelled and packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Services clearly identifies the nature of the substance and its associated hazards.
- 10.3.10 If a Notifiable Incident occurs in connection with work carried out under the Deed or any Contract:
- a. on Commonwealth Premises;
  - b. which involves Commonwealth Personnel; or
  - c. which involves a Commonwealth specified system of work,
- the Contractor shall:
- d. immediately report the incident to the Commonwealth;
  - e. promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
  - f. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
  - g. provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.
- 10.3.11 From time to time the Commonwealth may advise the Contractor of hazards to health and safety that have been identified at, or in the proximity of, Commonwealth Premises where Contractor Personnel and / or Subcontractor Personnel may be working.
- 10.3.12 On receipt of advice from the Commonwealth under clause 10.3.11, the Contractor shall undertake necessary risk assessments, identify control measures and advise Contractor Personnel and/or Subcontractor Personnel of the hazards and risks and relevant control measures.

#### **10.4 Environmental Obligations (Core)**

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- 10.4.1 The Contractor shall perform its obligations under the Deed and any 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* (Cth).

#### **10.5 Severability (Core)**

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

#### **10.6 Privacy (Core)**

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- 10.6.1 The Contractor shall:
- a. if it obtains Personal Information in the course of performing the Deed or any Contract, use or disclose that Personal Information only for the purposes of the Deed or that Contract subject to any applicable exemptions in the *Privacy Act 1988* (Cth);
  - b. comply with its obligations under the *Privacy Act 1988* (Cth); and

- c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.

10.6.2 The Contractor shall notify the Commonwealth as soon as reasonably practicable if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 10.6, whether by the Contractor, Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Deed or any Contract; or
- b. in relation to Personal Information obtained in the course of performing the Deed or any Contract:
- (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
  - (ii) it is approached by the Privacy Commissioner.

10.6.3 The Contractor shall ensure that Contractor Personnel, Subcontractors and Subcontractor Personnel who deal with Personal Information for the purposes of the Deed or any Contract are aware of, and comply with, this clause 10.6.

## 10.7 Child Safety (Optional)

**Option: For when the Commonwealth Child Safe Framework applies**

**Note to drafters:** The Department of Prime Minister and Cabinet) has developed the [Commonwealth Child Safe Framework \(CCSF\)](#) to protect children and young people who may have contact with Commonwealth entities. The CCSF sets out the minimum standards for Commonwealth entities to protect children.

Defence and all Defence officials have an obligation under the [Child Protection legislation](#) and the Work Health Safety Act 2011 (Cth) to ensure the health and safety of youth when they engage or interact with Defence. This obligation also extends to Defence contractors. Youth special care provisions also extend to over 18 year olds participating in a Defence Youth Program.

Defence policy relating to Child Safety is contained in YOUTHPOLMAN, which can be found here:

- <https://www.defenceyouth.gov.au/defence-youth-policy/>.

Defence has developed relevant clauses, for use with ASDEFCON based approaches to market, which address the requirements of the CCSF and YOUTHPOLMAN. These clauses are adapted from model clauses included in Department of Finance's ClauseBank and must be inserted into Defence procurements using the ASDEFCON Suite of Tendering and Contracting Templates, where the Contractor will engage with or interact with youth in performing its obligations under the Contract

The clauses can be found here:

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>

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

[procurement.asdefcon@defence.gov.au](mailto:procurement.asdefcon@defence.gov.au).

For information in relation to CCSF and policy related questions please email:

[procurement.policy@defence.gov.au](mailto:procurement.policy@defence.gov.au).

For further assistance and guidance in relation to the application of the CCSF please refer to the Child Safety Framework Factsheet here.

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

## 10.8 Modern Slavery (Optional)

**Option: For inclusion where the modern slavery risk assessment for the procurement has determined there is a risk of modern slavery existing in the relevant supply chain.**

**Note to drafters: The procurement should be assessed for the risk of modern slavery existing in the supply chain. Guidance on performing this risk assessment, as well as other guidance on the Modern Slavery Act 2018 (Cth), can be found on the Attorney-General's Department (AGD) Modern Slavery Register site here:**

- <https://modernslaveryregister.gov.au/resources/>.

**If the modern slavery risk assessment determines that there is a risk of modern slavery existing in the supply chain, drafters must include the model clauses for Defence procurements subject to the requirements of the Modern Slavery Act 2018 (Cth). These model clauses are based on the AGD's model clauses and have been developed for use with ASDEFCON-based contracts. They are contained in the ASDEFCON Clausebank which can be found here:**

- <http://drnet/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>.

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

[procurement.asdefcon@defence.gov.au](mailto:procurement.asdefcon@defence.gov.au).

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

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/700DDE0B-7EB6-4C98-BD11-CE00EAE739DA>.

## 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 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.

11.1.2 The parties shall continue to perform under the Deed and any Contract when there is a dispute.

### 11.2 Termination for Contractor Default (Core)

11.2.1 The Commonwealth may, in addition to any other right or remedy it may have, terminate the Deed or any Contract by notice in writing to the Contractor, if:

- an Insolvency Event occurs, except to the extent the exercise of a right under this clause 11.2.1a is prevented by law;
- the Contractor commits a Default for which the Deed or any Contract provides a notice of termination for default may be given;
- the Contractor fails to take action to remedy a default by the Contractor of another obligation to be performed or observed under the Deed or any Contract within 10 Working Days of being given notice in writing by the Commonwealth Representative or the Authorised Officer, to do so or, if action is taken within 10 Working Days, the Contractor fails to remedy the default within the period specified in the notice;
- the Contractor breaches any of its obligations under clause 0; or
- the Contractor fails to obtain or maintain any Authorisation required to enable it to comply with its obligations under the Deed or any resultant Contract, except to the extent that the failure was outside the Contractor's reasonable control;

**Option: for when a limitation of liability is included at clause 7.3**

- f. the Contractor would have, except for the operation of clause 7.3, been liable for Commonwealth loss in relation to the cap provided for in clause 7.3 to an amount equal to or greater than the amount of the liability cap.

11.2.2 If the Deed or any 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 the Contractor Personnel or Subcontractors and Subcontractor Personnel, which contain or relate to any Confidential Information or which are security classified;
- b. subject to clause 11.5, the parties shall be relieved from future performance, in respect of the Deed or any Contract, without prejudice to any right of action that has accrued at the date of termination;
- c. [subject to the liability caps in clause 7.3], rights to recover damages, including full contractual damages, shall not be affected;
- d. the Contractor shall deliver to the Commonwealth the TD for Services provided 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 the Contractor Personnel, Subcontractors or Subcontractor Personnel.

11.2.3 The Commonwealth may also terminate the Deed and any Contract by written notice if:

- a. the Contractor has persistently failed to meet its obligations under the Deed, or any 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 Services required by the Commonwealth and the relationship between the parties is no longer workable.

### **11.3 Termination for Convenience (Core)**

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11.3.1 In addition to any other rights it has under the Deed or any Contract, the Commonwealth may at any time terminate the Deed or any Contract by notifying the Contractor in writing.

11.3.2 If the Commonwealth Representative issues a notice under clause 11.3.1, the Contractor shall:

- a. stop or reduce work in connection with any current Contracts 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 provisions of the Contract for work conducted before the date the termination or reduction takes effect; 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 any profit anticipated on any part of the Contract terminated or reduced for convenience.



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

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- 11.4.1 Without limiting the Commonwealth's other rights or remedies under the Deed or any Contract or at law, if the Contractor owes any debt to the Commonwealth in relation to the Deed or any Contract, the Commonwealth may:
- a. deduct the amount of the debt from payment of any claim; or
  - b. give the Contractor a written notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days of receipt of notice.
- 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 General Interest Charge Rate current at the date the payment was due for each day the payment is late.

**11.5 Survivorship (Core)**

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- 11.5.1 Any provision of the Deed or any Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Deed or any Contract and any rights arising on termination or expiration shall survive, including provisions relating to Confidential Information, Privacy, Intellectual Property, the Right of Commonwealth to Recover Money, Defence Security and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Deed or any Contract.

EXECUTED AS A DEED by

SIGNED, SEALED and DELIVERED for and on behalf of  
THE COMMONWEALTH OF AUSTRALIA:

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

In the presence of:

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

SIGNED, SEALED and DELIVERED for and on behalf of  
THE CONTRACTOR:

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

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

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

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