

**OFFICIAL**  
**ATTACHMENT A**

**STATEMENT OF WORK (SOW) (CORE)**

***Note to tenderers: Attachment A will consist of an amalgamation of the draft SOW at Part 3 of the RFT and the successful tenderer's response.***

## ATTACHMENT B

## PRICE AND PAYMENTS (CORE)

**Note to tenderers: Attachment B will consist of an amalgamation of information submitted in response to TDR D, this draft Attachment B, the successful tenderer's response and any negotiated adjustments.**

## 1. GENERAL (CORE)

1.1 Attachment B consists of the following clauses and associated Annexes as indicated in Table B-1 below:

**Note to drafters: Some Annexes will include a single file with the appropriate pricing table, such as a PDF copy of a worksheet from the Support Short Pricing Workbook (SPTSPW). For Recurring Services, multiple schedules may be included under Annex A in order to incorporate all Recurring Services worksheets. Update the following table for the Annexes (and schedules) to be included in the draft Contract. Files names may be added prior to ED, when known. The examples below are based on the tabs for worksheets within the SPTSPW and the separate word file for Annex E.**

**If the draft Contract will significantly exceed the expected use of the template, for example, by including Government Furnished Facilities or exceeding A\$20m per year (and 'prescribed ACE percentages' becoming applicable), drafters should consider using the Support Pricing Workbook and updating this Attachment (and TDR D) to those used for ASDEFCON (Support).**

Table B-1: Annexes to Attachment B

Attachment B Clause Reference	Associated Annex	Annex File Names
2 Recurring Services (CORE)	Annex A Recurring Services	Schedule 1: Recurring Services OD to X <i>Schedule 2: Recurring Services X to Y</i> <i>Schedule 3: Recurring Services Y to Z</i>
3 Task-Priced Services (CORE)	Annex B Task-Priced Services	<i>Task Priced Services</i>
4 S&Q Services (CORE)	Annex C S&Q Services	<i>S and Q Services</i>
5 Adjustments (CORE)	Annex D Adjustments	<i>Adjustments</i>
6 Australian Contract Expenditure (OPTIONAL)	N/A	
0 Annual ACE Value (Core)  Note to tenderers: The Annual ACE Value table for any resultant contract will be based on the successful	Annex E Performance Assessment and Performance Payments (Optional)	<i>009_ASDEFCON_SPTS_V3.0_COC_ATTB_ANNE_PerformanceAssessmentandPerformancePayments</i>

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<p>tenderer's response to Table D-1 of TDR D.</p> <p>1.1.1 Table B-4 sets out the annual (or other) pricing periods and the Annual ACE Value in respect of each pricing period to be achieved by the Contractor.</p> <p><b>Table B-4: Annual ACE Value</b></p> <p>(...INSERT the Annual ACE Value table including table notes...)</p> <p>Performance Assessment and Performance Payments (OPTIONAL)</p>		
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- 1.2 The obligations of the Commonwealth under this Attachment B are subject to:
- a. the Contractor making a claim for payment in accordance with clause 7.2 of the COC; and
  - b. the other provisions of the Contract.
- 1.3 Except where expressly indicated to the contrary, the amounts set out in or calculated under this Attachment B are inclusive of all costs and other payments associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the Contract. This includes all licence fees, royalty payments, overseas taxes, duties and charges, Australian (Federal, State and Local Government) taxes including GST, customs and other duties and charges and arranging customs clearance and services of representatives.

**2 RECURRING SERVICES (CORE)**

**2.1 Introduction**

2.1.1 Annex A describes the amounts payable by the Commonwealth to the Contractor for the provision of Recurring Services in accordance with the Contract. The Recurring Services commence from the [...INSERT "Effective Date" or "Operative Date"...].

**2.2 Recurring Services Fee**

***Option A: For when Annex E, Performance Assessment and Performance Payments, is included into the Contract.***

2.2.1 Subject to clauses 5 and 6 of Annex E to this Attachment B, the Commonwealth shall pay to the Contractor, for the provision of the Recurring Services, the Recurring Services Fee, monthly in arrears.

***Option B: For when Annex E, Performance Assessment and Performance Payments, is not included into the Contract.***

2.2.2 The Commonwealth shall pay to the Contractor, for the provision of the Recurring Services, the Recurring Services Fee, monthly in arrears.

**ATTACHMENT B****3 TASK-PRICED SERVICES (CORE)****3.1 Introduction**

3.1.1 Annex B describes the amounts payable by the Commonwealth to the Contractor for the provision of Task-Priced Services in accordance with the Contract.

**3.2 Task-Priced Services**

3.2.1 For each Task-Priced Service the Commonwealth shall pay to the Contractor the price for the Task-Priced Service, as specified in Annex B, applicable to the month in which the Task-Priced Service was Accepted in arrears at the end of that month or in such other manner as may be agreed in writing by the parties in respect of that Task-Priced Service.

**4 S&Q SERVICES (CORE)****4.1 Introduction**

4.1.1 Annex C describes the amounts payable by the Commonwealth to the Contractor for the provision of S&Q Services in accordance with the Contract.

**4.2 S&Q Rates**

4.2.1 Annex C sets out the labour categories / skill levels and labour rates for the Contractor's employees for the purpose of S&Q Services. The labour rates apply to:

- a. S&Q Services provided during **[INSERT DEFINITION OF NORMAL TIME] (Normal Time)**; and
- b. S&Q Services provided at any other times (**Other Time**).

4.2.2 Annex C sets out the mark-up on purchased materials, Subcontract costs and other Direct Costs for the purpose of S&Q Services. Mark-ups for Subcontracts (including Subcontracts for materials) exceeding **[INSERT AMOUNT]** shall be subject to negotiation.

**Option: Include the following clauses when foreign currencies are applicable.**

4.2.3 If an S&Q Service will include component costs in foreign currencies, for rates that are not included in Annex C, values are to be quoted in source currency and equivalent Australian dollars (using the Reserve Bank of Australia rate as at the day prior to the submission of the S&Q Quote) inclusive of all applicable taxes and other duties, or as otherwise agreed between the parties.

4.2.4 Where an S&Q Quote is submitted that includes amounts priced in foreign currencies, and equivalent Australian dollar amounts determined in accordance with clause 4.2.3, the Commonwealth may elect to pay any amounts under any resulting S&Q Order in either source currency or Australian dollars, as applicable.

**4.3 Not-To-Exceed S&Q Services**

4.3.1 This clause applies to an S&Q Service to the extent that the S&Q Order specifies a Not-To-Exceed basis for pricing and payment.

4.3.2 The Commonwealth shall, for each Not-To-Exceed S&Q Service, pay to the Contractor, monthly in arrears, the lesser of:

- a. the cost incurred by the Contractor in performing the S&Q Service, calculated using the labour rates specified in Annex C and by applying the mark-up specified in Annex C to materials, Subcontracts and other Direct Costs (where applicable); or
- b. the Not-To-Exceed price set out in the S&Q Order.

**4.4 Firm Price S&Q Services**

4.4.1 This clause applies to an S&Q Service to the extent that the S&Q Order specifies a firm price basis for pricing and payment.

4.4.2 The Commonwealth shall, for each firm price S&Q Service, pay to the Contractor, monthly in arrears, the following:

- a. if the Contractor achieves a milestone specified in the S&Q Order, the amount specified for the milestone in the S&Q Order;

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- b. upon Acceptance of the S&Q Service (and Acceptance of any associated Deliverables), any amount specified in the S&Q Order as being payable upon Acceptance; and
- c. any other amount specified to be payable in accordance with the S&Q Order.

**5 ADJUSTMENTS (CORE)**

**Note: Agreements reached as a result of workplace enterprise bargaining are not considered to be awards for the purposes of the formula set out below.**

**5.1 General**

5.1.1 In this clause 5, the following interpretations apply:

- a. when applicable, the pricing tables in the Annexes to this Attachment are adjusted from the Adjustment Date, in accordance with clause 7.3 of the COC;
- b. the price for a Service is the price applicable to the period of when the Service was performed, not the date of the invoice (ie, if the invoice was submitted subsequent to the Adjustment Date);
- c. in accordance with clause 7.3.1. of the COC, unless stated otherwise in an S&Q Order, prices for an S&Q Service are not subject to an adjustment;
- d. if a source of an index publishes provisional and final index values, only index values designated as final shall be used;
- e. subject to clause 5.1.1d, if a quarterly index is published more than once, for the purposes of the formulae, the index value to be used (for the quarter preceding the Adjustment Date) shall be the first index value officially published in the quarter following that quarter; and
- f. if an index is discontinued, rebased or modified and the entity publishing that index provides official guidance on the replacement, bridging or re-baselining methodology to be applied, that guidance should be used as one of the inputs for determining any required update to the index.

**5.2 Adjustment Process**

**Note to drafters: The formula below can be used for prices where underlying costs are in a foreign currency (with payments made in \$A or in source currency), when the appropriate indices are included in Annex D.**

**The following formula only allows for one labour and one materials index per source currency, with the same weightings applied to all adjusted prices. If an adjustment process that allows for different weightings for more than two components is required, drafters may refer to the 'complex' option within ASDEFCON (Support). Drafters should also seek FIS advice.**

5.2.1 The prices specified in Annexes A and B to this Attachment B shall be adjusted for fluctuations in the cost of labour and materials (including where prices may be based in a foreign source currency) by applying the following formula in accordance with clause 7.3 of the COC:

$$P_1 = \left( Y * \frac{L_1}{L_0} + Z * \frac{M_1}{M_0} \right) * P_0$$

where, for each applicable source currency:

Ref	Description
P <sub>1</sub>	the new (ie, adjusted) price, to apply on and from the relevant Adjustment Date.
P <sub>0</sub>	the price applicable immediately prior to the relevant Adjustment Date.
Y	the component of a price (expressed as a decimal) specified in Annex D, which is attributed to a labour index series.
L <sub>1</sub>	the labour index value (number) for a labour index series (L) specified in Annex D, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
L <sub>0</sub>	the labour index value (number) for a labour index series (L) specified in Annex D that was used for the previous price adjustment or, in respect of the first price adjustment, the published index value for the quarter preceding the quarter containing the Base Date.

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Z	the component of a price (expressed as a decimal) specified in Annex D, which is attributed to a materials index series.
M <sub>1</sub>	the materials index value (number) for a materials index series (M) specified in Annex D, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
M <sub>0</sub>	the materials index value (number) for a materials index series (M) specified in Annex D that was used for the previous price adjustment or, in respect of the first price adjustment, the published index value for the quarter preceding the quarter containing the Base Date.

and where, for each price being adjusted, the sum of the components attributed to labour and materials equals one (ie,  $Y + Z = 1$ ).

- 5.2.2 For labour rates for S&Q Services in Annex C to Attachment B, the following price adjustment formula shall be applied in accordance with clause 7.3 of the COC:

$$P_1 = \frac{L_1}{L_0} * P_0$$

where, for each applicable source currency:

Ref	Description
P <sub>1</sub>	the new (ie, adjusted) labour rate for S&Q Services, to apply on and from the relevant Adjustment Date.
P <sub>0</sub>	the labour rate for S&Q Services, as specified in Annex C, immediately prior to the relevant Adjustment Date.
L <sub>1</sub>	the labour index value (number) for a labour index series (L) specified in Annex D, as published for the quarter preceding the quarter containing the relevant Adjustment Date.
L <sub>0</sub>	the labour index value (number) for a labour index series (L) specified in Annex D that was used for the previous rates adjustment or, in respect of the first rates adjustment, the published index value for the quarter preceding the quarter containing the Base Date.

### 5.3 Indices

- 5.3.1 The Australian and international indices for the Contract, and the proportions attributed to labour and materials components of the prices, are detailed in Annex D to this Attachment.

**Note to tenderers:**

**Note 1: For labour costs incurred in Australia, input based (cost of labour) indices acceptable to the Commonwealth are included in the ABS catalogue 'Wage Price Index' – Tables 8B and 9B.**

**Note 2: For labour costs incurred overseas, the labour index must be an appropriate index published by an agency of the relevant Government.**

**Note 3: For the Australian materials component, ABS catalogue 'Producer Price Indexes, Australia' – Table 12 should be utilised.**

**Note 4: For the imported materials component, the index must be appropriate and published by an agency of the relevant Government.**

## 6 AUSTRALIAN CONTRACT EXPENDITURE (OPTIONAL)

**Note to drafters: This clause should be used when the expected value of any resultant Contract (ie, known amounts (excluding S&Q Services) for the Initial Term, inclusive of all options to be submitted to the Section 23 Commitment Approval delegate for approval) will be between \$4 million and \$20 million (GST Inclusive), unless an exemption applies.**

**If the expected value of any resultant Contract is likely to exceed \$20 million, then a more extensive AIC program will be required and drafters should transfer the appropriate provisions from the ASDEFCON (Support) template into the draft Contract.**

**If the expected value is below \$4m (GST inclusive) then an AIC Program is not required and the clauses below can be deleted and the heading annotated as 'Not used'.**

### 6.1 Australian Contract Expenditure Amounts (Core)

**Note: The following formula is built into the component price calculations of the SPTSPW.**

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6.1.1 Amounts for planned Australian Contract Expenditure (ACE) and planned Imported Contract Expenditure (ICE) are to be determined in accordance with clause 4.1 of the COC, and when required to be forecast for applicable payment types under the Contract, a calculated ACE percentage is to be determined in accordance with the following formula:

$$\text{calculated ACE\%} = \frac{\text{planned ACE}}{\text{planned ACE} + \text{planned ICE}} * 100$$

6.1.2 Where the Contractor is required to forecast a calculated ACE percentage for Recurring Services Fees, for a given period under the Contract (eg, an annual reporting period for a Contract Status Report), the Contractor shall use the ACE percentages from the schedules to Annex A (calculated from the applicable worksheets of the SPTSPW) or provide justification to the Commonwealth, in writing, for the use of any alternative estimate.

**6.2 Alternate and Additional Deeming Rates (RFT Core)**

**Note to drafters: If the Commonwealth wishes to specify alternate and/or additional deeming rates to those included in the ACE Measurement Rules, then include those rates within the following table and provide any additional explanation, if required. Otherwise, the deeming rates within the ACE Measurement Rules will still apply and the first note to tenderers can be deleted.**

**Note to tenderers: Table B-2 may be pre-populated by the Commonwealth with alternative and/or additional deeming rates, if it is considered that deeming rates other than those listed in the ACE Measurement Rules should be applied to the proposed Contract.**

**The Commonwealth will consider deeming rates other than those listed in the ACE Measurement Rules for the proposed Contract. Table B-2 will consist of the successful tenderer's response to TDR D-12, and any negotiated adjustments.**

6.2.1 Table B-2 below specifies alternate or additional Subcontract categories, thresholds and deemed ACE and ICE percentages for the purposes of the application of paragraph 3 of the ACE Measurement Rules.

**Table B-2: Approved Alternate and Additional Deeming Rates**

Nature of cost category / Subcontractor work	Applicable Threshold (GST exclusive)	Deemed Australian Contract Expenditure and Imported Contract Expenditure	
		Australian Contract Expenditure	Imported Contract Expenditure
(...INSERT description...)	(...INSERT threshold value...)	(...INSERT %...)	(...INSERT %...)
(...INSERT description...)	(...INSERT threshold value...)	(...INSERT %...)	(...INSERT %...)

6.2.2 The parties acknowledge and agree that, in accordance with paragraph 4 of the ACE Measurement Rules, alternate deeming rates for indirect costs (including overhead and general and administrative costs) for the Contractor and specified Subcontractors shall be applied in accordance with Table B-3, as follows:

**Table B-3: Deeming Rates for Indirect Costs**

Entity Name	Deemed ACE percentage	Deemed ICE% percentage
(... INSERT CONTRACTOR NAME ...)	(...INSERT %...)	(...INSERT %...)
(... INSERT SUBCONTRACTOR NAME ...)	(...INSERT %...)	(...INSERT %...)

**6.3 Annual ACE Value (Core)**

**Note to tenderers: The Annual ACE Value table for any resultant contract will be based on the successful tenderer's response to Table D-1 of TDR D.**

6.3.1 Table B-4 sets out the annual (or other) pricing periods and the Annual ACE Value in respect of each pricing period to be achieved by the Contractor.

**Table B-4: Annual ACE Value**

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(...INSERT the Annual ACE Value table including table notes...)

**7 PERFORMANCE ASSESSMENT AND PERFORMANCE PAYMENTS (OPTIONAL)**

**7.1 Assessment of Performance and Calculation of Performance Payments**

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7.1.1 Annex E describes the performance assessment process and the method for calculating Performance Payments.



## ANNEX E TO ATTACHMENT B

**PERFORMANCE ASSESSMENT AND PERFORMANCE PAYMENTS (OPTIONAL)**

**Note to drafters: This annex allows a Performance Based Contracting (PBC) methodology to be applied to any resultant Contract. The PBC element operates by adjusting the payments for Recurring Services Fees in response to Contractor performance, as measured by KPIs. If any resultant Contract will not be a PBC, this annex and related clauses (eg, clause 6.3 and 6.4 of the COC) are to be deleted or replaced with 'Not used', as appropriate.**

**For further information on the use of PBC clauses, refer to the ASDEFCON (Support Short) PBC Guide. For advice on preparing a PBC and assistance drafting KPIs, contact the PBC CoE.**

**1. OBJECTIVES**

- 1.1 The Contractor acknowledges that the objective of performance assessment and the Performance Payments is to maximise the useable benefits of the Services for the Defence organisations that are the end customers of the Services.
- 1.2 This annex defines:
- a. the performance assessment process, which measures and assesses the Contractor's performance using Key Performance Indicators (KPIs); and
  - b. the method for calculating the Performance Payments.

**2. KEY PERFORMANCE INDICATORS**

- 2.1 The KPIs applicable to the Contract are:

**Note to drafters: Replace the following KPI examples and amend the following subclauses to appropriately describe the Contract-specific KPIs.**

- a. KPI-1: Mean Turn-Around Time for Repairable Items; and
- b. KPI-2: Order Response Time for Non-Repairable Items.

**Note to drafters: The KPI definitions below need to be drafted to suit the individual Contract. Selected KPIs need to be suitable measures of the Services, particularly in respect of the Contractor having sufficient control and responsibility for the required outcomes. KPI definitions need to identify the methods, timing (eg, daily or per event), and the data collection systems required to measure the Service outcomes measured by those KPIs.**

**Note that if a KPI for Non-RIs does not apply to all Non-RIs, then the applicable Stock Items need to be identified, usually by a specific column within the table in SOW Annex A, section 2.**

- 2.2 **KPI-1: [...INSERT KPI NAME...] is defined as [...INSERT DESCRIPTION...].**
- 2.3 The parameters and measurement data used to determine the Contractor's Achieved Performance against KPI-1 shall be measured [...INSERT REQUIREMENT, EG AS THE AVERAGE RI REPAIR TIME FROM THE (TIME SUBMITTED FOR REPAIR) UNTIL (FINISH). PERFORMANCE IS MEASURED FOR TWO DEMAND PRIORITIES...].
- 2.4 The Contractor's Achieved Performance for KPI-1, for the Review Period, shall be calculated as [...INSERT CALCULATION FOR FULL REVIEW PERIOD, EG, "the (mean) average result for all events that were completed during the Review Period (including for any demands placed before the start of the Review Period)" ...].
- 2.5 The Required Performance Level for KPI-1 is [...INSERT REQUIRED PERFORMANCE LEVEL AND UNIT OF MEASURE...].
- 2.6 **KPI-2: [...INSERT KPI NAME...] is defined as [...INSERT DESCRIPTION...].**
- 2.7 The parameters and measurement data used to determine the Contractor's Achieved Performance against KPI-2 shall be measured [...INSERT REQUIREMENT, EG THE AVERAGE FOR ALL DEMANDS PLACED FOR NON-RIS FROM (START) TO (FINISH)...].
- 2.8 The Contractor's Achieved Performance for KPI-2, for the Review Period, shall be calculated as [...INSERT CALCULATION FOR FULL REVIEW PERIOD ...].
- 2.9 The Required Performance Level for KPI-2 is [...INSERT REQUIRED PERFORMANCE LEVEL AND UNIT OF MEASURE...].

**ANNEX E TO ATTACHMENT B**

**3. PERFORMANCE MEASUREMENT AND REPORTING**

- 3.1 The Review Periods, over which time the KPI(s) are measured and assessed, shall be the reporting periods for the Services Summary Report, as required by clause 3.2 of the SOW.
- 3.2 The first Review Period shall be concurrent with reporting period for the second Services Summary Report or as otherwise notified, in writing, by the Commonwealth Representative.
- 3.3 The performance results achieved against the KPI(s), including the Achieved Performance and the Adjusted Performance Score for each KPI, shall be reported in the Performance Measurement Report (within the Services Summary Report) and delivered in accordance with clause 3.2 of the SOW.
- 3.4 The Contractor shall, upon request, provide the Commonwealth Representative with all supporting information required to verify the performance results reported against the KPI(s).

**4. ADJUSTED PERFORMANCE SCORES**

- 4.1 The Adjusted Performance Score (APS) for each KPI shall be determined from the Achieved Performance for the KPI (as reported and verified in accordance with clause 2.9) for the Review Period, in accordance with the following look-up tables:

**Note to drafters: Replace the following examples with look-up tables appropriate to the Contract's KPIs. Refer to the PBC CoE for assistance in developing the look-up tables.**

**Note: In Table B-E1, the APS is located at the intersection of the column and row for the Achieved Performance results from high and routine priority demands, respectively.**

**Table B-E1: KPI-1 [...INSERT KPI NAME...] Adjusted Performance Scores**

		Average turn-around time for high priority demands (days)										
		>12	≤12	≤11	≤10	≤9	≤8	≤7	≤6	≤5	≤4	≤3
Average turn-around time for routine priority demands (days)	>15	0%	11%	22%	34%	45%	56%	59%	62%	64%	67%	70%
	≤15	5%	16%	27%	38%	50%	61%	64%	66%	69%	72%	75%
	≤14	10%	21%	32%	43%	54%	66%	68%	71%	74%	77%	80%
	≤13	14%	26%	37%	48%	59%	70%	73%	76%	79%	82%	84%
	≤12	19%	30%	42%	53%	64%	75%	78%	81%	84%	86%	89%
	≤11	24%	35%	46%	58%	69%	80%	83%	86%	88%	91%	94%
	≤10	25%	36%	48%	59%	70%	81%	84%	87%	90%	92%	95%
	≤9	26%	38%	49%	60%	71%	82%	85%	88%	91%	94%	96%
	≤8	28%	39%	50%	61%	72%	84%	86%	89%	92%	95%	98%
	≤7	29%	40%	51%	62%	74%	85%	88%	90%	93%	96%	99%
	≤6	30%	41%	52%	64%	75%	86%	89%	92%	94%	97%	100%

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**Note: In Table B-E2, the APS appears in the cell directly below the Achieved Performance result.**

**Table B-E2: KPI-2 [...INSERT KPI NAME...] Adjusted Performance Scores**

<b>KPI-2 Achieved Performance (days):</b>	≥10	<10	<8	<6	<4	<3.5	<3	<2.5	≤2
<b>Adjusted Performance Score:</b>	0	20	40	60	80	85	90	95	100

**Note to drafters: Amend the following note to use values from the tailored tables above.**

**Note: As an example, an Achieved Performance (average order response time) of more than 2.5 days but less than 3 days, for KPI-2 for a Review Period, results in an APS of 90%.**

**5. PERFORMANCE PAYMENTS**

**Note to drafters: The Performance Payment is a portion of the Recurring Services Fee that may be fully earned, partially earned, or forfeit, in response to Contractor performance. Refer to the ASDEFCON (Support Short) PBC Guide for guidance when tailoring the following clauses.**

- 5.1 The *maximum performance payment amount* is [...INSERT PERCENTAGE, EG ten percent (10%)...] of the Recurring Services Fee (refer Annex A to Attachment B) for the applicable Review Period, representing the portion that is placed at-risk and either fully earned or reduced relative to the Contractor’s performance in providing Services that are measured by KPIs over the Review Period.
- 5.2 The *maximum performance payment amount* (in dollars) as determined under clause 5.1, for the applicable Review Period, is allocated against each KPI as follows (*KPI maximum payments*):

**Note to drafters: Allocation of percentages to KPIs in the following clauses provides a method for weighting the value of performance against each KPI. If all KPIs are of equal importance, the percentage amounts should be the same. Delete or add KPIs as applicable to the draft Contract. The percentages in the following subclauses must sum to 100%.**

- a. *KPI-1 maximum payment* = [...INSERT PERCENTAGE, EG sixty percent (60%)...] of the *maximum performance payment amount*; and
  - b. *KPI-2 maximum payment* = [...INSERT PERCENTAGE, EG forty percent (40%)...] of the *maximum performance payment amount*.
- 5.3 A Performance Payment in respect of each KPI, for a Review Period, is to be calculated in accordance with the following formula:
- $$P = A \times B$$
- where:
- P is the Performance Payment for the KPI for the Review Period;
  - A is the APS for the KPI for the Review Period, from clause 4; and
  - B is the applicable *KPI maximum payment*, from clause 5.2.
- 5.4 For a Review Period, the Contractor shall be entitled to all of, or a portion of, the *maximum performance payment amount*, being the sum of the Performance Payments in respect of each KPI for that Review Period.
  - 5.5 Within 10 Working Days after receipt of the Services Summary Report, and any supporting information provided in accordance with clause 3, the Commonwealth shall determine the amount of Performance Payments for the Review Period.
  - 5.6 To avoid doubt, Performance Payments are not calculated for any period of the Contract prior to the first Review Period and, subject to the other provisions of the Contract, the Contractor will be entitled to the full Recurring Services Fee applicable prior to the first Review Period.

## ANNEX E TO ATTACHMENT B

## 6. PROVISIONAL PAYMENTS (OPTIONAL)

**Note to drafters: If each Review Period is two months or more, then provisional payments are to be paid to the Contractor. If not required (ie, Review Periods are one month only), the following clauses may be replaced by a single 'Not used'. Refer to the ASDEFCON (Support Short) PBC Guide for further information.**

- 6.1 Unless a payment is adjusted in accordance with clause 6.3 or otherwise under the Contract, the Contractor shall be entitled to make a claim for payment each month for a provisional payment of a pro rata portion of the *maximum performance payment amount* for the Review Period (as specified in clause 5.1), on account of the Contractor's potential entitlement to a Performance Payment for that Review Period.
- 6.2 Following each Review Period, and review by the Commonwealth of the Services Summary Report, and any supporting information required, the Commonwealth shall calculate and notify the Contractor of the Contractor's entitlement to a Performance Payment for the Review Period in accordance with clause 5.3, and if the Performance Payments for all KPIs is:
- more than the sum of the provisional payments made under clause 6.1, then the Contractor is entitled to submit a claim for the amount of the difference; or
  - less than the sum of the provisional payments made under clause 6.1, then the amount of the difference shall be a debt owed by the Contractor to the Commonwealth, which the Commonwealth may elect to recover in accordance with clause 13.6 of the COC.
- 6.3 When the Performance Payment is to reduce, as determined in accordance with clause 6.2, the Commonwealth Representative may notify the Contractor that:
- the invoice for the last month of the Review Period is to be adjusted to account for any reduction to the Performance Payment; or
  - to facilitate prompt payment, the Commonwealth will pay a provisional payment for the last month of a Review Period and that that the Performance Payment reduction is to be deducted from a subsequent claim.
- 6.4 No amount shall be owing to the Commonwealth under clause 6.2 until the Commonwealth elects to recover the amount under clause 6.3 above or clause 13.6 of the COC.

## 7. SUSPENSION OF THE PERFORMANCE ASSESSMENT OF A KPI (CORE)

- 7.1 The Commonwealth Representative may notify the Contractor that the assessment of the Contractor's performance, against one or more KPIs, will be suspended for a Review Period or part of a Review Period.
- 7.2 Unless otherwise notified by the Commonwealth Representative, the Contractor shall be entitled to claim the *KPI maximum payment* amount (as specified in clause 5.2) attributable to a KPI for the duration of the suspension of assessment of that KPI in accordance with clause 7.1.
- 7.3 If the Commonwealth Representative suspends a requirement to assess a KPI for a given period, the Contractor shall continue to measure and report against any KPI that is time-based (eg, measures a response, delivery or turn-around time) during that period, unless otherwise notified by the Commonwealth Representative.

## ATTACHMENT C

## GLOSSARY (CORE)

**Note to drafters: Definitions, acronyms and abbreviations that are not used in a particular Contract may be deleted from this list. If drafters consider that an additional definition, acronym or abbreviation should be added, careful consideration needs to be given to the legal effect of the proposed addition in the context of the existing document.**

**All acronyms, abbreviations, definitions and referenced documents (if included in definitions), should be reviewed for currency prior to both the RFT release and the Effective Date.**

## 1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
ABN	Australian Business Number
ACE	Australian Contract Expenditure
ACM	Asbestos Containing Material
ACIP	Approved Contractor Insurance Program
ADF	Australian Defence Force
AFD	Application for a Deviation
AIA	Australian Industry Activity
AIC	Australian Industry Capability
ANZ	Australia and New Zealand
APS	Adjusted Performance Score
ASD	Australian Signals Directorate
CAATE	Commonwealth-Authorised Annual Technical Effort
CASG	Capability Acquisition and Sustainment Group
CASR	Commonwealth Assets Stocktaking Report
CAGE	Commercial And Government Entity
CCB	Configuration Control Board
CCP	Contract Change Proposal
CI	Configuration Item
CM	Configuration Management
CMCA	Contractor Managed Commonwealth Assets
COC	Conditions of Contract
COMSEC	Communications Security
CPR	Contract Performance Review
CPRs	Commonwealth Procurement Rules – July 2022
CSA	Configuration Status Accounting
CSR	Contract Status Report
CWBS	Contract Work Breakdown Structure
DEFLOGMAN	Defence Logistics Manual
DID	Data Item Description
DISP	Defence Industry Security Program
DPMC	Department of Prime Minister and Cabinet
DSPF	Defence Security Principles Framework

Abbreviation	Description
ERP	Enterprise Resource Planning
ESCM	Electronic Supply Chain Manual
FBL	Functional Baseline
G&A	General and Administrative
GFD	Government Furnished Data
GFE	Government Furnished Equipment
GFI	Government Furnished Information
GFM	Government Furnished Material
GST	Goods and Services Tax
ICE	Imported Contract Expenditure
IP	Intellectual Property
KPI	Key Performance Indicator
MEC	Multiple Entry Consolidated
MILIS	Military Integrated Logistics Information System
MMP	Maintenance Management Plan
NATA	National Association of Testing Authorities
Non-RI	Non-Repairable Item
NTE	Not To Exceed
NZBN	New Zealand Business Number
OEM	Original Equipment Manufacturer
QMS	Quality Management System
PBL	Product Baseline
PEPPOL	Pan-European Public Procurement On-Line
PT PCP	<b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b> Payment Times Procurement Connected Policy
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RI	Repairable Item
S&Q	Survey and Quote
S&TE	Support and Test Equipment
SAC	Supplies Acceptance Certificate

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<b>Abbreviation</b>	<b>Description</b>
SCCG	Security Classification and Categorisation Guide
SDS	Safety Data Sheet
SME	Small to Medium Enterprise
SOW	Statement of Work
SPTSPW	Support Short Pricing Workbook

<b>Abbreviation</b>	<b>Description</b>
SSMP	Support Services Management Plan
STR	Statement of Tax Record
TD	Technical Data
TDL	Technical Data List
TDSR	Technical Data and Software Rights
WHS	Work Health and Safety

## 2. DEFINITIONS

2.1 In the Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them in this Glossary or in the Details Schedule.

Term	Status	Definition
Acceptance	(Core)	means acceptance of Deliverables delivered in the course of providing the Services in accordance with clause 6.5 of the COC, signified by the Commonwealth Representative's signature (or by an Authorised Person's signature) of the SAC; and 'Accept' has a corresponding meaning.
ACE Measurement Rules	(Optional)	means the referenced document titled ' <i>Australian Contract Expenditure Measurement Rules</i> ', which defines the methods to be applied to determine the values for ACE and ICE for the Contract.
Achieved Performance	(Optional)	for a KPI for a Review Period, means a number representing the Contractor's performance against the KPI in the Review Period, as determined in accordance with Annex E to Attachment B.
Adjusted Performance Score	(Optional)	for a KPI for a Review Period, means the percentage score determined, in accordance with Annex E to Attachment B, as the Contractor's Adjusted Performance Score, representing the relative value of the Achieved Performance to the Commonwealth.
Adjustment Date	(Core)	<p>means:</p> <p>a. in respect of the first application of the formula in clause 5.2 of Attachment B, 1 July immediately following the Effective Date; and</p> <p>b. in respect of any subsequent application of the formula in clause 5.2 of Attachment B, each anniversary of the date referred to in paragraph a.</p> <p><b>Note to drafters: This definition is drafted on the assumption that the Adjustment Dates will align with financial years, but it may be amended to suit the individual draft contract. If the preference is to align the Adjustment Dates with each anniversary of the Effective Date then this definition could be replaced with the following:</b></p> <p style="text-align: center;"><b>means each anniversary of the Effective Date.</b></p>
Adjustment Note	(Core)	has the same meaning as in the GST Act.
Adjustment Payment	(Core)	has the meaning given by clause 7.3.4 of the COC.
Aeronautical Stock Item	(Core)	means aircraft or aircraft related equipment including missiles, propulsion units, safety and survival equipment, and/or the components, accessories and materials required to maintain those items; ground communications, radar and navigation equipment and components necessary for the efficient and safe control and operation of an aircraft, missile or propulsion unit; support equipment, including aircraft simulators and training devices, automated test equipment and breakdown spares.
AIA Schedule	(Optional)	means the AIA Schedule within Attachment K.
AIC Obligations	(Optional)	means the obligations under the Contract relating to AIC, as described under clause 4.2 of the COC.

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
AIC Schedule	(Optional)	means the AIC Schedule within Attachment K.
Allowable Costs	(Core)	means a cost incurred by the Contractor that is an allowable cost in accordance with the meaning in the Defence Cost Principles.
Annual ACE Value	(Core)	means the value identified in Table B-4 of Attachment B as the value of ACE to be achieved for Recurring Services in an applicable year (or other period for pricing of the Recurring Services Fee).
Application for a Deviation	(Core)	means an Application for a Deviation in the form of the annex to DID-PM-MGT-AFD.
Approval	(Core)	<p>a. for a data item, has the meaning given by clause 2.3 of the SOW; and</p> <p>b. in every other context, means the act of the Commonwealth Representative approving a particular claim, proposal or course of action as a basis for further work under the Contract.</p> <p>Approval in either case does not constitute Acceptance; 'Approve' has a corresponding meaning.</p>
Approved Subcontractor	(Core)	means a Subcontractor listed in Attachment I or the Approved Subcontractor section of an S&Q Order; and 'Approved Subcontract' means a contract between the Contractor and an Approved Subcontractor.
Approved Substance	(Core)	<p>means a Problematic Substance that is:</p> <p>a. specified for use by the Commonwealth in writing, including a Problematic Substance used for a purpose(s) stated in Technical Data that has been specified by the Commonwealth for use in providing the Services;</p> <p>b. Approved and used for the purpose(s) specified in an Approved Application for a Deviation; or</p> <p>c. Approved and used for the purpose specified in the Approved SSMP.</p>
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Assets Register	(Core)	means the log used by the Contractor for recording Contractor Managed Commonwealth Assets.
Associated Parties	(Core)	means other entities (including other contractors and Commonwealth organisations) performing activities related to the Products, the Services, the parent system or platform (if applicable), or otherwise having a connection with the Services.
Attachment	(Core)	means an Attachment to the Contract.
Audit	(Core)	means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
Australian Contract Expenditure or ACE	(Optional)	has the meaning given in paragraph 2.2 of the ACE Measurement Rules.



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Term	Status	Definition
Australian Entity	(Optional)	means: a. a company registered under the <i>Corporations Act 2001</i> (Cth) or a company registered under the <i>Companies Act 1993</i> (New Zealand); b. a body corporate, partnership, joint venture or association formed or incorporated in Australia or New Zealand; or c. a foreign-owned company in Australia or New Zealand, and which has a registered body number (ie, ARBN or NZRBN), carrying on business through a permanent establishment in Australia or New Zealand, including as evidenced through employment and the conduct of business operations in Australia or New Zealand.
Australian Industry	(Optional)	means Australian Entities that perform work in Australia or New Zealand.
Australian Industry Activity	(Optional)	means an activity identified as an Australian Industry Activity in Attachment K.
Australian Industry Capability or AIC	(Core)	means the program of activities set out in the Contract to achieve the Government and Defence policies for Australian Industry.
Australian Privacy Principles	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Authorisation	(Core)	means a licence, accreditation, permit, registration, regulatory approval, Export Approval or other documented authority (however described), required by law and necessary for the provision of Services or the performance of the Contract.
Authorised Person	(Core)	means a person who is delegated a function or authorised to carry out a function on behalf of the Commonwealth Representative in accordance with the Contract.
Beyond Economic Repair	(Optional)	means the categorisation given to an unserviceable Product when the cost of repairing the Product outweighs the cost of buying a replacement Product.
Beyond Physical Repair	(Optional)	means the categorisation given to an unserviceable Product when it cannot physically be repaired (eg, due to damage).
Cannibalisation	(Optional)	means the removal of a serviceable item from one system or high-level spare, in order to use that item to make another system available to undertake operations; and 'Cannibalise' has a corresponding meaning.
Capability	(Core)	<b>Note to drafters: Insert the applicable Capability name where indicated. Amend the following definition if there is no Mission System included at Annex A to the SOW. Instead, replace the term 'Mission System' with the actual higher-level systems or equipment to which the Products being supported relate.</b>  means the [INSERT NAME] Capability. Capability is the power to achieve a desired operational effect in a nominated environment within a specified time and to sustain that effect for a designated period. For the [INSERT NAME] Capability, this is achieved through the employment of the Mission System(s), the Support System, and other inputs provided by Defence.

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
Defence Cost Principles	(Core)	means the DefenceCost Principles, as amended from time to time.
Certification	(Core)	<p>a. for clause 10 of the SOW, has the meaning given by clause 10.1.2 of the SOW. 'Certified' has a corresponding meaning; and</p> <p>b. in relation to the certification of Products, means the end result of a process, which formally examines and documents compliance of a Product against predefined standards, to the satisfaction of the certifying authority.</p>
Change of Control	(Core)	<p>means:</p> <p>a. a body corporate or entity that Controls the Contractor or the Guarantor ceases to Control the Contractor or the Guarantor; or</p> <p>b. a body corporate or entity that does not Control the Contractor or the Guarantor comes to Control the Contractor or the Guarantor.</p>
Circuit Layout	(Core)	means a circuit layout that is protected under the <i>Circuit Layouts Act 1989</i> (Cth) or the corresponding laws of any other jurisdiction.
Claim	(Core)	means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).
Commercial and Government Entity Code	(Core)	means the code that identifies the manufacturer of an item in the NATO Codification System.
Commercial Item	(Core)	<p>means an item or service that is:</p> <p>a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and</p> <p>b. able to be used for its intended purpose under the Contract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item or use the service),</p> <p>but does not include an item created, manufactured or produced by the Contractor or a Related Body Corporate of the Contractor.</p>
Commercial Software	(Core)	<p>means Software that is:</p> <p>a. a Commercial Item;</p> <p>b. supplied without further development or modification in conjunction with a Commercial Item, under the standard commercial terms applicable to that item; or</p> <p>c. Free and Open Source Software.</p>
Commercial TD	(Core)	<p>means TD that is:</p> <p>a. a Commercial Item; or</p> <p>b. supplied, without further development or modification, in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or Software.</p>
Commercialise	(Core)	means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in TD, Contract Material or Software in return for

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
		payment of a royalty or a commercial return to the Commonwealth or the sublicensee.
Commonwealth- authorised Annual Technical Effort or CAATE	(Optional)	has the meaning given by clause 5.1.2 of the SOW.
Commonwealth Contractor	(Core)	means a person (other than the Contractor or a Subcontractor) engaged by the Commonwealth to provide goods or services to the Commonwealth.
Commonwealth Default	(Core)	means a Default by the Commonwealth, a Commonwealth Officer or a Commonwealth Contractor.
Commonwealth Mandated GFM	(Optional)	means GFE or GFD identified as 'Commonwealth Mandated GFM' in: a. Attachment G; or b. the GFM section of a S&Q Order.
Commonwealth Officer	(Core)	means any of the following: a. a Minister of State for the Commonwealth; b. a person employed or engaged under the <i>Public Service Act 1999</i> (Cth) or the <i>Members of Parliament (Staff) Act 1984</i> (Cth); c. a person who is included in Defence Personnel; and d. a member of the Australian Federal Police.
Commonwealth Personnel	(Core)	means any Commonwealth Officers, Defence Personnel and any other agents of the Commonwealth.
Commonwealth Premises	(Core)	means any of the following that is owned, leased, occupied or operated by the Commonwealth: a. an area of land or any other place (whether or not it is enclosed or built on); b. a building or other structure; and c. a vehicle, a vessel (including a submarine) or an aircraft.
Commonwealth Property	(Core)	means property of any kind (including GFM) owned or leased by, or in the possession of, the Commonwealth.
Commonwealth Service Provider	(Core)	means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide: a. professional, administrative, contract management or project management services to Defence; or b. technical management or assurance services, including verification and validation, safety, certification, security or capability development.
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.
Confidential Information	(Core)	means information (whether or not owned by the Commonwealth) that meets all of the following criteria:

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Term	Status	Definition
		<p>a. is specifically identified at Attachment E or in the Confidential Information section of an S&amp;Q Order;</p> <p>b. is commercially sensitive (not generally known or ascertainable);</p> <p>c. the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and</p> <p>d. was provided with an express understanding that it would remain confidential,</p> <p>but does not include information which:</p> <p>e. is or becomes public knowledge other than by breach of the Contract;</p> <p>f. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or</p> <p>g. has been independently developed or acquired by the receiving party.</p>
Configuration Audit	(Optional)	means Product configuration Verification accomplished by inspecting documents, Products and records; and reviewing procedures, processes, and systems of operation to Verify that the Product has achieved its required attributes (performance requirements and functional constraints) and the Product's design is accurately documented. Includes both functional and physical configuration audits.
Configuration Baseline (or 'Baseline')	(Optional)	means: <p>a. in the context of a Product, an agreed-to description of the attributes of a Product, at a point in time, which serves as a basis for defining change;</p> <p>b. in the context of documentation, an approved and released document, or a set of documents, each of a specific revision; the purpose of which is to provide a defined basis for managing change;</p> <p>c. in the context of Configuration Management documents, the currently approved and released configuration documentation; and</p> <p>d. in the context of a Software Product, a released set of files comprising a Software version and associated configuration documentation.</p>
Configuration Control	(Optional)	means: <p>a. in the context of configuration documentation, a systematic process that ensures that changes to released configuration documentation are properly identified, documented, evaluated for impact, approved by an appropriate level of authority, incorporated, and verified; and</p> <p>b. in the context of a Product, the Configuration Management activity concerning: the systematic proposal, justification, evaluation, co-ordination, and disposition of proposed changes; and the implementation of all approved and released changes into: <ul style="list-style-type: none"> <li>(i) the applicable configurations of a Product;</li> <li>(ii) associated Product information; and</li> <li>(iii) supporting and interfacing Products and their associated information.</li> </ul> </p>

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
Configuration Identification	(Optional)	<p>means:</p> <p>a. in the context of an identification process, the unique identifiers for a Product and its configuration documents; and</p> <p>b. in the context of a Configuration Management activity, the systematic process of selecting the Product attributes, organising associated information about the attributes, and stating the attributes. This Configuration Management activity encompasses the:</p> <p>(i) selection of Configuration Items;</p> <p>(ii) determination of the types of configuration documentation required for each Configuration Item;</p> <p>(iii) issuance of numbers and other identifiers affixed to the Configuration Items and to the technical documentation that defines the Configuration Item's configuration; and</p> <p>(iv) release of Configuration Items and their associated configuration documentation, and establishment of Configuration Baselines for Configuration Items.</p>
Configuration Item	(Optional)	means an aggregation of hardware/Software (or any of its discrete proportions), which satisfies an end item use function and is designated for Configuration Management.
Configuration Management or CM	(Optional)	means a process for establishing and maintaining consistency of a Product's performance, functional, and physical attributes with its requirements, design and operational information throughout its life.
Configuration Status Accounting	(Optional)	means the Configuration Management activity that formalises the recording and reporting of the established product configuration information, the status of requested changes, and the implementation of approved changes including changes occurring to Product units during operation and maintenance.
Consolidated Group	(Optional)	means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Consumable	(Optional)	means a Non-Repairable Item (Non-RI) which is consumed, or used beyond recovery in normal use, including Non-RIs such as ammunition, adhesives, rivets, paint, fuel, lubricants, sealants, sheet metal, lock wire, nuts, bolts, cleaning materials and electrical wiring cables.
Contract	(Core)	means the COC (including the Details Schedule), the Attachments including the SOW, any S&Q Order and any document expressly incorporated as part of the Contract.
Contract Change Proposal	(Core)	means a proposal in the format required by and submitted in accordance with clause 11.1 of the COC.
Contract Material	(Core)	means information, other than TD or Software, reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to the Commonwealth under the Contract.
Contract Performance Review	(Core)	means a review conducted in accordance with clause 3.3 of the SOW.

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
Contractor Default	(Core)	means a Default in relation to the Contract by the Contractor or Contractor Personnel.
Contractor Managed Commonwealth Asset or CMCA	(Core)	means any item of Commonwealth Property subject to inventory and stock control that is in the care, custody or control of the Contractor or Contractor Personnel for the purposes of the Contract.
Contractor Personnel	(Core)	means each of the following: a. an employee, officer or agent of the Contractor; b. a Subcontractor; and c. an employee, officer or agent of a Subcontractor.
Contractor Premises	(Core)	means any of the following: a. premises owned by the Contractor, a Related Body Corporate of the Contractor or a Subcontractor; and b. premises: (i) that is leased by, or licensed to, the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; and (ii) where the Contractor, Related Body Corporate or the Subcontractor is responsible for controlling physical access to the premises.
Control	(Core)	means, in relation to the Contractor or the Guarantor, any of the following: a. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Contractor or the Guarantor; b. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Contractor or the Guarantor; c. the ability to appoint or remove a majority of the directors of the Contractor or the Guarantor; d. the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the Contractor or the Guarantor; or e. any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Contractor or the Guarantor.
Controller	(Core)	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Copyright	(Core)	means any existing or future copyright as defined under the <i>Copyright Act 1968</i> (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.
Corrective Maintenance	(Optional)	means those actions necessary to restore items or systems (both hardware and Software) to a satisfactory condition or level of performance after failure or other unsatisfactory condition has been detected. It may be performed on any item, irrespective of whether

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Term	Status	Definition
		<p>another form of maintenance (such as Preventive Maintenance) is also defined for the item. In some cases the Corrective Maintenance action necessary may be equivalent to a Preventive Maintenance task defined for the item. Corrective Maintenance may also occur as a result of a suspected failure, even if further investigation indicates that no actual failure occurred.</p> <p>With respect to Software, means reactive modification of a Software product after delivery to correct discovered problems.</p>
Correctly Rendered Invoice	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>for the purposes of clause 11.9.12 of the COC, means an invoice which is:</p> <ol style="list-style-type: none"> <li>a. rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and</li> <li>b. for amounts that are correctly calculated and due for payment and payable under the terms of the relevant PT PCP Subcontract.</li> </ol>
Dangerous Goods	(Core)	has the meaning given in the Australian Code for the Transport of Dangerous Goods by Road and Rail (as amended from time to time).
day	(Core)	means a calendar day.
Default	(Core)	<p>means any of the following:</p> <ol style="list-style-type: none"> <li>a. a breach of an express or implied provision of the Contract by a party to the Contract; and</li> <li>b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following: <ol style="list-style-type: none"> <li>(i) the Commonwealth or Commonwealth Personnel;</li> <li>(ii) a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor; and</li> <li>(iii) the Contractor or Contractor Personnel.</li> </ol> </li> </ol> <p>A breach of a general law duty or an applicable law by Commonwealth Personnel, a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor is taken to be a Default by the Commonwealth.</p> <p>A breach of a general law duty or an applicable law by Contractor Personnel is taken to be a Default of the Contractor.</p>
Default Notice	(Core)	means a notice given to the Contractor requiring the Contractor to remedy a Default within the period specified in the notice.
Defect	(Core)	<p>means:</p> <ol style="list-style-type: none"> <li>a. in respect of a Product or Deliverable, any fault, defect, damage, omission or deficiency in design, materials, workmanship or quality (other than fair wear and tear), which: <ol style="list-style-type: none"> <li>(i) results in the Product or Deliverable not conforming to a requirement of this Contract or applicable legislation or recognised standards of practice; or</li> <li>(ii) renders the Product or Deliverable unfit for its intended use; and</li> </ol> </li> </ol>

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<b>Term</b>	<b>Status</b>	<b>Definition</b>
		b. in respect of any other Service, the provision of the Service otherwise than in accordance with this Contract, applicable legislation or recognised standards of practice.
Defence	(Core)	means the Department of Defence and/or the Australian Defence Force.
Defence Personnel	(Core)	means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the <i>Defence Act 1903</i> (Cth)) and the equivalents from other organisations on exchange to Defence.
Defence Property	(Core)	means Commonwealth Property administered by Defence.
Defence Purpose	(Core)	means a purpose related to any of the following: <ul style="list-style-type: none"> <li>a. the defence and defence interests of Australia;</li> <li>b. the national security of Australia;</li> <li>c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and</li> <li>d. peacekeeping or peace enforcement activities.</li> </ul>
Defence Service Provider	(Core)	means a person, other than Defence Personnel, involved in Defence work or engaged by Defence.
Deliverable(s)	(Core)	means any service, information (including Technical Data and Contract Material), document (including reports, manuals, designs, drawings and the like), hardware, Software or other thing, which is, or is required by the Contract to be, delivered or provided by the Contractor or its agents to the Commonwealth or its agents in the course of the performance of the Services.
Demand	(Optional)	means an authorised request from the Commonwealth for the supply of a Stock Item by the Contractor.
Deviation	(Optional)	means written authorisation to depart from the originally specified requirements for a Product. An Application for a Deviation is submitted before the event, when a condition is identified as not being able to be achieved, such as any of the following: <ul style="list-style-type: none"> <li>a. test requirement;</li> <li>b. process requirement;</li> <li>c. material requirement; and</li> <li>d. quality system requirement.</li> </ul>
Direct Cost	(Core)	means a cost incurred by the Contractor that is a direct cost in accordance with the meaning in the Defence Cost Principles.
Dispute	(Core)	means any dispute, difference or disagreement between the parties arising out of or in connection with this Contract, including any dispute or difference as to the formation, validity, existence or termination of this Contract.
document	(Core)	includes: <ul style="list-style-type: none"> <li>a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and</li> </ul>



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Term	Status	Definition
		b. any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device.
Engineering Change Proposal	(Optional)	means a formal written proposal by the Commonwealth or the Contractor, prepared in accordance with the terms of the Contract, to vary the specific requirements of an article, either delivered or to be delivered, which will require revision of any of the following: <ul style="list-style-type: none"> <li>a. the Configuration Baseline;</li> <li>b. the engineering drawings; and</li> <li>c. any document referenced from the documents identified in either paragraph a or b.</li> </ul>
Engineering Services	(Optional)	means those Services associated with performing activities of an engineering nature, including design management, technical-integrity management, Configuration Management and Software support, as well as the management of these engineering activities.
Engineering Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes and Technical Data needed to enable Engineering Services to be competently provided for a Materiel System throughout its life.
Excepted Risk	(Core)	means an event or circumstance that is any of the following: <ul style="list-style-type: none"> <li>a. an act of God, including a natural disaster (such as a bushfire, an earthquake, a flood, a landslide or a cyclone);</li> <li>b. war, invasion, acts of foreign enemies, hostilities between nations, a terrorist act as defined in section 100.1 of the Criminal Code, civil insurrection or militarily usurped power;</li> <li>c. confiscation by governments or public authorities; or</li> <li>d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels,</li> </ul> except to the extent that the event or circumstance (or any resulting delay, loss or damage): <ul style="list-style-type: none"> <li>e. arose out of or as a consequence of a Contractor Default; or</li> <li>f. could have been prevented or mitigated, by reasonable care on the part of the Contractor or Contractor Personnel.</li> </ul>
Export Approval	(Core)	means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the provision of the Services.
Extension Notice	(Core)	means a notice in the form of Annex B to Attachment F.
Failure	(Optional)	means the inability of a system or component to perform its required functions within specified performance requirements.
Free and Open Source Software	(Core)	means Software that: <ul style="list-style-type: none"> <li>a. is distributed on a free to use basis without a requirement to pay a royalty or other fee; and</li> <li>b. may be used, modified, developed or adapted by any person subject to specified conditions,</li> </ul>

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		and includes open source Software, public domain Software, shareware, community source Software and freeware.
Functional Baseline	(Core)	means the current Approved documentation for a system or top level CI, which describes the functional, performance, interoperability, and interface characteristics and the Verification required to demonstrate the achievement of those specified characteristics.
General Interest Charge	(Core)	means the Australian Taxation Office sourced rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) expressed as a decimal rate per day.
Goods and Services Tax	(Core)	has the same meaning as in the GST Act.
Government Furnished Data or GFD	(Optional)	means the data (if any) identified as Government Furnished Data in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Equipment or GFE	(Optional)	means the equipment (if any) identified as Government Furnished Equipment in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Information or GFI	(Optional)	means the information (if any) identified as Government Furnished Information in: a. Attachment G; or b. the GFM section of an S&Q Order.
Government Furnished Material or GFM	(Optional)	is the collective name for the GFE, GFD and GFI.
GST Act	(Core)	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Group	(Optional)	means a GST group formed in accordance with Division 48 of the GST Act.
Guaranteed Agreement	(Optional)	<b>Note to drafters: Include this if optional clause 7.8.2 is used in the COC.</b> means an agreement listed at Attachment 1 to the Master Deed of Guarantee and Indemnity.
Guarantor	(Core)	means the guarantor (if any) specified in the Deed of Guarantee and Indemnity, as identified in Item 9 of the Contract Details.
Hazardous Chemical	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Imported Contract Expenditure or ICE	(Optional)	has the meaning given in paragraph 2.3 of the ACE Measurement Rules.
Industry Capability	(Optional)	means the ability, resulting from the employment of business, commercial and industry resources, to provide particular goods and/or services. An industry capability is one that is not only able to provide

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		the goods and services when needed, but it is also sustainable over the period that the industry capability may be required. 'Industry Capabilities' has a corresponding meaning.
Insolvency Event	(Core)	<p>means, in respect of a person, any of the following:</p> <ul style="list-style-type: none"> <li>a. the person: <ul style="list-style-type: none"> <li>(i) becoming insolvent;</li> <li>(ii) ceasing to carry on all or a material part of its business; or</li> <li>(iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;</li> </ul> </li> <li>b. the appointment of a Controller, a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;</li> <li>c. the person becoming subject to external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth);</li> <li>d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the <i>Personal Property Securities Act 2009</i> (Cth));</li> <li>e. the person being taken under section 459F(1) of the <i>Corporations Act 2001</i> (Cth) to have failed to comply with a statutory demand;</li> <li>f. an order or resolution for the winding up or deregistration of the person;</li> <li>g. a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; and</li> <li>h. any analogous event under the law of any applicable jurisdiction.</li> </ul>
Intellectual Property or IP	(Core)	<p>means all present and future rights conferred by law in or in relation to any of the following:</p> <ul style="list-style-type: none"> <li>a. Copyright;</li> <li>b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and</li> <li>c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world, whether registered or unregistered.</li> </ul>
Key Performance Indicator	(Optional)	means a performance measure specified at Annex E to Attachment B as a KPI, being a measure that is used to determine the Contractor's entitlement to Performance Payments.
Key Person	(Optional)	means a person filling a Key Staff Position.
Key Staff Position	(Optional)	means a position that requires a person with highly specialised skills or such capabilities that are crucial to the success of the Contract, as identified in accordance with COC clause 3.8.
Latent Defect	(Optional)	means a Defect that:

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		<p>a. was not discoverable by reasonable test, inspection or other methods of assurance before Acceptance of the Products, Deliverables or Services; and</p> <p>b. other than in relation to Software, falls outside the incidence of random failures to be expected of the Products, Deliverables or Services of the relevant kind.</p>
Licence	(Core)	<p>means a non-exclusive licence of IP in respect of TD, Software or Contract Material, being a licence that:</p> <p>a. is fully paid-up and does not require any additional payment by the licensee, including by way of royalty or any other fee;</p> <p>b. cannot be revoked or terminated by the licensor for any reason except on expiration of a statutory protection term;</p> <p>c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;</p> <p>d. operates on a world-wide basis; and</p> <p>e. binds each successor in title to the owner of the IP in respect of the TD, Software or Contract Material.</p>
Local Business	(Core)	<b>Note to tenderers: This definition will be included from the successful tenderer's response to TDR G.</b>
Loss	(Core)	means any liability, loss (including economic loss), damage, compensation, costs and expenses.
Maintenance	(Optional)	means all actions taken to retain material in, or restore it to, a specified condition or to restore it to serviceability; and 'Maintain' has a corresponding meaning. It includes inspection, condition monitoring, servicing, repair, overhaul, testing, calibration, rebuilding, reclamation, upgrades, modification, recovery, classification and the salvage of technical equipment. Maintenance includes both Corrective Maintenance and Preventive Maintenance.
Maintenance Management System	(Optional)	means the logistic information management system that is used for managing the provision and performance of Maintenance Services. There may be more than one Maintenance Management System used under the Contract (eg, Commonwealth-provided system and Contractor system).
Maintenance Services	(Optional)	means those Services associated with performing Maintenance, including the management of Maintenance activities.
Maintenance Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes, and Technical Data needed to enable Maintenance Services to be competently provided for a Materiel System throughout its life.
Major Change	(Optional)	<p><b>Note to drafters: If this definition is required, amend it prior to RFT release to suit the requirements of the Contract, particularly in relation to the Products at Annex A to the SOW.</b></p> <p>means an engineering change that:</p> <p>a. contains an engineering design for which the impact assessment is classified as significant in relation to the technical risk introduced by the implementation of the design;</p>

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		<ul style="list-style-type: none"> <li>b. affects the FBL of the Mission System(s) and/or of an item of Commonwealth-owned equipment;</li> <li>c. affects the payments to be provided under the Contract;</li> <li>d. affects any Key Performance Indicators (KPIs) included in the Contract;</li> <li>e. results in significant retrofit action, particularly in relation to installed systems;</li> <li>f. with respect to Software, any change that involves Adaptive Maintenance or Perfective Maintenance (but, for clarity, not Corrective Maintenance, except where otherwise may be determined in accordance with paragraphs a or g);</li> <li>g. affects requirements (other than the Functional Baseline) and/or the design, and the Commonwealth considers the change has a significant impact upon one or more of the following:               <ul style="list-style-type: none"> <li>(i) the operational or performance characteristics of the Materiel System, including in relation to safety, security, survivability, reliability, maintainability, availability and supportability;</li> <li>(ii) the ability to meet schedule requirements (eg, for a ship availability);</li> <li>(iii) Government Furnished Equipment (GFE);</li> <li>(iv) Interface Control Documents or specified interoperability with interfacing CIs, support equipment or support software, spares, trainers or training devices, equipment or software;</li> <li>(v) the content of operating instructions, maintenance documentation or other Technical Data (TD), other than those classified as Minor Changes;</li> <li>(vi) interchangeability or replaceability as applied to CIs, and to all subassemblies and parts except the pieces and parts of non-repairable subassemblies;</li> <li>(vii) sources of CIs or Repairable Items at any level defined by source-control drawings; and</li> <li>(viii) skills, personnel numbers, training, biomedical factors or human-engineering design.</li> </ul> </li> </ul>
Malware	(Core)	means Software or Source Code the intent or effect of which is malicious (ie, Software that may appear to be dormant or perform a useful or desirable function, but that actually gains unauthorised access to system resources or induces the user to execute other malicious logic). Malware is a generic term for a number of different types of malicious code including adware, spyware, bots, ransomware, rootkits, trojans, viruses and worms.
Master Deed of Guarantee and Indemnity	(Optional)	<p><b>Note to drafters: Include this if optional clause 7.8.2 is used in the COC. Contact the ASDEFCON and Contracting Initiatives Team at <a href="mailto:procurement.asdefcon@defence.gov.au">procurement.asdefcon@defence.gov.au</a> for information on the relevant Master Deed of Guarantee and Indemnity.</b></p> <p>means the [INSERT NAME OF THE DEED] between the Commonwealth and the Guarantor dated [INSERT DATE].</p>
Materiel System	(Core)	means a Mission System combined with its Support System.

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Term	Status	Definition
Milestone	(Core)	in the context of S&Q Services, means a Milestone set out in the relevant S&Q Order.
Minor Change	(Optional)	<p><b>Note to drafters: If this definition is required, amend it prior to RFT release to suit the requirements of the Contract, particularly in relation to the Products at Annex A to the SOW.</b></p> <p>means an engineering change that does not meet the criteria for a Major Change and that:</p> <ol style="list-style-type: none"> <li>a. changes a Baseline;</li> <li>b. substitutes a component with one that is built to the same build standard; or</li> <li>c. amends TD, and the amendments have no technical impact on the supported materiel's form, fit, function, physical performance, logistic or maintenance support arrangements, and include amendments such as: <ol style="list-style-type: none"> <li>(i) typographic errors;</li> <li>(ii) grammatical errors;</li> <li>(iii) misspellings;</li> <li>(iv) incorrect page numbering;</li> <li>(v) incorrect nomenclature; and</li> <li>(vi) incorrect contact information.</li> </ol> </li> </ol>
Mission System	(Core)	<p><b>Note to drafters: This definition should be tailored to suit the context of the draft Contract.</b></p> <p>means a system that directly performs an operational function, such as a ship, tank, aircraft or communications system.</p> <p>The relationships between a Mission System and the Products may differ, depending upon the nature of each Product being supported under the Contract. For example, a Product may:</p> <ol style="list-style-type: none"> <li>a. be a Mission System (eg, a truck or car);</li> <li>b. form part of a Mission System (eg, a spare);</li> <li>c. form part of a larger system-of-systems that comprises multiple Mission Systems (eg, a radio that forms part of a larger communications system-of-systems); or</li> <li>d. be used in the support of a Mission System (ie, as part of the Support System for that Mission System).</li> </ol>
Modification Order	(Optional)	means the documentation that provides the means by which an approved configuration change resulting from an ECP process is incorporated into a Product.
month	(Core)	means a calendar month.
Moral Rights	(Core)	<p>means:</p> <ol style="list-style-type: none"> <li>a. a right of attribution of authorship;</li> <li>b. a right not to have authorship falsely attributed; or</li> <li>c. a right of integrity of authorship.</li> </ol>

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Term	Status	Definition
Non-Repairable Item	(Core)	means a Stock Item which is consumed in normal use; loses its original identity during periods of use by being incorporated into or attachment upon another assembly; or as a result of wear and tear, cannot be reconditioned because its design does not make it possible or its specific value does not justify it.
Non-Standard Repairs	(Optional)	means repairs that are not documented in approved maintenance publications or instructions.
Normal Time	(Core)	has the meaning given in clause 4.2.1 of Attachment B.
Notifiable Incident	(Core)	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
Operating Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes, and Technical Data needed to enable each Mission System to be competently operated throughout its life.
Operating Support Services	(Optional)	means those Services associated with: <ul style="list-style-type: none"> <li>a. operating a Mission System;</li> <li>b. performing activities that directly enable the operation of a Mission System (eg refuelling, fire-fighting and ordnance loading); and</li> <li>c. managing Operating Support activities,</li> </ul> but excludes Maintenance of a Mission System and the provision of the associated Supply Services at the operational level.
Other Time	(Core)	has the meaning given in clause 4.2.1 of Attachment B.
Ozone Depleting Substance	(Core)	means any substance identified as having ozone depleting potential in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or any regulations made under that Act.
Packaging	(Core)	means the wrapping, container, cushioning materials and palletisation materials, as required, in which an item is delivered, handled, stored or distributed until required for use or to be disposed of.
Patent	(Core)	means the rights and interests in any registered, pending or restored standard or innovation patent under the <i>Patents Act 1990</i> (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.
Performance Payment	(Optional)	means each amount determined in accordance with clause 5 of Annex E to Attachment B in respect of the Contractor's performance against each KPI in the Review Period.
Personal Information	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Prescribed Activities	(Core)	means: <ul style="list-style-type: none"> <li>a. the use, handling or storage of any of the following Hazardous Chemicals:</li> </ul>

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		<p>(i) a prohibited carcinogen, restricted carcinogen or lead, each as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth); or</p> <p>(ii) hazardous chemicals the use of which is restricted under regulation 382 of the <i>Work Health and Safety Regulations 2011</i> (Cth) including polychlorinated biphenyls;</p> <p>b. the use, handling or storage of a Problematic Source;</p> <p>c. high risk work as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth);</p> <p>d. electrical work on energised electrical equipment as contemplated by the <i>Work Health and Safety Regulations 2011</i> (Cth); or</p> <p>e. remote or isolated work as defined in subregulation 48(3) of the <i>Work Health and Safety Regulations 2011</i> (Cth).</p>
Preventive Maintenance	(Core)	<p>means all scheduled Maintenance actions performed to retain the systems in a serviceable condition, to ascertain the condition and correct functioning of the system hardware or Software, and to improve the reliability of the systems by providing systematic inspection, detection, prevention and delaying of known failure modes. Preventive Maintenance tasks include:</p> <p>a. scheduled inspection on-condition tasks;</p> <p>b. scheduled inspection Failure-finding tasks;</p> <p>c. scheduled removal rework tasks; and</p> <p>d. scheduled removal discard tasks.</p> <p>e. with respect to Software, Preventive Maintenance also means the modification of a Software product after delivery to detect and correct latent faults in the Software product before they become effective faults.</p>
Privacy Commissioner	(Core)	has the same meaning as in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Problematic Source	(Core)	means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licensed with the Australian Radiation Protection and Nuclear Safety Agency.
Problematic Substance	(Core)	means an Ozone Depleting Substance, Synthetic Greenhouse Gas, Dangerous Good or Hazardous Chemical.
Process Audit	(Core)	means a systematic, independent and documented review of a process (a process being a set of interrelated or interacting activities which transforms inputs into outcomes) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the process complies with stated requirements. The review may include any documentation and records associated with the process.
Product	(Core)	means the items listed in Annex A to the SOW and other Products identified in the SOW for which support Services are required, including, where applicable, any subordinate component required for the support of Products.
Product Audit	(Core)	means a systematic, independent and documented review of a product resulting in the obtaining of audit evidence and evaluating



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		such evidence to objectively determine the extent to which the product complies with stated requirements. The review may include the inspection of the product and analysis of its processes, documentation and records.
Product Baseline	(Optional)	means the current Approved documentation that describes the configuration of a CI during the production, fielding/deployment and operational support phases of its life cycle. The Product baseline describes all necessary physical or form, fit, and function characteristics of a CI, the selected functional characteristics designated for production Acceptance testing, and the production Acceptance test requirements.
Products Restrictions Schedule	(Core)	means Attachment J.
Project of Concern	(Core)	means any project or sustainment activity identified by the Minister for Defence and/or the Minister for Defence Materiel as a Project of Concern on the list held by Defence known as the Projects of Concern list.
Proportionate Liability Law	(Core)	means any of the following: <ul style="list-style-type: none"> <li>a. <i>Civil Liability Act 2002</i> (NSW) – Part 4;</li> <li>b. <i>Wrongs Act 1958</i> (Vic) – Part IVAA;</li> <li>c. <i>Civil Liability Act 2002</i> (WA) – Part 1F;</li> <li>d. <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2;</li> <li>e. <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A;</li> <li>f. <i>Proportionate Liability Act 2005</i> (NT);</li> <li>g. <i>Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001</i> (SA) – Part 3;</li> <li>h. <i>Civil Liability Act 2002</i> (Tas) – Part 9A;</li> <li>i. <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA;</li> <li>j. <i>Corporations Act 2001</i> (Cth) – Part 7.10, Div 2A; and</li> <li>k. <i>Australian Securities &amp; Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.</li> </ul>
PT PCP	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>means the Commonwealth's 'Payment Times Procurement Connected Policy'.</p>
PT PCP Policy Team	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.</p>
PT PCP Subcontract	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>means a Subcontract between a Reporting Entity and another party (<b>Other Party</b>) where:</p>

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Term	Status	Definition
		<p>a. the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract;</p> <p>b. both parties are carrying on business in Australia; and</p> <p>c. the component of the Subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (inc GST) during the period of the Subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the Subcontract;</p> <p>but does not include the following Subcontracts:</p> <p>d. Subcontracts entered into prior to the Reporting Entities' tender response for the Contract;</p> <p>e. Subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or</p> <p>f. Subcontracts for the purposes of:</p> <p>(i) procuring and consuming goods or services overseas; or</p> <p>(ii) procuring real property, including leases and licences.</p>
PT PCP Subcontractor	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.</p>
PTR Act	(Optional)	<p><b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b></p> <p>means the Payment Times Reporting Act 2020 (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.</p>
Quality	(Core)	means the degree to which a set of inherent characteristics fulfils requirements.
Quality Management	(Core)	means coordinated activities to direct and control an organisation with regard to Quality.
Quality Management System	(Core)	means the management system implemented by the Contractor in accordance with clause 10.1 of the SOW for the purposes of Quality Management.
Rate of Effort	(Optional)	means the work loading to be undertaken by the Contractor based on the set level of operations conducted by the Commonwealth during a period nominated in the Contract.
Recurring Services	(Core)	means all of the Services, other than any S&Q Services and Task-Priced Services, required to be provided by the Contractor under the Contract.
Recurring Services Fee	(Core)	means, in respect of a given period, the amount determined in accordance with the relevant Schedule to Annex A to Attachment B as the Recurring Services Fee.
Registrable Design	(Core)	means a design able to be protected under the <i>Designs Act 2003</i> (Cth) or the corresponding laws of any other jurisdiction.

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Related Body Corporate	(Optional)	has the meaning given by section 9 of <i>the Corporations Act 2001</i> (Cth).
Relevant Employer	(Optional)	means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.
Remediation Plan	(Core)	means a plan required by clause 6.7 of the COC.
Repairable Item	(Core)	means a Stock Item that, when unserviceable, can be reconditioned or economically repaired to a serviceable state for further use.
Reporting Entity	(Optional)	<b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b> has the meaning given to this term in the <i>PTR Act</i> .
Reporting Entity Subcontractor	(Optional)	<b>Note to drafters: Include if clauses 11.9.13 to 11.9.17 (regarding PT PCP) are included in the COC.</b> means any person that: a. is a Reporting Entity; and b. provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (inc GST). 'Reporting Entity Subcontract' has a corresponding meaning.
Requirements Determination	(Optional)	means the process which establishes the quantity of Stock Items to be procured, and comprises the assessment, requirement computation, and procurement determination based on historical use/consumption data.
Required Performance Level	(Optional)	for a KPI, means the level of performance that enables a fully effective contribution to Defence-required outcomes, as specified for the KPI in Annex E of Attachment B.
Reserve Stock	(Optional)	means the quantities of Stock Items required to be held by the Contractor to service a level of operations over and above that which is contracted for normal operations.
Reserve Stockholding Level	(Optional)	means the minimum holding of Reserve Stock required to be maintained by the Contractor unless otherwise Approved by the Commonwealth Representative.
Review Period	(Optional)	means the period for measurement and assessment of the Contractor's performance against KPIs, as specified in Annex E to Attachment B.
S&Q Quote	(Core)	has the meaning given in clause 3.10.2 of the COC.
S&Q Order	(Core)	means an order issued by the Commonwealth in respect of an S&Q Service and of an S&Q Quote in the form of Part 3 of Annex A to DID-SPTS-S&Q.
S&Q Services	(Core)	means the Services identified as S&Q Services in the SOW and such other services requested by the Commonwealth in accordance with clause 3.10 of the COC that are directly related to the Services.
Security Interest	(Core)	means any of the following:

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		<p>a. a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;</p> <p>b. a 'security interest' as defined in section 12(1) or (2) of the <i>Personal Property Securities Act 2009</i> (Cth); and</p> <p>c. an agreement to create any of these or allow any of these to exist.</p>
Services	(Core)	means services and goods (including Deliverables, Technical Data, Software and Contract Material) required to be provided under the Contract and includes items acquired in order to be incorporated in the Services.
Services Performance Review	(Core)	means a review conducted in accordance with clause 3.4 of the SOW.
Small to Medium Enterprise	(Optional)	means an Australian Entity which has up to 200 full-time equivalent employees.
Software	(Core)	means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, (including using a computer programming language to control a computer or its peripheral devices) and includes computer programs, firmware, applications and updates, but excludes Source Code.
Software Updates	(Optional)	means, in relation to Software a new release of or change to that Software, which is designed to overcome errors or malfunctions in, or designed to improve the operation of, the Software.
Source Code	(Core)	means the expression of Software in human readable language which is necessary for the understanding, maintaining, modifying, correction and enhancing of that Software.
Statement of Tax Record or STR	(Optional)	has the same meaning as in the <i>Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019</i> .
Stock Item	(Optional)	means a Product which is either a RI or a Non-RI and held either by the Commonwealth or the Contractor to support a Materiel System. Stock Items include spares.
Subcontractor	(Core)	means any person (not the Commonwealth) that, for the purposes of the Contract, provides items or services directly or indirectly to the Contractor and includes Approved Subcontractors; and "Subcontract" has a corresponding meaning.
Subcontractor Personnel	(Core)	means any officers, employees or agents of a Subcontractor.
Supplies Acceptance Certificate	(Core)	means a certificate in the form of Annex A to DID-PM-MGT-SAC or other form agreed between the parties.
Supply	(Optional)	means the comprehensive function of providing Products and Services needed by users at the time and place required, and includes identification, requirement determination, procurement, receipt, inspection, storage, distribution, stock recording and accounting, reclamation and disposal.

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Term	Status	Definition
Supply Services	(Optional)	means those Services associated with performing Supply activities, including the management of those Supply activities.
Supply Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes and Technical Data needed to enable Supply Services to be competently provided for a Materiel System throughout its life. Supply Support also includes the Support Resources of spares, piece parts, Consumables and Packaging.
Support and Test Equipment	(Core)	means the equipment needed to support the operation, support and disposal of a Materiel System, as and when required, throughout the life of the Materiel System. S&TE includes ground handling equipment, tools, personal protective equipment, metrology and calibration equipment, test equipment and automated test equipment, and diagnostic Software for support equipment maintenance. S&TE does not include either Training Equipment or Mission System equipment that is used by the Mission System when it is directly engaged in the performance of its mission.
Support Resources	(Core)	means the physical products, including spares, equipment, materials, facilities, Technical Data, personnel and any other physical resources required to operate and support all or a particular part of a Materiel System as the case requires.
Support System	(Core)	means the organisation of hardware, Software, materiel, facilities, personnel, processes and Technical Data required to enable a Mission System to be effectively operated and supported so that the Mission System can meet its operational requirements. The Support System includes the support required for Support Resources. The Support System embraces the support responsibilities undertaken by the Commonwealth, support contractors (including the Contractor), and support subcontractors (including Subcontractors).
Surge	(Optional)	means a short to medium-term change to the rate of effort.
Surveillance	(Core)	means continual monitoring and Verification of the status of an entity and analysis of records to ensure that specified requirements are being fulfilled (the entity could be a system, process, Product, project, contract etc).
Synthetic Greenhouse Gas	(Core)	means any gas identified as a Synthetic Greenhouse Gas in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or in any regulations made under that Act.
System Audit	(Core)	means a systematic, independent and documented review of a system (a system being a set of interrelated or interacting elements) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the system and its associated processes, documentation and records comply with stated requirements. The review may include any elements of the system.
Task-Priced Services	(Core)	means the Services provided in accordance with clause 3.9 of the COC.
Tax Invoice	(Optional)	has the same meaning as in the GST Act.
taxable supply	(Core)	has the same meaning as in the GST Act.

**OFFICIAL**  
**ATTACHMENT C**

<b>Term</b>	<b>Status</b>	<b>Definition</b>
Technical Data or TD	(Core)	means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to the Deliverables, Products, and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, Training Materials, test results and writings, and includes Source Code.
Technical Data and Software Rights Schedule or TDSR Schedule	(Core)	means Attachment D to the Contract.
Technical Instruction	(Optional)	<p><b>Note to drafters: This definition may be amended to include the name of the applicable document used by the regulatory / assurance authority.</b></p> <p>means a technical document, which is used to provide a rapid means of formally providing advice from an appropriate issuing authority to users and which is managed in accordance with its impact on Technical Integrity.</p>
Technical Integrity	(Optional)	means a Product's fitness for service, safety and compliance with regulations for environmental protection.
Term	(Core)	means: <ul style="list-style-type: none"> <li>a. the Initial Term; and</li> <li>b. each Option Period, if any.</li> </ul>
Trade Mark	(Core)	means a trade mark protected under the <i>Trade Marks Act 1995</i> (Cth) or corresponding laws of any other jurisdiction.
Training	(Optional)	means the processes, systems, materials, resources and Services for bringing Commonwealth Personnel to the required standard of competency by instruction, practice or other prescribed methodology.
Training Equipment	(Optional)	means any item of equipment required to perform Training.
Training Materials	(Optional)	means material, including reference manuals and publications for the Materiel System that were not principally developed for Training, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of Training and/or assessment given a body of students who meet the defined entry requirements. This material includes lesson plans, lesson guides, presentation materials, assessment tools (including plans, exams and/or question sets, checklists and reporting sheets), Training aids and other Training Equipment, student précis, mass briefs, mission plans, and, if applicable, computer-based training Software and manuals.
Training Services	(Optional)	means those Services associated with performing Training activities, including the management of those Training activities.
Training Support	(Optional)	means the organisation of hardware, Software, materiel, facilities, personnel, processes and Technical Data needed to enable Training to be competently provided for a Materiel System throughout its life.
Unrelated Party	(Core)	means any person other than any of the following:

**OFFICIAL**  
**ATTACHMENT C**

Term	Status	Definition
		a. the Commonwealth and Commonwealth Personnel; b. the Contractor and Contractor Personnel; c. a Related Body Corporate of the Contractor; and d. an employee, officer or agent of a Related Body Corporate of the Contractor.
Use	(Core)	means, in relation to a licence of any TD, Software or Contract Material granted to a licensee, to: <ul style="list-style-type: none"> <li>a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and</li> <li>b. disclose, transmit and communicate the TD, Software or Contract Material:               <ul style="list-style-type: none"> <li>(i) to the licensee's employees, officers and agents; and</li> <li>(ii) to a sublicensee under a sublicense granted in accordance with the licence.</li> </ul> </li> </ul>
Verification	(Core)	means confirmation by examination and provision of objective evidence that specified requirements to which a Product or Service, or aggregation of Products and Services, is built, coded, assembled and provided have been fulfilled; and "Verify" has a corresponding meaning.
WHS Legislation	(Core)	means: <ul style="list-style-type: none"> <li>a. the <i>Work Health and Safety Act 2011 (Cth)</i> and the <i>Work Health and Safety Regulations 2011 (Cth)</i>; and</li> <li>b. any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011 (Cth)</i>.</li> </ul>
Wilful Default	(Core)	means a Default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.
Working Day	(Core)	in relation to the doing of an act in a place, means any day in that place other than: <ul style="list-style-type: none"> <li>a. a Saturday, Sunday or public holiday; or</li> <li>b. any day within the two-week period that starts on:               <ul style="list-style-type: none"> <li>(i) the Saturday before Christmas Day; or</li> <li>(ii) if Christmas Day falls on a Saturday, Christmas Day.</li> </ul> </li> </ul>

**OFFICIAL**  
**ATTACHMENT D**

**TECHNICAL DATA AND SOFTWARE RIGHTS SCHEDULE (CORE)**

**Note to tenderers: Attachment D defines any restrictions on the TD or Software rights granted under any resultant Contract. Attachment D will consist of an amalgamation of information contained in this draft Attachment D, the successful tenderer's response to TDR C-5 and any negotiated adjustments.**

Unique Line Item Description	Owner or Licensor	System/ Subsystem/ Component/CI Name	Description of TD or Software	Restrictions on Commonwealth's rights to sublicense the TD or Software (Clause 5.2.2b(iv) of the COC)	Justification for Restriction(s)
(a)	(b)	(c)	(d)	(e)	(f)
<i>Example: D-1-1</i>	<i>Contractor</i>	<i>Aircraft Landing System</i>	<i>Aircraft structural loads and certification data</i>	<i>Licences do not include right to grant sublicences for the purpose of a third party modifying the Capability.</i>	<i>This data requires access to competitively sensitive data.</i>
<i>Example: D-1-2</i>	<i>Contractor</i>	<i>Combat Management System</i>	<i>Mission Planning Software</i>	<i>Licences do not include right to grant sublicences for the purpose of modifying, developing or upgrading the Software without the prior written consent of XYZ Pty Ltd.</i>	<i>This data requires access to competitively sensitive data.</i>



## ATTACHMENT E

## CONFIDENTIAL INFORMATION AND REPORTING (CORE)

**Note to tenderers: Attachment E will consist of the successful tenderer's response to this draft Attachment and any negotiated adjustments.**

**The Commonwealth's policy on the identification of Confidential Information, including the 'Confidentiality Test', is contained on the Department of Finance (DoF) website at:**

- <https://www.finance.gov.au/government/procurement/buying-australian-government/confidentiality-throughout-procurement-cycle>.

**The following four criteria comprise the 'Confidentiality Test', and must all be met before commercial information will be considered to be Confidential Information:**

- Criterion 1: The information to be protected must be specifically identified;**
- Criterion 2: The information must be commercially sensitive;**
- Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party; and**
- Criterion 4: The information was provided with an express or implied understanding that it would remain confidential.**

**The period of confidentiality must be specified for each item (eg for the period of the Contract, a period specified in the Contract). It should not be for an unlimited period.**

**Pricing provisions in Attachment B must only be listed in Attachment E if they meet the Confidentiality Test.**

**Note to drafters: Drafters must review their draft Contract to determine if it contains commercial information that meets the Confidentiality Test. Drafters should then review the examples provided below, prior to release of the RFT, and complete the tables as appropriate. Commercial information claimed to be confidential must be assessed against the Confidentiality Test and only information that meets this test can be included in this Attachment E. Only the information in Attachment E can be considered for reporting confidentiality provisions on AusTender and for Senate Order 192.**

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
<b>Confidentiality (Contract)</b>				
<b>COC, for example</b>				
Clause 10.6 (i.e. if not standard template liability regime)	Liability Caps		<b>Commonwealth / Contractor</b>	
Any tailored clauses or any confidential clauses inserted in the contract additional to the template clauses	(Insert any clauses which are not standard template clauses and that meet the DoF Confidentiality Test)			

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
<b>Confidentiality (Contract)</b>				
<b>Attachments</b> , for example				
Attachment A: Annex A	List of Products (Identify specific clause/s)		<b>Commonwealth / Contractor</b>	
Attachment B	Pricing (Identify specific clause, table or section)		<b>Contractor</b>	
Attachment D	Technical Data and Software Rights Schedule		<b>Contractor</b>	
<b>Confidentiality (Outputs)</b>				
Information obtained or generated in performing the contract	(Insert name of document, including specific section/s)		<b>Contractor / Commonwealth</b>	

ATTACHMENT F

AGREED DEEDS (CORE)

**Note to tenderers: Attachment F will consist of the following annexes:**

- A. Contract Change Proposal Deed (Core);
- B. Extension Notice (Optional);
- C. Bank Guarantee (RFT Core); and
- D. Deed of Guarantee and Indemnity (RFT Core).

## ANNEX A TO ATTACHMENT F

## CONTRACT CHANGE PROPOSAL (CCP) (CORE)

(CONTRACT NUMBER: (INSERT CONTRACT NUMBER) )

*Note: Contract Change Proposals which involve consideration may be executed in the form of an agreement rather than a deed and the CCP execution clause needs to be tailored accordingly.*

*For the purposes of the CCP, consideration may include a change in the contract price or the delivery of additional goods or services (even if at no cost to the Commonwealth).*

*A CCP shall identify any proposed variation to the payments required under the Contract, and identify separately the cost of preparation of the CCP in accordance with clause 11.1 of the COC.*

*If this CCP relates to changes of an administrative nature which have no impact upon the payments required under the Contract or on the Statement of Work, the Contractor may provide minimal details of the change. Responses are only required for headings denoted as mandatory.*

This CCP is made on [INSERT DATE]

Between

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

and

(INSERT CONTRACTOR...ACN/ARBN AND ABN IF APPLICABLE) having its registered office at (INSERT DETAILS) ('the Contractor')

**RECITALS:**

- A. The Commonwealth has entered into a contract (INSERT CONTRACT NUMBER) dated (INSERT DATE) ('the Contract') for the supply of (INSERT BRIEF DESCRIPTION OF THE SERVICES).
- B. The Contract provides that changes are to be dealt with by CCP.
- C. The Commonwealth or the Contractor proposes a change to the Contract as set out in CCP.

**AGREED TERMS:**

**CCP Number (Mandatory):**

**Date Raised (Mandatory):**

**Validity period for CCP (Mandatory):**

**Originator (Mandatory):**

**Reference in Contract (Mandatory): (INSERT CLAUSE NUMBER)**

1. **Details of Proposed Change (Mandatory):**
  - a. **Old Text:**
  - b. **New Text:**
2. **Justification for Proposed Change (Mandatory):**
3. **Effect of Proposed Change (If applicable):**

*Note: This should include a description of the effect of the change on the scope of work, including where appropriate: Quality, technical/functional specification, warranty, training, documentation, WBS and whether it is for S&Q Services.*

- a. **Payments Required under the Contract:**
  - (i) **Attachment B:**
  - (ii) **Cost of Preparation of CCP:**

- b. **Delivery:**
  - (i) **Location:**
  - (ii) **Date:**
- c. **Scope of Work:**

*Option: For when the parties intend this CCP to take effect on a date other than the date of signature:*

**4. Date of effect of this CCP:**

**5. Warranty:**

- a. In signing this CCP the Contractor warrants that the submitted cost of preparation of this CCP is true and correct.

**6. Approval:**

- a. The CCP and its attachments are Approved. The Contract shall be changed on the date specified in this CCP or when this CCP has been properly executed by both parties.

**SIGNED (INSERT EITHER "AS AN AGREEMENT" OR "AND DELIVERED AS A DEED" AS APPROPRIATE)**

SIGNED for and on behalf of  
THE COMMONWEALTH OF AUSTRALIA

By:

.....  
(signature) (print name and position of authorised signatory) (date)

In the presence of:

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

**Note for CCP 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 Commercial Division 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 CCP. The Contractor should seek its own independent legal advice on its execution of the CCP.**

SIGNED for and on behalf of  
THE CONTRACTOR:

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

ANNEX B TO ATTACHMENT F

EXTENSION NOTICE (OPTIONAL)

To: (INSERT NAME OF CONTRACTOR AND ACN/ARBN AND ABN AS APPLICABLE), having its registered office at (INSERT DETAILS) ('the Contractor').

Re: [INSERT NAME OF CAPABILITY/SYSTEM] Support Contract – Contract No: (INSERT NUMBER) ('Contract')

In this notice, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them by the Contract.

In accordance with clause 1.8 of the COC, the Commonwealth exercises its option to extend the Contract for (INSERT PERIOD) ('Option Period') to expire on (INSERT DATE).

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....

(signature)

(print name and position of authorised signatory)

(date)

In the presence of:

.....

(signature of witness)

(print name of witness)

(date)

## ANNEX C TO ATTACHMENT F

## BANK GUARANTEE (RFT CORE)

**Note to tenderers: If under the Master Guarantee Program, Defence and the tenderer have pre-agreed amendments to the template Bank Guarantee Deed, the tenderer should submit that pre-agreed varied version as part of its tender, indicating the alterations that were pre-agreed. Defence will then verify whether the alterations are consistent with pre-agreed amendments. If there are any further proposed amendments beyond those that were pre-agreed, these will be assessed on a case by case basis.**

This DEED is made on **(INSERT DATE)**

For the benefit of the Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth')

by **(INSERT NAME OF COMPANY)**, **(ACN/ARBN and ABN if applicable)** whose registered office is **(INSERT DETAILS)** ('the Promisor').

## RECITALS

- A. The Commonwealth has a Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** ('the Contract') with **(INSERT NAME OF CONTRACTOR)**, **(ACN/ARBN and ABN if applicable)** having its registered office at **(INSERT DETAILS)** (the 'Contractor') for the supply of **(INSERT BRIEF DESCRIPTION)**.
- B. The Contractor is required by the Contract to obtain this undertaking for the Commonwealth.

## OPERATIVE PART

1. The Promisor undertakes to pay on demand to the Commonwealth any amount or amounts which may be demanded by the Commonwealth from time to time, up to a maximum of **\$(INSERT AMOUNT)** (the 'Sum'). This undertaking is unconditional.
2. To make a demand, the Commonwealth shall give the Promisor a written notice setting out the amount demanded and the time within which it is to be paid.
3. The Promisor shall not make any inquiry in relation to the demand.
4. This undertaking continues in force until the earlier of:
  - a. the Promisor has received written notice from the Commonwealth that the undertaking is no longer required; and
  - b. the Commonwealth has received from the Promisor the whole of the Sum, or the balance after any part payment of the Sum.
5. Any payments made by the Promisor to the Commonwealth under this undertaking are to be made by electronic funds transfer with the Commonwealth of Australia identified as the payee.
6. This undertaking cannot be varied or waived under any circumstances. To avoid doubt, this undertaking is not affected if the Contract is varied, the Contractor is granted an extension of time to perform the Contract, or the Commonwealth waives a breach, failure or default of the Contractor.
7. Unless the contrary intention appears, any notice under this undertaking shall be effective if it is in writing and sent from and delivered to the Commonwealth or Promisor, as the case may be, as detailed below:

**[INSERT COMMONWEALTH ADDRESS AND EMAIL];**  
**(INSERT PROMISOR ADDRESS AND EMAIL).**
8. A notice given in accordance with clause 7 is delivered:
  - a. if sent by pre-paid post, when received at the address;
  - b. if hand delivered, when received at the address; or

**ANNEX C TO ATTACHMENT F**

- c. if sent as an email, when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee

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 taken to be received at 9.00am (recipient's local time) on the next Working Day. For the purpose of this clause, 'Working Day' in relation to the doing of an action in a place, means any day other than a Saturday, Sunday or public holiday in that place.

9. The laws of the **(INSERT STATE OR TERRITORY)** apply to this undertaking. The courts of that State or Territory have non-exclusive jurisdiction to decide any matter arising out of this undertaking.

SIGNED AS A DEED:

***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 Commercial Division intranet page at:***

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

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

**(INSERT THE PROMISOR'S USUAL SEALING CLAUSE)**



**ANNEX D TO ATTACHMENT F**

***Note to tenderers: If the tenderer has a Master Guarantee and Indemnity Deed with Defence and elects to apply that deed to the Contract, this Attachment will be marked 'Not Used'.***

**DEED OF GUARANTEE AND INDEMNITY (RFT CORE)**

This DEED is made on **(INSERT DATE)**

BETWEEN

The Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth')

AND

**(INSERT NAME OF COMPANY) (INSERT ACN/ABN AND ABN IF APPLICABLE)**, having its registered office at **(INSERT DETAILS)** ('the Guarantor').

**RECITALS**

- A. The Commonwealth and the Contractor are a party to the Guaranteed Agreements.
- B. The Guarantor has agreed to guarantee to the Commonwealth all of the Relevant Obligations and to indemnify the Commonwealth on the terms and conditions in this Deed.

**AGREED TERMS**

## ANNEX D TO ATTACHMENT F

**1 DEFINITIONS AND INTERPRETATION (CORE)****1.1 Definitions (Core)**

1.1.1 In the interpretation of this Deed, unless the contrary intention appears:

“Authorisation” means a licence, accreditation, permit, registration, regulatory approval, or other documented authority (however described), required by law.

“Contractor” means **(INSERT NAME OF COMPANY) (INSERT ACN/ARBN AND ABN IF APPLICABLE)**.

“Constitution” means, in relation to any person, the constitution, or similar governing document(s), of that person (if any).

“Corporations Act” means the *Corporations Act 2001* (Cth).

“Event of Default” means any event which entitles the Commonwealth to terminate a Guaranteed Agreement for Contractor default.

“Event of Insolvency” means, in respect of a person:

- a. the person:
  - (i) becoming insolvent;
  - (ii) ceasing to carry on all or a material part of its business; or
  - (iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- b. the appointment of a Controller (as defined in the *Corporations Act 2001* (Cth)), a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- c. the person becoming subject to external administration provided for in Chapter 5 of the *Corporations Act 2001* (Cth);
- d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the *Personal Property Securities Act 2009* (Cth));
- e. the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- f. an order or resolution for the winding up or deregistration of the person;
- g. a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- h. any analogous event under the law of any applicable jurisdiction.

**Note to drafters: Drafters to consider whether any additional agreements should be included in this definition.**

“Guaranteed Agreements” means:

- a. the contract dated **(INSERT DATE)** between the Commonwealth and the Contractor for the supply of **(INSERT REQUIREMENT)**; and
- b. **(INSERT DETAILS)**.

“Guaranteed Money” means all amounts the payment or repayment of which from time to time forms part of the Relevant Obligations and includes any amount recoverable as a debt to the Commonwealth in relation to the Guaranteed Agreement.

“Obligor” means the Contractor or the Guarantor.

“Power” means any right, power, authority, discretion, remedy or privilege.

**ANNEX D TO ATTACHMENT F**

“Relevant Obligations” means all of the liabilities and obligations of the Contractor to the Commonwealth under or by reason of the Guaranteed Agreements and includes any liabilities or obligations of the Contractor which:

- a. are liquidated or unliquidated;
- b. are present, prospective or contingent;
- c. are in existence before or come into existence on or after the date of this Deed; or
- d. relate to the payment of money or the performance or omission of any act.

“Security Interest” means each of the following:

- a. a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- b. a “security interest” as defined in section 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); and
- c. an agreement to create any of these or allow any of these to exist.

“Unpaid Sum” means any sum due and payable by the Guarantor under this Deed but unpaid.

“Working Day” in relation to the doing of an action in a place, means any day in that place other than:

- a. a Saturday, Sunday or public holiday; and
- b. any day within the two-week period that starts on:
  - (i) the Saturday before Christmas Day; or
  - (ii) if Christmas Day falls on a Saturday, Christmas Day.

## **1.2 Interpretation (Core)**

---

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes any other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a sub-clause of that clause;
- h. a reference to a “dollar”, “\$”, “\$A” or “AUD” means the Australian dollar;
- 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 date of this Deed, 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 assigns, including any person to whom that party novates any part of this Deed; and
- l. a reference to a document (including any Guaranteed Agreement) is to that document as varied, novated, ratified, replaced or restated from time to time.

**ANNEX D TO ATTACHMENT F****1.3 Joint and Several Liability (Optional)**

---

**Note to drafters: Include this clause where the Guarantor comprises more than one party.**

- 1.3.1 The expression "Guarantor" refers to each person identified as a Guarantor, and the obligations of the Guarantors under this Deed bind each person identified as a Guarantor, jointly and severally.

**1.4 Liability as Guarantor and Indemnifier (Core)**

---

- 1.4.1 Any reference in this Deed to the obligations or liabilities of the Guarantor shall be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this Deed.

**1.5 Principal Obligation (Core)**

---

- 1.5.1 Each obligation of the Guarantor under this Deed constitutes a principal, not a secondary or ancillary obligation, such that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.

**1.6 No Bias against Drafting Party (Core)**

---

- 1.6.1 No term or provision of this Deed shall be construed against a party on the basis that this Deed or the term or provision in question was put forward or drafted by that party.

**2 GUARANTEE (CORE)****2.1 Guarantee (Core)**

---

- 2.1.1 Subject to clause 2.4, the Guarantor irrevocably and unconditionally guarantees to the Commonwealth the due and timely performance by the Contractor of all the Relevant Obligations.

**2.2 Performance of Relevant Obligations (Core)**

---

- 2.2.1 Subject to clause 2.4, if the Contractor fails to perform any of the Relevant Obligations in accordance with the relevant Guaranteed Agreement, the Guarantor shall, in addition to its obligations under clause 2.3, on demand from time to time by the Commonwealth, immediately cause to be performed, such Relevant Obligations required to be performed by the Contractor in accordance with that Guaranteed Agreement.

**2.3 Payment by Guarantor (Core)**

---

- 2.3.1 Subject to clause 2.4, if the Contractor does not pay the Guaranteed Money when due in accordance with the terms of the relevant Guaranteed Agreement, the Guarantor shall within three Working Days following demand by the Commonwealth, pay to the Commonwealth the Guaranteed Money which is then due and unpaid.

**2.4 Limitation of Liability (Core)**

---

- 2.4.1 Subject to clause 7.1.1, the Guarantor's liability pursuant to this Deed in respect of any Guaranteed Agreement shall be no greater than the aggregate of the remaining Relevant Obligations of the Contractor as they exist from time to time pursuant to or arising out of that Guaranteed Agreement and the Guarantor shall be entitled to all defences and limitations of liability to which the Contractor is entitled under that Guaranteed Agreement. The total sum recoverable from the Guarantor under this Deed in respect of any Guaranteed Agreement shall not exceed the liability the Contractor would otherwise have for the Relevant Obligations under that Guaranteed Agreement.

**3 INDEMNITY (CORE)**

- 3.1.1 Subject to clause 2.4, the Guarantor, as a separate additional and primary liability, shall irrevocably and unconditionally indemnify the Commonwealth against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor

**ANNEX D TO ATTACHMENT F**

and own client basis), compensation or expense sustained or incurred by the Commonwealth arising out of or as a consequence of:

- a. any failure by the Contractor to perform the Relevant Obligations in accordance with the Guaranteed Agreements; or
- b. any obligation or liability that would otherwise form part of the Relevant Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason (including the insolvency of the Contractor), whether or not the Commonwealth knew or ought to have known of that reason.

**4 NATURE AND PRESERVATION OF LIABILITY (CORE)****4.1 Absolute and Unconditional Liability (Core)**

---

4.1.1 Subject to clause 2.4, the liability of the Guarantor under this Deed:

- a. is absolute and is not subject to the performance of any condition precedent or subsequent; and
- b. shall not be affected by any act, omission, matter or thing which may release the Guarantor from that liability or reduce the liability of the Guarantor (other than an express release of the Guarantor from all of its liabilities under this Deed) including any of the following:
  - (i) the occurrence before, on or at any time after, the date of this Deed of any Event of Insolvency in relation to any Obligor;
  - (ii) any Guaranteed Agreement or any payment or other act, the making or doing of which would otherwise form part of the Relevant Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
  - (iii) the Commonwealth granting time, waiver or other concession to, or making any composition, arrangement or compromise with any other Obligor (including to or with the Contractor in respect of the liability of the Guarantor) or any other person;
  - (iv) the Commonwealth not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of any Guaranteed Agreement or any Relevant Obligation;
  - (v) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Commonwealth or any other Obligor of any Guaranteed Agreement or any Relevant Obligation;
  - (vi) any variation to any Guaranteed Agreement or any Relevant Obligation, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Obligor;
  - (vii) the full, partial or conditional release or discharge by operation of law of any other Obligor from any Guaranteed Agreement or any Relevant Obligation;
  - (viii) the transfer, assignment or novation by the Commonwealth or any Obligor of all or any of its rights or obligations under any Guaranteed Agreement;
  - (ix) any person, whether named as a party or not, does not execute any Guaranteed Agreement or the execution of any Guaranteed Agreement by any person is invalid, forged or irregular in any way; or
  - (x) any failure by the Commonwealth to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Commonwealth relating to or affecting any Obligor at any time before or during the term of any Guaranteed Agreement, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Commonwealth was under a duty to disclose that fact, circumstance, event or thing to any Obligor.

**ANNEX D TO ATTACHMENT F****4.2 No Merger (Core)**

---

- 4.2.1 The guarantee and indemnity from the Guarantor under this Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any Guaranteed Agreement or any other Power of the Commonwealth.

**4.3 No Obligation to Gain Consent (Core)**

---

- 4.3.1 The Guarantor has no right or entitlement to consent to or be made aware of any event referred to in clause 4.1.1b, any transaction between the Commonwealth and any Obligor or any particulars concerning any obligation or liability that forms part of the Relevant Obligations.

**4.4 Appropriation (Core)**

---

- 4.4.1 The Commonwealth is under no obligation to marshal or appropriate in favour of the Guarantor, or to exercise, apply, transfer or recover in favour of the Guarantor, any Security Interest or any funds or assets which the Commonwealth holds, has a claim on, has received or is entitled to receive, but may do so in the manner and order as the Commonwealth determines in its discretion.

**4.5 Void or Voidable Transactions (Core)**

---

- 4.5.1 If a claim that a payment to the Commonwealth in connection with this Deed or any Guaranteed Agreement is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld by a court of competent jurisdiction or conceded or compromised then the Commonwealth is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Deed if the payment had not occurred.

**4.6 Claim or Demand on the Guarantor (Core)**

---

- 4.6.1 Where any Guaranteed Agreement obliges the Commonwealth to deliver a notice or demand to the Contractor or to comply with an obligation (including observing time periods for performance and Contractor opportunities to cure defaults) prior to the Commonwealth exercising a right under that Guaranteed Agreement in respect of a failure by the Contractor to comply with a Relevant Obligation, the Commonwealth shall deliver that notice or demand to the Contractor or comply with that obligation (including observing time periods for performance and Contractor opportunities to cure defaults) before making a demand under this Deed in respect of a failure by the Contractor to comply with that Relevant Obligation.
- 4.6.2 Subject to the Commonwealth complying with clause 4.6.1, the Guarantor agrees that the Commonwealth is not required to make any claim or demand on any Obligor, or to otherwise enforce any Guaranteed Agreement or any other right, power or remedy against any other Obligor, before making any demand or claim on the Guarantor.

**4.7 Waiver of Rights (Core)**

---

- 4.7.1 The Guarantor may not exercise any right of contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of any other Obligor before the Relevant Obligations are satisfied in full and irrevocably waives all of those rights of contribution, indemnity or subrogation it may have before the Relevant Obligations are satisfied in full.

**5 REPRESENTATIONS AND WARRANTIES (CORE)****5.1 General Representations and Warranties (Core)**

---

- 5.1.1 The Guarantor represents and warrants to the Commonwealth that:
- a. this Deed constitutes its valid and legally binding obligation and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration requirements and laws affecting creditors' rights generally;
  - b. the execution, delivery and performance of this Deed and each transaction contemplated by this Deed does not violate or breach any law or any document or agreement to which it is a party or which is binding on it or any of its assets;

**ANNEX D TO ATTACHMENT F**

- c. all Authorisations required to be obtained by it in connection with the execution, delivery and performance of this Deed, the transactions contemplated by this Deed and the legality, validity and enforcement of this Deed have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Authorisations or aware of any fact or circumstance which may cause any of those Authorisations to be suspended, forfeited, cancelled or rendered void;
- d. no Event of Default has occurred which has not been remedied or waived in accordance with the terms of the relevant Guaranteed Agreement;
- e. it is not the trustee of any trust; and
- f. it does not enjoy immunity from suit or execution in relation to its obligations under this Deed.

**5.2 Corporate Representations and Warranties (Core)**

---

5.2.1 The Guarantor represents and warrants to the Commonwealth that:

- a. it is duly registered and remains in existence;
- b. its execution, delivery and performance of this Deed does not (and the transactions contemplated by this Deed do not) violate its Constitution nor, if the Guarantor is listed on a stock exchange, any listing requirements or business rules of the applicable stock exchange;
- c. it has the power to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed;
- d. it has taken all corporate action required to enter into, deliver and perform this Deed and to carry out the transactions contemplated by this Deed; and
- e. the entry into and the performance of its obligations under this Deed is in its best interests and for a proper purpose.

**5.3 Representations and Warranties Repeated (Core)**

---

5.3.1 Each representation and warranty in clauses 5.1 and 5.2 shall be repeated on each day while any of the Relevant Obligations remain outstanding with reference to the facts and circumstances then subsisting, as if made on each such day.

**6 PAYMENTS (CORE)****6.1 Payments on Demand (Core)**

---

6.1.1 All payments by the Guarantor under this Deed are to be made to the Commonwealth in Australian dollars in immediately available funds and on the due date specified in the notice to the Guarantor or if no due date is specified, within three Working Days following receipt of demand by the Commonwealth.

**6.2 Payments of Interest on Unpaid Sums (Core)**

---

6.2.1 The Guarantor shall pay default interest on all Unpaid Sums. Default interest shall be calculated:

- a. where the Contract provides for the payment of default interest for late payment by the Contractor, in accordance with the relevant provisions of the Contract; and
- b. otherwise in accordance with clause 6.2.2.

6.2.2 Where this clause 6.2.2 applies, default interest shall be calculated in accordance with the following formula:

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

Where:

**ANNEX D TO ATTACHMENT F**

"I%" means the Australian Taxation Office sourced General Interest Charge rate current at the due date of payment of the Unpaid Sum expressed as a percentage;

"P" means the amount of the Unpaid Sum; and

"n" means the number of days after the due date for payment that the payment of the Unpaid Sum is made.

- 6.2.3 Notwithstanding any of the terms of the Contract, default interest accruing under this clause 6.2 shall be immediately payable by the Guarantor on demand by the Commonwealth.

**6.3 No Set-off or Counterclaim (Core)**

---

- 6.3.1 All payments by the Guarantor under this Deed shall be without any set off or counterclaim, and the Guarantor irrevocably waives any rights of set-off or counterclaim which it may have against the Commonwealth.

**6.4 Merger (Core)**

---

- 6.4.1 If the liability of the Guarantor to make any payment under this Deed becomes merged in any judgment or order, the Guarantor shall as an independent obligation pay to the Commonwealth interest at the rate which is the higher of that payable under clause 6.2 and that fixed by or payable under the judgment or order.

**6.5 No Deduction for Taxes (Core)**

---

- 6.5.1 All payments by the Guarantor under this Deed shall be without deduction or withholding for any present or future taxes, unless the Guarantor is compelled by law to deduct or withhold the same.
- 6.5.2 If the Guarantor is compelled by law to make any deduction or withholding from any payment under this Deed on account of taxes, the Guarantor shall on demand by the Commonwealth pay to the Commonwealth any additional amounts necessary to ensure that the Commonwealth receives (after all deductions and withholdings for taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made.

**7 EXPENSES (CORE)****7.1 Reimbursement (Core)**

---

- 7.1.1 The Guarantor shall reimburse the Commonwealth on demand for, and shall indemnify the Commonwealth 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 arising out of or as a consequence of the Commonwealth exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any rights under this Deed. The limitation of liability in clause 2.4 does not apply to this clause.

**8 GOODS AND SERVICES TAX (CORE)****8.1 Goods and Services Tax (Core)**

---

- 8.1.1 In this clause, 'GST' means the Commonwealth tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999*, and 'adjustment event', 'input tax credits', 'taxable supply' and 'tax invoice' have the respective meanings given to them by that Act.
- 8.1.2 If a party (the 'Supplier') makes a taxable supply to another party in relation to this Deed or any matter or thing occurring under this Deed (the 'Recipient'), and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled to recover from the Recipient the amount of any GST on the taxable supply, in addition to any other consideration recoverable for the taxable supply.
- 8.1.3 If the amount paid by the Recipient to the Supplier for GST differs from the actual amount of GST payable for the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), the following adjustments apply:



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- a. if the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier will refund the excess to the Recipient; or
  - b. if the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient will pay the balance to the Supplier.
- 8.1.4 If a party is entitled to recover or be compensated for all or a proportion of its costs in relation to this Deed or any matter or thing occurring under this Deed, the amount of the recovery or compensation is reduced by the amount of (or the same proportion of the amount of) any input tax credits available in relation to those costs.
- 8.1.5 A party is not required to pay any amount for GST to another party unless a valid tax invoice has been issued for that GST.

**9 NO REPRESENTATION BY OR RELIANCE (CORE)**

- 9.1.1 The Guarantor acknowledges that:
- a. the Commonwealth does not have any duty to supply it with information in relation to or affecting the Contractor or the Commonwealth before the date of this Deed or during the term of any Guaranteed Agreement;
  - b. it has relied on its own inquiries as to the Contractor, the nature and extent of the entire relationship between the Contractor and the Commonwealth (whether or not recorded in the Guaranteed Agreements) and the nature and effect of the Guaranteed Agreements; and
  - c. it does not enter into this Deed in reliance on any representation, promise, statement, conduct or inducement by or on behalf of the Commonwealth, except for any inducement expressly set out in this Deed.

**10 ASSIGNMENT AND NOVATION (CORE)**

- 10.1.1 Neither party may, without the prior written consent of the other party, assign, novate or otherwise transfer any of its rights or obligations under this Deed.

**11 RESOLUTION OF DISPUTES (CORE)**

- 11.1.1 A party shall not commence court proceedings relating to any dispute arising from this Deed except when that party seeks urgent relief from a court or when dispute resolution has failed under this clause 11. If a party fails to comply with this clause 11, the other party is not required to undertake dispute resolution for the dispute in accordance with clause 11.
- 11.1.2 The parties shall negotiate in good faith to settle a dispute arising between them and, if the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) within **(INSERT PERIOD)** days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 11.1.3 The parties shall at all times during the dispute continue to fulfil their obligations under this Deed.

**12 MISCELLANEOUS (CORE)****12.1 Notices (Core)**

- 12.1.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing and sent from and delivered to the Commonwealth or Guarantor, as the case may be, at the following address:

**[INSERT COMMONWEALTH ADDRESS AND EMAIL]**

**(INSERT GUARANTOR ADDRESS AND EMAIL)**

- 12.1.2 A notice or communication is deemed to be delivered:
- a. 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;

**ANNEX D TO ATTACHMENT F**

- b. if hand delivered, when received at the address, or by the recipient if sooner; 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 taken to be received at 9.00am (recipient's local time) on the next Working Day.

**12.2 Laws (Core)**

---

- 12.2.1 The laws of **(INSERT RELEVANT STATE OR TERRITORY)** apply to this Deed, and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.

**12.3 Entire Agreement (Core)**

---

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

**12.4 Further Assurances (Core)**

---

- 12.4.1 Each party shall take the steps, sign the documents, and do all other acts and things as may be reasonably required by the other party to give effect to this Deed and to perfect the Powers afforded or created by this Deed.

**12.5 Powers Cumulative (Core)**

---

- 12.5.1 The Powers conferred by this Deed on the Commonwealth are cumulative and in addition to all other Powers available to the Commonwealth by law or under any Guaranteed Agreement.

**12.6 Form of Demand (Core)**

---

- 12.6.1 A demand on the Guarantor for payment under this Deed may be in any form and contain any information as the Commonwealth determines.

**12.7 Severability (Core)**

---

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

**12.8 Waiver (Core)**

---

- 12.8.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power provided by law or under this Deed by the Commonwealth does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power provided by law or under this Deed.
- 12.8.2 A waiver or consent given by the Commonwealth under this Deed is only effective and binding if it is given or confirmed in writing by the Commonwealth.
- 12.8.3 No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

**12.9 Consents (Core)**

---

- 12.9.1 A consent required under this Deed from the Commonwealth may be given or withheld, or may be given subject to any conditions, as the Commonwealth (in its discretion) thinks fit, unless this Deed expressly provides otherwise.

**12.10 Moratorium Legislation (Core)**

---

- 12.10.1 To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, are expressly waived.

ANNEX D TO ATTACHMENT F

12.11 Binding on each Signatory (Core)

---

12.11.1 This Deed binds and is enforceable against the Guarantor despite:

- a. any other person not executing this Deed or its execution being defective in any way; or
- b. any obligation or liability of any other party under this Deed not being binding or enforceable against that party for any reason.

12.12 Counterparts (Core)

---

12.12.1 This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

SIGNED AS A DEED

SIGNED, SEALED AND DELIVERED

by the COMMONWEALTH OF AUSTRALIA

.....

in the presence of

.....

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

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

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

**(INSERT EXECUTION CLAUSE OF THE GUARANTOR)**

## ATTACHMENT G

## GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

**Note to drafters:** Drafters should provide details including dates of any Commonwealth Mandated or proposed GFM prior to release of the RFT. The first line under 'Commonwealth Mandated GFM-GFE' is provided as an example only, to illustrate the linkages between Table G-A-1 and Table G-A-2. This example must be deleted and replaced with project-specific detail as appropriate.

If, in addition to the licence terms provided under clause 5.4 of the draft COC, further restrictions apply to:

- a. the use of Technical Data and Software within the GFM, due to restrictions or limitations on the relevant IP rights (such as those restrictions established under an acquisition contract for the development of the relevant GFM) - these are to be identified in column (g) and Table G-A-2; and
- b. GFM that is subject to Export Approvals (ie, foreign export controls such as International Traffic in Arms Regulations) - these are to be identified in column (h).

To determine the circumstances in which the Commonwealth may consider the Contractor (or its nominee) obtaining ownership of the IP developed under the Contract with respect to new GFM, refer to the ASDEFCON TD / IP Commercial Handbook at:

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/A0841422-C25A-4D54-9020-87FC33242AED>.

GFE provided to the Contractor must be accompanied by safety related information sufficient to enable safety risk assessments to be performed. Refer to CASsafe Requirement 10.2 'Supply safe plant, structures, substances and radiation sources' for further information. Where safety-related information is not intrinsically captured in the Technical Data provided with GFE, that information must be provided as additional GFI or GFD (as applicable).

**Note to tenderers:** Attachment G will consist of an amalgamation of information contained in this draft Attachment G, the successful tenderer's response to TDR E-6 and any negotiated adjustments.

- 1.1 The table below sets out the Government Furnished Material (GFM) provided by the Commonwealth to the Contractor under the Contract, divided into:
  - a. Commonwealth Mandated GFM (Government Furnished Equipment (GFE) and Government Furnished Data (GFD)) that the Contractor is required to use in the provision of the Services in accordance with the Contract; and
  - b. non-mandated GFM (Government Furnished Information (GFI) and all other GFM that is not Commonwealth Mandated GFM).

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Table G-A-1: GOVERNMENT FURNISHED MATERIAL

Item Description	Reference/ Part Number	Quantity	Delivery Date and Location	Return Date and Location	Time Period for Inspection	Technical Data and Software Restrictions (Yes/No)  (if Yes, include Unique Line Item Description)	Export Approval Restrictions  (if applicable)	Comments/ Intended Purpose
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
<b>Commonwealth Mandated GFM - GFE</b>								
<i>EXAMPLE ONLY: Combat Management System</i>						E-R-1		
<b>Commonwealth Mandated GFM - GFD</b>								
<b>Non-mandated GFM - GFI</b>								
<b>All other non- mandated GFM</b>								

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**ATTACHMENT G**

**Notes Table G-A-1:**

- a. *Item Description:* A description of the item of GFM.**
- b. *Reference / Part Number:* A reference, part number, document number, or other identifier that clearly identifies the item of GFM.**
- c. *Quantity:* The quantity of the item of GFM to be delivered (or made available) by the Commonwealth.**
- d. *Delivery Date and Location:* The date on and location at which the item of GFM is to be delivered (or made available) by the Commonwealth.**
- e. *Return Date and Location:* The date on and location at which the item of GFM is to be returned to the Commonwealth.**
- f. *Time Period for Inspection:* The period within which the Contractor is required to inspect the item of GFM and notify the Commonwealth in accordance with clause 3.10.1 of the SOW.**
- g. *Technical Data and Software Restrictions:* Indicates if there are restrictions on the TD or Software within an item of GFM that are in addition to the licence terms granted by the Commonwealth under clause 5.4 of the COC (if applicable). The nature of the restrictions on the relevant TD or Software is set out in Table G-A-2.**
- h. *Export Approval Restrictions:* Any restrictions derived from Export Approvals to which an item of GFM is subject (if applicable).**
- i. *Comments / Intended Purpose:* The purpose for which the item of GFM is provided to the Contractor and any comments that are supplementary to the information provided in columns (a) to (h).**

ATTACHMENT G

**Note to drafters: Drafters should set out any restrictions that apply to the Contractor's Use and sublicensing of the GFM. Relevant restrictions may be identified in related Acquisition contracts or earlier Support contracts for the Capability. The first line is provided as an example only, and must be deleted and replaced with project-specific detail as appropriate.**

**For TD or Software that is listed in this table, ownership in any new IP created by the Contractor or a Subcontractor is assigned to the Commonwealth or its nominee under clause 5.1.3 of the COC. Column (c) should describe the category in sufficient detail so as to enable the identification of TD or Software that comes within the relevant category.**

Table G-A-2: RESTRICTIONS

Unique Line Item Description	Equipment/ System/ Subsystem/ Component/ CI Name	Description of TD or Software	Owner or Licensor	Restrictions on Use or sublicense of the TD or Software
(a)	(b)	(c)	(d)	(e)
<i>EXAMPLE ONLY: E-R-1</i>	<i>Combat Management System</i>	<i>Electronic Warfare Software Source Code</i>	<i>EW Pty Ltd</i>	<i>The Contractor may use solely for the purpose of installation and configuration of the CMS and must not sublicense any of the Technical Data to XYZ Pty Ltd or its related body corporates.</i>

**SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (OPTIONAL)**

**Note to drafters:** A SCCG is to be included where the procurement involves classified information or security-protected assets.

**For information and a template for developing a SCCG refer to the Defence Security and Vetting Service website for Project Security at:**

- <http://drnet/AssociateSecretary/Security-Vetting-Services/Security-Intelligence/Pages/Project-Security.aspx>.

**The SCCG and a Project Identification Document are to be forwarded for review by the Defence Security and Vetting Service Project Security team at [DSA.ProjectSecurity@defence.gov.au](mailto:DSA.ProjectSecurity@defence.gov.au).**

**[DRAFTERS TO INSERT SECURITY CLASSIFICATION AND CATEGORISATION GUIDE PRIOR TO RELEASE OF RFT].**



## SCHEDULE OF APPROVED SUBCONTRACTORS (RFT CORE)

**Note to drafters: Update the following table to list the Approved Subcontractors identified in accordance with clause 11.9 of the COC. In finalising the preparation of Attachment I, drafters should specifically capture (under Comments/Exclusions) where the Commonwealth has agreed, in accordance with clause 11.9.5 of the COC, that Approved Subcontractor status does not require compliance with certain Contract provisions for certain Approved Subcontractors.**

**Note to tenderers: The schedule of Approved Subcontractors will be based on the successful tenderer's response to TDR A-3, and any negotiated changes.**

Table I-1: Schedule of Approved Subcontractors

Subcontractor	ABN/ ACN (if applicable)	Work / Services to be subcontracted and any significant Deliverables (including technical significance)	Prescribed Activity as referenced at 11.9.4(b)(iii) of the COC	Subcontract Value (\$A) (per annum)	Location of work to be performed (incl. postcode)	Comments / Exclusions
(a)	(b)	(c)	(d)	(e)	(f)	(g)
e.g. ABC Pty Ltd		Supply of support on communication systems	N/A	\$xxx	123 Soldier Ave, Bandiana	

**Notes on Table I-1:**

- (a) **Subcontractor name:** Name of the business entity performing the Subcontract. Include the registered business name and, if applicable, relevant trading name.
- (b) **ABN / ACN:** Australian Business Number, Australian Company Number, or other business registration number for the entity.
- (c) **Work to be subcontracted:** Description of the Services to be performed by the Subcontractor.
- (d) **Prescribed Activity:** Identify if Prescribed Activities will be required as part of the Services, and the nature of the applicable WHS risk.
- (e) **Subcontract value (\$A):** The total value of the Subcontract in Australian dollars for the Term (including GST), not including amounts for ad hoc (eg, S&Q) Services.
- (f) **Location of work to be performed:** The location (including the postcode) where the majority of the work for the activity will be performed
- (g) **Comments / Exclusions:** Comments expanding on the information in the previous columns, and / or to explain the reason for a Subcontractor that meets the criteria in clause 11.9.4 of the COC not being treated as an Approved Subcontractor, either for the purposes of the Contract as a whole or for the purposes of the application of specific provisions of the Contract, in accordance with clause 11.9.5 of the COC.

## PRODUCTS RESTRICTIONS SCHEDULE

**Note to drafters: Prior to RFT release drafters are to:**

- a. ensure that any licence restrictions applicable to TD in the Products that may affect a Tenderer's provision of the Services (not otherwise sufficiently addressed by the restrictions in clause 5.4 of the COC) are specified in this Attachment J; and
- b. determine if Commonwealth requirements (addressing the Capability's Life of Type requirements relating to licensing) mean additional licence restrictions are appropriate and specify those additional restrictions.

The examples contained in Attachment J are to be removed prior to RFT release and project specific information must be inserted where necessary. Further information on clause 5 of the draft COC and the TDSR Schedule can be found in the ASDEFCON TD / IP Commercial Handbook at:

- <http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Handbooks.aspx>.

**Note to tenderers: Attachment J identifies licence restrictions on the TD and Software rights granted under the Contract in respect of Products.**

## 1. SPECIFIC LICENCE RESTRICTIONS

- 1.1 Clause 5.4 of the COC sets out the terms of the licences granted by the Commonwealth to TD or Software provided as, or as a part of, Products.
- 1.2 Table J-1 sets out the specific licence restrictions that apply to TD or Software provided as, or as a part of, Products, in addition to the terms set out in clause 5.4 of the COC.

**Table J-1: LICENCE RESTRICTIONS APPLICABLE TO PRODUCTS**

Unique identifier	Reference Number	Licensor	Description of TD or Software	Identify the restriction or the licence that contains the restriction
a.	b.	c.	d.	e.
Example: J1	ABC #1276	EW Pty Ltd (Approved Subcontractor)	Electronic Warfare Software Source Code	The Contractor must not grant a sublicense of the TD to any of the following companies (or their Related Bodies Corporate): a. XYZ Pty Ltd; b. ...
Example: J2	G-B-2	XYZ Pty Ltd	Combat Management System	The Contractor must not, and must not grant a sublicense to, modify, develop or upgrade the Mission Planning Software without the prior written consent of the licensor, to be requested from the Commonwealth.
Example: J3	12345	Contractor	Mission Planning Software	N/A

**2. ADDITIONAL RESTRICTIONS**

2.1 Table J-2 sets out additional restrictions that apply to the TD or Software provided as, or as part of, the Products (for example, restrictions imposed by the Commonwealth, which are additional to restrictions contained in any licences set out above at section 1 of this Attachment J).

**Table J-2: ADDITIONAL RESTRICTIONS ON PRODUCTS**

Unique identifier	Reference Number	Description of TD or Software	Identify the restriction or the licence that contains the restriction
a.	b.	c.	d.

**3. EXPORT APPROVAL RESTRICTIONS**

3.1 Table J-3 sets out specific Export Approval restrictions that apply to the Contractor's provision of the Services in respect of each Product identified below.

**Table J-3: EXPORT APPROVALS**

Unique identifier	Reference Number	Country of Origin	Description of Product (i.e. item or component)	Restriction
a.	b.	c.	d.	e.

## AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

**Note to drafters:** This Attachment should be included if an AIC program will apply to any resultant Contract. Refer to COC clause 4 for more details on including an AIC program.

**If an AIC program is not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all the clauses below the heading.**

**Note to tenderers:** Attachment K will consist of an amalgamation of this Attachment, the successful tenderer's response to Annexes D and G (TDR D and TDR G) to Attachment A to the conditions of tender, and any negotiated changes.

## 1 AIC REQUIREMENTS

### 1.1 Australian Industry Capability Schedule

**Note to tenderers:** The AIC Schedule for any resultant contract will be based on the successful tenderer's response to Table G-1 of TDR G.

1.1.1 Table K-1 sets out the Australian Industry Capability Schedule.

#### Table K-1: Australian Industry Capability Schedule

(...INSERT the AIC Schedule table and notes...)

### 1.2 Australian Industry Activities Schedule

**Note to drafters:** Australian Industry Activities (AIAs) are activities performed by Australian Industry (including by the Contractor and Subcontractors in Australia or New Zealand) that are considered important to achieving contract outcomes that enable Defence Capabilities. AIAs may contribute to a Sovereign Industry Capability Priority (SICP) as defined in Defence's industry policies, or otherwise make a recognised contribution by Australian Industry in supporting Defence's Capabilities. An AIA may require particular skills, resources or work processes that are limited in availability and not easily replicated, and for which their loss may diminish Defence's ability to sustain capabilities from the local industry base. When applicable, drafters should identify relevant AIAs in Annex G to Attachment A to the conditions of tender.

**If an AIA Schedule is not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all the clauses below the heading.**

**Note to tenderers:** When Australian Industry Activities (AIAs) are applicable to any resultant contract, the AIA Schedule will be based on Table G-2 of TDR G.

1.2.1 Table K-2 sets out the Australian Industry Activities Schedule.

#### Table K-2: Australian Industry Activities Schedule

(...If applicable, INSERT the AIA table and notes...)