

ATTACHMENT A

STATEMENT OF WORK (CORE)

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

ATTACHMENT B

PRICE AND PAYMENTS (CORE)

Note to tenderers: Attachment B will consist of an amalgamation of information contained in TDR D, this draft Attachment, the successful tenderer's response, including the details tendered within the 'Acquisition Pricing Workbook' (ACQPW), and any negotiated adjustments. Further guidance on completing the ACQPW can be found in the ACQPW Guide and the [ACE Guide for ASDEFCON](#).

1. PRICING STRUCTURE

1.1 Attachment B has the following structure:

Clause		page
2	Price Schedule (CORE)	2
3	Schedule of Payments (CORE)	2
4	Adjustments (CORE)	3
5	Schedule of Specific Prices and Not-To-Exceed Prices (CORE)	5
6	Schedule of Rates (CORE)	5
7	Australian Contract Expenditure (CORE)	5
8	Schedule of Further Quantities and Optional Extras (OPTIONAL)	7
9	Cost Reimbursement (OPTIONAL)	7
10	Incentive Payments (OPTIONAL).....	7

Note to drafters: Some Annexes will include a file with the appropriate pricing table, such as a PDF copy of a spreadsheet from the 'Acquisition Pricing Workbook' (ACQPW). Update the following table for the Annexes to be included in the Contract. File names may be added when known, the examples below are based on the tabs in the workbook.

Annex	Title	File Names
A	Price Schedule (Core)	<i>Price Schedule</i>
B	Schedule of Payments (Core)	<i>Milestone Payment Schedule</i>
C	Adjustments (Core)	<i>Adjustments</i>
D	Schedule of Specific Prices and Not-To-Exceed Prices (Core)	<i>Specific Prices and Not-To-Exceed Prices</i>
E	Schedule of Rates (Core)	<i>Schedule 1: Labour Rates; and Schedule 2: Schedule of Margins</i>
F	Schedule of Further Quantities and Optional Extras (Optional)	<i>Further Quantities</i>

- 1.1.1 For clarity, Attachment B includes the Annexes listed in clause 1.1, including electronic files (eg, PDF files of tables / spreadsheets) that are controlled documents and managed as part of the Contract.
- 1.1.2 The obligations of the Commonwealth under this Attachment B are subject to the:
- Contractor making a claim for payment in accordance with clause 7.2 of the COC; and
 - other provisions of the Contract.
- 1.1.3 Except where expressly indicated to the contrary, the amounts set out in this Attachment B are inclusive of all costs and other payments associated with providing the Supplies (including achieving the Milestones) 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

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Government) taxes including GST, customs and other duties and charges and arranging customs clearance and services of representatives.

- 1.1.4 In the event of any inconsistency, the dates specified in the Delivery Schedule at Attachment C shall have precedence over any dates specified in this Attachment B.

Note to drafters: The ACQPW (in MS Excel®) provided as part of TDR D is designed to collect information suitable for the financial assessment of tendered responses, and population of the Annexes to this Attachment for the successful tender. If the project chooses to rename the ACQPW, for example to reflect the name of the project, drafters will need to amend references in the following clauses, and notes to tenderers, accordingly. Guidance should be included in this draft Attachment or TDR D, as appropriate, to assist tenderers when responding.

2 PRICE SCHEDULE (CORE)

2.1 Price Schedule

- 2.1.1 The Price Schedule details an indentured Contract Work Breakdown Structure (CWBS) of prices for the Contract.

Note to drafters: Prior to RFT release, drafters need to provide high-level CWBS details to enable tenderers to complete the 'Price Schedule' in the ACQPW. Refer to TDR D-2 for further details.

Note to tenderers: Annex A will consist of an amalgamation of the ACQPW 'Price Schedule' worksheet for the successful tenderer's response to TDR D-2, and any negotiated adjustments.

- 2.1.2 The Price Schedule is detailed in the file: (...INSERT the file name for the 'Price Schedule' tab from the workbook...), and forms Annex A to this Attachment.

3 SCHEDULE OF PAYMENTS (CORE)

3.1 Introduction

- 3.1.1 The Schedule of Payments describes the amounts payable by the Commonwealth to the Contractor for the achievement of Milestones (**INSERT THE FOLLOWING WHERE A MOBILISATION PAYMENT HAS BEEN AGREED, "and as a Mobilisation Payment"**) in accordance with the Contract.

3.2 Mobilisation Payment (RFT CORE)

Note to drafters: Drafters should insert a maximum percentage of the Contract Price against the Mobilisation Payment in TDR D-3.

- 3.2.1 The amount of the Mobilisation Payment is (**INSERT AMOUNT**).
- 3.2.2 The Commonwealth shall pay to the Contractor the Mobilisation Payment upon (**INSERT CRITERIA FOR MOBILISATION PAYMENT**).

3.3 Milestone Payment Schedule

- 3.3.1 The Milestone Payment Schedule sets out the Milestones and the Milestone Payments for the Contract.

Note to drafters: Prior to RFT release drafters need to populate the 'Milestone Payment Schedule' worksheet of the ACQPW. Refer to TDR D-3 for details.

Note to tenderers: Annex B will consist of an amalgamation of the ACQPW 'Milestone Payment Schedule' worksheet for the successful tenderer's response to TDR D-3, and any negotiated adjustments.

- 3.3.2 The Milestone Payment Schedule is detailed in the file: (...INSERT the file name for the "Milestone Payment Schedule" tab from the workbook...), and forms Annex B to this Attachment.
- 3.3.3 The Commonwealth shall, for achievement of a Milestone, pay to the Contractor the relevant Milestone Payment as specified in the 'Milestone Payment Schedule'.
- 3.3.4 The Contractor is taken to have achieved a Milestone only if all of the Milestone criteria set out in Attachment C have been satisfied.

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4 ADJUSTMENTS (CORE)

Note to tenderers: Clause 4, including Annex C, will consist of an amalgamation of the successful tenderer's response to TDR D-4, including the ACQPW 'Adjustments' worksheet, and any negotiated adjustments. Agreements reached as a result of workplace enterprise bargaining are not considered to be awards for the purposes of the formula set out below.

4.1 General

4.1.1 In this clause 4, the following interpretations apply:

- a. for the purposes of calculating adjustments, the Milestone Date is the date specified in Attachment C for the achievement of the relevant Milestone or such earlier date upon which the Milestone is achieved;
- b. references to a quarter are to a calendar quarter (January-March, April-June, July-September, and October-December);
- c. a reference to the quarter preceding the quarter containing a Milestone Date (or other event for which payment is applicable):
 - (i) is premised on the understanding that Contract costs are largely incurred in the prior quarter;
 - (ii) avoids the delay (eg, of several months) for indices to be published, and the subsequent calculation and payment of the price adjustment;
 - (iii) ensures that the Commonwealth does not pay an adjustment for a quarter in which limited or no work has been undertaken;
- d. if the due date of the previous Milestone and the due date of the current Milestone fall within the same quarter, then the index value for the preceding quarter shall be used;
- e. subject to paragraph g and h, references to an index value for a quarter are to the index number(s) published at any time in respect of that quarter;
- f. if a source of an index series publishes provisional and final index values, index values designated as provisional shall not be used;
- g. subject to paragraph f, if a quarterly index is published more than once, for the purposes of the formulae, the index value for that quarter shall be taken to be the first index value officially published in the quarter following that quarter; and
- h. 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, as set out in this clause 4.

4.2 Adjustment Process

4.2.1 For each currency identified in this Attachment B, the following price adjustment formula shall be applied in accordance with clause 7.3 of the conditions of contract:

$$PA = P * \left(X + \sum_{i=1}^q \left(Y_i * \frac{L_n}{L_0} \right) + \sum_{k=1}^r \left(Z_k * \frac{M_n}{M_0} \right) \right) - P$$

Where, for a particular source currency:

Ref	Description
PA	the price adjustment, for a price in the Price and Payment schedule.
P	the price in the Price and Payments schedule, as applicable at the Base Date.
X	if applicable, a fixed or non-variable component of the price (expressed as a decimal), in a particular currency.
Y _i	the component of the price (expressed as a decimal) that is attributed to a labour index series (L _i). A labour index series tracks price variations for a labour category in a particular currency.

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L_n	<p>Note to drafters: If Cost Reimbursement is not used, remove the subparagraph b below and/or if a Mobilisation Payment will not be considered for the Contract, remove subparagraph c below. In either case, amend the description as appropriate.</p> <p>the labour index value (number) for a specific labour index series (L_i), which (as required by clause 4.1.1b above) is published for the quarter preceding the quarter in which:</p> <ol style="list-style-type: none"> if related to a Milestone Payment, the Milestone was scheduled to occur; (OPTIONAL) if related to a Cost Reimbursement Payment, the due date by which the Cost Reimbursement Supplies were scheduled to be provided; or (OPTIONAL) if related to the Mobilisation Payment, the date on which the Mobilisation Payment is made by the Commonwealth.
L_o	the labour index value (number) for a specific labour index series (L_i) for the quarter preceding the quarter containing the Base Date.
Z_k	the component of the price (expressed as a decimal) that is attributed to a materials index series (M_k). A materials index series tracks price variations for a category of materials in a particular currency.
M_n	<p>Note to drafters: If Cost Reimbursement is not used, remove the subparagraph b below and/or if a Mobilisation Payment will not be considered for the Contract, remove subparagraph c below. In either case, amend the description as appropriate.</p> <p>the materials index value (number) for a materials index series (M_k), which (as required by clause 4.1.1b above) is published for the quarter preceding the quarter in which:</p> <ol style="list-style-type: none"> if related to a Milestone Payment, the Milestone was scheduled to occur; (OPTIONAL) if related to a Cost Reimbursement Payment, the due date by which the Cost Reimbursement Supplies were scheduled to be provided; or (OPTIONAL) if related to the Mobilisation Payment, the date on which the Mobilisation Payment is made by the Commonwealth.
M_o	the materials index value (number) for a materials index series (M_k), as published for the quarter preceding the quarter containing the Base Date.
i	is a number that identifies the labour component (Y_i) and the associated labour index series (L_i) in Annex C (eg, if $i=1$, $Y_i=Y_1$ and $L_i=L_1$).
q	is the number of labour indices in a price adjustment formula (eg, if $q=3$, there are three labour index series (L_i) with three related component weightings (Y_n) identified in Annex C).
k	is a number that identifies the materials component (Z_k) and the associated materials index series (M_k) in Annex C (eg, if $k=2$, $Z_k=Z_2$ and $M_k=M_2$).
r	is the number of materials indices in a price adjustment formula (eg, if $r=2$, there are two materials indices (M_k) with two related component weightings (Z_k) identified in Annex C).

and where, for each price adjustment, the sum of all components (weightings) attributed to fixed amount, labour and materials components, equals one, ie:

$$X + \sum_{i=1}^q Y_i + \sum_{k=1}^r Z_k = 1$$

4.3 Indices

- 4.3.1 The Australian and international indices for the labour and materials components of the prices for the Contract are detailed in the file: (...**INSERT the file name for the “Adjustments” tab from the workbook...**), and forms Annex C to this Attachment.

Note to tenderers:

Note 1: For labour costs incurred in Australia, the only input based (cost of labour) index acceptable to the Commonwealth is ABS catalogue ‘Wage Price Index’ Table 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.

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

5 SCHEDULE OF SPECIFIC PRICES AND NOT-TO-EXCEED PRICES (CORE)

Note to drafters: Prior to RFT release drafters need to populate the 'Specific Prices' worksheet of the ACQPW. Refer to TDR D-5 for details.

Note to tenderers: Annex D will consist of an amalgamation of the ACQPW 'Specific Prices' worksheet for the successful tenderer's response to TDR D-5, and any negotiated adjustments. Only those tendered specific prices that are relevant to any negotiated resultant Contract will transfer into the 'contract version' of the ACQPW and Annex D for that resultant Contract.

- 5.1.1 The Schedule of Specific Prices and Not-To-Exceed Prices is detailed in the file: (...INSERT the file name for the 'Specific Prices' tab from the workbook...), and forms Annex D to this Attachment.

Note: When the required range and quantities of Spares, S&TE, Training Equipment and Special-to-Type Packaging have been determined and agreed, the Approved recommended provisioning lists for these Support Resources will be added to Annex A to Attachment B to the COC, and the Contract Price and relevant Milestone Payments (including ACE percentages) will be adjusted accordingly, through a CCP. The prices for all Spares, Training Equipment, S&TE and Special-to-Type Packaging to be purchased by the Commonwealth is not expected to exceed the tendered NTE price for the respective category. Prices for other Support Resources, not subject to NTE prices, are included within the Contract Price.

6 SCHEDULE OF RATES (CORE)

Note to tenderers: Annex E will consist of an amalgamation of the ACQPW 'Schedule of Rates' and 'Labour Pricing' tabs for the successful tenderer's response to TDR D-6 and any negotiated adjustments.

6.1 Labour Rates and Margins

- 6.1.1 The Schedule of Labour Rates for the Contract is detailed in the file: (...INSERT the file name for the 'Labour Rates' tab from the workbook...), and forms Schedule 1 to Annex E to this Attachment.
- 6.1.2 The Schedule of Margins for the Contract is detailed in the file: (...INSERT the file name for the 'Schedule of Margins' tab from the workbook...), and forms Schedule 2 to Annex E to this Attachment.
- 6.1.3 The labour rates and margins that shall be applied by the Contractor (and Approved Subcontractors) in all CCPs under the Contract are detailed in the Schedule of Labour Rates and the Schedule of Margins.
- 6.1.4 Subject to clause 11.1.6 of the COC, the labour rates and margins that shall be applied by the Contractor (and Approved Subcontractors) for the cost of preparation of all CCPs under the Contract are detailed in the Schedule of Labour Rates and the Schedule of Margins.

7 AUSTRALIAN CONTRACT EXPENDITURE (CORE)

7.1 Australian Contract Expenditure Amounts

Note to tenderers: Tenderers are not required to submit a response for Table B-1 (below). However, the preferred tenderer will be required to determine the planned ACE and planned ICE (as cumulative values from ED), and a calculated ACE percentage, for each ACE Measurement Point, to be included in Table B-1 of any resultant Contract.

The calculated ACE percentages will usually represent the maximum values for the Prescribed ACE Percentages, to be included in Attachment F of any resultant Contract. After ED, the

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planned ACE and planned ICE should provide a basis for quantifying appropriate changes to the calculated ACE percentages and Prescribed ACE Percentages that result from CCPs.

The planned ACE and planned ICE will be expected to include (but not be limited to) the payments up until the applicable Milestone in the ACQPW (submitted as part of the preferred tenderer's response to TDR D-3).

7.1.1 Table B-1 identifies, for each ACE Measurement Point (column a), the planned Australian Contract Expenditure (ACE) (column b) and the planned Imported Contract Expenditure (ICE) (column c), on a cumulative basis (ie, from ED to each ACE Measurement Point) consistent with Annex A (Price Schedule) and Annex B (Milestone Payment Schedule) to this Attachment B.

7.1.2 Table B-1 also identifies a calculated ACE percentage (column d), for each ACE Measurement Point, determined in accordance with the following formula:

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

7.1.3 Prescribed ACE Percentages, included at Attachment F as AIC Obligations, shall be based on the corresponding calculated ACE percentages in Table B-1.

Note: The Prescribed ACE Percentage may be different to the calculated ACE percentage.

7.1.4 For each CCP prepared in accordance with clause 11.1 of the COC that affects the planned ACE and/or planned ICE values in Table B-1, the Contractor shall prepare, as part of the CCP, changes to Table B-1 and, when applicable, changes to the Prescribed ACE Percentages under clause 4 of Attachment F.

Note to drafters: Enter the ACE Measurement Points into Table B-1. These should match the ACE Measurement Points in draft Attachment F.

Table B-1: ACE Measurement Points and calculated ACE percentages

ACE Measurement Point (in accordance with Attachment F) (a)	Planned ACE (\$) (b)	Planned ICE (\$) (c)	Calculated ACE% (d)
			()%
			()%
			()%
			()%

7.2 Alternate and Additional Deeming Rates (RFT Core)

Note to drafters: Table B-2 may be pre-populated by the drafter with alternative and/or additional deeming rates, prior to tendering, when the Commonwealth considers that deeming rates other than those listed in the ACE Measurement Rules should be applied to the proposed Contract.

Note to tenderers: 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-11, and any negotiated adjustments.

7.2.1 Table B-2 below specifies alternate or additional Subcontract categories, thresholds and deemed ACE and ICE percentages for the purposes of the application of this 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 %...)

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- 7.2.2 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 as follows:

Table B-3: Approved Alternate Deeming Rates for Indirect Costs

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

- 7.2.3 Upon notification by Defence's Commercial and Financial Analysis Directorate, Financial Investigation Service (FIS), that FIS has confirmed different alternate or additional deeming rates for the Contractor or a Subcontractor, the Contractor shall, within 20 Working Days, submit a CCP in accordance with clause 11.1 of the COC, to update Table B-2 or B-3 (as appropriate) to incorporate the new alternate or additional deeming rates.

8 SCHEDULE OF FURTHER QUANTITIES AND OPTIONAL EXTRAS (OPTIONAL)

Note to drafters: Prior to release of the RFT, drafters are to identify the potential further quantities and optional extras that may be included in any resultant Contract (noting that other options may be proposed by tenders). Drafters should refer to the 'Further Quantities' worksheet of the ACQPW and, where known insert:

- a brief description of the additional quantities of Supplies and/or optional extras that the Commonwealth may require;
- the quantity required; and
- the proposed delivery points (to be included in the comments column).

Drafters should define an appropriate scope for the addition or option; for example, by requesting an additional 'Mission System' and a 'Support Resource package per additional Mission System'.

Note to tenderers: Annex F will consist of an amalgamation of the ACQPW 'Further Quantities' worksheet for the successful tenderer's response to TDR D-12, and any negotiated adjustments.

8.1 Further Quantities and Optional Extras

- 8.1.1 The Schedule of Further Quantities and Optional Extras for the Contract is detailed in the file: (...INSERT the file name for the 'Further Quantities' tab from the workbook...), and forms Annex F to this Attachment.

9 COST REIMBURSEMENT (OPTIONAL)

Note to Drafters: Cost Reimbursement Payments, allowing part of a contract to be paid on a reimbursement basis, are generally only considered by Defence for activities that are difficult to scope and for the tenderers to price (such as high-risk design and development). Accordingly, this payment method is an option within the ASDEFCON (Strategic Materiel) template. If such a payment method is being considered for the draft Contract, and the appropriate template is being used, drafters should refer to the ASDEFCON (Strategic Materiel) template (Attachment B clauses 4 and 9, Annex D to Attachment A to the COT, and related clauses of the draft COC) for applicable clauses.

10 INCENTIVE PAYMENTS (OPTIONAL)

Note to drafters: The Commonwealth's preferred assessment periods, key performance indicators and weightings (if any) need to be included below, before release of the RFT.

Note to tenderers: This clause will consist of an amalgamation of the incentive payment aspects in TDR D-12, the successful tenderer's response and any negotiated adjustments.

10.1 (... To be determined ...)

- 10.1.1 (... INSERT DETAILS OF INCENTIVE PAYMENTS, IF APPLICABLE ...).

ATTACHMENT C

DELIVERY SCHEDULE (CORE)

Note to tenderers: Attachment C will consist of an amalgamation of TDR D-3, this draft attachment, the successful tenderer's response and any negotiated changes.

1. MILESTONE SCHEDULE AND DELIVERY SCHEDULE (SUPPLIES)

- 1.1 The Contractor shall comply with the dates and locations identified in the Delivery Schedule - Table C-1 (Milestone Schedule) and Table C-2 (Delivery Schedule (Supplies)).
- 1.2 Table C-1 and Table C-2 also:
 - a. identify those Milestones that are Stop Payment Milestones;
 - b. set out those Supplies in relation to which ownership will pass to the Commonwealth in accordance with clause 6.8.1b(i) of the COC (where applicable); and
 - c. identify those Supplies which will or will not be subject to Acceptance for the purposes of clause 6.8 of the COC, including (where applicable) any applicable Supplies that form part of a Milestone in Table C-1.
- 1.3 The Milestone Criteria (entry and exit) applying to Table C-1 are defined in clause 2 and Table C-3. In the event of an inconsistency, the delivery dates specified in this schedule have precedence over dates specified elsewhere in the Contract.

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Note to drafters: Ensure that prior to issuing the Request for Tender (RFT):

- a. the list of Milestones and associated entry or exit criteria in the following table are updated to align with the specific requirements of the Contract, particularly the SOW; and
- b. the Milestones that the Commonwealth wishes to have treated as Stop Payment Milestones are identified in the table.

The identification of Stop Payment Milestones should be undertaken in conjunction with the identification of Milestones against which Liquidated Damages would apply in Attachment D. Commercial advice should be sought to ensure that a commercially sound payment and remedies regime is identified.

Also, drafters are to ensure that prior to the Effective Date:

- a. delivery details for all of the Supplies (particularly Support System elements such as progressive and discrete quantities of Spares, S&TE, computers, Facilities, and other resources and Supplies associated with Australian Industry Activities) are clearly specified so as to effectively accommodate Acceptance activities. Some Supplies will readily be cross-referenced and managed in accordance with Milestones under Table C-1 (including any applicable Supplies that form all or part of a Milestone) whereas other Supplies may not, and need to have delivery details clearly specified in accordance with Table C-2; and
- b. for each Milestone in Table C-1, corresponding entry and exit criteria are included in Table C-3.

If either Earned Value Management (EVM) or Defence-Required Australian Industry Capabilities (DRAICs) are included in the draft SOW, drafters should refer to the draft Attachment C in ASDEFCON (Strategic Materiel) for additional Milestones and associated entry or exit criteria for inclusion in the following tables.

Table C-1: Milestone Schedule

ID	Milestone	Milestone Date (in months)	Stop Payment (Y or N)	Description of Applicable Supplies	Delivery Location	Acceptance Required (Y or N)	Will Ownership Transfer to the Commonwealth (Y or N)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
	ED	0 – complete					
	SRR						
	SDR						
	PDR						
	DDR						
	PPR						
	TRR #1						

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ID	Milestone	Milestone Date (in months)	Stop Payment (Y or N)	Description of Applicable Supplies	Delivery Location	Acceptance Required (Y or N)	Will Ownership Transfer to the Commonwealth (Y or N)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
	TRR #2						
	TRR #n						
	Subsystem FAT #1						
	Subsystem FAT #2						
	Subsystem FAT #n						
	System FAT						
	TNGRR						
	FACRR						
	SAT #1						
	SAT #2						
	SAT #n						
	Acceptance #1						
	Acceptance #2						
	Acceptance #n						
	Mission System #1 FCA						
	Mission System #1 PCA						
	Mission System #1 SAA						
	Mission System #1 Acceptance						
	Mission System #n Acceptance						
	[...]						
	FA						

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Notes on Table C-1:

- a. **ID:** A unique line item number.
- b. **Milestone:** Milestone name or abbreviation. If linked to a Contract (Support) event, include the Concurrent Contract Milestone number (eg, CCM #1).
- c. **Milestone Date:** The date for achievement of the Milestone, for example, at the conclusion of the final meeting for a Mandated System Review that spans several days. The Milestone Date is scheduled relative to the Effective Date or another major Milestone.
- d. **Stop Payment:** Is this Milestone a Stop Payment Milestone in accordance with clause 7.8 of the COC?
- e. **Description of Applicable Supplies:** Identify / list the Supplies that are to be delivered and/or Accepted as part of the applicable Milestone.
- f. **Delivery Location:** Location(s) for the Milestone activity and the delivery of associated Supplies, where applicable.
- g. **Acceptance Required:** Identify whether or not the Applicable Supplies in column e will be subject to Acceptance – yes or no (Y or N).
- h. **Ownership Transfer:** Supplies Accepted at this Milestone will be transferred into Commonwealth ownership in accordance with clause 6.11.1a of the COC – yes or no (Y or N).

Note to drafters: Prior to contract signature, drafters are to update Table C-2 including appropriate cross-referencing to applicable Milestones.

Table C-2: Delivery Schedule (Supplies)

Other Supplies	Delivery Date (in months)	Delivery Location	Acceptance Required (Y or N)	Will Ownership Transfer to the Commonwealth (Y or N)
(a)	(b)	(c)	(d)	(e)
[INSERT DETAILS REGARDING ITEMS OF SUPPLIES]	[INSERT DETAILS REGARDING ITEMS OF SUPPLIES]	[INSERT DETAILS REGARDING ITEMS OF SUPPLIES]		
[INSERT DETAILS REGARDING ITEMS OF SUPPLIES]	[CROSS-REFERENCE TO MILESTONE WHERE RELEVANT]	[CROSS-REFERENCE TO MILESTONE WHERE RELEVANT]		
[INSERT DETAILS REGARDING ITEMS OF SUPPLIES]	[CROSS-REFERENCE TO KEY PROJECT PLAN WHERE RELEVANT]	[CROSS-REFERENCE TO KEY PROJECT PLAN WHERE RELEVANT]		
[SPARES]	In accordance with Approved RSPL	In accordance with Approved RSPL		

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Other Supplies	Delivery Date (in months)	Delivery Location	Acceptance Required (Y or N)	Will Ownership Transfer to the Commonwealth (Y or N)
(a)	(b)	(c)	(d)	(e)
[PACKAGING]	In accordance with Approved PACKPL	In accordance with Approved PACKPL		
[TECHNICAL DATA]	In accordance with Approved SSTDL	In accordance with Approved SSTDL		
[TRAINING EQUIPMENT]	In accordance with Approved TEL	In accordance with Approved TEL		
[TRAINING MATERIALS]	In accordance with Approved TML	In accordance with Approved TML		
[S&TE]	In accordance with Approved S&TEPL	In accordance with Approved S&TEPL		
[FACILITIES]	[CROSS-REFERENCE TO MILESTONE]	[CROSS-REFERENCE TO MILESTONE]		
Data items specified in the SOW	In accordance with the CDRL	In accordance with the CDRL		

Notes on Table C-2:

- a. **Other Supplies:** A brief description or title that identifies the other Supplies.
- b. **Delivery Date:** Scheduled date(s) for the delivery of the other Supplies, in months after the Effective Date or applicable Milestone. Where applicable, refer to the location in the Contract or the applicable Approved data item where this information can be found.
- c. **Delivery Location:** Location(s) for the delivery of the other Supplies. Where applicable, refer to the location in the Contract or the applicable Approved data item where this information can be found.
- d. **Acceptance Required:** Identify whether or not the other Supplies are subject to Acceptance – yes or no (Y or N).
- e. **Ownership Transfer:** Supplies Accepted will be transferred into Commonwealth ownership in accordance with clause 6.11.1a of the COC – yes or no (Y or N).

ATTACHMENT C

2. SCHEDULE OF MILESTONE CRITERIA – ENTRY AND EXIT

Note to drafters: The Schedule of Milestone Criteria – Entry and Exit should be tailored to suit project-specific needs. The schedule is to accurately define the scope of the relevant Milestone, noting that, when a Milestone Payment is attached to a particular Milestone, the exit criteria are used to determine whether or not payment can actually be made. Milestone Payments should not be listed here but be listed in the Schedule of Payments at Annex B to Attachment B. By way of example, entry and exit criteria are provided below. For instance, the exit criteria for the ED Milestone might be further tailored to include the following project-specific subordinate criteria:

- a. lodgement of requisite securities by the Contractor;
- b. Acceptance or Approval (as relevant) of all data items scheduled in the CDRL for delivery and Commonwealth action (ie, Acceptance or Approval) at ED; and
- c. finalisation of Contractor insurance details.

Note to tenderers: Table C-3 will consist of an amalgamation of the information contained in TDR D-3, this draft annex, the successful tenderer's response, and any negotiated adjustments.

- 2.1 Table C-3 sets out the Milestone criteria – entry and exit that will be used by the Commonwealth to validate whether:
- a. the Contractor may formally commence, and legitimately make claims in relation to, achievement of work on elements comprising a given Milestone; and
 - b. a given Milestone has been achieved.

Table C-3: Schedule of Milestone Criteria – Entry and Exit

MILESTONE	MILESTONE CRITERIA	
	ENTRY CRITERIA	EXIT CRITERIA
(a)	(b)	(c)
Effective Date (ED)		<ul style="list-style-type: none"> Contract signature Delivery to the Commonwealth of securities and deeds, in accordance with clauses 7.4, 7.5 and 7.7 of the COC CCP approval / Acceptance / Approval (as applicable) of all CDRL items scheduled for delivery prior to or at ED (for CDRL items subject to CCP approval, Acceptance or Approval)

ATTACHMENT C

MILESTONE	MILESTONE CRITERIA	
	ENTRY CRITERIA	EXIT CRITERIA
(a)	(b)	(c)
System Requirements Review (SRR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at SRR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at SRR (for data items subject to Review)
System Definition Review (SDR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at SDR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at SDR (for data items subject to Review)
Preliminary Design Review (PDR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at PDR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at PDR (for data items subject to Review)
Detailed Design Review (DDR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met Proposed updates to the Technical Data and Software Rights (TDSR) Schedule received 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at DDR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at DDR (for data items subject to Review)
Provisioning Preparedness Review (PPR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at PPR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at PPR (for data items subject to Review)
Test Readiness Review (TRR) # 1 - #n	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at TRR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at TRR (for data items subject to Review)

ATTACHMENT C

MILESTONE	MILESTONE CRITERIA	
	ENTRY CRITERIA	EXIT CRITERIA
(a)	(b)	(c)
Subsystem Factory Acceptance Test (FAT) #1 - #n	<ul style="list-style-type: none"> Exit criteria for TRR met for the Subsystem FAT 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at Subsystem FAT, including any associated objective evidence, reports and minutes for the Subsystem FAT (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at Subsystem FAT, including any associated objective evidence, reports and minutes for the Subsystem FAT (for data items subject to Review)
System Factory Acceptance Test (SFAT) #1 - #n	<ul style="list-style-type: none"> Exit criteria for TRR met for the SFAT 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at SFAT, including any associated objective evidence, reports and minutes for the SFAT (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at SFAT, including any associated objective evidence, reports and minutes for the SFAT (for data items subject to Review)
Training Readiness Review (TNGRR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at TNGRR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at TNGRR (for data items subject to Review)
Facilities Readiness Review (FACRR)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at FACRR (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at FACRR (for data items subject to Review)
System Acceptance Test (SAT) #1 - #n	<ul style="list-style-type: none"> Exit criteria for TRR met for the SAT 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at SAT, including any associated reports objective evidence, and minutes for the SAT (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at SAT, including any associated objective evidence, reports and minutes for the SAT (for data items subject to Review)

ATTACHMENT C

MILESTONE	MILESTONE CRITERIA	
	ENTRY CRITERIA	EXIT CRITERIA
(a)	(b)	(c)
Acceptance #1 - #n (for Supplies subject to Acceptance, other than the Mission System or Support System)	<ul style="list-style-type: none"> Delivery to the Commonwealth of the Supplies Acceptance Certificate and other supporting evidence (as required) for the Supplies being offered for Acceptance in accordance with clause 6.5 of the COC Approval of all Applications for a Deviation applicable to the Supplies being offered for Acceptance 	<ul style="list-style-type: none"> Approval of the Supplies Acceptance Certificate for the Supplies being offered for Acceptance
Mission System Acceptance #1 - #n	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan(s) and the Contract for SAA met Delivery to the Commonwealth of the Supplies Acceptance Certificate and other supporting evidence (as required) for the Mission System(s) being offered for Acceptance in accordance with clause 6.5 of the COC Approval of all Applications for a Deviation applicable to the Mission System(s) being offered for Acceptance 	<ul style="list-style-type: none"> Approval of the Supplies Acceptance Certificate for the Mission System(s) being offered for Acceptance
Functional Configuration Audit (FCA)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at FCA (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at FCA (for data items subject to Review)
Physical Configuration Audit (PCA)	<ul style="list-style-type: none"> Entry criteria in the Approved governing plan and the Contract met 	<ul style="list-style-type: none"> Exit criteria in the Approved governing plan and the Contract met Acceptance/Approval (as applicable) of all data items scheduled for delivery prior to or at PCA (for data items subject to Acceptance or Approval) Delivery of all data items scheduled for delivery prior to or at PCA (for data items subject to Review)
Final Acceptance (FA)		<ul style="list-style-type: none"> The Commonwealth Representative has certified the Final Acceptance Certificate in accordance with clause 6.6 of the COC.

ATTACHMENT D

LIQUIDATED DAMAGES (CORE)

Note to drafters: The LD Amounts in clause 1.1 are to exclude GST.

Note to tenderers: Attachment D will consist of an amalgamation of this attachment, the successful tenderer's response and any negotiated adjustments.

1. FOR FAILURE TO ACHIEVE DELIVERY (CORE)

Note to drafters: Drafters are to include here:

- a. the relevant Milestones to which liquidated damages are to be applied;**
- b. the rate of liquidated damages and/or the formulae for its calculation (not including any adjustments as per clause 2.1 below); and**
- c. any other specific conditions which are to apply in addition to the formula for variation of LD Amounts set out below.**

- 1.1 For each Milestone listed in an item below, the LD Amount applicable to that Milestone is the amount set out in the corresponding column for that item.

Item	Milestone	LD Amount
(a)	(b)	(c)
1		
2		

- 1.2 The LD Amounts are GST exclusive.

2. ADJUSTMENT TO LIQUIDATED DAMAGES (CORE)

- 2.1 The LD Amounts in clause 1.1 shall be subject to adjustment in accordance with the following formula:

$$A = LD \times \frac{CPI_i}{CPI_o} - LD$$

where:

- A = adjustment;
- LD = value of the relevant LD Amount at the Base Date;
- CPI_i = the CPI number for the quarter ending immediately before the date on which the LD Amounts are paid to the Commonwealth; and
- CPI_o = the CPI number for the quarter containing the Base Date.

- 2.2 In this Attachment D, 'CPI' means the Consumer Price Index, All Groups, weighted average of eight capital cities published by the Australian Bureau of Statistics (ABS), or if that Index is no longer published by the ABS, the index published by the ABS in substitution for that Index.

- 2.3 To avoid doubt, if the Commonwealth elects to accept compensation in lieu of liquidated damages under clause 10.6 of the COC (as the case may be), the value of the compensation to which the Commonwealth shall be entitled is equivalent to the LD Amount that would otherwise be payable to the Commonwealth in respect of the relevant Milestone, as varied by the formulae set out in clause 2.1.

OFFICIAL
ATTACHMENT E

**GOVERNMENT FURNISHED MATERIAL AND GOVERNMENT FURNISHED SERVICES (RFT
CORE)**

Note to Drafters: This Attachment E consists of the following annexes:

- a. Government Furnished Material (GFM); and***
- b. Government Furnished Services (GFS).***

ANNEX A TO ATTACHMENT E

GOVERNMENT FURNISHED MATERIAL (OPTIONAL)

Note to drafters: Drafters should provide details of any Commonwealth Mandated GFM and non-mandated GFM prior to release of the RFT.

If, in addition to the licence terms provided under of clause 5.5.2 of the draft COC, further restrictions apply to:

- c. the use of Technical Data and Software within the GFM, due to restrictions or limitations on the relevant Intellectual Property rights - these are to be identified in column (f); and***
- d. 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 Technical Data & Intellectual Property Commercial Handbook at:

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/A0841422-C25A-4D54-9020-87FC33242AED>.***

GFE provided to the Contractor should 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 should be provided as additional GFI or GFD (as applicable).

Note to tenderers: Attachment E will consist of an amalgamation of this attachment, the successful tenderer's response to TDR E-10, and any negotiated adjustments.

Non-mandated GFM will include GFM proposed by the Commonwealth and included in the RFT and GFM proposed by the Contractor and included in TDR E-10, as negotiated between the Commonwealth and the successful tenderer.

1. GOVERNMENT FURNISHED MATERIAL

1.1 Table E-1 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 production of, or to incorporate into, the Supplies in accordance with the Contract; and
- b. non-Mandated GFM (Government Furnished Information (GFI) and all other GFM that is not Commonwealth Mandated GFM).

ANNEX A TO ATTACHMENT E

Table E-A-1: Government Furnished Material

Item Description	Reference/Part Number	Qty	Delivery Date and Location	Return Date and Location	Time Period for Inspection	Technical Data and Software Restrictions (if applicable)	Contractor to Own New IP in GFM (Yes/No)	Export Approval Restrictions (if applicable)	Comments/Intended Purpose
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Commonwealth Mandated GFM - GFE									
Commonwealth Mandated GFM - GFD									
Non-mandated GFM - GFI									
All other non-mandated GFM									

Notes: Table E-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 by the Commonwealth.

ANNEX A TO ATTACHMENT E

- d. **Delivery Date and Location:** The date on and location at which the item of GFM is to be delivered 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 3.12.1 of the SOW.
- g. **Technical Data and Software Restrictions:** Any restrictions on the Technical Data or Software within an item of GFM that is in addition to the licence terms granted by the Commonwealth under clause 5.6 of the COC (if applicable).
- h. **Contractor to Own New IP in GFM:** A declaration of whether or not the IP created under the Contract or a Subcontract with respect to the item of GFM is to be owned by the Contractor pursuant to clause 5.1.4 of the COC.
- i. **Export Approval Restrictions:** Any restrictions derived from Export Approvals to which an item of GFM is subject to (if applicable).
- j. **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 (i).

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 E-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)
EXAMPLE ONLY: E-R-1	Combat Management System	Electronic Warfare Software Source Code	EW Pty Ltd	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.

ANNEX B TO ATTACHMENT E

GOVERNMENT FURNISHED SERVICES

Note to drafters: Provide details of any Commonwealth GFS prior to release of the RFT.

If access to the Defence information systems is to be provided, refer to the Defence ERP System website for release dates:

- <https://www.defence.gov.au/business-industry/industry-capability-programs/enterprise-resource-planning-program>

Note to tenderers: Annex B will consist of an amalgamation of TDR E-10, this draft Annex and the successful tenderer's response.

2. GOVERNMENT FURNISHED SERVICES

2.1 Table E-B-1 and Table E-B-2 set out the Government Furnished Services (GFS) provided by the Commonwealth to the Contractor under the Contract, divided into:

- Commonwealth Mandated GFS that the Contractor is required to use for the production of the Supplies in accordance with the Contract and, where specified, only for the intended purpose; and
- non-Mandated GFS.

Table E-B-1: Commonwealth Mandated GFS

Commonwealth Mandated GFS Item	Date(s) of Delivery of GFS and Period Required	Comments / Conditions of Access / Intended Purpose
DPN Sponsorship, Provisioning & Access	From ED through until FA	To enable access to mandated Defence information systems and electronically-available Referenced Documents, GFI, GFD and eForms (eg, AE527), which are available through the DPN.
Mandated Defence Information System Access	From ED through until FA	To enable the Contractor to undertake SOW requirements, which require use of Mandated Defence Information Systems.
Mandated Defence Information System Training	As required in accordance with the SOW.	To enable the Contractor to undertake SOW requirements, which require use of Mandated Defence Information Systems.

Note to tenderers: Non-mandated GFS will include GFS proposed by the Commonwealth and included in the RFT and GFS proposed by the Contractor and included in TDR E-10, as negotiated between the Commonwealth and the successful tenderer.

Table E-B-2: Non-Mandated GFS

Non-Mandated GFS Item	Dates of Delivery of GFS	Comments / Conditions of Access / Intended Purpose

ATTACHMENT F

AUSTRALIAN INDUSTRY CAPABILITY (CORE)

Note to drafters: Where the expected value of the Contract will not exceed \$20 million, drafters may use the AIC provisions from ASDEFCON (Complex Materiel) Volume 1 in lieu of the below clauses.

Note to tenderers: Attachment F will consist of an amalgamation of information contained in this draft attachment, the successful tenderer's response to TDRs G, and any negotiated adjustments including, if applicable, additional Australian Industry Activities (AIAs). AIAs are a contractual mechanism to implement specific Industrial Capabilities, such as activities that contribute to Sovereign Defence Industrial Priorities (SDIPs) identified in the Defence Industry Development Strategy (DIDS)). The Australian Industry Capability Guide for ASDEFCON provides further explanation of AIAs.

1.1 Purpose

Note to drafters: Amend the following clauses to suit the scope of this Attachment.

- 1.1.1 This Attachment sets out the following Australian Industry Capability (AIC) Obligations:
- a. the Australian Industry Activities (AIAs) that are to be performed, which include:
 - (i) the Industrial Capabilities to be established within Australian Entities, in whole or in part, under the Contract; and
 - (ii) other elements of the work to be performed by Australian Industry and/or the Supplies that are to be provided by Australian Industry (as applicable); and
 - b. the Australian Contract Expenditure (ACE) Measurement Points and the Prescribed ACE Percentage to be achieved at each of the ACE Measurement Points.
- 1.1.2 The Sovereign Defence Industrial Priorities (SDIPs) and associated Detailed SDIPs applicable to the Contract are (in no particular order):
- a. [...INSERT NAME OF AN APPLICABLE SDIP...], for which the following Detailed SDIPs are applicable:
 - (i) [...IDENTIFY APPLICABLE DETAILED SDIP...]; and
 - (ii) [...IDENTIFY APPLICABLE DETAILED SDIP...]; and
 - b. [...INSERT ANY ADDITIONAL SDIP AND ASSOCIATED DETAILED SDIPS...].
 - (i) ; and
 - b. . [...INSERT ANY ADDITIONAL SDIP AND ASSOCIATED DETAILED SDIPS...].

2 DEFENCE-REQUIRED AUSTRALIAN INDUSTRIAL CAPABILITIES (OPTIONAL)

Note to drafters: Within a contract, DRAICs specify requirements relating to Sovereign Defence Industrial Priorities (SDIPs) (including Detailed SDIPs) and/or other initiatives to create, enhance or maintain key Industrial Capabilities that enable ADF Capability. DRAICs are also subject to Verification and Acceptance. If DRAICs are to be included in the draft Contract, drafters should incorporate the applicable clauses here from Attachment F of the ASDEFCON (Strategic Materiel) template. Additionally, tender data requirements will need to be added to Annex G to Attachment A to the COT, and DRAIC planning and management requirements will be required in the SOW. If including DRAICs, it is important that all related aspects are included in the draft Contract. Refer to the AIC Guide for ASDEFCON for further information.

2.1 Not Used

3 REQUIRED ACTIVITIES TO BE PERFORMED BY AUSTRALIAN INDUSTRY (RFT CORE)

Note to drafters: The intent of this clause is to set out activities, which are either linked to SICP/CIC requirements or to particular Industrial Capabilities of interest to Defence, including in relation to Sovereignty, to ensure that the Contract includes the obligations for this work to be

ATTACHMENT F

undertaken by Australian Industry. An example may be that the Contractor must ensure that the design of the Mission System or a key part of the Mission System is undertaken in Australia by Australian Industry. Another example may be that the Contractor must undertake all procurement in Australia to ensure that supply chains are Australian-based and/or maximise the opportunities for Australian Industry to be part of the Contractor's supply chain to enhance Sovereignty.

The following clauses should not be used when the Commonwealth needs to specify complex Industrial Capabilities in detail, which would then be subject to Verification and Acceptance (under the proposed Contract or a subsequent Contract (Support)) to confirm that the required Industrial Capabilities have been created or enhanced. AIAs such as these should be addressed by including them as DRAICs under the preceding clause.

If the Commonwealth does not need to specify any required activities be performed by Australian Industry, clauses 3.2 and 3.3 may be retained in draft form in order to include any suitable AIAs proposed by the successful tenderer (refer to TDR G-1.1). Drafters should also review the notes to tenderers for the needs of the draft Contract and, if applicable, identify any SICPs/CICs that the Commonwealth would expect tenderers to address in response to TDR G-1.1. In such cases, the note to tenderers in clause 3.2 may be relocated below the heading of clause 3.2.

3.1 Planning and Implementation

- 3.1.1 The Contractor shall further define, plan and implement the required activities to be performed by Australian Industry described under this clause 3, in accordance with the Contract.

3.2 Required Activities

Note to drafters: Amend the following clause (and repeat the clause as necessary) to define AIAs that are required activities to be performed by Australian Industry as a contractual obligation (but which are not DRAICs). Each description should define 'what' activities are required to be performed; the Contractor will define 'how' they are implemented in the AIC Plan.

Notwithstanding, the required activities must have sufficient detail so that the outcomes being sought by the Commonwealth are clear, and that the activities can be properly scoped by tenderers for resources and pricing purposes. Requirements should be written in outcome terms and should be verifiable by simple measurement or observation / audit, to enable confirmation that the activities are being performed, once the Contract is underway.

DO NOT include 'objectives' or generic requirements in these clauses (eg, to 'maximise participation') as these are unworkable as Essential AIC Obligations (refer COC clause 4.2).

Required activities may include specific arrangements for collaborative security partnerships, export programs, and/or enduring strategic partnerships with tier 2 suppliers, when required by the Project Execution Strategy (PES).

- 3.2.1 The Contractor shall ensure that the following activities for [...INSERT TITLE OF FIRST REQUIRED ACTIVITY...] are undertaken by Australian Industry:
- a. [...INSERT DETAILS OF FIRST REQUIRED ACTIVITY TO ENSURE THAT OUTCOMES AND SCOPE ARE CLEAR, INCLUDING CROSS-REFERENCING TO ANY APPLICABLE SICPs/CICs...]; and
 - b. [...INSERT ADDITIONAL DETAILS UNTIL THE REQUIRED ACTIVITY IS FULLY DESCRIBED...].

Note to drafters: Retain the following clause for the purposes of the RFT. It may be updated during negotiations to capture any AIAs proposed by the preferred tenderer that are of value to Defence.

Note to tenderers: Where the preferred tenderer's AIC response (to TDR G) identifies activities (as 'Opportunities to Enhance AIC') that are considered beneficial to be identified as AIAs, these

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may be incorporated during negotiations into this clause 3.2, using the following clause (repeated as necessary).

- 3.2.2 The Contractor shall ensure that the following activities for (...INSERT TITLE OF REQUIRED ACTIVITY...) are undertaken by Australian Industry:
- (...INSERT DETAILS OF FIRST REQUIRED ACTIVITY TO ENSURE THAT OUTCOMES AND SCOPE ARE CLEAR, INCLUDING CROSS-REFERENCING TO ANY APPLICABLE SICPs/CICs...); and
 - (...INSERT ADDITIONAL DETAILS UNTIL THE REQUIRED ACTIVITY IS FULLY DESCRIBED...).

3.3 Other Requirements for Australian Industry

Note to drafters: The intent of this clause is to capture any other elements of the draft Contract that are to be undertaken by Australian Industry, but which do not have the complexity that would require them to be classified as a DRAIC or a required activity under clause 3.2. If applicable, these other requirements are to be listed under clause 3.3.1 (otherwise, clause 3.3.1 may be retained pending tender responses). Drafters should consider the following aspects when amending this clause for the RFT:

a. These elements are likely to be provided by lower-tier Subcontractors / suppliers, particularly Small-to-Medium Enterprises (SMEs).

b. These 'other requirements' could be mandated by Government or offered by a preferred tenderer. Examples include the use of Australian steel for construction, use of an Australian-developed product, or use of specialised services (eg, for cyber security).

Other requirements may be based on the preferred tender, to capture elements of the offer that the Commonwealth wants to include as an easily specified AIC Obligation.

c. Unless specific direction applies, this clause is to facilitate market competition to the extent practicable (consistent with Commonwealth Procurement Rules, whether or not the rules in Division 2 apply). Drafters should not refer to specific products or Subcontractors in the RFT but instead use generic terms (eg, use 'Australian steel' as opposed to 'BlueScope steel'). Drafters should not include any Commonwealth Mandated Government Furnished Material (GFM) in this clause.

DO NOT include 'objectives' or generic requirements in these clauses (eg, to 'maximise participation') as these are unworkable as Essential AIC Obligations (refer COC clause 4.2).

These requirements must be specific, have a clearly defined scope, and able to be objectively verified under any resultant Contract.

Note to tenderers: The Commonwealth expects that the tenderer's AIC response (ie, to TDR G) identifies additional procurements / activities that may be incorporated into this clause 3.3, using the following clause (repeated as necessary) to capture the tenderer's proposal(s).

- 3.3.1 In addition to the requirements of clause 3.2, the Contractor shall ensure that the following other requirements are also performed by Australian Industry:
- [...INSERT DETAILS OF FIRST OTHER REQUIREMENT TO BE PERFORMED BY AUSTRALIAN INDUSTRY...]; and
 - [...INSERT ADDITIONAL DETAILS UNTIL ALL OTHER REQUIREMENTS TO BE PERFORMED BY AUSTRALIAN INDUSTRY ARE IDENTIFIED...].

4 ACE MEASUREMENT

4.1 ACE Measurement Points and Prescribed ACE Percentages.

Note to drafters: ACE Measurement Points in Table F-1 should match those in clause 7 of draft Attachment B. . If the proposed Contract will be high value and is likely to exceed 10 years in

ATTACHMENT F

duration, then Prescribed ACE Percentages may be requested as part of the tender, in which case, refer to the AIC Guide for ASDEFCON for an alternative note to tenderers.

Note to tenderers: Tenderers are not required to propose Prescribed ACE Percentages in their tender (other than in respect of the final ACE Measurement Point). The preferred tenderer(s) during ODIA / contract negotiations will need to calculate ACE Percentages for Table B-1 of draft Attachment B and propose Prescribed ACE Percentages derived from these calculated ACE Percentages for inclusion in Table F-1 (below), noting they may not necessarily be the same. Subject to negotiations, the final Prescribed ACE Percentage in Table F-1 will be the overall Prescribed ACE Percentage tendered in response to Annex G to Attachment A to the COT. Refer also to clause 7 of draft Attachment B for further information.

- 4.1.1 Table F-1 sets out the ACE Measurement Points and the Prescribed ACE Percentages in respect of each ACE Measurement Point.

Table F-1: ACE Measurement Points and Prescribed ACE Percentages

ACE Measurement Point	Prescribed ACE Percentage
	()%
	()%
	()%

ATTACHMENT G

TECHNICAL DATA AND SOFTWARE RIGHTS (TDSR) SCHEDULE

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

- a. ensure that the TD and Software requirements addressing the Materiel System's Life of Type requirements, relating to licensing and ownership) are those reflected in the Description of Requirements and the SOW;**
- b. determine and specify whether the Commonwealth requires ownership of IP in TD and Software (ie, Commonwealth TD and Commonwealth Software); and**
- c. where applicable, identify in the TDSR Schedule any items or equipment (at a product, system, subsystem or component level) where potential restrictions proposed by a tenderer will not be acceptable to the Commonwealth.**

The examples contained in each annex are to be removed prior to RFT release and system-specific information must be inserted where necessary. Information regarding the conduct of a Commonwealth Technical Data Requirements Analysis (TDRA) can be found in the [CASG Handbook \(E&T\) 12-2-003 Technical Data Management](#).

Further information on clause 5 of the draft COC and the TDSR Schedule can be found in the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance/intellectual-property-framework>

Note to tenderers: Attachment G and its annexes define any restrictions on the TD and Software rights granted under any resultant Contract and provide additional information for the purposes of the TD and Software provisions under any resultant Contract. Attachment G does not define restrictions on GFM.

Attachment G and its annexes will consist of an amalgamation of information contained in this draft Attachment G, the successful tenderer's response to TDR C-5 and any negotiated adjustments.

- 1.1 Attachment G consists of the following Annexes:
 - A. Delivery and Licence Restrictions on Use of TD and Software (Core);
 - B. Key Commercial Items (Core);
 - C. Commonwealth TD and Commonwealth Software (Core);
 - D. Excluded Parties (Core);
 - E. Patents, Registrable Designs and Circuit Layouts (Core);

ANNEX A TO ATTACHMENT G

DELIVERY AND LICENCE RESTRICTIONS ON USE OF TD AND SOFTWARE (CORE)

Note to drafters: Drafters should, after considering Life of Type requirements for the Materiel System (particularly for restrictions on sustainment activities and any future support contracts) and for the scope of the draft Contract, and after conducting a TDRA, identify and list (whether in TDR C-5 or in a note to tenderers in column (f) of the table below) any restrictions that the Commonwealth considers would not be acceptable for inclusion in this Annex A.

The Commonwealth must carefully consider TD and Software requirements before agreeing to include any restrictions in this Annex A that will limit:

- a. the Licence the Commonwealth receives under clause 5.2.3b(ix) of the draft COC; or***
- b. delivery requirements under clause 5.13 of the draft COC.***

Note to tenderers: In addition to the information provided in this Annex A, tenderers should note any guidance provided in TDR C-5 in relation to specific restrictions that are considered to be unacceptable to the Commonwealth. In responding, tenderers are to identify any proposed restrictions on:

- a. the Commonwealth's sublicensing rights in respect of TD and Software under clause 5.2.3b(ix) of the draft COC (columns (f) and (g)); and***
- b. the Commonwealth's rights to require delivery of TD for the purposes of clause 5.13 of the draft COC (columns (e) and (g)). Restrictions will only be included in column (e) where tenderers have justified the basis for the restricted delivery requirements for the relevant TD or Software. These restrictions will only be agreed if the Commonwealth considers that delivery of the item to the Commonwealth is not required.***

If TD or Software currently exists that will be incorporated into Commonwealth TD or Commonwealth Software, tenderers are to list the TD or Software in this Annex A and include a reference to the relevant Unique Line Item Description of the Commonwealth TD or Commonwealth Software from Annex C and insert in column (d).

For any item of TD or Software that is subject to restrictions on delivery to the Commonwealth, the recipient of the TD or Software is the person identified in the Approved Support System Technical Data List (SSTD L) or Approved Software List, as applicable

ANNEX A TO ATTACHMENT G

Unique Line Item Description	Owner or Licensor	System/ Subsystem/ Component/ CI Name	Description of TD or Software (and refer to Unique Line Item Description from Annex C, if appropriate)	Restrictions on Commonwealth's rights to the delivery of the TD or Software (Yes / No) (COC, clause 5.13) If yes, specify identity of recipient(s) or nature of the restrictions in column (f)	Restrictions on Commonwealth's rights to Use or to grant a Sublicence of the TD or Software (COC, clause 5.2.3b(ix))	Justification for Restriction(s)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
F-A-1	Contractor	Helicopter Landing System	Aircraft structural loads and certification data	No	Licences do not include right to grant sublicences for the purpose of a third party upgrading the Supplies.	This data requires access to competitively sensitive data.
F-A-2	Contractor	Combat Management System	Mission Planning Software	No	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.	This data requires access to competitively sensitive data.
F-A-3	Contractor	Communications System	Business Process Manual	Yes - no right of delivery to Commonwealth, but Contractor will provide directly to a Subcontractor recipient where necessary.	N/A	Contains competitively sensitive data that are trade secrets and not required to utilise this Capability as envisaged under the Contract. Contractor will directly provide to a recipient where necessary.
F-A-4	EW Pty Ltd (Approved Subcontractor)	Combat Management System	Electronic Warfare Source Code	Yes - no right of delivery to Commonwealth, but Contractor will provide directly to a subcontractor recipient where necessary.	N/A	Not required to utilise this Capability as envisaged under the Contract. Contractor will directly provide to a recipient where necessary.
F-A-5	Contractor	Combat Management System	Electronic Warfare Test and configuration	Yes - no right of delivery to Commonwealth, but Contractor will provide	N/A	Not required to utilise this Capability as envisaged under the Contract.

ANNEX A TO ATTACHMENT G

			Software (ew.test.exe)	directly to a subcontractor recipient where necessary.		Contractor will directly provide to a recipient where necessary.
F-A-6	Contractor	Communications System	Diagram of crypto device operations on page 3 of XYZ-41 operations manual. (See also item F- C-1 in Annex C)	No	Licences do not include a right to grant sublicences for the purposes of research and development or studies conducted by third parties.	The diagram includes descriptions of sensitive information integral to the unique operation of the crypto device that would provide a competitive advantage to other crypto device makers.

ANNEX B TO ATTACHMENT G

KEY COMMERCIAL ITEMS (CORE)

Note to drafters: The Commonwealth's rights to Use Commercial TD and Commercial Software relating to a Key Commercial Item must be identified by tenderers and proposed in responding to this Annex B. Where possible, this should be done prior to contract execution or as soon as possible after the supply of the Commercial Item to the Commonwealth.

Note to tenderers: Tenderers are to list all items of Commercial TD or Commercial Software related to a Key Commercial Item in accordance with clause 5.3 of the draft COC, and specify the terms applicable to the licence proposed to be granted for the item. The tenderer may complete column (f) by reference to other documents from which those terms are ascertainable.

Unique Line Item Description	Description of Key Commercial Item System/ Subsystem/ Component/CI Name	Description of related TD or Software (including version number and use)	Details of Approved Subcontractor or relevant Related Body Corporate	Owner or Licensor	Licence Terms
(a)	(b)	(c)	(d)	(e)	(f)
F-B-1	Hydrographic System	XYZ Software V8.5 used in Support System	Microvision Pty Ltd.	Microvision Pty Ltd.	Same terms as per clause 5.3 except no permission to grant a sublicense to ABC Pty Ltd.
F-B-2	Helicopter Landing System	Maintenance Manual for Helicopter Landing System	Safe Landing Pty Ltd.	Safe Landing US Inc.	Terms and conditions are as detailed at www.safelanding.com/manuals/HLS/terms and conditions.aspx as at 1 July 2018. The Commonwealth must pay to Safe Landing US Inc. an annual licence fee of \$3,000.00 starting 2 years after Final Acceptance as notified to the Commonwealth on 1 July 2018.

ANNEX C TO ATTACHMENT G

COMMONWEALTH TD AND COMMONWEALTH SOFTWARE (CORE)

Note to drafters: Other than any IP created within updates to GFI and GFD, or changes to GFE (including Software provided as GFE), the Commonwealth's default position is to not own IP created under any resultant Contract or Subcontract. However, in limited cases for national security and / or strategic interest reasons, the Commonwealth can require ownership of IP in specific items of TD or Software by including / describing the TD or Software (applicable to that system) in this Annex C prior to RFT release.

For any TD or Software that is listed in this annex, ownership of any new IP in that TD or Software is assigned to the Commonwealth or its nominee under clause 5.1.3 of the draft COC. Column (d) should describe the category in sufficient detail as to enable the identification of TD or Software that comes within the relevant category. Column (b) is to include a cross reference to the Approved Support System Technical Data List (SSTD L) or Approved Software List, where the relevant TD or Software is to be listed in greater detail.

Note to tenderers: Tenderers are to identify in column (d) of this Annex C, the categories or types of TD or Software relating to each item of Supplies shown below in column (c). For each item of TD or Software that falls within the category listed in column (d), the ownership of IP relating to that item created under or in connection with the Contract will be assigned to the Commonwealth. The relevant TD or Software is referred to as Commonwealth TD or Commonwealth Software (as applicable).

If any Commonwealth TD and Commonwealth Software contains IP owned by the Tenderer or a proposed Subcontractor (being IP in existence prior to Effective Date or created outside the Contract and Subcontracts), the Contractor is to grant a licence to the Commonwealth of that IP under clause 5.2 of the draft COC (subject to any proposed restrictions listed in Annex A). Tenderers should note that such restrictions should not prevent the use of the Commonwealth TD or Commonwealth Software as provided for in the Contract (see clause 5.16.1b of the draft COC).

This Annex does not deal with licences of GFM that are provided by the Commonwealth to the Contractor (see clause 5.5 of the draft COC and Attachment E).

Unique Line Item Description	Item Reference within SSTD L / Software List	Equipment/ System/ Subsystem/ Component/ CI Name	Category of TD or Software	Name of Assignee	Restrictions on non-Commonwealth owned IP (refer Unique Line Item Description from Annex B if required)	Restrictions on licences granted by the Commonwealth under clause 5.4.2 of the COC
(a)	(b)	(c)	(d)	(e)	(f)	(g)
F-C-1	ABC #1299	Communication System	Cryptographic software and manuals.	Commonwealth	Contractor owns IP in crypto diagrams. For restrictions see item F-B-6 of Annex B.	The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and must not sublicense any of the IP in the Technical Data (see also Part B).
F-C-2	ABC #1976	Hydrographic System	XYZ environmental operations manual.	Commonwealth	Nil	The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and

ANNEX C TO ATTACHMENT G

						must not sublicense any of the IP in the Software.
F-C-3	ABC #1982	Combat Management System	Operation and maintenance manuals for XYZ combat management system.	ABC Pty Ltd (via the Commonwealth).	Nil	The Contractor may use solely for the purpose of installation and configuration on XYZ subsystem and must not sublicense any of the IP in the Technical Data.

ANNEX D TO ATTACHMENT G

EXCLUDED PARTIES

Note to drafters: Listing parties as Excluded Parties means they cannot be engaged by the Commonwealth as Commonwealth Service Providers for the purposes of the Contract. The effect of this is that the Commonwealth is not entitled to grant these parties the broad Sublicences at clauses 5.2.3a and 5.6.1b(i) of the draft COC. However, Excluded Parties may still be granted Sublicences under clauses 5.2.3b, 5.2.3c, 5.6.1b(ii) or 5.6.1b(iii). The Commonwealth's preference is that there are no Excluded Parties. In most cases, there will be no need for Excluded Parties because the TDSR Schedule enables the tenderer to protect specific TD or Software that it considers sensitive. For further guidance on the impact of listing parties as Excluded Parties, see Chapter 5 of the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

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

Note to tenderers: The Commonwealth has broad rights to grant a sublicense in respect of TD, Software and Contract Material to a Commonwealth Service Provider at clauses 5.2.3a and 5.6.1b(i) of the draft COC. The listing of Excluded Parties will only be agreed to by the Commonwealth in exceptional circumstances, due to the administrative and operational constraints for the Commonwealth arising from listing a party in this annex. Specifying that a party is an Excluded Party does not mean that the Commonwealth cannot sublicense to that person if they are engaged in another capacity (for example, to provide maintenance or upgrade services to the Commonwealth) and such sublicensing is not restricted in Annex A or B. For further guidance, see Chapter 5 of the ASDEFCON Technical Data and Intellectual Property Commercial Handbook which is available at:

<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/intellectual-property-framework>.

1.1 The following parties are excluded from being Commonwealth Service Providers for the purposes of the Contract:

Unique Line Item Description	Excluded Party (a party must be capable of being clearly identified by the Commonwealth)	Period of Restriction (must not be perpetual)	Justification for Non-Disclosure Restriction
(a)	(b)	(c)	(d)
Example: F-D-1	XYZ Pty Ltd	5 years from Effective Date	XYZ Pty Ltd is a direct competitor of the Contractor in relation to the Mission System. If XYZ Pty Ltd is granted a licence as a Commonwealth Service Provider, it will have access to the design and performance characteristics of the Mission System without specific restrictions on the use or disclosure of the TD. This will cause significant harm to the Contractor's competitive advantage and the Contractor's ability to generate revenue from other customers in relation to the Mission System.

ANNEX E TO ATTACHMENT G

ANNEX E – PATENTS, REGISTRABLE DESIGNS AND CIRCUIT LAYOUTS (CORE)

Note to tenderers: Tenderers are to identify any restrictions that will limit the licences granted to the Commonwealth in relation to a Patent, Registrable Design or Circuit Layout (in accordance with clause 5.18 of the draft COC). A full description of the relevant Supplies, TD or Software that contains the Patent, Registrable Design or Circuit Layout protection must be included.

Unique Line Item Description	Supplies containing a Patent, Registrable Design or Circuit Layout (pending or registered)	Type of IP (Patent, Registrable Design or Circuit Layout)	Owner / IP Applicant	Application / Registration No (if applicable)	Countries or regions of permitted use	Restriction
(a)	(b)	(c)	(d)	(e)	(f)	(g)
F-E-1	Signal Integrator Manual (Method of Signal Capture)	Patent	XYZ Pty Ltd	AU 01 233 323232	Australia only	The Commonwealth may not make an integrated circuit from the plans contained in the manual for a period of 3 years.
F-E-2	Signal Integrator Device	Circuit Layout	XYZ Pty Ltd	N/A	Australia and United States only	The Commonwealth may not disclose the device to a third party for a period of 5 years.

ATTACHMENT H

SCHEDULE OF APPROVED SUBCONTRACTORS (CORE)

Note to drafters: Update the following table to list the Approved Subcontractors identified in accordance with the conditions in clause 11.9 of the COC. A Subcontractor may be required to execute an Approved Subcontractor Deed in relation to Intellectual Property rights or if the Approved Subcontractor will be considered to be an AIC Subcontractor. Refer to clause 11.9 of the COC to determine if the Subcontractor will be required to execute an Approved Subcontractor Deed.

Note to tenderers: Attachment H will consist of an amalgamation of TDR A-3, the successful tenderer's response and any negotiated adjustments.

Table H-1: Schedule of Approved Subcontractors

Approved Subcontractor (ABN/ACN if applicable)	Work to be Subcontracted (including technical significance)	CWBS reference	Australian Industry Activity references (if applicable)	Equipment / Supplies	Location of work to be performed (incl postcode)	Subcontract value \$A	Is an Approved Subcontractor Deed (ASD) required, and reason? (see clause 11.9 of COC)			Comments/ Exclusions
							IP rights (clauses 2 and 4 of the ASD) (Yes/No)	AIC Subcontractor (clause 5 of the ASD) (Yes/No)	Other (specify in comments) (Yes/No)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
ANZ Subcontractors										
XYZ Pty Ltd (ABN 123456789012)	Supply of Comms Storage Cabins			For integration into Subsystem X		\$xxx	No	No	No	SOW clause x.x - software performance measurement requirement not applicable to this Subcontract because there is no software development involved
ABC Pty Ltd (ABN 1232345678901)	Supply of Comms system			For integration into Subsystem X		\$YM	Yes	Yes	No	Subcontractor is performing work integral to the development of a new Industrial Capability for communications software support
Overseas Subcontractors										

ATTACHMENT H

ATTACHMENT I

AGREED DEEDS AND FORMS (CORE)

1.1 Attachment I consists of the following Annexes:

- A. Approved Subcontractor Deed (Core)
- B. Final Acceptance Certificate (Optional)
- C. Contract Change Proposal Deed (Core)
- D. Bank Guarantee (RFT Core)
- E. Deed of Guarantee and Indemnity (RFT Core)
- F. Confidentiality Deed Poll (Core)
- G. AIC Compliance Certificate (Core)

ANNEX A TO ATTACHMENT I**APPROVED SUBCONTRACTOR DEED (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/ARBN AND ABN AS APPLICABLE] a company duly incorporated under the laws of **[INSERT JURISDICTION]** and having its registered office at **[INSERT DETAILS]** **(‘the Approved Subcontractor’)**.

RECITALS

- A.** The Commonwealth has entered into a Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** **(‘the Contract’)** with **(INSERT NAME OF CONTRACTOR AND ACN/ARBN AND ABN AS APPLICABLE)** **(‘the Contractor’)** for the supply of **(INSERT BRIEF DESCRIPTION)**.
- B.** The Contractor has entered into a contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** **(‘the Approved Subcontract’)** with the Approved Subcontractor for the supply of **(INSERT BRIEF DESCRIPTION)**.
- C.** The Approved Subcontractor has agreed to provide the commitments set out in this Deed in favour of the Commonwealth in relation to the Approved Subcontract.

AGREED TERMS

ANNEX A TO ATTACHMENT I

1 INTERPRETATION

Note to drafters: The definitions at clause 1.1 below should be reviewed for currency and relevancy prior to both the RFT release and the Effective Date of this deed.

1.1 Definitions (Core)

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

"ACE Measurement Points" has the meaning given in the Approved Subcontract.

"ACE Measurement Rules" means method for calculating Australian Contract Expenditure and Imported Contract Expenditure as prescribed by the *ACE Measurement Rules*, August 2021.

"AIC Obligations" means the obligations of the Approved Subcontractor under the Approved Subcontract relating to AIC and for the avoidance of doubt includes the obligation to comply with the Subcontractor AIC Plan.

"Approved Subcontract" means the Approved Subcontract identified in the recitals and includes any amendments to the Approved Subcontract.

"Approved Subcontract Material" means information, other than Technical Data (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 or in connection with the Approved Subcontract.

"Approved Subcontractor Personnel" means the officers, employees and agents of the Approved Subcontractor and includes employees, officers or agents of a subcontractor to the Approved Subcontractor.

"Audit" 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" has the meaning given in the ACE Measurement Rules.

"Australian Entity" means:

- a. a company registered under the *Corporations Act 2001* (Cth) or a company registered under the *Companies Act 1993* (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" means Australian Entities that perform work in Australia or New Zealand.

"Circuit Layout" means a circuit layout that is protected under the *Circuit Layouts Act 1989* (Cth) or the corresponding laws of any other jurisdiction.

"Claim" 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 or court).

"Commercial Item" means an item that is:

- a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and
- b. able to be used for its intended purpose under the Approved Subcontract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item).

"Commercial Software" means Software that is:

ANNEX A TO ATTACHMENT I

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or
- c. Free and Open Source Software.

"Commercial TD" means TD that is:

- a. a Commercial Item; or
- b. supplied, without further development or modification, as a part of, or in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or Software.

"Commercialise" means, in respect of the Commonwealth or any of its sublicensees, to exploit the Intellectual Property (IP) in TD, Approved Subcontract Material or Software in return for payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.

"Commonwealth Contractor" means a person (other than the Contractor, the Approved Subcontractor or a subcontractor of either of them) engaged by the Commonwealth to provide goods or services to the Commonwealth.

"Commonwealth EVPR" means the Commonwealth Earned Value Performance Report (EVPR) to be provided by the Approved Subcontractor to the Commonwealth, which is substantially in the form of the Contractor EVPR with financial data at the cost level, not at the price level (ie, all costs are those incurred by the Approved Subcontractor, not those incurred by the Contractor).

"Commonwealth Officer" means any of the following:

- a. a Minister of State for the Commonwealth;
- b. a person employed or engaged under the *Public Service Act 1999* (Cth) or the *Members of Parliament (Staff) Act 1984* (Cth);
- c. a person who is included in Defence Personnel; and
- d. a member of the Australian Federal Police.

"Commonwealth Property" means property of any kind (including government furnished material) owned or leased by, or in the possession of, the Commonwealth.

"Commonwealth Personnel" means Commonwealth Officers, Defence Personnel, and any other agents of the Commonwealth.

"Commonwealth Service Provider" 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,

but does not include Excluded Parties.

"Commonwealth Software" means:

- a. any Software of the type described in Annex C to the TDSR Schedule in respect of an item of Supplies specified in that annex; and
- b. any developments, modifications or improvements to that Software.

"Commonwealth TD" means:

- a. any TD of the type described in Annex C to the TDSR Schedule in respect of an item of Supplies specified in that annex; and
- b. any developments, modifications or improvements to that TD.

ANNEX A TO ATTACHMENT I

"Confidential Information" means:

- a. any information provided by the Approved Subcontractor that is identified in Schedule 3; and
- b. any other information:
 - (i) that is commercially sensitive (not generally known or ascertainable);
 - (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and
 - (iii) that was provided with an express or implied understanding that it would remain confidential,

but does not include information that:

- c. is or becomes public knowledge other than by breach of this Deed;
- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- e. has been independently developed or acquired by the receiving party.

"Contractor EVPR" means the EVPR required to be provided by the Approved Subcontractor to the Contractor in accordance with the Approved Subcontract.

"Contractor Managed Commonwealth Assets" or "CMCA" means any item of Commonwealth Property subject to inventory and stock control that is in the care, custody or control of the Approved Subcontractor or Approved Subcontractor Personnel for the purposes of the Approved Subcontract.

"Contractor Personnel" means the officers, employees and agents of the Contractor.

"Copyright" means any existing or future copyright as defined under the *Copyright Act 1968* (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.

"Defect" means:

a defect, fault (including a fault which results in a Failure), damage, malfunction or omission in the Supplies, including in relation to:

- a. operation, performance or functionality of the Supplies; or
- b. design manufacture, workmanship or materials,

and 'Defective' has a corresponding meaning.

Without limiting the above, Supplies are defective if they do not conform to the requirements of the Approved Subcontract. A defect, fault, damage, malfunction or omission is not a Defect to the extent that it results from fair wear and tear.

"Defence" means the Department of Defence and/or the Australian Defence Force.

"Defence Personnel" 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 *Defence Act 1903* (Cth)) and the equivalents from other organisations on exchange to Defence.

"Defence Purpose" means a purpose related to any of the following:

- a. the defence and defence interests of Australia;
- b. the national security of Australia;
- c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and
- d. peacekeeping or peace enforcement activities.

ANNEX A TO ATTACHMENT I

"Effective Date" means the date on which this Deed is signed by the parties, or if signed on separate days, the date of the last signature.

"Environment" in the context of environmental management, means any of the following:

- a. ecosystems and their constituent parts;
- b. natural and physical resources;
- c. the qualities and characteristics of locations, places and areas;
- d. noise; and
- e. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs a, b or c.

"Excluded Party" means a party identified as such in Annex D to the TDSR Schedule.

"Failure" means the inability of a system or component to perform its required functions within specified performance requirements. The fault tolerance discipline distinguishes between a human action (a mistake), its manifestation (a hardware or software fault), the result of the fault (a failure), and the amount by which the result is incorrect (the error).

"Free and Open Source Software" means Software that:

- f. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and
- g. may be used, modified, developed or adapted by any person subject to specified conditions,

and includes open source Software, public domain Software, shareware, community source Software and freeware.

"Imported Contract Expenditure" has the meaning given in the ACE Measurement Rules.

"Industry Capability" 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 the goods and services when needed, but it is also sustainable over the period that the industry capability may be required, and 'Industry Capabilities' has a corresponding meaning.

"Intellectual Property" or "IP" means all present and future rights conferred by law in or in relation to any of the following:

- a. Copyright;
- b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and
- 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.

"Key Commercial Item" means a Commercial Item listed (or required to be listed) in Annex B to the TDSR Schedule.

"Latent Defect" means a Defect that:

- a. was not discoverable by reasonable care or inspection before Acceptance of the Supplies (or if the Contract does not provide for Acceptance of the Supplies, Final Acceptance), as the case may be; and
- b. other than in relation to Software, falls outside the incidence of random Failures to be expected of Supplies of the relevant kind.

"Licence" means a non-exclusive licence of IP in respect of TD, Software, or Approved Subcontract Material, being a licence that:

- a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;

ANNEX A TO ATTACHMENT I

- b. cannot be revoked or terminated by the owner for any reason except upon expiration of a statutory protection term;
- c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- d. operates on a world-wide basis; and
- e. binds each successor in title to the owner of the IP in respect of the TD, Software or Approved Subcontract Material.

"Loss" means any liability, loss (including economic loss), damage, compensation, costs and expenses.

"Moral Rights" means any of the following:

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

"Patent" means the rights and interests in any registered, pending, or restored standard or innovation patent under the *Patents Act 1990* (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.

"Quality" means the degree to which a set of inherent characteristics fulfils requirements.

"Registrable Design" means a design able to be protected under the *Designs Act 2003* (Cth) or the corresponding laws of any other jurisdiction.

"Request" means a request for tender, proposal, quotation or information or similar request for the provision of goods or services to the Commonwealth.

"Royalty" means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use any IP, however calculated.

"Software" 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 and applications, but excludes Source Code.

"Source Code" means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.

"Subcontractor AIC Plan" means the Approved Subcontractor's AIC Plan developed, delivered and updated by the Approved Subcontractor and approved by the Contractor in accordance with the Approved Subcontract.

"Sublicence" means, in respect of a Licence of IP granted to the Commonwealth under clause 2.2.2, a sublicence of that IP on terms that comply with the requirements of clause 2.3 of this Deed.

"Supplies" means goods and services required to be supplied under or in connection with the Approved Subcontract and includes items acquired in order to be incorporated in the Supplies. A reference to Supplies is also a reference to:

- a. each item of Supplies;
- b. a component of a system or subsystem comprised of Supplies; and
- c. such a system or subsystem itself.

"Surveillance" 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).

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"TDSR Schedule" means Schedule 1 of this Deed.

"Technical Data" or "TD" means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to the Supplies, 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.

"Trade Mark" means a trade mark protected under the *Trade Marks Act 1995* (Cth) or corresponding laws of any other jurisdiction.

"Use" means, in relation to a licence of any TD, Software or Approved Subcontract Material granted to a licensee, to:

- a. use, reproduce, adapt and modify the TD, Software or Approved Subcontract Material in accordance with the licence; and
- b. disclose, transmit and communicate the TD, Software or Approved Subcontract Material:
 - (i) to the licensee's employees, officers and agents; and
 - (ii) to a sublicensee under a sublicense granted in accordance with the licence.

"Verification" 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" and "Verified" have corresponding meanings.

"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 the 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 subclause 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 Effective Date, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word "includes" in any form is not a word of limitation; and

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- k. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Deed.

1.3 Precedence (Core)

- 1.3.1 Unless expressly provided for, the terms of this Deed prevail over the provisions of any Schedule to this Deed to the extent of any inconsistency.

1.4 Survival (Core)

- 1.4.1 The rights and obligations created under or in connection with this Deed survive the termination or expiry of the Contract or the Approved Subcontract.

2 TECHNICAL DATA AND SOFTWARE (OPTIONAL)

Note to drafters: If the Approved Subcontractor is not providing significant IP in items of TD or Software (ie, clause 11.9.3.c (and possibly 11.9.3d(i)) of the COC does not apply to the Approved Subcontractor but other parts of clause 11.9.3 of the COC do apply), then clause 2 will not be necessary and may be deleted and marked 'Not Used'. If the Approved Subcontractor is providing significant IP in items of TD or Software (ie, clause 11.9.3c and possibly 11.9.3d(i) of the COC do apply to the Approved Subcontractor), then all of clause 2 is a requirement of this deed.

2.1 Ownership of Intellectual Property

- 2.1.1 Nothing in this Deed affects the ownership of IP, except as expressly contemplated in this clause 2.1.
- 2.1.2 The parties agree that all IP created under or in connection with the Approved Subcontract in respect of Commonwealth TD and Commonwealth Software that is delivered or required to be delivered as part of the Supplies, is assigned to the Commonwealth (or its nominee) immediately upon its creation.

2.2 TD and Software

- 2.2.1 This clause 2.2 applies to all TD and Software delivered or required to be delivered to the Contractor or any other person under the Approved Subcontract, other than:
- Commonwealth TD and Commonwealth Software to the extent that clause 2.4 applies; and
 - Commercial TD or Commercial Software to which clause 2.3 applies.
- 2.2.2 The Approved Subcontractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 2.2 applies, to:
- Use the TD or Software for any Defence Purpose; and
 - grant a Sublicence in accordance with clauses 2.2.3 and 2.4 to Use the TD or Software.
- 2.2.3 The Commonwealth may grant a Sublicence in respect of all TD and all Software to which this clause 2.1.2 applies, to:
- a Commonwealth Service Provider to Use the TD or Software to enable the Commonwealth Service Provider to perform its obligations, functions or duties to the Commonwealth;
 - any person to Use the TD or Software to do any of the following:
 - installing or configuring the Supplies;
 - physically integrating the Supplies with other systems;
 - operating or maintaining the Supplies;
 - rectifying any Defect in the Supplies;
 - undertaking training in relation to the Supplies;
 - removing or uninstalling the Supplies;

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- (vii) decommissioning or destroying the Supplies;
 - (viii) for the person to respond to a Request to be engaged for any of the above purposes; and
 - (ix) for any other purpose (including to modify and upgrade the Supplies) but subject to the restrictions specified in Annex A to the TDSR Schedule; and
- c. any person for a purpose referred to in clause 3.1.3.
- 2.2.4 If, when exercising rights under clause 2.2.2, the Commonwealth discloses TD or Software that contains Confidential Information to a third party, the Commonwealth shall ensure that the disclosure of that information is in accordance with clause 3.1.
- 2.2.5 A Licence granted under clause 2.2.2 shall be on terms no less favourable than the terms agreed to with the Contractor for the benefit of the Commonwealth under the Contract.

2.3 Commercial TD and Commercial Software

- 2.3.1 This clause 2.3 applies to all Commercial TD and Commercial Software referred to in clause 2.3.2 that is delivered or required to be delivered to the Contractor or any other person under the Approved Subcontract.
- 2.3.2 The Approved Subcontractor shall ensure that each Commercial Item (and related Commercial TD or Commercial Software) delivered or required to be delivered under the Approved Subcontract is specified as a Key Commercial Item in Annex B to the TDSR Schedule, if the IP in the related Commercial TD or Commercial Software is owned by the Approved Subcontractor, unless otherwise agreed by the Commonwealth in writing.
- 2.3.3 The Approved Subcontractor grants to the Commonwealth a licence in respect of all Commercial TD and all Commercial Software to which this clause 2.3 applies to Use the Commercial TD or Commercial Software, or to grant a sublicense to any person to Use the Commercial TD or Commercial Software, for any of the purposes set out in clauses 2.2.3b(i) to 2.2.3b(viii), and for any other purpose, subject to any restrictions specified in Annex B to the TDSR Schedule for that item.
- 2.3.4 The Approved Subcontractor shall ensure that any licence granted to the Commonwealth in respect of Commercial TD and Commercial Software under this clause 2.3 does not require the Commonwealth to pay a Royalty or other fee (not otherwise included in the Approved Subcontract price) unless the Commonwealth has agreed in writing to the payment.
- 2.3.5 A licence granted under clause 2.3.3 shall be on terms no less favourable than the terms agreed to with the Contractor for the benefit of the Commonwealth under the Contract.

2.4 Commonwealth Sublicences

- 2.4.1 The Commonwealth's right to grant a Sublicence to a person ("**Sublicensee**") in accordance with clause 2.2.2 is subject to the following conditions:
- a. the Sublicence shall only be granted for a Defence Purpose;
 - b. the Sublicence shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to the Commonwealth;
 - c. the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD and Software (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth or a Commonwealth Contractor;
 - d. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in clause 2.4.1a; and
 - e. any right of the Sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 2.4.
- 2.4.2 The Approved Subcontractor shall ensure that any IP in Commonwealth TD or Commonwealth Software not assigned to the Commonwealth under clause 2.1.2 is specified in Annex C of the TDSR Schedule.

ANNEX A TO ATTACHMENT I**2.5 Approved Subcontractor to deliver TD and Software**

- 2.5.1 The Commonwealth may by notice to the Approved Subcontractor require the delivery to the Commonwealth (or its nominee) of all TD and Software included as part of the Supplies.
- 2.5.2 The Approved Subcontractor shall comply with a notice given under clause 2.5.1. unless compliance with the notice would be inconsistent with any restricted delivery requirements specified in respect of the relevant TD of Software in Annex A of the TDSR Schedule.
- 2.5.3 The Commonwealth shall act reasonably when issuing a notice under clause 2.5.1., including in relation to specifying a time for delivery of the item of TD or Software.

2.6 Patents, Registrable Designs and Circuit Layouts

- 2.6.1 The Approved Subcontractor warrants and shall ensure that a licence is granted or obtained under this Deed for the Commonwealth to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use or support the Supplies.
- 2.6.2 The Approved Subcontractor warrants and shall ensure that any restriction on a right referred to in clause 2.6.1. is specified in Annex E to the TDSR Schedule.

2.7 No Commercialisation

- 2.7.1 A Licence or Sublicence granted in accordance with this clause 2 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the TD or Software.
- 2.7.2 For the avoidance of doubt, clause 2.7 does not prevent the Commonwealth from granting a Sublicence, in accordance with a right granted in this clause 2, to a person for the purpose other than providing goods or services to the Commonwealth for a Defence Purpose.

3 CONFIDENTIAL INFORMATION (CORE)**3.1 Confidential Information (Core)**

Note to drafters: If clause 2 above is not used, delete subclause 3.1.1a and clause 3.1.2, and mark clause 3.1.2 as 'Not Used'.

- 3.1.1 Each party shall ensure that Confidential Information provided by the other party under or in connection with the Deed or identified in Schedule 2 is not disclosed, except to the extent that:
- the disclosure is permitted under clause 3.1.3;
 - the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 2; or
 - the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- 3.1.2 Each party shall ensure that, before disclosing Confidential Information under clause 3.1.1b, the recipient:
- executes a confidentiality deed poll substantially in the form of Schedule 2; or
 - is otherwise subject to an obligation not to disclose the Confidential Information to any other person, which is on terms substantially equivalent to those in Schedule 2.
- 3.1.3 The restriction in clause 3.1.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is for any of the following purposes:
- as required or authorised by law;
 - as necessary for the conduct of any legal proceedings arising in connection with the Deed, the Contract or the Approved Subcontract;
 - is made by the Commonwealth, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
 - is to any of the following:

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- (i) a legal adviser, insurer, financier, auditor or accountant of a party, to the extent required to enable them to perform those roles;
 - (ii) a Related Body Corporate for internal management purposes;
 - (iii) any Commonwealth Personnel that need to know the information to undertake their duties or functions;
 - (iv) Contractor Personnel or Approved Subcontractor Personnel that need to know the information to enable the Contractor or Approved Subcontractor to perform their obligations under the Contract or Approved Subcontract; or
 - (v) a Commonwealth Service Provider who needs to know the information to undertake their duties or functions.
- 3.1.4 The Approved Subcontractor shall not, in marking information supplied to the Commonwealth, misuse the term "Confidential Information" or equivalent terms.
- 3.1.5 Subject to clause 3.1.6, the Approved Subcontractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
- a. the date specified in a notice given by the Commonwealth (acting reasonably); and
 - b. the time the documents and other material are no longer required for the purposes of the Approved Subcontract or this Deed.
- 3.1.6 The Approved Subcontractor may retain, and will not be required to return or destroy, any documents containing or relating to Confidential Information of the Commonwealth, where such documents are:
- a. retained in order to comply with any legal, professional or insurance obligations; or
 - b. stored in electronic backups or records that are produced in the normal course of business where it is not reasonably practicable to destroy such backups or records.
- 3.1.7 If the Commonwealth gives a notice under clause 3.1.5a and the Approved Subcontractor has placed or is aware that documents containing the Confidential Information are beyond its possession or control, the Approved Subcontractor shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 3.1.8 Subject to clause 3.1.6 the Approved Subcontractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information of the Commonwealth.
- 3.1.9 Return or destruction of the documents referred to in this clause 3.1 does not release the Approved Subcontractor from its obligations under the Approved Subcontract or this Deed.

4 INDEMNITIES AND WARRANTIES (OPTIONAL)

Note to drafters: If the Approved Subcontractor is not providing significant IP in items of TD or Software (ie, clause 11.9.3c (and possibly 11.9.3d.(i)) of the COC does not apply to the Approved Subcontractor but other parts of clause 11.9.3 of the COC do apply), then clause 4 is not necessary and may be deleted and marked 'Not Used'. If the Approved Subcontractor is providing significant IP in items of TD or Software (ie, clause 11.9.3c and possibly 11.9.3d.(i) of the COC do apply to the Approved Subcontractor), then all of clause 4 is a core requirement of this deed.

4.1 Intellectual Property and Confidentiality Indemnity

- 4.1.1 The Approved Subcontractor shall indemnify the Commonwealth and Commonwealth Personnel in respect of any Loss in connection with a Claim by a third party in respect of the following:
- a. an infringement or alleged infringement of the third party's IP rights (including Moral Rights) arising out of or as a consequence of:

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- (i) an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in this Deed; and
 - (ii) a failure by the Approved Subcontractor to grant (or ensure the grant of) a licence or assign (or ensure the assignment of) IP rights under or referred to in this Deed; and
 - b. a breach or alleged breach of any obligation of confidentiality owed to that third party arising out of or as a consequence of any act or omission of the Approved Subcontractor or Approved Subcontractor Personnel.
- 4.1.2 The liability of the Approved Subcontractor under clause 4.1.1 shall be reduced to the extent that the Approved Subcontractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth default.
- 4.1.3 In this clause 4.1:
- “infringement” of a right includes an act or omission that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 and 96A of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), or section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement of the right.

4.2 Intellectual Property Warranties

- 4.2.1 The Approved Subcontractor warrants and shall ensure that, in respect of any IP in the TD or Software delivered or required to be delivered as part of the Supplies or under or in connection with this Deed, and as at the time of the delivery to the Contractor or, if delivered directly to the Commonwealth, the Commonwealth, of the relevant TD or Software and after making diligent inquiries:
- a. the IP is licenced to, or owned by, the Commonwealth as required by this Deed;
 - b. the Approved Subcontractor has no notice of any challenge to the validity or enforceability of any of the IP and has no knowledge of any actual or threatened claim or proceeding in relation to any of the IP;
 - c. the Approved Subcontractor is not engaged in litigation, arbitration or other proceedings in relation to any of the IP; and
 - d. there are no proceedings threatened by or against the Approved Subcontractor in relation to any of the IP, and there is nothing that is likely to give rise to any such proceedings.
- 4.2.2 The warranty under clause 4.2 does not apply to the extent that the infringement arises from a failure by the Commonwealth, Commonwealth Personnel or a sublicensee of the Commonwealth to comply with a restriction specified in the TDSR Schedule.

5 AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

Note to drafters: Clause 5, including all subclauses, must be included in the deed when the Approved Subcontractor is an AIC Subcontractor. If clause 5 is included, all subclauses are core and required as part of the deed.

5.1 Subcontractor AIC Plan

- 5.1.1 The Approved Subcontractor acknowledges that the Australian Industry Capability (AIC) objectives for the Contract are to:
- a. within the context of the Commonwealth obtaining value for money, identify and pursue opportunities to maximise the participation of Australian Entities in the performance of the Contract;
 - b. facilitate the creation, enhancement and/or maintenance of Industrial Capabilities within Australia and New Zealand to satisfy the Contract requirements, achieve the ADF capability objectives, and support government's and Defence's goals for Australian Industry, as set out in Defence industry policy; and

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- c. ensure that Australian Industry has the necessary technology, IP rights, TD, know-how and know-why to participate in future development and sustainment work in relation to the materiel system.
- 5.1.2 The Approved Subcontractor's approach and obligations for giving effect to the objectives described in clause 5.1 shall be set out in the Subcontractor AIC Plan, which shall detail the specific activities and other commitments that the Approved Subcontractor will undertake in connection with the performance of the Approved Subcontract.
- 5.1.3 The Approved Subcontractor shall undertake the required activities to comply with the AIC Obligations in accordance with the Approved Subcontract. Without limiting those AIC Obligations, and with the aim of achieving the AIC objectives referred to in clause 5.1, the Approved Subcontractor shall continually:
 - a. identify and promote opportunities for enhancing the quality of Australian Industry participation in the performance of the Approved Subcontract, particularly in relation to developing, enhancing and maintaining Industrial Capabilities;
 - b. monitor and explore opportunities for the increased involvement of Australian Industry in the performance of the Approved Subcontract; and
 - c. liaise with the Contractor in relation to AIC in the performance of the Approved Subcontract and reporting on its performance of the AIC Obligations in accordance with the Approved Subcontract.
- 5.1.4 The Approved Subcontractor shall comply with the Subcontractor AIC Plan.

5.2 Independent AIC Audit Program

- 5.2.1 Without limiting the Commonwealth's rights under clause 6, the Approved Subcontractor acknowledges and agrees that the Approved Subcontractor's compliance with the AIC Obligations may be audited as part of the Commonwealth's Independent AIC Audit Program.
- 5.2.2 Each person conducting the Commonwealth's Independent AIC Audit Program is a person authorised by the Commonwealth for the purposes of clause 6.

5.3 Reporting

- 5.3.1 Within 30 Working Days of the Effective Date, or otherwise on request by the Commonwealth in relation to a proposed Contract Change Proposal to the Contract the Approved Subcontractor shall provide the Commonwealth with a report which provides a breakdown of the Approved Subcontract price to level 4 of the contract work breakdown structure for the Approved Subcontract in respect of each of the following categories, separating amounts in respect of each category into budgeted Australian Contract Expenditure (ACE) and budgeted Imported Contract Expenditure (ICE) (and where reference to a '**Subcontract**' means a subcontract to the Approved Subcontract):
 - a. labour costs (excluding labour provided through a Subcontract);
 - b. materials costs (excluding materials provided through a Subcontract);
 - c. other direct costs¹, including travel and accommodation costs;
 - d. Subcontract costs (inclusive of all subcontractors to the Approved Subcontractor, with the breakdown of the subcontract price into ACE and ICE amounts to be provided for as many subcontractors as necessary, up to a maximum of 5 or to provide visibility of 80% of the total stated subcontract ACE value (whichever results in the smaller number of subcontractors), with all other subcontractors amalgamated and provided as a separate entry, showing consolidated amounts for ACE and ICE;
 - e. indirect costs (including overheads and general administrative costs); and
 - f. all remaining price elements, including management reserve, profit and incentives, as applicable to the Approved Subcontractor's work scope and in relation to subcontracts.

¹ Refer to the CASG Cost Principles regarding the scope of direct costs / direct expenses.
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- 5.3.2 Within 30 Working Days after the occurrence of an ACE Measurement Point, or otherwise on request by the Commonwealth in relation to a proposed Contract Change Proposal to the Contract, the Approved Subcontractor shall provide the Commonwealth with a report which provides a breakdown of the actual costs incurred in performing the Approved Subcontract up until and including the ACE Measurement Point or the date specified in the Commonwealth's request (as applicable), with this breakdown to be provided to level 4 of the contract work breakdown structure for the subcontract in respect of each of the following categories, separating amounts in respect of each category into ACE and ICE (and where reference to a 'Subcontract' means a subcontract to the Approved Subcontract):
- labour costs (excluding labour provided through a Subcontract);
 - materials costs (excluding materials provided through a Subcontract);
 - other direct costs, including travel and accommodation costs;
 - Subcontract costs (inclusive of all subcontractors to the Approved Subcontractor, with the breakdown of the subcontract price into ACE and ICE amounts to be provided for as many subcontractors as necessary, up to a maximum of 5 or to provide visibility of 80% of the total stated subcontract ACE value (whichever results in the smaller number of Subcontractors), with all other subcontractors amalgamated and provided as a separate entry, showing consolidated amounts for ACE and ICE; and
 - indirect costs (including overheads and general and administrative costs).

6 COMMONWEALTH ACCESS (CORE)

- 6.1.1 During the performance of the Approved Subcontract, the Approved Subcontractor shall, subject to the Commonwealth giving five Working Days' prior notice to the Approved Subcontractor, provide the Commonwealth and any person authorised by the Commonwealth, access to Approved Subcontractors' premises, and to records and accounts in connection with the performance of work under the Approved Subcontract, including the right to copy. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Approved Subcontractor shall provide, immediate access to the premises, records or accounts for any purpose related to such emergency, investigation or threat. The Commonwealth may copy any records or accounts for such purposes.
- 6.1.2 Without limiting clauses 6.1.1 and 6.1.3, the Approved Subcontractor acknowledges and agrees that:
- the Auditor-General has the power under the *Auditor Act 1997* (Cth) to conduct audits (including performance audits) of the Approved Subcontractor in relation to the Approved Subcontract;
 - the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Approved Subcontract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
 - the Commonwealth may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 6.1.1.
- 6.1.3 Without limiting the generality of clause 6.1.1, the purposes for which the Commonwealth or any person authorised by the Commonwealth may require access include:
- inspecting CMCA, attending, conducting or checking stocktakes of CMCA, including viewing and assessing the Approved Subcontractor's inventory control and stocktaking systems, and removing CMCA that is no longer required for the performance of the Approved Subcontract;
 - performing audit and Surveillance activities in relation to Quality;

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Option: Include this subclause when the Approved Subcontractor is an AIC Subcontractor.

- c. auditing the Approved Subcontractor's compliance with the AIC Obligations including validating progress in meeting the Subcontractor AIC Plan;
- d. investigating the reasonableness of proposed prices or costs in any CCP submitted to the Contractor under the Approved Subcontract;
- e. investigating:
 - (i) postponement costs claimed;
 - (ii) schedule recovery costs claimed;
 - (iii) cost reimbursement payments;
 - (iv) Defect rectification costs claimed; and
 - (v) any other claims made by the Approved Subcontractor under the Approved Subcontract;
- f. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;

Option: Include this subclause if clause 2 is included in the deed.

- g. validating the Contractor's compliance with clause 2 and the TDSR Schedule;
- h. auditing raw data, Software, and Source Code for the purpose of validating the Approved Subcontractor's performance under this Deed and the Approved Subcontract;

Option: Include clause 6.1.3i if clause 7 is included in the deed.

- i. performing reviews of the Earned Value Management System;
 - j. without being under any obligation to do so, monitoring the Approved Subcontractor's compliance with any applicable laws or Approved plans in connection with the protection of Work Health and Safety (WHS) or the Environment, including the development and implementation of any systems, policies or procedures related to WHS and environmental compliance as required under the Approved Subcontract;
 - k. assessing the financial viability of the Approved Subcontractor to perform and complete the Subcontract;
 - l. validating progress against the requirements of any approved remediation plan provided by the Contractor under the Contract; and
 - m. such other matters specified in the Approved Subcontract.
- 6.1.4 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth to comply with, any reasonable Approved Subcontractor safety and security requirements or codes of behaviour for the premises.

7 EARNED VALUE MANAGEMENT (OPTIONAL)

Note to drafters: Clause 7 must be included when the Approved Subcontractor is required to have an earned value management system (to provide reports on earned value) in accordance with the Approved Subcontract.

- 7.1.1 The Approved Subcontractor shall provide the Commonwealth EVPRs to the Commonwealth at the same time as it provides the Contractor EVPRs to the Contractor (or when otherwise required by the Commonwealth where the Approved Subcontract does not specify timing for the provision of a Contractor EVPR).
- 7.1.2 The Approved Subcontractor and the Commonwealth acknowledge and agree that, where analysis of the Commonwealth EVPRs identifies a variance, which may not have been evident to the Contractor in the Contractor EVPRs, the Commonwealth may discuss this variance with

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the Contractor, but the Commonwealth will do so in a manner that does not result in the sharing any of the underlying financial data with the Contractor.

8 LAW**8.1 Goods and Services Tax (Core)**

- 8.1.1 In this clause, 'GST' means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions 'adjustment event', 'taxable supply' and 'tax invoice' have the meaning as in that Act.
- 8.1.2 If a party to this Deed (the "Supplier") makes a taxable supply under this Deed or in connection with any matter or thing occurring under this Deed to another party to this Deed (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 8.1.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient shall pay the deficiency to the Supplier.
- 8.1.4 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

8.2 No Exclusion of Law or Equity (Core)

- 8.2.1 Subject to its terms, this Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

8.3 Waiver (Core)

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

8.4 Remedies (Core)

- 8.4.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 8.4.2 Subject to the terms of this Deed, the rights and obligations of the parties under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

8.5 Variation (Core)

- 8.5.1 This Deed may only be varied by written agreement of the parties.

8.6 Applicable Law (Core)

- 8.6.1 The laws of the **[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.

8.7 Notices (Core)

- 8.7.1 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 relevant party, at the following address:

[INSERT COMMONWEALTH ADDRESS, FAX NUMBER AND EMAIL]

(INSERT APPROVED SUBCONTRACTOR ADDRESS, FAX NUMBER AND EMAIL)

- 8.7.2 A notice or communication is deemed to be delivered:

ANNEX A TO ATTACHMENT I

- a. if sent by pre-paid post, when received at the address;
- b. if hand delivered, when received at the address, or by the addressee if sooner;
- c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- d. 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, transmission 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.

ANNEX A TO ATTACHMENT I

SIGNED AS A DEED

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

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

In the presence of:

(signature)_____
(print name)_____
(date)

SIGNED SEALED AND DELIVERED for and on behalf of

THE APPROVED SUBCONTRACTOR:

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

<http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/%7BEBDAF9B0-2B07-45D4-BC51-67963BAA2394%7D>

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

(INSERT APPROPRIATE APPROVED SUBCONTRACTOR'S EXECUTION CLAUSE)

ANNEX A TO ATTACHMENT I

SCHEDULE 1

TD & SOFTWARE RIGHTS (TDSR) SCHEDULE (OPTIONAL)

Note to drafters: This schedule including all of its annexes should be included, and tables populated accordingly, when clause 2 is included in the Approved Subcontractor Deed.

The TDSR Schedule used in this Deed should reflect the restrictions on TD and Software supplied by the Approved Subcontractor and included in the TDSR Schedule to the Contract. If the Approved Subcontractor is engaged before the TDSR Schedule under the Contract is updated to take into account that engagement, a CCP under clause 11.1 of the Contract should be raised to update the TDSR Schedule in the Contract in conjunction with the execution of this Deed.

- 1.1 This Schedule consists of the following Annexes:
- a. Annex A – Delivery and Licence Restrictions on Use of TD and Software;
 - b. Annex B – Key Commercial Items;
 - c. Annex C – Commonwealth TD and Commonwealth Software;
 - d. Annex D – Excluded Parties; and
 - e. Annex E – Patents, Registrable Designs and Circuit Layouts.

ANNEX A TO ATTACHMENT I

SCHEDULE 1

ANNEX A – DELIVERY AND LICENCE RESTRICTIONS ON USE OF TD AND SOFTWARE (CORE)

Note to Tenderers: This table should reflect Annex A in the TDSR Schedule for the Contract, in respect of TD and Software provided by the Approved Subcontractor.

Unique Line Item Description	Owner or Licensor	System/ Subsystem/ Component/ CI Name	Description of TD or Software subject to Restriction (refer Unique Line Item Description from Annex C if appropriate)	Restricted Delivery Arrangements? (Yes/No) If yes, specify identity of recipient(s) or nature of the restrictions in column (g)	Restrictions on Commonwealth rights to Use or Sublicense the TD or Software	Justification for Restriction (s)
(a)	(b)	(c)	(d)	(e)	(f)	(g)

ANNEX A TO ATTACHMENT I
SCHEDULE 1

ANNEX B– KEY COMMERCIAL ITEMS (CORE)

Note to tenderers: This table should reflect Annex B in the TDSR Schedule for the Contract, in respect of Commercial Items required to be delivered by the Approved Subcontractor and for which the Approved Subcontractor owns the IP in the related Commercial TD or Commercial Software (which should also be listed). The terms applicable to the licence proposed to be granted for the item are also to be specified. The tenderer may complete column (d) by reference to other documents from which those terms are ascertainable.

Unique Line Item Description	Description of Key Commercial Item System/ Subsystem/ Component/CI Name	Description of related Commercial TD or Commercial Software (including version number and use)	Licence Terms
(a)	(b)	(c)	(d)

ANNEX A TO ATTACHMENT I

ANNEX C – COMMONWEALTH TD AND COMMONWEALTH SOFTWARE (CORE)

Note to Tenderers: This table should reflect Annex C in the TDSR Schedule for the Contract, in respect of Commonwealth TD and Commonwealth Software that will be created by the Approved Subcontractor.

Unique Line Item Description	Item References within SSTDL / Software List	Equipment System/ Subsystem/ Component/CI Name	Category of TD or Software	Name of Assignee	Restrictions on non-Commonwealth owned IP (refer Unique Line Item Description from Annex A if required)	Restrictions on licences granted by the Commonwealth to Commonwealth TD or Commonwealth Software
(a)	(b)	(c)	(d)	(e)	(f)	(g)

ANNEX A TO ATTACHMENT I
SCHEDULE 1

ANNEX D – EXCLUDED PARTIES (CORE)

Note to Tenderers: This table should reflect Annex D in the TDSR Schedule for the Contract, to the extent that Excluded Parties have been identified by the Approved Subcontractor.

Unique Line Item Description	Excluded Party (party must be capable of being clearly identified by the Commonwealth)	Period of Restriction (must not be perpetual)	Justification for Non-Disclosure Restriction
(a)	(b)	(c)	(d)

ANNEX A TO ATTACHMENT I

ANNEX E – PATENTS, REGISTRABLE DESIGNS AND CIRCUIT LAYOUTS (CORE)

Note to Tenderers: This table should reflect the equivalent table under Annex E of the TDSR Schedule for the Contract, in respect of restrictions on a Patent, Registrable Design or Circuit Layout provided by the Approved Subcontractor.

Unique Line Item Description	Supplies containing a Patent, Registrable Design or Circuit Layout (pending or registered)	Type of IP (Patent, Registrable Design or Circuit Layout)	Owner / IP Applicant	Application / Registration No (if applicable)	Countries or regions of permitted use	Restrictions
(a)	(b)	(c)	(d)	(e)	(f)	(g)

SCHEDULE 1

ANNEX A TO ATTACHMENT I

SCHEDULE 2

CONFIDENTIALITY DEED POLL

(INSERT NEGOTIATED FORM OF CONFIDENTIALITY DEED POLL)

ANNEX A TO ATTACHMENT I

SCHEDULE 3

CONFIDENTIAL INFORMATION

(INSERT EXTRACT OF NEGOTIATED ATTACHMENT N TO THE CONDITIONS OF CONTRACT)

ANNEX B TO ATTACHMENT I

FINAL ACCEPTANCE CERTIFICATE (OPTIONAL)

Contract Reference

From

[Contractor's name, address and A.C.N./
A.R.B.N and A.B.N. as applicable]

To

[Commonwealth Representative]

Contractor's Certification:

The Contractor seeks Final Acceptance Certification from the Commonwealth of Australia for the Final Acceptance Milestone. The Contractor certifies that:

- a. the Supplies function and integrate as required by the [INSERT CONTRACT NUMBER AND WHERE APPLICABLE, AMENDMENT NUMBER];
- b. the Contractor has fulfilled all of its obligations under the Contract, except to the extent that the Contractor's obligations expressly, or by implication, survive the Final Acceptance Milestone; and
- c. the Contractor has no outstanding claims against the Commonwealth, except for:
 - (i) the Final Acceptance Milestone as calculated in accordance with the Contract; and
 - (ii) [where APPLICABLE, INSERT DETAILS OF ANY OTHER CLAIMS].

Commonwealth's Endorsement:

The Commonwealth of Australia is satisfied that the Contractor has fulfilled all of its obligations under the Contract, except to the extent that the Contractor's obligations expressly, or by implication, survive the Final Acceptance Milestone, and the Contractor has therefore achieved Final Acceptance for the purposes of the Contract.

Authorised Signatory Printed Name

Position Held Date

Authorised Signatory Printed Name

Position Held Date

ANNEX C TO ATTACHMENT I

CONTRACT CHANGE PROPOSAL (CORE)

CONTRACT NUMBER: (INSERT CONTRACT NUMBER)

Note to Contractor: 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 separately the cost of preparation of the CCP and any proposed variation to the payments required under the Contract and, where approved in accordance with clause 11.1 of the COC, the reasonable cost of preparation shall be taken into account in calculating the varied payments under the Contract.

This template CCP includes examples of how some sections may be completed. CCP drafters will need to rely on their own judgement as to how best to describe the proposed contract change.

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 dated the (INSERT DATE)

Between

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

and

(INSERT CONTRACTOR NAME, ACN/ARBN AND ABN AS APPLICABLE) having its registered office at (INSERT CONTRACTOR'S REGISTERED OFFICE) ("the Contractor").

RECITALS

- A. The Commonwealth has entered into a contract (INSERT CONTRACT NUMBER) dated (INSERT EFFECTIVE DATE) ("the Contract") for the supply of (INSERT BRIEF DESCRIPTION).
- 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 this CCP.

AGREED TERMS:**CCP Number (Mandatory):****ECP Number (If applicable):****Date Raised (Mandatory):****Validity period for CCP (Mandatory):****Originator (Mandatory):****Reference in Contract (Mandatory): (INSERT CLAUSE NUMBER)****1. DETAILS OF PROPOSED CHANGE (MANDATORY):*****Example 1:***

- 1.1 The parties agree that the Contract is amended in accordance with the following table.

ANNEX C TO ATTACHMENT I

Amendment	Affected Provisions	Substituted / Inserted Provisions
Replace	Conditions of Contract – Attachment A – Annex C – Contract Data Requirements List (CDRL) (Delete current CDRL)	With Appendix 1 (COC – Attachment A – Annex C – CDRL) (Insert Appendix 1 to this CCP)
Insert		Appendix 2 (DID-PM-MGT-XYZ) (Insert Appendix 2 to this CCP under Attachment A – Annex C – CDRL)
Remove	DID-V&V-MGT-PQR	

Example 2:

- a. Old Text:
- b. New Text:

2. JUSTIFICATION FOR PROPOSED CHANGE (MANDATORY):**3. EFFECT OF PROPOSED CHANGE (IF APPLICABLE):**

- a. Contract Price:
 - (i) Price and Delivery Schedule:
 - (ii) Schedule of Payments including payment method:
 - (iii) Cost of Preparation of CCP:
- b. Delivery:
 - (i) Location:
 - (ii) Date:
- c. Scope of Work:

Note to Contractors: This should include a description of the effect of the change on the scope of work, including where appropriate, Quality, technical/functional specification(s), warranty, training, documentation, WBS and PMB.

- d. Australian Industry Capability
 - (i) Australian Industry Activities (AIAs):
 - (ii) the Prescribed ACE Percentage at each future ACE Measurement Point:

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:**

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

ANNEX C TO ATTACHMENT I

6. APPROVAL:

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

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

<http://ibss/PublishedWebsite/LatestFinal/%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 Contractor's execution of the Contract Change Proposal. The Contractor should seek its own independent legal advice on its execution of the Contract Change Proposal.

SIGNED **[INSERT 'AS AN AGREEMENT' OR 'AND DELIVERED AS A DEED' AS APPROPRIATE]**

SIGNED for and on behalf of:

THE COMMONWEALTH OF AUSTRALIA

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

In the presence of:

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

SIGNED for and on behalf of

THE CONTRACTOR:

(INSERT APPROPRIATE CONTRACTOR's EXECUTION CLAUSE)

Appendix:

1. Engineering Change Proposal (ECP) (if applicable)

ANNEX D TO ATTACHMENT I

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. The final agreed deed will form this Annex F to Attachment I in any resultant Contract.

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 given 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, FAX NUMBER AND EMAIL]

(INSERT PROMISOR ADDRESS, FAX NUMBER AND EMAIL)

8. A notice given in accordance with clause 7 is deemed to be delivered:
 - a. if hand delivered, when received at the address; or

ANNEX D TO ATTACHMENT I

- b. if sent by pre-paid post, when received at the address,
but if the receipt, transmission 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 a 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 Procurement and Contracting 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 E TO ATTACHMENT I

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) (ACN/ARBN 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 E TO ATTACHMENT I

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) (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 REQUIREMENTS)**; 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 E TO ATTACHMENT I

'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 beginning on the first Saturday that falls before Christmas Day (or from Christmas Day when it falls on a Saturday).

1.2 Interpretation

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 E TO ATTACHMENT I**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 2.2.1, 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,

ANNEX E TO ATTACHMENT I

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:

- 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

ANNEX E TO ATTACHMENT I

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.

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:

ANNEX E TO ATTACHMENT I

- 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;
- 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.

ANNEX E TO ATTACHMENT I

- 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:

'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)

- 8.1.1 In this clause, 'GST' means the Commonwealth tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), 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

ANNEX E TO ATTACHMENT I

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:
- 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.

ANNEX E TO ATTACHMENT I**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, FAX NUMBER AND EMAIL]

(INSERT GUARANTOR ADDRESS, FAX NUMBER 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;
- b. if hand delivered, when received at the address, or by the recipient if sooner;
- c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire notice; or
- d. 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,

- 12.1.3 but if the receipt, transmission 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.

ANNEX E TO ATTACHMENT I**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.

12.11 Binding on each Signatory (Core)

- 12.11.1 This Deed binds and is enforceable against the Guarantor despite:
- any other person not executing this Deed or its execution being defective in any way; or
 - 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)

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 Procurement and Contracting 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)

ANNEX F TO ATTACHMENT I

CONFIDENTIALITY DEED POLL (CORE)

This Deed Poll is made on **(INSERT DATE)** by:

(INSERT NAME OF CONFIDANT AND ACN/ABN AND ABN AS APPLICABLE) ('the Confidant') in favour of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth') and the Relevant Third Party.

RECITALS:

- A. In performance of any of its obligations in relation to the Contract **(INSERT CONTRACT NUMBER)** dated **(INSERT DATE)** for the supply of **(INSERT BRIEF DESCRIPTION)** ('Agreement'), the Confidant may become aware of or have access to Confidential Information belonging to the Commonwealth, the Relevant Third Party or another person.
- B. The Commonwealth requires and the Confidant agrees that it is necessary to take all necessary steps (including the execution of this Deed for the benefit of the Commonwealth and the Relevant Third Party) to ensure that the Confidential Information is kept confidential, is not disclosed to any party that is not authorised to receive it and is only used for the Permitted Purposes.

AGREED TERMS

1. ACKNOWLEDGEMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the statements in the Recitals in every particular.

2. DEFINITIONS

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

'Confidential Information' means information (whether or not owned by the Commonwealth or a Relevant Third Party) that meets all of the following criteria:

- a. is specifically identified at Schedule 1 to this Deed;
- b. is commercially sensitive (not generally known or ascertainable);
- c. disclosure would cause unreasonable detriment to the owner of the information or another party; and
- d. was provided with an express or implied understanding that it would remain confidential;

but does not include information which:

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

'Documents' include:

- a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and
- b. any article or material from which sound, images or writings are capable of being reproduced with or without the aid of any other article or device.

'Permitted Purposes' means

- a. the purposes described in Schedule 1 to this Deed; and
- b. any other purpose that may be approved in writing by the Commonwealth from time to time.

ANNEX F TO ATTACHMENT I

'Personnel' means any officer, employee, agent, adviser or independent contractor of the Confidant.

'Relevant Third Party' means each entity, if any, described in Schedule 1 to this Deed, or as notified to the Confidant by the Commonwealth from time to time.

'Working Day' means in relation to the doing of an action in a place;

- a. any day other than a Saturday, Sunday or public holiday in that place; or
- 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.

3. INTERPRETATION

3.1 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 next Working Day;
- f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- g. a reference to a clause includes a reference to a subclause of that clause;
- h. a reference to a 'dollar', '\$', '\$A' or 'AUD' means the Australian dollar unless otherwise stated;
- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on date of entering into the 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; and
- k. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Deed.

4. CONFIDENTIALITY UNDERTAKINGS

4.1 The Confidant:

- a. acknowledges and agrees that this Deed is for the benefit of the Commonwealth and any Relevant Third Party and is directly enforceable by the Commonwealth or any Relevant Third Party, even though they are not parties to this Deed;
- b. shall ensure that the Confidential Information is kept confidential and secure from disclosure;
- c. shall only use the Confidential Information for the Permitted Purposes;
- d. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose any of the Confidential Information to any person, other than its Personnel who:
 - (i) have a need to know and access the Confidential Information in order for the Confidant to carry out the Permitted Purposes; and
 - (ii) where required by the Commonwealth, have executed a similar undertaking to this Deed in favour of the Commonwealth and each Relevant Third Party,

ANNEX F TO ATTACHMENT I

and the Commonwealth may grant or withhold its consent; and

- e. shall promptly notify the Commonwealth of any unauthorised possession, disclosure or use of the Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.
- 4.2 The restrictions imposed by this Deed in relation to Confidential Information will not apply to the disclosure by the Confidant or its Personnel of any Confidential Information to the extent it is required to be disclosed by law or court order.
- 4.3 The Confidant acknowledges that it may be provided with the ability to access Commonwealth-held information (in addition to the Confidential Information) in connection with its performance of the Permitted Purposes, including through access to Commonwealth information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use Commonwealth-held information except to the extent strictly required to undertake the Permitted Purposes.

5. CONFIDANT'S REPRESENTATIVES

- 5.1 The Confidant shall ensure that its Personnel (whether or not still employed or engaged in that capacity) do not do or omit to do anything which, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this Deed.
- 5.2 The Confidant shall give the Commonwealth all assistance it reasonably requires to take any action or bring any proceedings for breach of the undertaking contained in clause 5.1.

6. RETURN OF CONFIDENTIAL INFORMATION

- 6.1 Without limiting the Confidant's obligations at law, the Confidant shall deliver to the Commonwealth or the Relevant Third Party (as applicable), or destroy or erase, as required by the Commonwealth, all Documents and any other material (including electronically or otherwise stored) in its possession, power or control which contain or relate to the Confidential Information on the earlier of:
- a. demand by the Commonwealth, and
 - b. the time the Documents and any other material are no longer required for the Permitted Purposes.
- 6.2 If the Commonwealth makes a demand under this clause 6, and the Confidant has placed or is aware that Documents containing the Confidential Information are beyond its possession or control, then the Confidant shall provide full particulars of the whereabouts of the Documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 6.3 The Confidant shall ensure that its Personnel and each person to whom it (or its Personnel) has disclosed any Confidential Information comply with the requirements of this clause 6 as if personally bound by it.
- 6.4 Return or destruction of any Confidential Information does not release the Confidant from its obligations under this Deed.

7. SURVIVAL

- 7.1 This Deed shall survive the termination or expiry of the Agreement.

8. INDEMNITY

- 8.1 The Confidant indemnifies the Commonwealth and the Relevant Third Party, their officers, employees and agents against all liability or loss arising directly or indirectly from, and any costs, charges and expenses (including the cost of settling any action) arising or incurred in connection with:
- a. any breach by the Confidant of this Deed; or
 - b. any act or omission by any of the Confidant's Personnel which, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this Deed.

ANNEX F TO ATTACHMENT I**9. INJUNCTIVE RELIEF**

- 9.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth or a Relevant Third Party for any breach of this Deed and that the Commonwealth and each Relevant Third Party is entitled to injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

10. WAIVER

- 10.1 Failure by the Commonwealth or a Relevant Third Party to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

11. REMEDIES CUMULATIVE

- 11.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law, in equity or any other such right or remedy.

12. OTHER INSTRUMENTS

- 12.1 Subject to the other covenants of this Deed, the rights and obligations of the Commonwealth, each Relevant Third Party and the Confidant pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the Commonwealth, Relevant Third Party and the Confidant under any other deed or agreement to which they are parties.

13. VARIATIONS AND AMENDMENTS

- 13.1 No term or provision of this Deed shall be amended or varied unless such amendment or variation is agreed by the Commonwealth in writing.

14. APPLICABLE LAW

- 14.1 The laws of **[INSERT STATE/TERRITORY]** shall apply to this Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of this Deed.

15. NOTICES

- 15.1 Unless the contrary intention appears, any notice under this Deed shall be effective if it is in writing and sent from and delivered to the Commonwealth or Confidant, as the case may be, as detailed below:

- a. **[INSERT COMMONWEALTH ADDRESS AND EMAIL];** or
- b. **(INSERT CONFIDANT ADDRESS AND EMAIL).**

- 15.2 A notice given in accordance with this clause 15 is deemed to be delivered:

- a. if hand delivered, when received at the address;
- b. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
- c. if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,

but if the receipt, transmission or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the notice is deemed to be delivered at 9.00am (recipient's local time) on the next Working Day.

ANNEX F TO ATTACHMENT I

SIGNED AS A DEED POLL

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

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

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

(INSERT APPROPRIATE CONFIDANT'S EXECUTION CLAUSE)

ANNEX F TO ATTACHMENT I

SCHEDULE 1

1. CONFIDENTIAL INFORMATION

Note to drafters: It is essential to describe the specific Confidential Information that may be used and provided to the Confidant.

1.1 (INSERT CONFIDENTIAL INFORMATION BEING PROVIDED)

2. PERMITTED PURPOSES

Note to drafters: It is essential to describe the Permitted Purposes for which the Confidential Information may be used by the Confidant. The intention of this part of this Annex is to clearly and accurately define the scope of those Permitted Purposes and so confine its use for only those purposes.

3. RELEVANT THIRD PARTY

Note to drafters: Identify any Relevant Third Party with as much precision as possible. If necessary, this can be done by identifying an entity such as a company, or by describing a class of persons that can be readily identified, eg the authors of specified material.

ANNEX G TO ATTACHMENT I

FORM OF AIC COMPLIANCE CERTIFICATE (CORE)

[TO BE PRINTED ON COMPANY LETTERHEAD]

From: [Contractor/AIC Subcontractor]

To: Commonwealth of Australia represented by the Department of Defence

[CONTRACT DETAILS] (the "Contract")

[I am a director]/[We are directors] of [Contractor/AIC Subcontractor] of [address] ("**Company**") and [am]/[are each] authorised to execute this Certificate in the name of the Company.

[I/We] refer to the Contract. Terms defined in the Contract shall have the same meaning in this certificate unless given a different meaning in this Certificate.

This Certificate is an AIC Compliance Certificate for the purposes of the Contract.

This Certificate is provided in conjunction with the **[select which of the two following options is appropriate]**:

- a. [Contract/Subcontract] Status Report prepared by the Company in relation to the period from [] to [] (the "**Review Period**") in accordance with the terms of the [Contract/Subcontract]; and
- b. **[Paragraph to apply to Contractor version only.]**ACE measurement report prepared by the Company to support and justify the Achieved ACE Percentage at the most recent ACE Measurement Point in accordance with the terms of the Contract.

[I/We] certify that during the Review Period and as at the date of this Certificate [(except as disclosed in paragraph e below)]:

- a. The obligations contained in [clauses 4.1 and 4.2 of the Contract / clauses [] and [] of the Subcontract] have been complied with since the date of the last AIC Compliance Certificate provided to the Commonwealth under the [Contract/Subcontract].
- b. **[Paragraph to apply to Contractor version only.]**As at the date of this Certificate:
 - (i) the ACE information provided in the [Contract Status Report]/[ACE measurement report] is complete and accurate;
 - (ii) the calculation of the ACE has been undertaken in accordance with the ACE Measurement Rules; and
 - (iii) status reporting against the AIC requirements of the Contract is complete and accurate.
- c. **[Paragraph to apply to AIC Subcontractor version only.]**As at the date of this Certificate:
 - (i) Subcontract status reporting against the AIC requirements of the Subcontract is complete and accurate;
 - (ii) the calculation of the ACE has been undertaken in accordance with the ACE Measurement Rules; and
 - (iii) there are no material non-compliances with the Company's commitments set out in the Subcontract AIC Plan.
- d. The Essential AIC Obligations of the [Contract/Subcontract] have been complied with and [I/we] [was/were] not aware of the occurrence of any breach or potential breach of any Essential AIC Obligation under the [Contract/Subcontract].
- e. The disclosed exceptions are as follows:

Exception	Remedial action status proposed/undertaken
[Clause and description]	[Describe action undertaken/proposed]

ANNEX G TO ATTACHMENT I

[I/We] acknowledge that disclosure of exceptions to compliance will not prejudice the rights of the Commonwealth under the Contract.

The representations and warranties in this Certificate are correct and not misleading by reference to the facts and circumstances subsisting as at the date of this Certificate.

[Director]

[Director]

ATTACHMENT J

SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (OPTIONAL)

Note to drafters: A Security Classification and Categorisation Guide (SCCG) is to be included where the procurement involves classified information, security-protected assets, or the procurement is for a Software-dependent system.

For information on developing a SCCG refer to the Defence Security and Vetting Service guidance on Business Impact Levels Guidelines at:

<http://drnet/AssociateSecretary/security/advice/Pages/bils.aspx>

and contact the Defence Security and Vetting Services Project Security Team at DSA.ProjectSecurity@defence.gov.au.

[DRAFTERS TO INSERT SECURITY CLASSIFICATION GRADING DOCUMENT PRIOR TO RELEASE OF RFT].

ATTACHMENT K

NOT USED

ATTACHMENT L

RESIDENT PERSONNEL (OPTIONAL)

Note to drafters: Attachment L contains a recommended structure that should be developed and amended to suit the needs of the proposed Contract. Further considerations include:

- a. if Resident Personnel (RP) will be located at multiple locations, using annexes for the facilities and ICT requirements for each location;
- b. if RP will reside with Approved Subcontractors, amending clauses accordingly; and
- c. the need to accommodate both on-going positions in the RP and temporary staff (eg, when performing regulatory audits or other activities).

1. INTRODUCTION

- 1.1 The purpose of this Attachment L is to detail the roles of Resident Personnel (RP) and to define the resources required to be provided by the Contractor to enable the RP to efficiently undertake those roles.

Note to drafters: The introduction should be updated to reflect the objectives for using RP.

- 1.2 The parties acknowledge that the objectives of locating RP at Contractor Premises are:
- a. to provide the Commonwealth with visibility of day-to-day Contract activities without the need for a greater number of formal meetings;
 - b. to facilitate communication between the Contractor and the Commonwealth; and
 - c. to expedite Contract administrative functions within the RP's scope of responsibility.

2. RESIDENT PERSONNEL

Note to drafters: If the RP team is small a simple list rather than the following table may be suitable. If a table is to be used, amend / replace the table below as required.

- 2.1 Table 1 lists the ongoing positions in the RP team.

Table 1: Resident Personnel

serial	Position Title	Grade / Rank	Start	Completion
(a)	(b)	(c)	(d)	(e)
Location 1				
1	RP Team Leader		ED + 20	
2	Engineering Manager		OD - 20	
3	Logistics Manager			
4	Commercial Manager		OD + 20	
5	Contract Support			
Location 2				
6	Technical Representative			

ATTACHMENT L

3. ROLE OF RESIDENT PERSONNEL

Note to drafters: *If the RP team is small, details of the roles may be inserted here; alternatively, an annex for duty statements or terms of reference may be added. Consideration should be given to identifying Commonwealth activities that are required under the Contract (eg, Commonwealth action for data items in accordance with the CDRL, acting as the Commonwealth Representative's delegate at specific meetings, etc) where this can be done succinctly. Where specific roles may be excluded (eg, processing of ECPs or CCPs), this should also be identified here.*

- 3.1 [DRAFTER TO INSERT DETAILS OF RP TEAM AND MEMBER ROLES / TERMS OF REFERENCE].

4. CONTRACTOR-PROVIDED FACILITIES FOR RESIDENT PERSONNEL

Note to drafters: *Insert details and amend the following suggested clauses as required.*

- 4.1 Unless otherwise agreed by the Commonwealth Representative, the work area provided by the Contractor for the RP shall:
- a. accommodate all members of the RP within a single area (ie, RP team members should not be physically isolated unless otherwise agreed);
 - b. include a lockable office for the RP Team Leader; and
 - c. include at least [DRAFTER TO INSERT] workstations (including desks and chairs) for temporary RP team members and visitors as may be required from time to time.
- 4.2 The Contractor shall provide a workstation for each RP team member that includes:
- a. the Information and Communications Technology (ICT) required by clause 6; and
 - b. [DRAFTER TO INSERT].
- 4.3 The Contractor shall provide the RP with a secure storage facility for classified matter up to and including [DRAFTER TO INSERT].
- 4.4 The Contractor shall provide the RP with access to a private meeting room facility, on an as-required basis, sufficient to accommodate at least [DRAFTER TO INSERT] persons.

Note to drafters: *Consider also company cafeteria (if available), washroom facilities, etc.*

5. WORK HEALTH AND SAFETY

Note to drafters: *The following clauses should be reviewed, amended, and expanded as necessary to address WHS requirements for the RP. Refer also to clause 12.4 of the COC and clause 9 of the SOW for standard Contract requirements for WHS and the code of practice referenced in clause 9.3.5 of the SOW.*

- 5.1 The Contractor shall provide, and shall ensure that the Subcontractors provide the RP with:
- a. a safe working environment in accordance with clause 9.3.5 of the SOW;
 - b. access to all safety-related training and briefings as may be reasonably required to ensure the health and safety of the RP when located at the Contractor's or Subcontractor's workplace(s) (as the case may be); and
 - c. access to all WHS procedures, safety risk assessments and other WHS-related information applicable to the RP when located at the Contractor's or Subcontractor's workplace(s) (as the case may be).
- 5.2 In the event of a Notifiable Incident involving RP, the Contractor shall:
- a. immediately notify the RP Team Leader or, if the RP Team Leader is not immediately contactable, the next available member of the RP team; and
 - b. report the Notifiable Incident in accordance with clause 9.4 of the SOW.

ATTACHMENT L

6. INFORMATION AND COMMUNICATIONS TECHNOLOGY REQUIREMENTS

Note to drafters: Add further requirements as applicable. Consideration may be given to telephones, access to the Defence Protected and/or Secret Network, a secure area, access to Contractor systems, printers, photocopiers, video-conferencing facilities, etc. Additional considerations may include which ICT resources may be shared versus exclusive use. Refer also to clause 11.10 of the COC, Defence Security.

6.1 [DRAFTER TO INSERT].

7. ANNEXES:

A. [DRAFTER TO INSERT]

ATTACHMENT M

GLOSSARY (CORE)

Note to drafters: If drafters consider that an additional definition, acronym or abbreviation should be added, careful consideration needs to be given to the legal and practical effect of the proposed addition in the context of the tender pack or contract as a whole.

The listing of all acronyms, abbreviations, definitions and referenced documents, and the version numbers of all referenced documents should be reviewed for currency prior to both the RFT release and the Effective Date.

1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
AAI	Accountable Authority Instructions
ABL	Allocated Baseline
ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACE	Australian Contract Expenditure
ACM	Asbestos Containing Material
ACN	Australian Company Number
ACQPW	Acquisition Pricing Workbook
ACSC	Australian Cyber Security Centre
ACSI	Australian Communications Security Instruction
ADF	Australian Defence Force
AFD	Application for a Deviation
AIA	Australian Industry Activity
AIC	Australian Industry Capability
AIO	Australian Industry Opportunity
ANP	Australian Naval Publication
ANZ	Australia and New Zealand
ARBN	Australian Registered Body Number
ASARP	As Secure As Reasonably Practicable
ASTDL	ANZ Subcontractor Technical Data List
ATO	Australian Taxation Office
ATO	Authorisation to Operate
ATO-C	Authorisation to Operate with Conditions
ATP&Ps	Acceptance Test Plan and Procedures
ATR	Acceptance Test Report
AV&V	Acceptance Verification and Validation
BRDP	Business Rule Decision Points
BREX	Business Rules Exchange
CAGE	Commercial and Government Entity (see also NCAGE)
CAID	Clear Accountability In Design
CASG	Capability Acquisition and Sustainment Group
CASP	Commonwealth Assets Stocktaking Plan
CASR	Commonwealth Assets Stocktaking Report
CBD	Certification Basis Description

Abbreviation	Description
CCP	Contract Change Proposal
CCR	Configuration Change Register
CDRL	Contract Data Requirements List
CFA	Commercial and Financial Analysis
CI	Configuration Item
CM	Configuration Management
CMCA	Contractor Managed Commonwealth Assets
CMP	Configuration Management Plan
CMS	Contract Master Schedule
COC	Conditions of Contract
COMSEC	Communications Security
COTS	Commercial-Off-The-Shelf
CPR	Contract Performance Review
CPRs	Commonwealth Procurement Rules
CR	Commonwealth Representative
CSA	Configuration Status Accounting
CSAR	Configuration Status Accounting Report
CSCI	Computer Software Configuration Item
CSCR	Cyber Security Case Report
CSCRCP	Cyber Supply Chain Risk Plan
CSDB	Common Source Data Base
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CSR	Contract Status Report
CSWBS	Contract Summary Work Breakdown Structure
CTIS	Cyber Threat Intelligence Sharing
CTXP	Contractor Transition Plan
CWBS	Contract Work Breakdown Structure
DASA	Defence Aviation Safety Authority
DASR	Defence Aviation Safety Regulations
DCwS	Defence Cyberworthiness System
DDG	Defence Digital Group
DDN	Data Dispatch Note
DDR	Detailed Design Review
DESE	Digitally Enabled Systems and Equipment

ATTACHMENT M

Abbreviation	Description
DID	Data Item Description
DIDS	Defence Industry Development Strategy
DISP	Defence Industry Security Program
DML	Data Management List
DOR	Description of Requirement
DRAIC	Defence-Required Australian Industrial Capability
DRAICRR	DRAIC Readiness Review
DSPF	Defence Security Principles Framework
DS&VS	Defence Security and Vetting Service
DWRM	Defence Workplace Relations Manual
E3	Electromagnetic Environmental Effects
E8MM	Essential Eight Maturity Model
ECARS	Equipment Certification to Access Radio Frequency Spectrum
ECP	Engineering Change Proposal
EMC	Electromagnetic Compatibility
EMI	Electromagnetic Interference
EMM	Engineering and Maintenance Manual
EMP	Electromagnetic Pulse
ENVMS	Environmental Management System
ERP	Enterprise Resource Planning
ESCM	Electronic Supply Chain Manual
EVM	Earned Value Management
EVMP	Earned Value Management Plan
EVMS	Earned Value Management System
FAC	Final Acceptance Certificate
FACRR	Facilities Readiness Review
FBL	Functional Baseline
FCA	Functional Configuration Audit
FRAR	Facilities Requirements Analysis Report
FTE	Full-Time Equivalent
GFD	Government Furnished Data
GFE	Government Furnished Equipment
GFF	Government Furnished Facilities
GFI	Government Furnished Information
GFM	Government Furnished Material
GFS	Government Furnished Services
GST	Australian Goods and Services Tax
HAR	Hazard Analysis Report
HE	Human Engineering
HEPP	Human Engineering Program Plan
HERF	Hazards of Electromagnetic Radiation to Fuel
HERO	Hazards of Electromagnetic Radiation to Ordnance

Abbreviation	Description
HL	Hazard Log
HRI	Hazard Risk Index
HSI	Human System Interface
HSMP	Health and Safety Management Plan
HWCI	Hardware Configuration Item
ICE	Imported Contract Expenditure
ICT	Information and Communications Technology
ICTA	ICT Accreditation
ILS	Integrated Logistic Support
IP	Intellectual Property
IPP	Indigenous Procurement Policy
IRMT	Integrated Reliability, Maintainability and Testability
IRMTPR	Integrated Reliability, Maintainability and Testability Program Report
ISP	Integrated Support Plan
ISSMP	In-Service Security Management Plan
IT	Information Technology
KPIs	Key Performance Indicators
LCAM	Logistics Compliance and Assurance Manual
LCC	Life Cycle Cost
LCCMP	Life Cycle Cost Management Plan
LOT	Life-of-Type
LSA	Logistic Support Analysis
LSAR	Logistic Support Analysis Record
MILIS	Military Integrated Logistics Information System
MOTS	Military-Off-The-Shelf
MSA	Materiel Safety Assessment
MSR	Mandated System Review
MSSMP	Materiel System Security Management Plan
MSTDT	Mission System Technical Documentation Tree
MTDI	Master Technical Data Index
NATO	North Atlantic Treaty Organisation
NCAGE	NATO Commercial and Government Entity Code
NSN	NATO Stock Number
NTE	Not-To-Exceed
OCD	Operational Concept Document
ODIS	Office of Defence Industry Support
OEM	Original Equipment Manufacturer
OT	Operational Technology
PBL	Product Baseline
PBS	Product Breakdown Structure
PCA	Physical Configuration Audit

ATTACHMENT M

Abbreviation	Description
PDF	Portable Document Format
PDR	Preliminary Design Review
PMP	Project Management Plan
PPE	Personal Protective Equipment
PPR	Provisioning Preparedness Review
PT PCP	Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC. Payment Times Procurement Connected Policy
PRRL	Personnel Resource Requirements List
PSS	Planned Servicing Schedule
PV&VRP	Previous V&V Results Package
QA	Quality Assurance
QMS	Quality Management System
R&D	Research and Development
RAM	Reliability, Availability and Maintainability
RI	Repairable Item
RP	Resident Personnel
RPL	Recommended Provisioning List
RTM	Requirements Traceability Matrix
S&TE	Support and Test Equipment
SAC	Supplies Acceptance Certificate
SADL	Systems Approach to Defence Learning
SCCG	Security Classification and Categorisation Guide
SCR	Safety Case Report
SDIP	Sovereign Defence Industrial Priority
SDR	System Definition Review
SDS	Safety Data Sheet
SE	Systems Engineering
SEG	Security and Estate Group
SEMP	Systems Engineering Management Plan
SFARP	So Far As Reasonably Practicable
SGML	Standard Generalized Markup Language
SICC	Security Incident Coordination Centre
SME	Small to Medium Enterprises
SWMP	Software Management Plan
SOW	Statement of Work
SRMP	Security Risk Management Plan
SRR	System Requirements Review
SS	System Specification
SSoI	Security System of Interest
SSOP	Security Standard Operating Procedure
SSP	System Security Plan
SSPP	System Safety Program Plan

Abbreviation	Description
SSS	System/Subsystem Specification
SSTD	Support System Technical Data List
STR	Statement of Tax Record
SWG	Security Working Group
SWLIST	Software List
SWSP	Software Support Plan
TD	Technical Data
TDP	Technical Data Plan
TDSR	Technical Data and Software Rights
TNGRR	Training Readiness Review
ToSA	Target of Security Assessment
TRR	Test Readiness Review
UOC	Unit of Competency
V&V	Verification and Validation
V&VP	Verification and Validation Plan
VCRM	Verification Cross Reference Matrix
VET	Vocational Education and Training
WBS	Work Breakdown Structure
WHS	Work Health and Safety
WHSMS	WHS Work Health and Safety Management System
XML	eXtensible Markup Language

ATTACHMENT M

2. DEFINITIONS

Term	Status	Definition
Acceptance	(Core)	means signature by the Commonwealth Representative of a SAC in accordance with clause 6.5 of the COC; and 'Accept' has a corresponding meaning.
Acceptance Verification and Validation	(Core)	means V&V activities conducted in accordance with clause 7 of the SOW for the purposes of achieving Acceptance of Supplies.
Accreditation	(Optional)	means formal recognition by an authoritative body that: <ul style="list-style-type: none"> a. an organisation has demonstrated competence to carry out certain duties and tasks; or b. a system is authorised to operate in a defined configuration, with a specified role and in a particular environment (having regard to the associated residual risk with the operation of a system).
ACE Measurement Point	(Core)	means each ACE Measurement Point specified in Table F-1 of Attachment F.
ACE Measurement Rules	(Core)	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.
ACE Value	(Core)	means the Australian dollar value of ACE.
Achieved ACE Percentage	(Core)	means, in respect of an ACE Measurement Point, the ACE expressed as a percentage of the Total Contract Expenditure.
ADF Capability Objectives	(Core)	has the meaning given in clause 1.3.1b of the COC.
Adjustment Note	(Core)	has the same meaning as in the GST Act.
Administration and Logistics Delay Time	(Core)	means the period during which Maintenance is delayed for reasons of an administrative or logistics nature, including waiting for a spare to become available, waiting for an item of S&TE in order to perform Maintenance, waiting for transportation, waiting to use a facility required for Maintenance, and waiting for Maintenance Personnel to become available.
AIC Compliance Certificate	(Core)	means a certificate in the form of Annex H to Attachment I.
AIC Objectives	(Core)	has the meaning given in clause 1.3.1c of the COC.
AIC Obligations	(Core)	means the obligations under the Contract relating to AIC and for the avoidance of doubt includes the following obligations: <ul style="list-style-type: none"> a. the obligations on the Contractor under clause 4 of the COC, clause 10 of the SOW and Attachment F; and b. the Essential AIC Obligations.
AIC Remediation Plan	(Core)	has the meaning given in clause 4.4.1 of the COC.
AIC Subcontractor	(Core)	means a Subcontractor identified as an AIC Subcontractor in Attachment H in accordance with clause 11.9 of the COC.
AIC Subcontractor Obligations	(Core)	means the obligations of an AIC Subcontractor under the relevant Approved Subcontract relating to AIC and for the avoidance of doubt includes the obligation to comply with the relevant Subcontractor AIC Plan.

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Term	Status	Definition
Allocated Baseline	(Optional)	means the current Approved documentation for a CI, which describes the functional, performance, interoperability and interface characteristics that are allocated from those of the higher-level CI, interface requirements with interfacing CIs, additional design constraints, and the Verification required to demonstrate achievement of those specified characteristics.
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 2.4.4 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; and 'Approve' and 'Approved' have a corresponding meaning.</p>
Approved Subcontractor	(Core)	means a Subcontractor that is listed in Attachment H; and 'Approved Subcontract' means a contract between the Contractor and an Approved Subcontractor or between a Subcontractor and an Approved Subcontractor to that Subcontractor.
Approved Subcontractor Deed	(Core)	means a deed substantially in the form of Annex A to Attachment I.
Approved Substance	(Core)	<p>means a Problematic Substance that is:</p> <p>a. specified by the Commonwealth in writing for use under the Contract;</p> <p>b. embedded within GFE;</p> <p>c. Approved in the Hazard Log or Materiel Safety Assessment, as applicable, for inclusion in the Supplies; or</p> <p>d. Approved and used for the purpose(s) specified in the Approved HSMP or the Approved PMP, as applicable.</p>
As Secure As Reasonably Practicable or ASARP	(Core)	<p>means that, in relation to a Security System-of-Interest (SSoI), or elements thereof, an adequate level of security has been achieved, such that an incremental improvement in security would:</p> <p>a. require a disproportionate deterioration in relation to meeting other system cost, schedule, or performance objectives;</p> <p>b. violate system constraints; or</p> <p>c. require unacceptable concessions, such as an unacceptable change in the way operations are performed.</p>
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Associated Parties	(Core)	means other entities (including other contractors and Commonwealth organisations) performing activities related to the Supplies, the Capability, or otherwise having a connection with the work performed under the Contract.

ATTACHMENT M

Term	Status	Definition
Authority to Operate or ATO	(Optional)	Note to drafters: This term is only applicable for Security Authorisations relating to ICT Security. has the meaning given through the Defence Security Principles Framework (DSPF).
Authority to Operate with Conditions or ATO-C	(Optional)	Note to drafters: This term is only applicable for Security Authorisations relating to ICT Security. has the meaning given through the DSPF.
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	(Core)	has the meaning given in paragraph 2.2 of the ACE Measurement Rules.
Australian Entity	(Core)	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	(Core)	means Australian Entities that perform work in Australia or New Zealand.
Australian Industry Activity or AIA	(Core)	means an activity identified as an Australian Industry Activity in Attachment F.
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 Industry Opportunity or AIO	(Optional)	means an opportunity to achieve enhanced outcomes against the AIC Objectives.
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 delivery of the Supplies or the performance of the Contract.
Base Date Currency Exchange Rate	(Core)	means the currency exchange rate between source currency and AUD available from www.rba.gov.au/statistics/frequency/exchange-rates.html that applied at the Base Date.
Baseline	(Core)	see Configuration Baseline.

ATTACHMENT M

Term	Status	Definition
Defence Cost Principles	(Core)	means the referenced document titled ' <i>Defence Cost Principles</i> ', which provides a framework to deliver greater understanding and clarity regarding how costs may be attributed to Defence Contracts.
Capability	(Core)	means the ability, resulting from the employment of the Mission System and the Support System, to achieve a desired operational effect in a nominated environment within a specified time and to sustain that effect for a designated period.
Capability State	(Core)	means the differing states of the Capability System and any intermediate state.
Capability System	(Core)	means the Materiel System combined with all other elements provided by the Commonwealth, including Personnel and Facilities.
Certificate of Conformity	(Core)	means a formal certification that the goods supplied are authentic, their origin traceable, that they meet the specification and conditions contained in the original order, and that this is certified by a responsible member of the supplier's quality control organisation.
Certification	(Core)	means: <ul style="list-style-type: none"> a. for the purposes of clauses 8 and 9 of the SOW, certification by an organisation accredited by the JAS-ANZ, or an equivalent certification body acceptable to the Commonwealth, and 'Certified' has a corresponding meaning; and b. in relation to the certification of Supplies, the end result of a process which formally examines and documents compliance of Supplies against predefined standards, to the satisfaction of the certifying authority.
Certification Basis	(Optional)	means the suite of standards against which materiel is to be certified, derived from or judged to be equivalent to a subset of the materiel standards approved by an applicable regulatory authority.
Certification Basis Description	(Optional)	means the document listing, inter-alia, the individual Certification Basis requirements and the evidence that demonstrates Contractor compliance with the requirements.
Change of Control	(Core)	means: <ul style="list-style-type: none"> a. a body corporate or entity that Controls the Contractor or the Guarantor ceases to Control the Contractor or the Guarantor; or b. a body corporate or entity that does not Control the Contractor or the Guarantor comes to Control the Contractor or the Guarantor.
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).
Codification	(Core)	means the act of establishing and maintaining Stock Item identification and related data under the Defence cataloguing system and/or the national system of another country participating in the NATO codification system.
Codification Data	(Core)	means: <ul style="list-style-type: none"> a. for items of Supplies not already codified in the NATO Codification System, the engineering drawings, standards, specifications and/or technical documentation required to fully identify the items

ATTACHMENT M

Term	Status	Definition
		designated by the Commonwealth to support the equipment covered by the Contract; or b. for items of Supplies already codified in the NATO Codification System, the details of that codification.
Commercial and Government Entity Code	(Core)	means the code that identifies the manufacturer of an item in the NATO Codification System.
Commercial Item	(Core)	means an item that is: a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and 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).
Commercial Software	(Core)	means Software that is: a. a Commercial Item; b. supplied, without further development or modification in conjunction with a Commercial Item under the standard commercial terms applicable to that item; or c. Free and Open Source Software.
Commercial TD	(Core)	means TD that is: a. a Commercial Item; or 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.
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 payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.
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 Annex A to Attachment E.
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 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:

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Term	Status	Definition
		<ul style="list-style-type: none"> a. an area of land or any other place (whether or not 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)	<p>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:</p> <ul style="list-style-type: none"> 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, <p>but does not include Excluded Parties.</p>
Commonwealth Software	(Core)	<p><i>Note to tenderers: The Commonwealth will own any IP created under the Contract or a Subcontract in respect of Commonwealth Software.</i></p> <p>means:</p> <ul style="list-style-type: none"> a. any Software of the type described in Annex C to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and b. any developments, modifications or improvements to that Software.
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.
Commonwealth TD	(Core)	<p><i>Note to tenderers: The Commonwealth will own any IP created under the Contract or a Subcontract in respect of Commonwealth TD.</i></p> <p>means:</p> <ul style="list-style-type: none"> a. any TD of the type described in Annex C to the TDSR Schedule in respect of an item of Supplies specified in that Annex; and b. any developments, modifications or improvements to that TD.
Competency	(Core)	means the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
Confidential Information	(Core)	<p>means:</p> <ul style="list-style-type: none"> a. any information in the Contract that is identified in Attachment N; and b. any other information: <ul style="list-style-type: none"> (i) that is commercially sensitive (not generally known or ascertainable); and (ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and

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		<p>(iii) that was provided with an express or implied understanding that it would remain confidential,</p> <p>but does not include information that:</p> <ul style="list-style-type: none"> c. is or becomes public knowledge other than by breach of the Contract; d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or e. has been independently developed or acquired by the receiving party.
Configuration Audit	(Core)	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')	(Core)	means: <ul style="list-style-type: none"> 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, for conducting Verification and Validation, and for other management activities; 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; c. in the context of Configuration Management documents, the currently approved and released configuration documentation; and d. in the context of a Software product, a released set of files comprising a Software version and associated configuration documentation.
Configuration Control	(Core)	means: <ul style="list-style-type: none"> 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 b. in the context of a product, the CM function that ensures changes to and variances from an approved Configuration Baseline are properly identified, recorded, evaluated, approved or disapproved, and incorporated and Verified as appropriate; including the implementation of all approved and released changes into: <ul style="list-style-type: none"> (i) the applicable configurations of a product; (ii) associated product information; and (iii) supporting and interfacing products and their associated information.
Configuration Control Board	(Core)	means the group comprising executive, technical, logistics and other representatives who review and recommend approval or disapproval of changes and variances to an approved configuration managed product (Mission System, CI, or other product) and its supporting documentation. There may be Commonwealth, Contractor and

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		Subcontractor CCBs, as applicable to the Contract. The composition of the required CCB is normally defined in each organisation's CM plans.
Configuration Identification	(Core)	<p>means:</p> <ul style="list-style-type: none"> a. in the context of an identification process, the unique identifiers for a product and its configuration documents; and b. in the context of a CM activity, the systematic process of selecting the product attributes, organising associated information about the attributes, and stating the attributes. This CM activity encompasses the: <ul style="list-style-type: none"> (i) establishment of a structure for products (including the selection of CIs) for product configuration information; (ii) determination of the types of configuration documentation required for each CI to select, define, document, and baseline product attributes; (iii) issuance of numbers and other identifiers affixed to the CIs and to the technical documentation that defines the CI's configuration; and (iv) release of CIs and their associated configuration documentation, and establishment of Configuration Baselines for CIs.
Configuration Item	(Core)	means an aggregation of hardware/Software, a combination of both, or any of its discrete proportions, which satisfies an end item use function and is designated for separate Configuration Management.
Configuration Management	(Core)	means a technical and management 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	(Core)	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 Multiple Entry Consolidated (MEC) group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Consumable	(Core)	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.
Contamination	(Optional)	means the presence in, on or under land, air or water of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under the land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any statutory requirement for the protection of the Environment.

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Contract	(Core)	means the COC (including the Details Schedule), the attachments including the Statement of Work, and any document expressly incorporated as part of the Contract.
Contract (Support)	(Core)	means a contract entered into, or to be entered into, to sustain the major elements of the Supplies.
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 Price	(Core)	means the amount specified in Annex A to Attachment B as the Contract Price.
Contract Summary Work Breakdown Structure or CSWBS	(Core)	means the Work Breakdown Structure (WBS) set out at clause 4 of this Attachment M.
Contractor Default	(Core)	means a Default in relation to the Contract by the Contractor or Contractor Personnel.
Contractor Maintained Licensed Fittings	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>for a GFF Licensed Area, means the Licensed Fittings identified in the list titled 'Contractor Maintained Licensed Fittings' included in Appendix 2 of the relevant annex to Attachment O.</p>
Contractor Managed Commonwealth Assets	(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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> a. premises owned by the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; and b. premises (including any GFF): <ul style="list-style-type: none"> (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.
Contractor (Support)	(Core)	means the party (other than the Commonwealth) to the Contract (Support).
Control	(Core)	means, in relation to the Contractor or the Guarantor, any of the following:

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		<ul style="list-style-type: none"> 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 votes at the meeting of the board of directors of the Contractor or the Guarantor; and 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	(Core)	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 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.
Correctly Rendered Invoice	(Optional)	<p>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</p> <p>for the purposes of clause 11.9.12 of the COC, means an invoice which is:</p> <ul style="list-style-type: none"> a. rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and b. for amounts that are correctly calculated and due for payment and payable under the terms of the relevant PT PCP Subcontract.
Cost Reimbursement Supplies	(Optional)	means the Supplies specified in [INSERT ANNEX or ANNEXES] to the SOW for which Cost Reimbursement Payments shall be payable in accordance with clause 7.8.1 of the COC.
Critical Resources	(Core)	means those resources which are not new but require special management attention due to schedule constraints, cost implications or known scarcities.
Cyber Supply Chain	(Core)	means the Contractor and the associated network of Subcontractors (including direct Subcontractors and lower-tier Subcontractors) that provides items of Digitally Enabled Systems and Equipment (DESE) directly or indirectly to the Commonwealth to satisfy the requirements of the Contract.

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Cyberworthiness	(Core)	<p>means the desired outcome of a range of policy and assurance activities that allow the operation of Australian Defence Force platforms, systems and networks in a contested cyberspace environment, in accordance with the capability manager's operating intent.</p> <p>Assessing Cyberworthiness takes into consideration output from security assessments of enabling systems, the intended operating context, and any mitigation measures to be applied. The aim of Cyberworthiness is to ensure a capability is fit for purpose by assuring the confidentiality, integrity and availability of the systems required for survivability in a contested cyber environment.</p>
Defence Cyberworthiness System	(Optional)	means the framework provisioned by Chief of Joint Capability (CJC) as the ADF Cyberworthiness Authority, for the purposes of ensuring that Capability Managers understand and manage their risks to achieve Cyberworthiness outcomes. It complements the process and directives within existing frameworks, including seaworthiness, land worthiness and airworthiness.
Dangerous Goods	(Core)	has the meaning given in the <i>Australian Code for the Transport of Dangerous Goods by Road and Rail</i> (extant edition and as amended from time to time).
Day	(Core)	means a calendar day.
Default	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> a. a breach of an express or implied provision of the Contract by a party to the Contract; and b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following: <ul style="list-style-type: none"> (i) the Commonwealth or Commonwealth Personnel; (ii) a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor; and (iii) the Contractor or Contractor Personnel. <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>
Defect	(Core)	<p>means a defect, fault (including a fault which results in a Failure), damage, malfunction or omission, including in relation to:</p> <ul style="list-style-type: none"> a. operation, performance or functionality; or b. design, manufacture, workmanship or materials, <p>and 'Defective' has a corresponding meaning.</p> <p>Without limiting the above, Supplies are Defective if they do not conform to the requirements of the Contract. A defect, fault, damage, malfunction or omission is not a Defect to the extent that it results from fair wear and tear.</p>
Defence	(Core)	means the Department of Defence and/or the Australian Defence Force.

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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"> a. the defence and defence interests of Australia; b. the national security of Australia; c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and d. peacekeeping or peace enforcement activities.
Defence-Required Australian Industrial Capability or DRAIC	(Optional)	means an Industrial Capability provided by one or more Australian Entities that provides specific outcomes required by Defence, and which is described in Attachment F. A DRAIC is a combination of DRAIC Elements that can be: <ul style="list-style-type: none"> a. organised and operated to provide the required outcome; and b. applicable to the acquisition and/or the sustainment of a Materiel System.
Defence Service Provider	(Core)	means a person, other than Defence Personnel, involved in Defence work or engaged by Defence.
Delivery Schedule	(Core)	means Attachment C to the Contract.
Description of Requirement	(Core)	means the document set out at Annex A to the SOW.
Digitally Enabled Systems and Equipment or DESE	(Core)	<p><i>Note to drafters: Amend the following definition to suit the cyber-security requirements of the Contract. This definition acts to scope the cyber-security requirements (eg, for the purposes of cyber supply chain analyses).</i></p> <p>means those systems and items of equipment that are categorised as Information and Communications Technology (ICT) Equipment, Operational Technology (OT) Equipment, or internet of things devices (ie, devices that connect together via the internet).</p>
Design Authority	(Core)	means a person or organisation that has the overall responsibility for developing and ensuring the integrity of a design of a system or equipment, ensuring that the design decisions are documented and the consequences of any design decision are understood.
Detailed SDIP	(Optional)	means a detailed description of how an SDIP is to be delivered to support Defence capabilities. Detailed SDIPs include information needed by all levels of the supply chain, to consistently and continuously guide and grow the sovereign defence industrial base, aligned to Defence's needs.
Developmental Support System Components	(Optional)	means all items of S&TE, Training Equipment and special-to-type Packaging that either need to be developed or modified to satisfy the requirements of the Contract. Developmental Support System Components are a subset of Support System Components.
Deviation	(Core)	means written authorisation to depart from the originally specified requirements for a product before its production, granted following an application for a Deviation submitted before the event, when a condition is identified as not being able to be achieved, such as any of the following:

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		<ul style="list-style-type: none"> a. test requirement; b. process requirement; c. material requirement; and d. quality system requirement.
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)	<p>includes each of the following:</p> <ul style="list-style-type: none"> a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and b. any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.
DRAIC Element	(Optional)	means a component element of a DRAIC, and includes, as separate DRAIC Elements, infrastructure, hardware, Software, materiel, facilities, personnel, ICT, processes, and Technical Data.
Earned Value Management or EVM	(Optional)	means the program set out in clause 3.2.4 of the SOW for integrating scope, schedule, and resources and for measuring project performance under the Contract. It compares the amount of work that was planned with what was actually earned and what was actually spent to determine if cost and schedule performance are as planned. It also includes the management action to correct deviations from the plan.
Earned Value Management System or EVMS	(Optional)	means a system that complies with clause 3.2.4 of the SOW.
Effectivity	(Core)	means a designation, defining the product range (eg, serial numbers, block numbers, batch numbers, lot numbers, models, dates or event) at which a specific product configuration applies, a change is to be or has been affected, or to which a variance from that product information applies.
Engineering Change Proposal	(Core)	<p>means a formal written proposal by the Commonwealth or the Contractor, prepared in accordance with the terms of the Contract, by which a change to a Baseline of an article, either delivered or to be delivered, is proposed, described, justified, and submitted to the approval authority. An Engineering Change Proposal may require revision of product configuration documentation, including:</p> <ul style="list-style-type: none"> a. the contract specification; b. the engineering drawings; and c. any document referenced from the documents identified in either paragraphs a or b.
Engineering Design Data	(Optional)	has the meaning given in DEF(AUST)CMTD-5085C, ' <i>Engineering Design Data for Defence Materiel</i> '.
Engineering Support	(Core)	means the organisation of hardware, Software, materiel, Facilities, Personnel, processes, and Technical Data needed to enable engineering and design-management services to be competently

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		provided for the Materiel System throughout its LOT. Engineering Support includes Software support.
Environment	(Optional)	in the context of environmental management, means any of the following: <ul style="list-style-type: none"> a. ecosystems and their constituent parts; b. natural and physical resources; c. the qualities and characteristics of locations, places and areas; d. noise; and e. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs a, b or c.
Environmental Harm	(Optional)	means any actual or threatened adverse impact on, or damage to, the Environment.
Environmental Incident	(Optional)	means any Environmental Harm or Contamination caused by or in relation to the Contractor's activities.
Environmental Management System or ENVMS	(Optional)	has the meaning given to that term in AS/NZS ISO 14001:2015.
Environmental Outcomes	(Optional)	means the minimisation of Environmental Harm wholly or partially caused by the Materiel System or its use, achieved through the elimination of environmental hazards and minimisation of environmental risks.
Essential AIC Obligations	(Core)	means each of the obligations set out in clause 4.2 of the COC.
EVM-required Subcontractor	(Optional)	means an Approved Subcontractor that is required to implement an EVMS that complies with the identified requirements under the Subcontractor Earned Value Management Requirements clause of the SOW.
Excepted Risk	(Core)	means an event or circumstance that is any of the following: <ul style="list-style-type: none"> a. an act of God, including a natural disaster, such as a bushfire, an earthquake, a flood, a landslide or a cyclone; 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; c. confiscation by governments or public authorities; and d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels, except to the extent that the event or circumstance (or any resulting delay, loss or damage): <ul style="list-style-type: none"> e. arose out of or as a consequence of a Contractor Default; or f. could have been prevented or mitigated, by reasonable care on the part of the Contractor or Contractor Personnel.
Excluded Parties	(Core)	means the parties identified as such in Annex D to the TDSR Schedule.
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

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		performance of the Contract, including the provision and use of the Supplies.
Facilities	(Core)	means all mobile, fixed, permanent and semi-permanent buildings, structures, installations, and the associated machinery, plant and utilities for the operating, engineering, Maintenance, supply, Training, and administrative elements of a Materiel System.
Facilities Condition Report	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licensed Area, means the report at Appendix 3 of the relevant annex to Attachment O.</p>
Failure	(Core)	means the inability of a system or component to perform its required functions within specified performance requirements. The fault tolerance discipline distinguishes between a human action (a mistake), its manifestation (a hardware or Software fault), the result of the fault (a failure), and the amount by which the result is incorrect (the error).
Failure Mode	(Core)	means the physical or functional manifestation of a Failure. For example, a system in failure mode may be characterised by slow operation, incorrect outputs, or complete termination of execution.
Failure Severity	(Core)	has the meaning set out in clause 7.1.7 of the SOW.
Final Acceptance	(Optional)	means signature, by the Commonwealth Representative, of a Final Acceptance Certificate in accordance with clause 6.6 of the COC.
Final Acceptance Certificate	(Core)	means the certificate issued under clause 6.6 of the COC and as set out at Annex B to Attachment I.
Free and Open Source Software	(Core)	<p>means Software that:</p> <ul style="list-style-type: none"> a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and b. may be used, modified, developed or adapted by any person subject to specified conditions, <p>and includes open source Software, public domain Software, shareware, community source Software and freeware.</p>
Full-Time Equivalent or FTE	(Optional)	means the equivalent of one person employed in a defined staff position on a full time basis, allowing for associated employment agreement obligations and entitlements.
Functional Baseline or FBL	(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. The system or segment specification, with support from other documents, as applicable, establishes the functional baseline for the Mission System and Developmental Support System Components.
GFF Common Area	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means an area of a GFF Licensed Area or the Commonwealth Premises in which the GFF is located, identified in the plans in Appendix 1 of the relevant annex to Attachment O as a GFF Common Area.</p>

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GFF Delay Event	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means any of the following:</p> <ul style="list-style-type: none"> a. the Commonwealth excludes the Contractor or Contractor Personnel from the GFF (or a substantial part of it) other than as reasonably necessary for the normal operation and maintenance of the Commonwealth Premises in which the GFF is located; b. the Commonwealth requires the Contractor to relocate from the GFF to another location; c. the GFF Licence is terminated by the Commonwealth; and d. the Contractor cannot exercise (or fully exercise) a right granted under the GFF Licence due to a Commonwealth Default or a breach of a general law duty or an applicable law by an Unrelated Party, <p>other than as a result of a Contractor Default or an Excepted Risk.</p>
GFF Licence	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the licence granted by clause 3.8 of the COC.</p>
GFF Licence Application Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licensed Area, means the date specified in the annex for that GFF Licensed Area as the date on which the GFF Licence applies to the GFF Licensed Area.</p>
GFF Licence Commencement Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence, means [... INSERT DATE ...], being the date the GFF Licence commences.</p>
GFF Licence Expiry Date	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence, means [... INSERT DATE ...], being the date the GFF Licence expires and ceases to have effect.</p>
GFF Licence Term	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licence, means the period determined in accordance with clause 1.1 of Attachment O.</p>
GFF Licensed Area	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to a GFF Licence, means the area forming part of a Commonwealth Premises and identified as such in Appendix 1 of the relevant annex to Attachment O, including all buildings in that area and all Licensed Fittings in that area or those buildings.</p>
GFF Permitted Purpose	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means any of the following:</p> <ul style="list-style-type: none"> a. the purpose of performing the Contractor's obligations under and in connection with the Contract; and

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		b. if the Commonwealth Representative consents in writing to the use of a GFF Licensed Area for a purpose under or in connection with another contract to which the Commonwealth is a party, the other purpose.
Glossary	(Core)	means this glossary.
Governing Security Documents	(Optional)	<p>Note to drafters: Amend the following definition to suit the security requirements of the Contract. This definition is critical to the successful operation of the security provisions of the SOW, and particular attention is drawn to clause 4.6.7 of the SOW. Do not include commercial standards within this definition.</p> <p>means the following documents applicable to the security provisions of the SOW:</p> <ul style="list-style-type: none"> a. the Protective Security Policy Framework (PSPF); b. the Australian Government Information Security Manual (ISM); c. the Defence Security Principles Framework (DSPF); d. the Essential Eight Maturity Model (E8MM); e. the Security Classification and Categorisation Guide (SCCG) at Attachment J to the COC; f. [INSERT OTHER APPLICABLE DEFENCE SECURITY DOCUMENTS].
Government Agency	(Core)	<p>means a person or body performing governmental functions, including any of the following:</p> <ul style="list-style-type: none"> a. a body politic; b. a government or government department or other body; c. a governmental, semi-governmental or judicial person; and d. a person (whether autonomous or not) charged with the administration of a law.
Government Furnished Data or GFD	(Optional)	means the data identified as 'Government Furnished Data' in Attachment E.
Government Furnished Equipment or GFE	(Optional)	means the equipment identified as 'Government Furnished Equipment' in Attachment E.
Government Furnished Facilities or GFF	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the GFF Licensed Area(s) identified in Attachment O.</p>
Government Furnished Information or GFI	(Optional)	means the information identified as 'Government Furnished Information' in Attachment E.
Government Furnished Material or GFM	(Optional)	means GFD, GFE, and GFI and any other material identified by the Commonwealth as GFM in Attachment E.
Government Furnished Services or GFS	(Optional)	means the services identified as 'Government Furnished Services' in Annex B to Attachment E.

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GST Act	(Core)	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and associated taxation legislation.
GST Group	(Optional)	means a GST group formed in accordance with Division 48 of the GST Act.
Guaranteed Agreement	(Optional)	<p>Note to drafters: Include this if optional clause 7.7.2 is used in the COC.</p> <p>means an agreement listed at Attachment 1 to the Master Deed of Guarantee and Indemnity.</p>
Hazardous Chemical	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Information and Communications Technology Equipment or ICT Equipment	(Optional)	means any device that can process, store or communicate data electronically in a digital form, such as computers, multifunction devices, network devices, smartphones, digital cameras, electronic storage media, smart devices and other radio devices.
Imported Content	(Core)	means that part of the Supplies that is not AIA or Australian Government charges or duties, including GST. This includes that part of the Supplies that is of overseas (other than New Zealand) origin and comprises all associated costs including, but not limited to, international freight and cartage (by other than Australian and New Zealand industry carriers), agent's fees, and overseas storage.
Imported Contract Expenditure or ICE	(Core)	has the meaning given in paragraph 2.3 of the ACE Measurement Rules.
Independent AIC Audit Program	(Core)	means the Commonwealth's Independent AIC Audit Program for auditing compliance with the AIC Obligations and AIC Subcontractor Obligations.
Indigenous Enterprise	(Optional)	<p>means an organisation, operating a business, that is 50 per cent or more Indigenous owned. It may take the form of a company, incorporated association or trust. A social enterprise or registered charity may also be an Indigenous enterprise if it is operating a business.</p> <p>Supply Nation (www.supplynation.org.au) maintains a list of Indigenous Enterprises that meet this definition.</p>
Industrial Capability	(Core)	means the ability, resulting from the employment of business, commercial and industry resources, to provide particular goods and/or services. An industrial capability is one that is not only able to provide the goods and services when needed, but it is also sustainable over the period that the industrial capability may be required; and 'Industrial Capabilities' has a corresponding meaning.
Insolvency Event	(Core)	<p>means, in respect of a person, any of the following:</p> <p>a. the person:</p> <ul style="list-style-type: none"> (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;

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		<ul style="list-style-type: none"> 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; c. the person becoming subject to external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (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 <i>Personal Properties Securities Act 2009</i> (Cth)); 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; 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; and h. any analogous event under the law of any applicable jurisdiction.
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"> a. Copyright; b. rights in relation to a Circuit Layout, Patent, Registrable Design or Trade Mark (including service marks); and 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.
Internal System Review	(Core)	means a System Review, other than a Mandated System Review, that the Contractor or Subcontractor conducts as part of the program of activities for the Contract.
Introduction into Service Training	(Core)	means Training that is designed to train Personnel, who are already competent and qualified on existing equipment, on the new systems being provided under the Contract to enable those Personnel to competently operate and support the new systems. This type of Training would also be provided to training personnel.
Issue	(Core)	means a concern or action whose progress needs to be monitored, but which is technically not a risk because it does not represent any cost or schedule threat to the Contract at this point in time. Typical issues include action items from meetings, corrective actions, and concerns or actions arising from correspondence, metrics collection and analysis, deviation from progress against plans, and reviews of process application.
Key Commercial Item	(Core)	means a Commercial Item listed (or required to be listed) in Annex C to the TDSR Schedule.
Key Person	(Optional)	means a person filling a Key Staff Position.
Key Staff Position	(Optional)	means a project position that requires a person with highly specialised skills or such capabilities that are crucial to the success of the project, as identified in accordance with clause 3.4 of the SOW.
Latent Defect	(Core)	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 Supplies (or if the Contract does not provide for Acceptance of the Supplies, Final Acceptance), as the case may be; and</p> <p>b. other than in relation to Software, falls outside the incidence of random Failures to be expected of Supplies of the relevant kind.</p>
LD Amount	(Optional)	for a Milestone, means the amount specified in, or calculated in accordance with, Attachment D as the LD Amount for the Milestone.
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 upon 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>
Licensed Fittings	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the following items in a GFF Licensed Area:</p> <p>a. fixed internal partitioning and panelling;</p> <p>b. floor coverings, window blinds and awnings;</p> <p>c. cabling and connection points of any installed telecommunication systems;</p> <p>d. lines, conduits, connections, taps, outlets, controls and regulatory and safety devices of any reticulated electricity, gas or water supply;</p> <p>e. sinks and basins;</p> <p>f. fire sprinkler systems;</p> <p>g. light, heating and air-conditioning fittings;</p> <p>h. installed warning or alarm systems;</p> <p>i. signage supporting the function or the intended function of the GFF;</p> <p>j. hoses and compressor units;</p> <p>k. other fixed plant and equipment (not being GFE), including that listed in an appendix to an annex to Attachment O; and</p> <p>l. any other items made available in a GFF Licensed Area by the Commonwealth for the Contractor's use,</p> <p>and any items that replace those while the GFF Licence is in force, but does not include items that are GFE.</p> <p>Note to drafters: This list should be reviewed and updated depending on the actual licensed fittings. If a fitting which is being licensed does not appear on the list above, you will need to include it. Conversely, if an item is listed as being a 'licensed</p>

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		<i>fitting' above, but is not being licensed to the Contractor, it should be deleted from the list above.</i>
Life Cycle Cost	(Core)	means the total cost to the Commonwealth of acquisition and ownership (both direct and indirect) of the Mission System and Support System over the LOT of the Mission System. The LCC includes all costs associated with acquisition, In-Service operations, logistics support, and disposal.
Life-of-Type or LOT	(Core)	means the planned duration of the service life of the Mission System. For this Contract, the LOT is the period of [...DRAFTER TO INSERT PERIOD...] years following Final Acceptance.
Long Lead Time Item	(Core)	means a Mission System component or Support System Component which, because of its complexity of design, complicated manufacturing process, or limited production capacity, would cause extended production or procurement cycles that would preclude timely delivery if not ordered in advance of the normal provisioning processes under the Contract for the particular type of component.
Loss	(Core)	means any liability, loss (including economic loss), damage, compensation, costs and expenses.
Maintenance	(Core)	means all actions taken to retain materiel 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 Support	(Core)	means the organisation of hardware, Software, materiel, Facilities, Personnel, processes, and Technical Data needed to enable Maintenance services to be competently provided for the Materiel System throughout its LOT.
Major Change	(Core)	<p><i>Note to drafters: Amend this definition to include any project-specific requirements.</i></p> <p>means an Engineering Change Proposal that:</p> <ol style="list-style-type: none"> contains an engineering design for which the judgement of significance is classified as significant in relation to the technical risk introduced by the implementation of the design; affects the FBL of the Mission System(s); affects the Contract Price; 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: <ol style="list-style-type: none"> the operational or performance characteristics of the Materiel System, including in relation to safety, security, survivability, reliability, maintainability, availability and supportability; the ability to meet schedule requirements, particularly the Milestone Dates; Government Furnished Equipment (GFE); Interface Control Documents or specified interoperability with interfacing CIs, support equipment or support Software, spares, trainers or training devices, equipment or Software;

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		<p>(v) the content of operating instructions, maintenance documentation or other Technical Data (TD), other than those classified as Minor Changes;</p> <p>(vi) interchangeability or replaceability as applied to CIs, and to all subassemblies and parts except the pieces and parts of non-repairable subassemblies;</p> <p>(vii) sources of CIs or Repairable Items at any level defined by source-control drawings; and</p> <p>(viii) skills, personnel numbers, training, biomedical factors or human-engineering design.</p>
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.
Mandated System Review	(Core)	means a System Review that is mandated in the Contract.
Master Deed of Guarantee and Indemnity	(Optional)	<p>Note to drafters: Include this if optional clause 7.7.2 is used in the COC. Contact the ASDEFCO and Contracting Initiatives Team at procurement.asdefcon@defence.gov.au for information on the relevant Master Deed of Guarantee and Indemnity.</p> <p>means the [INSERT NAME OF THE DEED] between the Commonwealth and the Guarantor dated [INSERT DATE].</p>
Materiel Safety	(Core)	<p>means that the Materiel Systems, including elements thereof, are, so far as is reasonably practicable, without risks to the health and safety of persons who:</p> <ol style="list-style-type: none"> use those Materiel Systems or elements for a purpose for which they were designed and manufactured; handle those Materiel Systems or elements; store those Materiel Systems or elements; construct those Materiel Systems or elements; carry out any reasonably foreseeable activity in relation to the manufacture, assembly or use of the Materiel Systems or elements or proper storage decommissioning, or disposal (eg, inspection, operation, cleaning, Maintenance or repair of Materiel Systems or elements); and are at or in the vicinity of a workplace and who are exposed to Materiel Systems or elements at that workplace or whose health or safety is affected by any activity referred to in sub-paragraph (a) to (e) above.
Materiel System	(Core)	means the combination of the Mission System and the Support System.
Milestone	(Core)	means an event specified as a Milestone in Annexes A and B to Attachment B.
Milestone Date	(Core)	in relation to a Milestone, means the date for achievement of the Milestone as set out in Attachment B.

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Milestone Payment	(Core)	in relation to a Milestone, means the amount set out in Annex B to Attachment B in respect of the Milestone.
Minor Change	(Core)	<p>Note to drafters: Amend this definition to include any project-specific requirements.</p> <p>means an Engineering Change Proposal that:</p> <ul style="list-style-type: none"> a. does not meet any of the criteria for a Major Change; b. substitutes a component with one that is built to the same build standard; or c. amends TD, and the amendments have no technical impact on the associated product's form, fit, function, physical performance, logistic or maintenance support arrangements, and includes amendments such as: <ul style="list-style-type: none"> (i) typographic errors; (ii) grammatical errors; (iii) misspellings; (iv) incorrect page numbering; (v) incorrect nomenclature; and (vi) incorrect contact information.
Mission System	(Core)	<p>Note to drafters: When complex Support System Components are to be developed (eg, an integration and test laboratory or Training simulator) these may be designated as a type of Mission System for the purposes of the Contract by including the optional words below and listing them within the definition.</p> <p>means that element of the Materiel System that directly performs the operational function [... and those elements designated as Mission Systems under the Contract ...]. For this Contract, Mission System specifically means [...INSERT PROJECT SPECIFIC MEANING...].</p>
Mobilisation Payment	(RFT Core)	means the payment identified as a Mobilisation Payment in Annex B to Attachment B.
month	(Core)	means a calendar month.
Moral Rights	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> a. a right of attribution of authorship; b. a right not to have authorship falsely attributed; or c. a right of integrity of authorship.
Not-To-Exceed	(Core)	means a price (inclusive of any extra fees) that shall not be exceeded for the provision and completion of an applicable group of Supplies or of an approved work activity.
Notifiable Incident	(Core)	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
Objective Evidence	(Core)	means specified documentary evidence required to validate an item for a specific application.
Obsolescence	(Core)	means the process of becoming out-of-date or superseded. Obsolescence can affect all equipment, Software, tools, processes, Technical Data and other support elements.

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Operating Expenses	(Optional)	<p><i>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor. This list should be reviewed and amended to ensure completeness and accuracy.</i></p> <p>means the total of all costs, charges, fees, expenses, Taxes and other outgoings paid or payable, charged or chargeable, assessed or assessable upon or otherwise incurred by the Commonwealth in respect of the Commonwealth Premises in which the GFF is located or in managing, supervising, operating, cleaning, painting, maintaining and keeping secure the Commonwealth Premises in which the GFF is located and not otherwise recouped by the Commonwealth under the GFF Licence, including all of the following:</p> <ol style="list-style-type: none"> all amounts paid or payable to any Government Agency in respect of the Commonwealth Premises in which the GFF is located (not including a GFF Licence fee, if any); all insurance premiums payable in respect of the insurances effected by the Commonwealth in respect of the Commonwealth Premises in which the GFF is located against risks referable to the Commonwealth Premises in which the GFF is located or to the Commonwealth in relation to the Commonwealth's ownership or interest in the Commonwealth Premises in which the GFF is located; amounts incurred in respect of the maintenance, operation, renovation, repair, upgrade and upkeep of the Commonwealth Premises in which the GFF is located (other than those parts of the Commonwealth Premises in which the GFF is located from which the Contractor derives no benefit from a right of access); amounts incurred in respect of cleaning, lighting, maintaining and servicing common areas; amounts incurred in respect of caretaking, security and other expenses associated with facilities provided on or from the Commonwealth Premises in which the GFF is located; amounts incurred in respect of control and security (including fees payable to the Commonwealth's security contractors, car parking attendants and traffic supervisors) in connection with the Commonwealth Premises in which the GFF is located (including amounts incurred in respect of salaries and wages, labour on costs and accident compensation insurance premiums); amounts incurred in respect of maintenance, repair and testing of fire fighting and protection equipment (including sprinkler installations, hydrants, fire extinguishers, smoke detectors and other fire fighting equipment) installed by the Commonwealth on the Commonwealth Premises in which the GFF is located, including amounts paid or payable to a Government in respect of the supply, maintenance, servicing and monitoring of fire alarms; amounts incurred in respect of any other services (including IT services) provided in respect of the Commonwealth Premises in which the GFF is located, including: <ol style="list-style-type: none"> amounts payable to specialist contractors; wages paid to permanent staff employed; and the cost of materials used by the Commonwealth, in connection with those services;

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		<p>i. amounts that the Commonwealth incurs in respect of the management and supervision of the Commonwealth Premises in which the GFF is located and arrangements for use or occupation of or access to the Commonwealth Premises in which the GFF is located;</p> <p>j. amounts incurred in complying with any requirement of a Government Agency in relation to the Commonwealth Premises in which the GFF is located (other than those parts of the Commonwealth Premises in which the GFF is located to which there is no access or use by the public or the Contractor) but excluding requirements which are the responsibility of a particular tenant, licensee or occupier of the Commonwealth Premises in which the GFF is located; and</p> <p>k. any other expenditure reasonably and properly incurred by the Commonwealth in the operation and maintenance of the Commonwealth Premises in which the GFF is located, but excluding any of the following:</p> <p>l. costs of capital repairs (provided these are not needed because of Contractor Default);</p> <p>m. amounts that the Commonwealth is not permitted by law to recover from the Contractor;</p> <p>n. amounts of GST in respect of the GFF Licence; and</p> <p>o. any other amounts payable or to be borne by the Contractor under Attachment O.</p>
Operating Support	(Core)	means the organisation of hardware, Software, materiel, Facilities, Personnel, processes and Technical Data needed to enable the Mission System to be competently operated throughout its LOT.
Operational Technology Equipment or OT Equipment	(Optional)	<p>means the programmable components of a system (hardware and/or software) that detect or cause a change through the direct monitoring and/or control of physical devices, processes or events. These components interact with the physical environment or manage devices that interact with the physical environment.</p> <p>Embedded systems are also included in the sphere of operational technology (eg, smart instrumentation), along with a large subset of scientific data acquisition, control, and computing devices. Systems that process operational data (including electronic, telecommunications, computer systems and technical components) are included under the term operational technology. An OT device could be as small as the engine control unit (ECU) of a car or as large as the distributed control network for a national electricity grid.</p>
Other Capabilities	(Core)	means Capabilities that are currently maintained or that will be introduced by the Commonwealth and/or by third parties under separate contractual arrangements with the Commonwealth, and which interoperate and/or integrate with the Materiel System.
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.

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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 Measurement Baseline or PMB	(Core)	means the agreed time-phased budget plan against which Contract performance is measured under the EVMS.
Personal Information	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Personnel	(Core)	means all staff involved in the operation and/or support of the Mission System and/or Support System, including Commonwealth, Contractor (Support) and Subcontractors (Support) staff.
Physical Configuration Audit	(Optional)	means the formal examination of the 'as-built' configuration of a Configuration Item against its technical documentation to establish or verify the Configuration Item's Product Baseline.
Prescribed ACE Percentage	(Core)	means the ACE percentage specified in Table 1 of Attachment F in respect of an ACE Measurement Point.
Prescribed Activities	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> a. the use, handling or storage of: <ul style="list-style-type: none"> (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 (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; b. unless otherwise agreed by the Commonwealth, the use, handling or storage of Hazardous Chemicals that are defined in the <i>Work Health and Safety Regulations 2011</i> (Cth) as: <ul style="list-style-type: none"> (i) Schedule 11 Hazardous Chemicals exceeding manifest quantities; or (ii) Schedule 15 Chemicals where the applicable State or Territory regulator has determined the storage facility to be a major hazard facility; c. the use, handling or storage of a Problematic Source; d. the use, handling or storage of ordnance; e. high risk work as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth) that requires dedicated work plans; f. electrical work on energised electrical equipment as contemplated by the <i>Work Health and Safety Regulations 2011</i> (Cth); g. high risk construction work, demolition work or excavation work, each as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth);

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		<p>h. work involving ACM as contemplated by subregulation 419(2) of the <i>Work Health and Safety Regulations 2011</i> (Cth);</p> <p>i. work that requires a confined space entry permit in accordance with <i>Work Health and Safety Regulations 2011</i> (Cth); and</p> <p>j. 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>
Privacy Commissioner	(Core)	means any person performing any 'privacy function' within the meaning of 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.
Problem Resolution System	(Core)	means the Contractor's closed-loop system, as required under clause 7.1.7 of the SOW, for collecting, classifying, and documenting data in relation to Failures, problems and faults, and for defining corresponding corrective actions and V&V activities.
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 Audit	(Core)	means a systematic, independent and documented review of a product (a product being the result of a process) resulting in the obtaining of audit evidence and evaluating 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 or PBL	(Core)	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.
Product Configuration Information	(Core)	means a CI's detailed design documentation including those Verification requirements necessary for Accepting product deliveries (eg, for first article Acceptance and Acceptance inspections). Product Configuration Information includes product definition

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		information (ie, information that defines the product's requirements, documents the product attributes, including the process information used in its realisation, and is the authoritative source for CM of the product) and product operational information (information developed from product definition information used to test, operate, maintain and dispose of a product).
Proportionate Liability Law	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> a. <i>Civil Liability Act 2002</i> (NSW) – Part 4; b. <i>Wrongs Act 1958</i> (Vic) – Part IVAA; c. <i>Civil Liability Act 2002</i> (WA) – Part 1F; d. <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2; e. <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A; f. <i>Proportionate Liability Act 2005</i> (NT); g. <i>Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001</i> (SA) – Part 3; h. <i>Civil Liability Act 2002</i> (Tas) – Part 9A; i. <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA; j. <i>Corporations Act 2001</i> (Cth) – Part 7.10, Div 2A; and k. <i>Australian Securities & Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.
PT PCP	(Optional)	<p>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</p> <p>means the Commonwealth's 'Payment Times Procurement Connected Policy'.</p>
PT PCP Policy Team	(Optional)	<p>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</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>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</p> <p>means a Subcontract between a Reporting Entity and another party (Other Party) where:</p> <ul style="list-style-type: none"> a. the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract; b. both parties are carrying on business in Australia; and 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>but does not include the following Subcontracts:</p> <ul style="list-style-type: none"> d. Subcontracts entered into prior to the Reporting Entities' tender response for the Contract;

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		<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>procuring real property, including leases and licences.</p>
PT PCP Subcontractor	(Optional)	<p>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</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>Note to drafters: Include if clauses 11.9.11-11.9.15 (regarding PT PCP) are included in the COC.</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 Assurance	(Core)	means that part of Quality Management focused on providing confidence that Quality requirements will be fulfilled.
Quality Management	(Core)	means co-ordinated 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 8.1 of the SOW for the purposes of Quality Management.
Radiofrequency Spectrum	(Optional)	means the range of frequencies of electromagnetic radiation within which radiocommunications are capable of being made from zero to less than 420 terahertz.
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.
Related Body Corporate	(Core)	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).
Repairable Item	(Core)	means an item that when unserviceable can be reconditioned or economically repaired to a serviceable state for further use.
Request	(Core)	means a request for tender, proposal, quotation or information or similar request for the provision of goods or services to the Commonwealth.
Resident Personnel	(Core)	means the Commonwealth Personnel, and Commonwealth engaged contractors and representatives located at the Contractor's and Subcontractor's premises for the purpose of the Contract.
Review	(Core)	in relation to a data item, has the meaning given in clause 2.4.3 of the SOW.
Risk Register	(Core)	means the log used by the Contractor for recording each risk, risk assessment and risk management strategy in accordance with the Approved PMP.
Royalty	(Core)	means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use, any IP, however calculated.

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Safety Outcomes	(Core)	means the achievement of Materiel Safety through the identification of foreseeable hazards that could give rise to risks to health and safety and the elimination, so far as is reasonably practicable, of risks to health and safety and where elimination is not reasonably practicable, the minimisation of risks to health and safety so far as is reasonably practicable.
Schedule 11 Hazardous Chemicals	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Schedule 15 Chemical	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Security Authorisation	(Core)	<p>means a security-related Certification, Accreditation, risk assessment outcome, regulatory approval, or other documented authority provided by a Defence security authority and necessary for the delivery of the Supplies or the performance of the Contract.</p> <p>Note to drafters: Amend the following definition to suit the security requirements of the Contract:</p> <p>Note: The DSPF and ISM are continually evolving. The language below in relation to ICT security reflects the endorsed version of these policy documents, where the terms 'ATO-C' and 'ATO' have replaced the long-standing terms, 'PICTA' and 'ICTA', respectively.</p> <p>For the purposes of the security requirements of the Contract, the applicable Security Authorisations are:</p> <ol style="list-style-type: none"> ATO-C / ATO; cyber-maturity assessment against the Defence Cyberworthiness System (DCwS); and the security considerations as part of the applicable regulatory / assurance framework for the Contract (eg, seaworthiness or airworthiness).
Security Interest	(Core)	<p>means any of the following:</p> <ol style="list-style-type: none"> 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; a 'security interest' as defined in section 12(1) or (2) of the <i>Personal Property Securities Act 2009</i> (Cth); and an agreement to create any of these or allow any of these to exist.
Security Outcomes	(Core)	<p>means that a Security System-of-Interest (SSol), including elements thereof, has achieved a level of security performance such that the SSol is determined to be As Secure As Reasonably Practicable (ASARP), including that:</p> <ol style="list-style-type: none"> security considerations have been addressed as they apply to the design, development, implementation, V&V, and Security Authorisations for the SSol; the SSol is able to operate effectively, achieve the Safety Outcome, and undertake the intended missions in the environment in which the system is expected to operate, as set out in the Contract; the SSol is resilient to cyber threats, including that the SSol is able to:

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Term	Status	Definition
		<p>(i) withstand, respond to, and adapt to adverse system conditions caused by cyber threats; and</p> <p>(ii) recover from effects, attacks or compromises caused by cyber threats;</p> <p>d. the security risks applicable to the SSol have either been eliminated or the likelihood and/or consequence have been reduced to the extent practicable; and</p> <p>e. the Commonwealth's security obligations have been met as they pertain to the confidentiality, classification, availability and integrity of information and data processed, stored and/or communicated electronically or by similar means by the SSol.</p>
Security System-of-Interest or SSol	(Core)	<p>Note to drafters: Amend the following definition to incorporate any additional SSols, including Support System Components that are SSols, which are those systems or components that would be subject to the requirements of the System Security Program clause of the SOW. Drafters should consider the relationship between SSols and ToSAs when amending this definition.</p> <p>means:</p> <p>a. the Mission System; and</p> <p>b. [DRAFTER TO INSERT].</p>
Sewerage Treatment Plant	(Optional)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>means the facility so identified on the plan at Appendix 1 of an annex to Attachment O.</p>
Shared Facilities	(Core)	<p>Note to drafters: Include this if a GFF Licence is to be provided to the Contractor.</p> <p>in relation to the GFF Licence, means:</p> <p>a. if a part of a GFF Licensed Area is identified in a plan at Appendix 1 to an annex to Attachment O as Shared Facilities, that part of the GFF Licensed Area; and</p> <p>b. any part of a GFF Licensed Area specified as Shared Facilities in a notice by the Commonwealth Representative under clause 4 of Attachment O.</p>
Small to Medium Enterprise (SME)	(Core)	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 and applications, and Software Updates but excludes Software Design Data and Source Code.
Software Design Data	(Core)	means data which describes the internal design and operation of a Software program and its interface with the external Software and hardware systems in which it operates, including explanations of particular codes, standard headers or distinct procedures (with reference to inputs, outputs and processing).
Software Release	(Optional)	means a collection of new and/or changed Software CIs, which are tested and introduced into the live environment together.

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Term	Status	Definition
Software Update	(Optional)	means, in relation to Software: a. 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); or b. a new version of that Software (which is designed to enhance or provide extra functionality to that Software).
Source Code	(Core)	means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.
Sovereign Defence Industrial Priority or SDIP	(Core)	has the meaning given in the 2024 Defence Industry Development Strategy. SDIPs applicable to the Contract are identified in Attachment F.
Sovereignty	(Core)	means Australia having sovereign control over the ability to employ Defence capability or force when and where required, and for the period required, to produce the desired military effect. Sovereignty is a component of Capability, particularly in relation to preparedness. Sovereignty embraces all of the Industrial Capabilities identified in Attachment F for delivery under the Contract.
Spare	(Core)	means an item that is a Repairable Item (RI) or a non-Repairable Item that is not currently fitted to an end item or system.
Specification	(Core)	a detailed statement of a set of requirements to be satisfied by a material, product, system or process, indicating the procedures for checking compliance with these requirements. It may take the form of either a standard produced for common and repeated use, or a publication, which defines a unique product or process, and may incorporate reference to published standards.
Standard	(Core)	a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context.
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</i> – March 2019.
Statement of Work or SOW	(Core)	means Attachment A, including the annexes to the SOW and any specifications referred to in the SOW.
Stock Item	(Core)	means an item which is either a RI or a non-RI and held either by the Commonwealth or the Contractor to support the Materiel System. Stock Items include Spares.
Stop Payment Milestone	(Optional)	means a Milestone, identified as a Stop Payment Milestone in Annex B to Attachment B.
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 AIC Plan	(Core)	means the AIC plan developed, delivered and updated by the AIC Subcontractor and approved by the Contractor or another Approved Subcontractor (as applicable) in accordance with the relevant Approved Subcontract.
Subcontractor (Support)	(Core)	means a subcontractor to the Contractor (Support).

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Term	Status	Definition
Sublicence	(Core)	in respect of a Licence of IP granted to the Commonwealth in accordance with clause 5.2, 5.3 or 5.6 of the COC , means a sublicence of that IP on terms that comply with the requirements of clause 5.8 of the COC.
Supplier Request Document	(Optional)	means the request documentation sent by the Contractor to potential subcontractors as part of a formal approach to the market (including request for proposal, request for tender and request for quotation).
Supplies	(Core)	means goods and services required to be supplied under the Contract and includes items acquired in order to be incorporated into the Supplies. A reference to Supplies is also a reference to: a. each item of Supplies; b. a component of a system or subsystem comprised of Supplies; and c. such a system or subsystem itself.
Supplies Acceptance Certificate	(Core)	means a certificate in the form of annex to DID-PM-MGT-SAC or other form agreed between the parties.
Supply Chain	(Core)	means the network of Subcontractors that deliver products and services to the Contractor, either directly or indirectly through other Subcontractors, which are incorporated into the Supplies.
Supply Support	(Core)	means the organisation of hardware, Software, materiel, Facilities, Personnel, processes, and Technical Data needed to enable supply services to be completely provided for the Materiel System throughout its LOT. Supply Support also includes the Support Resources of Spares and Packaging.
Support and Test Equipment	(Core)	means the equipment needed to support the operation, support and disposal of the Mission System and Support System Components, as and when required, throughout the life of the Materiel System. S&TE includes materials handling equipment, 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 the Mission System as the case requires.
Support System	(Core)	means the sum of the existing support infrastructure (including that of the Commonwealth, the Contractor and its Subcontractors, the Contractor (Support) and its Subcontractors) and the additional support elements being generated under the Contract to enable the Mission System to be effectively operated and supported so that it can meet its operational requirements. The Support System includes support required for Support System Components.
Support System Components	(Core)	means the physical end-items of the Support System that can be defined using a specification. Support System Components are a subset of Support Resources and include Packaging, Technical Data, equipment, materials, and Facilities, as well as Spares and other physical components required for the support of those Support

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Term	Status	Definition
		System end-items. Support System Components do not include Personnel or Spares for the Mission System.
Support System Constituent Capabilities	(Core)	means the five subsystems of the Support System, including Operating Support, Engineering Support, Maintenance Support, Supply Support, and Training Support. Each Support System Constituent Capability involves the following organisations: the Commonwealth, in-service support contractors (including the Contractor) and in-service support subcontractors (including Subcontractors).
Supportability	(Core)	means the degree to which the Mission System design characteristics and the planned or existing Support System enable preparedness requirements to be met.
Supportability Related Design Factors	(Core)	means those Supportability factors that affect the design of an item. Examples include inherent reliability and maintainability values, testability values, and transportability characteristics.
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).
Sustainment Training	(Optional)	means Training that is conducted as part of career, trade and specialist courses undertaken by Defence Personnel in relation to the Capability.
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.
System Owner	(Core)	<p><i>Note to drafters: Amend the following definition to incorporate the System Owner for the Mission System. If different SSols (or parts thereof) will have different System Owners, amend the definition accordingly.</i></p> <p>has the meaning given in the Defence Cyber Security Assessment & Authorisation Framework. For the purposes of the ICT and cyber security requirements of the Contract, the System Owner is [INSERT APPLICABLE APPOINTMENT].</p>
System Review	(Core)	means an event at which the progress of the technical effort (including that of engineering and integrated logistics support) is assessed relative to its governing plans and technical and contractual requirements.
Systems Engineering	(Core)	includes the technical and management efforts of directing and controlling a totally integrated engineering effort of a system or program. SE includes the effort to define the system and the integrated planning and control of the technical program efforts of design engineering, specialty engineering, production engineering, and integrated test planning. SE also includes the effort to transform an operational need or statement of deficiency into a description of system requirements and a preferred system configuration.

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Term	Status	Definition
Target of Security Assessment or ToSA	(Optional)	<p>in relation to ICT security and cyber security, means an information system, a system comprising DESE, and all associated documentation, that is the subject of a security evaluation.</p> <p>The Mission System, as a whole, could be a ToSA (as well as being a SSol) or specific subsystems or components of the Mission System could be separate ToSAs (eg, the mission management system and the communications system within a platform could be separate ToSAs). If applicable, Support System Components (eg, an item of Training Equipment) may be defined as SSols, each with one or more ToSAs.</p>
Tax	(Core)	means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.
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 Materiel System and includes calculations, data, databases, designs, design documentation, drawings, guides, instructions, handbooks, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, Training Materials, test results and writings, and includes Software Design Data and Source Code.
Technical Data and Software Rights Schedule or TDSR Schedule	(Core)	means Attachment G to the Contract.
Technical Integrity	(Optional)	in relation to an item, means the item's fitness for service, safety and compliance with regulations for environmental protection.
Total Contract Expenditure	(Core)	<p>means, in the context of an ACE Measurement Point, the sum of:</p> <ul style="list-style-type: none"> a. Australian Contract Expenditure; and b. Imported Contract Expenditure, <p>each calculated from ED to that ACE Measurement Point.</p>
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	(Core)	means the processes, systems, materials, resources, and services for bringing Personnel to the required standard of competency by instruction, practice or other prescribed methodology.
Training Equipment	(Core)	means any item of equipment required to perform Training.
Training Materials	(Core)	means materials necessary for a suitably qualified instructor to effectively and efficiently provide Training to a body of students who meet the defined entry requirements. This material includes Training specifications, course curricula, Competency standards, lesson plans, assessment instruments (including recording / tracking tools), student workbooks, précis and other publications (excluding publications developed for non-Training purposes), exams, Training aids including presentation, image, audio and video files, and, if applicable, computer-based training content, Software and manuals.
Training Support	(Core)	means the organisation of hardware, Software, material, Facilities, Personnel, processes, and Technical Data needed to enable

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Term	Status	Definition
		Training services to be competently provided for the Materiel System throughout its life.
Transition	(Core)	means the activities undertaken by the Contractor, Subcontractor and the Commonwealth to transition the Supplies that have been produced under the Contract from the project oriented, development environment to an operating and support environment, leading to eventual closing out of the Contract.
Unit of Competency or UOC	(Core)	an agreed statement of the skills and knowledge required for effective performance in a particular job or job function. A UOC is made up of elements of competency, together with performance criteria, a range of variables, and an evidence guide.
Unrelated Party	(Core)	means any person other than any of the following: 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: a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and b. disclose, transmit and communicate the TD, Software or Contract Material: (i) to the licensee's employees, officers and agents; and (ii) to a sublicensee under a sublicense granted in accordance with the licence.
Validation	(Core)	means confirmation by examination and provision of Objective Evidence that the specific intended use or application of a product or service, or aggregation of products and services, is accomplished in an intended usage environment; and 'Validate' and 'Validated' have corresponding meanings.
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 any of the following: a. the <i>Work Health and Safety Act 2011</i> (Cth) and the <i>Work Health and Safety Regulations 2011</i> (Cth); and b. any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011</i> (Cth).
WHS Management System	(Core)	has the meaning given to OHS Management System in AS/NZS ISO-45001:2018.
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.

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Term	Status	Definition
Work Breakdown Structure	(Core)	has the meaning given in DEF(AUST)5664A – Work Breakdown Structures for Defence Materiel Projects.
Working Day	(Core)	<p>in relation to the doing of an action in a place, means any day in that place other than:</p> <ul style="list-style-type: none">a. a Saturday, Sunday or public holiday; andb. any day within the two-week period that starts on:<ul style="list-style-type: none">(i) the Saturday before Christmas Day; or(ii) if Christmas Day falls on a Saturday, Christmas Day.

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3. REFERENCED DOCUMENTS

Reference	Description
AAP 8000.011	Defence Aviation Safety Regulations
ABS Catalogue 5206 – Table 4	Australian National Accounts: National Income, Expenditure and Product, Table 4 - Chain Price Indexes
ABS Catalogue 6345	Wage Price Index, Australia
ABS Catalogue 6427	Producer Price Indexes, Australia
ABS Catalogue 6457	International Trade Prices Indexes, Australia
ACE Measurement Rules	<i>Australian Contract Expenditure Measurement Rules</i> . Available from: https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance
	ACSC Publication, 'Cloud Computing Security Considerations', October 2021
	ACSC Publication, 'Cyber Supply Chain Risk Management', May 2023
	ACSC Publication, 'Essential Eight Maturity Model', as amended from time to time
	ACSC Publication, 'Guidelines for Security Documentation', September 2023
	ACSC Publication, 'Guidelines for System Monitoring', September 2023
	ACSC Publication, 'Identifying Cyber Supply Chain Risks', May 2023
	ACSC Publication, 'Strategies to Mitigate Cyber Security Incidents', February 2017
	ACSC Publication, 'Strategies to Mitigate Cyber Security Incidents – Mitigation Details', February 2017
	ACSC System Security Plan (SSP) Annex Template, as amended from time to time
ADF-I-3 ESO	ADF-I-3 Electromagnetic Spectrum Operations
ADFP 6.0.4	Radiofrequency Spectrum Management
AFSMAN	Air Force Security Manual, Volume 1, 7 May 2024
ANP3411-0101	Naval Materiel Assurance Publication
ANP4605	Navy Cyberworthiness
ANSI/AIAA G-043-1992	American National Standards Institute / American Institute of Aeronautics and Astronautics, <i>Guide for the Preparation of Operational Concept Documents</i> , 1992
	<i>Australian Code for the Transport of Dangerous Goods by Road and Rail (as amended from time to time)</i>
ARPANS Act	<i>Australian Radiation Protection and Nuclear Safety Act 1998</i> (Cwth)
ARPANS Regulations	<i>Australian Radiation Protection and Nuclear Safety Regulations 2018</i> (Cwth)
ARPANSA Radiation Protection Series S-1	Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)
ARPANSA Radiation Protection Series S-1	Advisory Note: Compliance of mobile or portable transmitting equipment (100 kHz to 300 GHz) (2021)

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Reference	Description
AS 1100	Australian Standards – Technical Drawings
AS/NZS ISO 9001:2016	Quality Management Systems – Requirements
AS/NZS ISO 10005:2018	Quality Management – Guidelines for Quality Plans.
AS/NZS ISO 14001:2015	Environmental management systems—Requirements with guidance for use
AS/NZS ISO 19011:2003	Guidelines for Quality and/or Environmental Management Systems Auditing
AS/NZS ISO 31000:2018	Risk Management – principles and guidelines
AS/NZS ISO 45001:2018	Occupational health and safety management systems—Requirements with guidance for use
AS/NZS ISO/IEC/IEEE 12207: 2019	Systems and software engineering – Software life cycle processes
AS/NZS ISO/IEC/IEEE 15288:2015	Systems and software engineering - System life cycle processes
	<i>Auditor-General Act 1997 (Cth)</i>
	<i>Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010) (Cth)</i>
ASD-STE100	International specification for the preparation of technical documentation in a controlled language
ASIO 18-9938	Security Manager's Guide: Supply Chain Security, 2018
CASG Manual (PM) 006	<i>Defence Supplement to the Australian Standard for Earned Value Management, AS 4817, Version 2.0 (2020)</i>
	CASG Risk Management Product Risk Matrix
	<i>Circuit Layouts Act 1989 (Cth)</i>
	Code of Practice, <i>Managing the Work Environment and Facilities</i> (an approved code of practice under section 274 of the WHS Act)
	Code of Practice, <i>Preparation of Safety Data Sheets for Hazardous Chemicals</i> (an approved code of practice under section 274 of the WHS Act)
CPRs	Commonwealth Procurement Rules - July 2024
	Commonwealth Supplier Code of Conduct, as amended from time to time
	<i>Copyright Act 1968 (Cth)</i>
	<i>Corporations Act 2001 (Cth)</i>
CTIS	Australian Cyber Security Centre (ACSC) Cyber Threat Intelligence Sharing (CTIS) platform
	<i>Defence Act 1903 (Cth)</i>
	Defence Cyber Security Assessment & Authorisation Framework, Version 4.2, 22 April 2024
	Defence Cyberworthiness System (DCwS) Maturity Model
DEF(AUST)1000C	ADF Packaging
DEF(AUST)CMTD-5085C	Engineering Design Data for Defence Materiel

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Reference	Description
DEF(AUST)5629C	Production of Military Technical Manuals
DEF(AUST)IPS-5630	Developing S1000D Interactive Electronic Technical Publications (IETPs)
DEF(AUST)5664A	Work Breakdown Structures for Defence Materiel Projects
DEF(AUST)5691	Logistic Support Analysis
DEF(AUST)5692	Logistic Support Analysis Record Requirements for the Australian Defence Organisation
Defence Cost Principles	<i>Defence Cost Principles</i> . Available from: https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance
Defence ICT/Cyber SCRM Framework	The Defence ICT/Cyber Procurement Supply Chain Risk Management Framework, October 2020
DEFLOGMAN	Note to drafters: The DEFLOGMAN has been withdrawn and is being replaced. Update the following references if the replacement manuals are published. Defence Logistics Manual
DEFLOGMAN Part 2 Volume 5 Chapter 5	Item Identification and Recording of Defence Logistics Assets in Support of MILIS
DEFLOGMAN Part 2 Volume 5 Chapter 10	Defence Disposal Policy
DEFLOGMAN Part 2 Volume 10 Chapter 16	Life Cycle Costing Analysis
DEFLOGMAN Part 3	Electronic Supply Chain Manual (ESCM)
DI ADMINPOL Annex J PPL7	Required Behaviours in Defence
DIDS	<i>2024 Defence Industry Development Strategy</i> , also known as '2024 DIDS'
	Defence Intellectual Property Policy 2014
DLM	Defence Learning Manual
DRSM	Defence Radiation Safety Manual
	Defence Safety Manual
DSPF	<i>Defence Security Principles Framework</i> , as amended from time to time
	<i>Designs Act 2003</i> (Cth)
EIA-632-1998	Processes for Engineering a System
ANSI/EIA-649-B	National Consensus Standard for Configuration Management
EIA-836	Configuration Management Data Exchange and Interoperability
EMM	Engineering and Maintenance Manual
EMS MM	Electromagnetic Spectrum (EMS) Management Manual
	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
	<i>Financial Policy – Gifts and Benefits</i>
	<i>Financial Policy - Sponsorship</i>
Form AC847	Application for Contractor Access to MILIS

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Reference	Description
GHS	Globally Harmonised System of Classification and Labelling of Chemicals, Third Revised Edition
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
IPP	<i>Commonwealth Indigenous Procurement Policy</i> – December 2020. A copy of the IPP is available from: https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp
ISA/IEC 62433 series	Security for Industrial Automation and Control Systems
ISM	Information Security Manual (as amended from time to time)
	<i>Integrity Policy</i>
ISO 216	Writing Paper and Certain Classes of Printed Matter – Trimmer Sizes – A and B series
ISO 10303	Automation systems and integration — Product data representation and exchange
ISO 10918	JPEG
ISO/IEC 27001:2022	Information security, cybersecurity and privacy protection – Information security management systems – Requirements
ISO/IEC 27005:2022	Information security, cybersecurity and privacy protection – Guidance on managing information security risks
ISO/IEC 27032:2012	Cybersecurity – Guidelines for internet security
	<i>Judiciary Act 1903 (Cth)</i>
LCAM	Logistics Compliance and Assurance Manual
LMSM	<i>Land Materiel Safety Manual</i>
	<i>Legal Services Directions 2017</i>
MIL-HDBK-1467	Acquisition of Software Environments and Support Software
MIL-HDBK-46855A	Human Engineering Guidelines for Military Systems, Equipment and Facilities
MILPERSMAN	Military Personnel Policy Manual
MIL-STD-882E	Department of Defense Standard Practice – System Safety
MIL-STD-961E	Defense and Program-unique Specifications Format and Content
MIL-STD-1472F	Human Engineering
MIL-STD-461G	Requirements for the Control of Electromagnetic Interference – Characteristics of Subsystems and Equipment
MIL-STD-464C	Electromagnetic Environmental Effects – Requirements for Systems
	<i>National Measurement Act 1960 (Cth)</i>
NIST CSF	National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF), Version 2.0, February 26, 2024
NIST SP 800-30	Guide for Conducting Risk Assessments, Revision 1, September 2012
NIST SP 800-37	Risk Management Framework for Information Systems and Organizations: A System Life Cycle Approach for Security and Privacy, Revision 2, December 2018

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Reference	Description
NIST SP 800-53	Security and Privacy Controls for Information Systems and Organizations, Revision 5, September 2020
NIST SP 800-53A	Assessing Security and Privacy Controls in Information Systems and Organizations, Revision 5, January 2022
NIST SP 800-82	Guide to Operational Technology Security, Revision 3, September 2023
	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)</i>
	<i>Patents Act 1990 (Cth)</i>
	<i>Personal Property Securities Act 2009 (Cth)</i>
	<i>Privacy Act 1988 (Cth)</i>
PSPF	Protective Security Policy Framework, as amended from time to time
	<i>Radiocommunications Act 1992 (Cth)</i>
S1000D™	<i>International specification for technical publications using a common source database</i>
SADL	Systems Approach to Defence Learning
SAFETYMAN	Defence Safety Manual
Shadow Economy Procurement Connected Policy	Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019.
STANAG 4177	Codification of Items of Supply - Uniform System of Data Acquisition
	<i>Taxation Administration Act 1953 (Cth)</i>
	<i>Trade Marks Act 1995 (Cth)</i>
	The United Nations Convention on Contracts for the International Sale of Goods
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>
WHS Regulations	<i>Work Health and Safety Regulations 2011 (Cth)</i>
	<i>Workplace Gender Equality Act 2012 (Cth)</i>
	<i>Workplace Gender Equality Procurement Principles</i>

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4. WBS DICTIONARY FOR CONTRACT SUMMARY WBS

WBS Element	Definition
Mission System	<p>This element includes the hardware and Software used to accomplish the primary mission of the defence materiel item.</p> <p>This element includes all design, development, integration, assembly, test and checkout, as well as all technical and management activities associated with individual hardware / Software elements</p> <p>This element also includes the design, development, integration, assembly, test and checkout associated with the overall Mission System. When an electronic/automated Software system comprises several Mission Systems, each will be listed separately at level 2.</p>
Support System	<p>This element includes all of the physical support deliverables being generated under the Contract, including any effort associated with the acquisition of, and/or the design, development and production of those physical deliverables.</p> <p>Includes any effort associated with delivery, installation, integration, and check out.</p> <p>Includes the acquisition, design, development and production of any logistics resources associated with those physical deliverables (ie, the logistics resources required for the support of Support System elements such as Facilities, S&TE, etc).</p>
Platform Integration	<p>This element includes the effort involved in providing technical and engineering services to the platform manufacturer or integrator during the installation and integration of the Mission System into the host vehicle.</p>
Project Management	<p>This element includes the business and administrative planning, organising, directing, co-ordinating, controlling, and approval actions designated to accomplish overall program objectives which are not associated with specific hardware elements and are not included in systems engineering.</p> <p>This element includes cost, schedule, performance measurement management, warranty administration, contract management, data management, vendor liaison, subcontract management, risk, IV&V activities, life cycle cost, transition to operational service, Australian Industry Capability, and and Technical Data and Software rights management.</p>
Systems Engineering	<p>This element includes the technical and management efforts of directing and controlling a totally integrated engineering effort of a system or program.</p> <p>This element includes the effort to define the system and the integrated planning and control of the technical program efforts of design engineering, specialty engineering, production engineering, and integrated test planning.</p> <p>This element also includes the effort to transform an operational need or statement of deficiency into a description of system requirements and a preferred system configuration.</p>

ATTACHMENT M

WBS Element	Definition
Integrated Logistic Support	<p>This element includes the overall planning, directing, and controlling of the ILS function.</p> <p>This element includes the effort associated with the logistics-analysis processes, the outcome of which results in the identification of the logistics resources (both range and scale) required to support both the Mission System and the Support System.</p> <p>Excludes the acquisition of, and/or the design, development and production of specific Support System Components (eg, S&TE, Facilities, Software Support Environment, Training Equipment and Materials, etc). These activities are covered under the individual Support System elements themselves.</p> <p>Excludes the acquisition, design, development and production of the logistics resources required for the support of the individual Support System elements themselves.</p>
Verification and Validation	<p>This element includes V&V management and infrastructure for both the Mission System and the Support System as well as the actual V&V for all phases of the Contract.</p> <p>This element includes processes that demonstrate that the engineering design and development process is complete, demonstrate that the design risks have been minimised, demonstrate that the system will meet specifications and determine whether the engineering design is supportable (practical, maintainable, safe, etc.) for operational use.</p> <p>This element includes such tests as system demonstration, flight tests, sea trials, mobility demonstrations, stability tests, qualification operational test and evaluation, etc., and support thereto, required to prove the operational capability of the deliverable system</p> <p>This element also includes logistics testing efforts to evaluate the achievement of Supportability goals and the adequacy of the support for the system (eg, deliverable maintenance tools, test equipment, technical publications, maintenance instructions, personnel skills and training requirements, and Software support facility/environment elements).</p>

ATTACHMENT N

CONFIDENTIAL INFORMATION AND REPORTING (CORE)

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 by potential tenderers must be assessed against the Confidentiality Test and only information that meets this test can be included in this attachment. Only the information in this attachment can be considered for reporting confidentiality provisions on AusTender for Senate Order 192.

Note to tenderers: This attachment will consist of the successful tenderer's response to this 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 for a Contractor's commercial information to be Confidential Information:

- a. **Criterion 1:** The information to be protected must be specifically identified;
- b. **Criterion 2:** The information must be commercially sensitive;
- c. **Criterion 3:** Disclosure would cause unreasonable detriment to the owner of the information or another party; and
- d. **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 (e.g. 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 this attachment if they meet the Confidentiality Test.

Confidential Information

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
(a)	(b)	(c)	(d)	(e)
Conditions of Contract, for example				
Clause 10.10 (eg if an amended liability regime).	Liability Caps	Contains details about insurance and liability regimes that meet the DoF Confidentiality Test	Commonwealth / Contractor.	
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 meet the DoF Confidentiality Test.	Insert relevant reason.	Insert name of party.	

ATTACHMENT N

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
(a)	(b)	(c)	(d)	(e)
Conditions of Contract Attachments , for example				
Attachment A- Annex A	Description of Requirement (Identify Specific clause/s).	Contains information about how the Capability/Supplies are to be provided that may compromise the supplier's commercial interests elsewhere, including competing in future tender processes.	Commonwealth / Contractor	
Attachment B:	Price and Payments (Identify Specific clause, table or section).	Contains details about commercially sensitive pricing information that is not in the public domain, including information about hourly rates, internal costing, profit margins, or pricing structures.	Contractor.	
Attachment F	Intellectual Property Plan Note that clauses describing how Intellectual Property rights are to be dealt with would generally not be considered confidential.	Contains details about Intellectual Property regimes including trade secrets and other Intellectual Property matters where they relate to a potential supplier's competitive position.	Insert name of party.	

ATTACHMENT O

GOVERNMENT FURNISHED FACILITIES LICENCE

Note to drafters: This attachment is to be used if a GFF Licence is to be provided to the Contractor (see COC clause 3.8).

All necessary approvals under the Lands Acquisition Act 1989 (Cth) (LAA) to grant a GFF Licence must be obtained before the Contract is signed. Failure to obtain the necessary LAA approvals before the Contract is signed will breach the LAA.

Drafters must engage with Directorate of Estate Licensing and Leasing (DELL), Infrastructure Division, Security and Estate Group to ensure the necessary approvals are in place before Contract signature.

Drafters should include details of any proposed or required GFF Licensed Area in an annex to the GFF Licence prior to release of the RFT.

Note to tenderers: This Attachment O will consist of an amalgamation of TDR E-13, the draft annex(es) to this GFF Licence, the successful tenderer's response and any negotiated adjustments. The date for provision of access to the GFF should be included in TDR E-13.

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ANNEXES

- A. GFF Licensed Area #1
- B. **[INSERT OTHER ATTACHMENTS]**

APPENDIXES

- A-1 Plans
- A-2 Licensed Fittings
- A-3 Facilities Condition Report

[INSERT OTHER APPENDIXES]

ATTACHMENT O

1 TERM**1.1 GFF Licence Term**

Note to drafters: The term of the GFF Licence must be within the term of the Contract.

- 1.1.1 The GFF Licence commences on the GFF Licence Commencement Date and ends on the earlier of:
- a. the day on which the GFF Licence is terminated;
 - b. the GFF Licence Expiry Date; and
 - c. the day on which the Contract expires or is terminated.
- 1.1.2 The GFF Licence applies to a GFF Licensed Area from the relevant GFF Licence Application Date until the earlier of:
- a. the date specified in the annex as the date the GFF Licence ceases to apply to the GFF Licensed Area; and
 - b. the end of the GFF Licence Term in accordance with clause 1.1.1.

2 GFF**2.1 Use of GFF**

-
- 2.1.1 The Contractor shall only use a GFF Licensed Area for a GFF Permitted Purpose.

2.2 Licensed Fittings

-
- 2.2.1 The Contractor's right to occupy and use a GFF Licensed Area includes the right to use the Licensed Fittings in that area for a GFF Permitted Purpose.

2.3 State and Condition of the GFF

-
- 2.3.1 The Contractor acknowledges and agrees that the state and condition of a GFF Licensed Area, at the GFF Licence Application Date for that area, is as described in the Facilities Condition Report for that area and accepts the GFF Licensed Area in that state and condition subject to any works agreed to be carried out by either party and as recorded in the Facilities Condition Report.
- 2.3.2 The Commonwealth has not made, and the Contractor acknowledges and agrees that the Commonwealth has not made, any promise, representation or warranty as to the suitability of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located for a GFF Permitted Purpose or any other purpose.

2.4 Commonwealth Access

-
- 2.4.1 The Contractor acknowledges and agrees that, without limiting any other rights of the Commonwealth under the Contract, the Commonwealth may access a GFF Licensed Area at any time for the purposes of:
- a. exercising its rights and powers under this GFF Licence or the Contract;
 - b. monitoring or inspecting the performance of the Contractor of its obligations under this GFF Licence or the Contract; or
 - c. for any other reasonable purpose.
- 2.4.2 The Contractor acknowledges and agrees that Commonwealth Contractors may access a GFF Licensed Area in accordance with their contracts with the Commonwealth.
- 2.4.3 The Commonwealth shall comply with, and shall require any Commonwealth Contractors to comply with, any reasonable Contractor safety and security requirements for a GFF Licensed Area notified to, and approved by, the Commonwealth.

3 RIGHTS UNDER THE GFF LICENCE

Note to drafters: The purpose of the GFF Licence is to provide the Contractor with a non-exclusive right to access Defence premises. Defence does not intend to provide the

ATTACHMENT O

Contractor with a lease. Therefore, clause 3.1 must remain unchanged to ensure that Defence's intentions are carried into effect.

3.1 Contractor's Rights

3.1.1 The Contractor's rights under the GFF Licence:

- a. are personal rights in contract;
- b. do not create any interest or estate in a GFF Licensed Area;
- c. do not create the relationship of landlord and tenant between the Contractor and the Commonwealth; and
- d. do not confer exclusive possession of a GFF Licensed Area on the Contractor.

3.2 Access Arrangements for GFF

3.2.1 The Commonwealth shall provide access to a GFF Licensed Area for persons Approved under this clause 3.2, as necessary for the Contractor's carrying out a GFF Permitted Purpose.

3.2.2 Unless otherwise agreed, the Contractor shall seek written Approval from the Commonwealth Representative, at least five Working Days prior to entry being required, for each person the Contractor wishes to have access to a GFF Licensed Area.

3.2.3 The Commonwealth Representative may, by notice to the Contractor, exclude the Contractor and specified Contractor Personnel from a GFF Licensed Area, or any part of it, at any time and for any period.

3.2.4 The Contractor shall comply with, and require persons given access under clause 3.2.2 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour applicable to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.

4 SHARED FACILITIES

4.1 Shared Facilities

4.1.1 The Contractor acknowledges and agrees that:

- a. the Commonwealth Representative may, at any time, notify the Contractor that a specified part (or the whole) of a GFF Licensed Area is Shared Facilities; and
- b. Shared Facilities may be used by the Commonwealth and other persons authorised by the Commonwealth.

4.1.2 The Commonwealth may, by direction to the Contractor, determine the priority of use of the Shared Facilities as between the Contractor and other users. The Commonwealth shall do this on the basis of the operational priority of the tasks requiring the use of the Shared Facilities. The Contractor shall act in accordance with, and give effect to, such a direction.

5 DEALINGS WITH THE GFF

5.1 Sublicensing

5.1.1 The Contractor shall not sublicense or part with possession of any part of a GFF Licensed Area or any right or obligation under the GFF Licence without the prior written Approval of the Commonwealth.

5.1.2 The Contractor shall ensure that each sublicense of any part of a GFF Licensed Area or any right or obligation under the GFF Licence includes, as far as possible, terms corresponding to the terms on which the Contractor occupies the GFF Licensed Area (including terms limiting the purposes for which the sublicensee may use the sublicensed area to a GFF Permitted Purpose).

5.2 Security Interests

5.2.1 The Contractor shall not create or allow to be created any Security Interest in respect of any part of a GFF Licensed Area.

ATTACHMENT O**6 OBLIGATIONS****6.1 Occupation and Use of GFF**

- 6.1.1 The Contractor shall at all times comply with the laws in force in the locality in which a GFF Licensed Area is situated that relate to the use or occupation of the area and shall ensure that all persons whom it gives access to the area do the same.
- 6.1.2 The Contractor shall:
- a. keep all GFF Licensed Areas clean and tidy;
 - b. not do anything that is, or may be, dangerous, annoying, or offensive, or that may interfere with the Commonwealth or other persons using a GFF Licensed Area, the Commonwealth Premises in which a GFF Licensed Area is located or properties adjoining the Commonwealth Premises; and
 - c. comply with the requirements of the Commonwealth concerning the storage and removal of waste and debris.
- 6.1.3 The Contractor's obligation to keep a GFF Licensed Area clean and tidy only applies to the extent to which the uncleanness or untidiness is not materially caused or contributed to by the Commonwealth or any other person using a GFF Licensed Area with the authority of the Commonwealth.
- 6.1.4 The Contractor shall not obstruct or permit the obstruction, in any way, of a GFF Common Area or a fire door or escape door of a GFF Licensed Area.

6.2 Altering the GFF

- 6.2.1 The Contractor shall not carry out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area without the prior written Approval of the Commonwealth.
- 6.2.2 The Contractor shall ensure that any such works are carried out:
- a. by:
 - (i) tradespersons nominated by the Commonwealth; or
 - (ii) if the Commonwealth Approves in advance of the works, by other suitably qualified and licensed tradespersons;
 - b. in accordance with applicable laws and any applicable requirements of Government Agencies;
 - c. in accordance with the terms of any Commonwealth Approval (which may include a requirement for the provision of security in respect of the proposed works); and
 - d. to the satisfaction of the Commonwealth.
- 6.2.3 All costs incurred by the Commonwealth in connection with any such works under clauses 6.2 and 6.2.2, including the costs of obtaining relevant professional advice, shall be met by the Contractor and the Commonwealth may elect to recover the amount of the costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 6.2.3 until the Commonwealth elects to recover the amount.
- 6.2.4 This clause 6.2 does not prevent the Commonwealth from carrying out any alteration to, improvement of or other works (including structural works) on a GFF Licensed Area.

6.3 Maintenance Obligations

- 6.3.1 For a GFF Licensed Area, the Contractor shall maintain any Contractor Maintained Licensed Fittings for that area in accordance with clause 3.19 of the SOW.
- 6.3.2 If the Contractor fails to comply with clause 6.3, the Commonwealth may undertake the required maintenance itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such maintenance shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 6.3.1 until the Commonwealth elects to recover the amount.

ATTACHMENT O**6.4 Commonwealth to Maintain GFF**

- 6.4.1 Unless required by clause 3.19 of the SOW to maintain a GFF Licensed Area, if the Contractor becomes aware of a need for maintenance for the GFF Licensed Area (other than the Contractor Maintained Licensed Fittings), the Contractor shall report the matter to the Commonwealth Representative as soon as practicable and in any event:
- for maintenance required urgently, within 24 hours; and
 - otherwise, within five Working Days.
- 6.4.2 The Commonwealth shall undertake such maintenance as is necessary to keep a GFF Licensed Area (other than the Contractor Maintained Licensed Fittings) in good and functional repair and condition having regard to:
- the condition of the GFF Licensed Area as at the GFF Licence Application Date for the area (as evidenced in the relevant Facilities Condition Report); and
 - in the case of the fixed plant and equipment that are included in the Licensed Fittings in the GFF Licensed Area, the expected life of the plant and equipment as at the GFF Licence Application Date for the area.
- 6.4.3 The Commonwealth shall, other than in relation to urgent maintenance, provide prior reasonable notice to the Contractor of any proposed maintenance that may cause significant delay or disruption to the Contractor's use of a GFF Licensed Area for a GFF Permitted Purpose.
- 6.4.4 Nothing in this clause 6.4 affects or limits any liability of the Contractor under clause 10.8 of the COC in relation to loss of, or damage to, any GFF.

6.5 Sewerage and Trade Waste

- 6.5.1 The Contractor shall not, and shall ensure that Contractor Personnel do not, discharge trade waste from a GFF Licensed Area through the sewerage system interface to the Commonwealth's Sewerage Treatment Plant on the Commonwealth Premises in which the GFF Licensed Area is located.

7 RELOCATION**7.1 Relocation**

- 7.1.1 The Commonwealth may, by notice to the Contractor, require the Contractor to relocate from a GFF Licensed Area into another specified area no later than a date specified in the notice (which shall be no less than two months after the date of the notice).
- 7.1.2 The notice may require specified amendments to the provisions of this Attachment O (including the details of the GFF Licensed Area included in this GFF Licence) in relation to the relocation.
- 7.1.3 If the Commonwealth issues a notice under clause 7.1.1, the Contractor shall submit a CCP that is consistent with the notice.
- 7.1.4 The Contractor shall vacate the GFF Licensed Area by no later than the date specified in the notice.
- 7.1.5 The Contractor shall vacate the GFF Licensed Area in accordance with clause 10.4.1 and a reference to the expiry or termination of the GFF Licence in that clause shall be taken to be a reference to the date specified in the notice under clause 7.1.1.

8 GFF LICENCE FEE AND RELATED ARRANGEMENTS**8.1 GFF Licence Fee**

- 8.1.1 No fee is payable by the Contractor in respect of the GFF Licence.

8.2 Operating Expenses

- 8.2.1 No amount is payable by the Contractor under the Contract by way of contribution to the Operating Expenses of a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.

ATTACHMENT O

- 8.2.2 The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor.

8.3 Utilities and Telecommunications Facilities

- 8.3.1 No amount is payable by the Contractor under the Contract by way of contribution to the costs of utilities or telecommunications facilities in relation to a GFF Licensed Area or the Commonwealth Premises in which a GFF Licensed Area is located.
- 8.3.2 The Contractor shall pay to the Commonwealth an amount in respect of the costs of utilities or telecommunications facilities (to the extent not included in an amount referred to in clause 8.2.2) for a GFF Licensed Area, if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities in the GFF Licensed Area by the Contractor.

9 DAMAGE TO OR DESTRUCTION OF THE GFF**9.1 Damage or Destruction**

- 9.1.1 If the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located:
- a. subject to clause 7.1, the right of the Contractor to continue to use so much of the GFF Licensed Area as it is safe and practicable for it to use is not affected; and
 - b. the Commonwealth may (but is not required to), repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located.

10 TERMINATION AND MAKE GOOD**10.1 Commonwealth's Right to Terminate GFF Licence for Breach**

- 10.1.1 Without limiting clause 13 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, without terminating the Contract if the Contractor:
- a. fails to comply with a Default Notice under clause 13.3.1 of the COC in relation to a Contractor Default in respect of any GFF, or a direction under clause 13.3.2b of the COC issued in connection with such a Default Notice; or
 - b. fails to comply with any of the following by the relevant due date:
 - (i) **[LIST SPECIFIC REQUIREMENTS]**

10.2 Right to Terminate on Damage to, or Destruction of, the GFF or Commonwealth Premises

- 10.2.1 Either the Commonwealth or the Contractor may, by notice to the other, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas (without terminating the Contract), if:
- a. the Contractor cannot access or use all or a part of a GFF Licensed Area for a GFF Permitted Purpose because of damage to, or destruction of, all or a part of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; and
 - b. either:
 - (i) the Commonwealth notifies the Contractor that it does not propose to repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the Commonwealth Premises in which the GFF Licensed Area is located; or
 - (ii) the Commonwealth notifies the Contractor that it will repair, re-build or re-instate the damaged or destroyed parts of the GFF Licensed Area or the

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Commonwealth Premises in which the GFF Licensed Area is located but does not complete that within a reasonable period,

and the Commonwealth does not, within a reasonable period after the notice, give a notice under clause 7.1.1.

10.3 Commonwealth's Right to Terminate GFF Licence for Convenience

- 10.3.1 In addition to clause 13.4 of the COC, the Commonwealth may, by notice to the Contractor, terminate the GFF Licence or cease the application of the GFF Licence to one or more GFF Licensed Areas, for convenience (without terminating the Contract).
- 10.3.2 None of the other provisions of the Contract limit the Commonwealth's ability to terminate the GFF Licence under this clause 10.3.

10.4 CCP to be Submitted

- 10.4.1 If the GFF Licence is terminated, or the GFF Licence ceases to apply to one or more GFF Licensed Areas (and the Contract has not been terminated), the Contractor shall, within 10 Working Days after the termination or cessation takes effect or such longer period agreed to by the Commonwealth, submit a CCP to amend the Contract to address the consequences of the termination or cessation.

10.5 Contractor to Vacate GFF

- 10.5.1 If the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall vacate the GFF Licensed Area and return it and any other Commonwealth Property on the GFF Licensed Area to the Commonwealth in the same condition as they were:
- a. at the GFF Licence Application Date for the GFF Licensed Area (as evidenced by the relevant Facilities Condition Report); or
 - b. in the case of Commonwealth Property brought onto the GFF Licensed Area after the GFF Licence Application Date for the area, at the time it was first brought onto the GFF.
- 10.5.2 Without limiting clause 10.5, except to the extent otherwise agreed by the Commonwealth Representative:
- a. by the date the GFF Licence ceases to apply to a GFF Licensed Area, the Contractor shall remove from the GFF Licensed Area all of the Contractor's property and shall take down, remove and carry away, without causing any damage to the GFF Licensed Area or any Commonwealth Property, all removable items or equipment that the Contractor has fixed to or brought onto the GFF Licensed Area; and
 - b. if the Contractor causes any such damage, the Contractor shall immediately make good that damage.
- 10.5.3 If, after an inspection of the GFF Licensed Area in accordance with clause 3.20 of the SOW, any part of the GFF Licensed Area or Commonwealth Property is found not to be in the condition described in clause 10.5, then:
- a. the Contractor shall return the GFF Licensed Area or Commonwealth Property to the condition referred in clause 10.5; or
 - b. the Commonwealth may return the GFF Licensed Area or Commonwealth Property to that condition and the Commonwealth may elect to recover the amount of any reasonable costs incurred by the Commonwealth in doing so under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 10.5.3 until the Commonwealth elects to recover the amount.
- 10.5.4 Clause 10.5.3 does not apply to the extent that the difference in the condition of the GFF Licensed Area is due to:
- a. fair wear and tear;
 - b. alterations or improvements or other works made in accordance with clause 6.2; or
 - c. loss or damage of the type referred to in clause 10.8.3 of the COC.

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- 10.5.5 Any items that the Contractor is required to remove under clause 10.5.2 that are not removed within five Working Days (or such other period agreed to in writing by the Commonwealth) after the date the GFF Licence ceases to apply to a GFF Licensed Area, are taken to be abandoned and become Commonwealth Property. Any costs incurred by the Commonwealth in removing or disposing them, and storing them for a reasonable period awaiting disposal, shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 10.5.5 until the Commonwealth elects to recover the amount.
- 10.5.6 The Contractor's obligations under this clause 10.4.1 are not affected by any decision by the Commonwealth as to the future use or disposal of any part of the GFF Licensed Area, whether or not the Commonwealth restores, continues in use unrestored, retains unused or disposes of the part of the area or Commonwealth Property to which the obligations relate.

ANNEX A TO ATTACHMENT O**DETAILS OF GFF LICENSED AREA #1 [INSERT DESCRIPTIVE TITLE]**

Note to drafters: A separate annex should be included for each geographically distinct GFF Licensed Area to be covered by the GFF Licence. For example, a building on Garden Island and a building at a RAAF Base in Victoria to be supplied as GFF under the Contract would each require separate GFF Licensed Area annexes.

Drafters should complete the GFF Licence application and cessation dates for each GFF Licensed Area included in the GFF Licence. For a GFF Licensed Area that is to be covered by the GFF Licence during the whole term of the GFF Licence, drafters should include a reference to the GFF Licence Commencement Date in column 1 and the GFF Licence Expiry Date for column 2.

1. GFF LICENCE APPLICATION PERIOD

- 1.1 For the purposes of clause 1.1.2 of Attachment O, the GFF Licence applies to the GFF Licensed Area described in this annex as set out below:

Date the GFF Licence applies ...
(column 1)

[INSERT DATE]

Date the GFF Licence ceases to apply ...
(column 2)

[INSERT DATE]

2. APPENDIXES:

- A. Plans
- B. Licensed Fittings (including any Contractor Maintained Licensed Fittings)
- C. Facilities Condition Report

GFF ADDITIONAL CLAUSE BANK

Note to drafters: This clause bank contains additional clauses for use in Attachment O (GFF Licence) and other provisions of the Contract. The formatting in this document is designed to preserve cross referencing within the clauses where possible, as such the paragraph numbering does not align with what it should be once the paragraphs are copied and pasted into Attachment O. Drafters should refer to the drafting instructions for guidance on where to insert the additional clauses, and further should review and check the numbering and cross references once the clauses have been incorporated into Attachment O.

Directorate of Estate Licensing & Leasing Infrastructure Division, Security and Estate Group will notify drafters of which of these additional requirements are to be included in Attachment O as well as any other tailored clauses to be included.

A. Contractor has maintenance obligations

Note to drafters: If the Contractor is to be obliged to maintain more than the Contractor Maintained Licensed Fittings (i.e. the GFF itself or the Licensed Fittings), replace clause 6.3 in Attachment O.

1.1 Contractor to Maintain GFF

- 1.1.1 The Contractor shall undertake maintenance in accordance with clause 3.20 of the SOW.
- 1.1.2 If the Contractor fails to comply with clause 1.1.2, the Commonwealth may undertake the required maintenance itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such maintenance shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.1.2 until the Commonwealth elects to recover the amount.

B. Commonwealth has maintenance obligations

Note to drafters: Include clauses 6.4.5 and 6.4.6 if the Contractor is to be required to contribute towards maintenance costs.

1.2 Commonwealth to Maintain GFF

- 1.2.1 The Commonwealth Representative may, by notice to the Contractor, determine that the Contractor is to make a contribution specified in the notice to the cost of maintenance for a GFF Licensed Area. If the Commonwealth Representative does this:
- a. the amount of the contribution is to be reasonable, having regard to the period of the Contractor's use of and access to, and the nature and extent of the use by Contractor Personnel of, the GFF Licensed Area; and
 - b. the amount so determined is payable by the Contractor to the Commonwealth on demand.
- 1.2.2 To avoid doubt:
- a. the Commonwealth Representative may give more than one such notice; and
 - b. a notice may specify the times at which contributions are payable.

C. Use of Sewerage System

Note to drafters: If the Contractor is permitted to discharge trade waste through the sewerage system interface to the Commonwealth's Sewerage Treatment Plant on the

Commonwealth Premises in which the GFF is located, replace clause 6.5 of Attachment O with the following and insert definitions for capitalised terms in the Glossary.

1.3 Sewerage and trade waste

- 1.3.1 The Contractor may discharge trade waste from the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O, after processing through the Trade Waste Treatment Plant, through the sewerage system interface to the Sewerage Treatment Plant, subject to the following conditions:
- a. the Commonwealth Representative may, at any time, by notice to the Contractor, suspend or terminate the Contractor's rights under clause 1.3.1;
 - b. the Contractor shall at its cost maintain the effective operation of the Trade Waste Treatment Plant and the sewerage system interface to the Sewerage Treatment Plant. The Contractor is entitled to reasonable access to the Sewerage Treatment Plant for that purpose;
 - c. in maintaining the effective operation of the sewerage system interface to the Sewerage Treatment Plant, the Contractor shall:
 - (i) repair any damage that it causes to the Commonwealth's Sewerage Treatment Plant;
 - (ii) cause as little interference to the Commonwealth's activities on the Commonwealth Premises in which the GFF Licensed Area is located as reasonably possible;
 - (iii) comply with any directions of the Commonwealth; and
 - (iv) comply with all applicable laws and Authorisations;
 - d. the Contractor shall ensure that any discharge of material through the sewerage system interface will not adversely affect the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property in any way;
 - e. if the Commonwealth Representative so requires, the Contractor shall make good, as soon as practicable and at its cost, any damage to the GFF or the Commonwealth Premises in which the GFF Licensed Area is located resulting from:
 - (i) the repair or removal of the sewerage interface or the Sewerage Treatment Plant; or
 - (ii) the connection to the Sewerage Treatment Plant,
 except to the extent that the Contractor is not liable for any such damage in accordance with clause 10.8.3 of the COC;
 - f. the Contractor shall notify the Commonwealth Representative of any breach of standards for discharge quality from the Trade Waste Treatment Plant no later than one Working Day after it becomes aware of the breach; and
 - g. the Contractor shall provide to the Commonwealth every three months (or otherwise as agreed by the Commonwealth Representative):
 - (i) reports regarding the testing and performance of the Trade Waste Treatment Plant; and
 - (ii) copies of all laboratory reports prepared as a result of such testing.
- 1.3.2 If the Contractor discharges trade waste from the GFF Licensed Area that, in the Commonwealth's opinion, adversely affects the operation of the Sewerage Treatment Plant or adversely affects the Commonwealth Premises in which the GFF Licensed Area is located or any other property:

- a. the Commonwealth Representative may direct the Contractor to cease discharging such waste;
 - b. if the Contractor fails to comply with the direction, the Commonwealth may sever the sewerage system interface itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 1.3.2b until the Commonwealth elects to recover the amount; and
 - c. the Contractor agrees that it is not entitled to damages or compensation for any Loss it suffers resulting from, and is not entitled to a postponement of a date for delivery under the Contract or a Milestone Date, or postponement costs on account of, complying with a direction under clause 1.3.2a or the Commonwealth severing the sewerage system interface.
- 1.3.3 The Commonwealth shall use its reasonable endeavours to keep the Sewerage Treatment Plant in operation.
- 1.3.4 If the Commonwealth exercises its rights under clause 1.3.1a, the Contractor shall immediately make its own arrangements for the safe removal and disposal of all its trade waste from the GFF Licensed Area.

and include a new clause 8.4 into Attachment O ...

2 GFF LICENCE FEE AND RELATED ARRANGEMENTS

2.1 Sewerage and trade waste

- 2.1.1 The Contractor shall meet the cost of upgrading the processing of the Trade Waste Treatment Plant and the Commonwealth's Sewerage Treatment Plant to the extent that the upgrade is required due to the Contractor's increased use of the sewerage interface for the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment O.
- 2.1.2 If separate metering of the Contractor's interface to the Sewerage Treatment Plant is not available:
 - a. the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amount of the charges incurred that, in the opinion of the Commonwealth Representative, is attributable on a pro-rata basis to the Contractor's use of the Sewerage Treatment Plant under the Contract; and
 - b. the Commonwealth may elect to recover the amount of those charges under clause 13.6 of the COC within 30 days after the date of the notice. No amount shall be owing to the Commonwealth under this clause 2.1.2b until the Commonwealth elects to recover the amount.
- 2.1.3 If separate metering of the Contractor's interface to the Sewerage Treatment Plant is available, the Contractor shall pay the charges incurred in respect of the Contractor's use of the Sewerage Treatment Plant.
- 2.1.4 If the Contractor breaches clause 1.3.1d, the Commonwealth may repair the resultant damage to the Sewerage Treatment Plant or the Commonwealth Premises in which the GFF Licensed Area is located itself or by a third party. All reasonable costs incurred by the Commonwealth in connection with such works shall be met by the Contractor and the Commonwealth may elect to recover the amount of those costs under clause 13.6 of the COC. No amount shall be owing to the Commonwealth under this clause 2.1.4 until the Commonwealth elects to recover the amount.

and insert an additional paragraph in clause 6.3.2 of the COC ...

- d. as provided in clause 1.3.2c of Attachment O.

and include the following definitions in the Glossary in their appropriate alphabetical positions ...

Trade Waste Treatment Plant means the facility so identified on the plan at Appendix 1 of Annex [INSERT ANNEX #] to Attachment O.

D. Fire protection equipment

Note to drafters: If the Commonwealth is not providing and maintaining fire protection equipment in the GFF and the Contractor is required to install and maintain its own fire protection equipment, add after clause 6.5 of Attachment O ...

3 OBLIGATIONS

3.1 Fire Protection Equipment

- 3.1.1 The Contractor shall, for the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment O, do the following:
- a. install and maintain fire protection equipment which is adequate for the GFF Licensed Area and the conduct of a GFF Permitted Purpose; and
 - c. maintain the fire protection equipment for the GFF Licensed Area in accordance with applicable laws and any applicable requirements of Government Agencies.

E. GFF Licence Fee

Note to drafters: If the Contractor is permitted to do non-contract work in a specific GFF Licensed Area (ie, the conduct of specified non-contract work has been provided for in the GFF Licence), it will be required to pay a market-based GFF Licence Fee. Replace clause 8 of Attachment O with the following (with the exception of clause 8.4 if already included as set out above in item C of this Clause Bank).

4 GFF LICENCE FEE AND RELATED ARRANGEMENTS

4.1 GFF Licence Fee

- 4.1.1 The Contractor shall pay the Commonwealth the GFF Licence Fee in respect of the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment O, without set off or deduction, on or before each due date for payment, which is [INSERT DAY OF MONTH].
- 4.1.2 No demand for payment is necessary.
- 4.1.3 No fee is payable by the Contractor in respect of any other GFF Licensed Area.

4.2 GFF Licence Fee Review

- 4.2.1 The Commonwealth may, in the period from 2 months before and at any time after a Market Review Date, give the Contractor a notice:
- a. specifying an adjusted GFF Licence Fee with effect from the Market Review Date; and
 - b. requiring the Contractor to submit a CCP to incorporate the adjusted GFF Licence Fee into the Contract and to do so:
 - (i) within 20 Working Days after the date of the notice; or
 - (ii) if the Contractor objects to the specified adjusted GFF Licence Fee, within 10 Working Days after the parties agree on the adjustment, or the valuer makes a determination, under clause 4.2.2c(iii).
- 4.2.2 If the Contractor objects to the specified adjusted GFF Licence Fee:

- a. the Contractor shall give the Commonwealth a notice of objection within 20 Working Days after the date of the notice under clause 4.2.1;
- b. the parties shall negotiate in good faith to try to agree on the adjustment to the GFF Licence Fee;
- c. if the parties do not so agree within 20 Working Days after the Commonwealth receives the notice under clause 4.2.2a:
 - (i) within a further 20 Working Days, the parties shall jointly appoint a valuer and give the valuer instructions in accordance with this clause 4.2.2;
 - (ii) if, within that 20 Working Days, the parties have not agreed on the identity of the valuer, they shall request the President of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) in the jurisdiction in which the GFF Licensed Area is located to appoint an independent valuer; and
 - (iii) the valuer shall, in accordance with this clause 4.2 determine the adjusted GFF Licence Fee within 15 Working Days after appointment.

Each time limit in this clause 4.2.2 is of the essence.

- 4.2.3 The valuer shall be a member of the Australian Property Institute (or, if that organisation no longer exists, an equivalent organisation) and have at least five years experience in valuing similar premises in the location of the Commonwealth Premises in which the GFF Licensed Area is located.
- 4.2.4 The valuer shall act as an independent expert and not as an arbitrator, and shall give written reasons for the determination.
- 4.2.5 The Contractor and the Commonwealth shall share the valuer's costs equally.
- 4.2.6 In determining or agreeing upon an adjusted GFF Licence Fee, the Commonwealth and the Contractor shall (and shall require any valuer to):
 - a. assume that the Commonwealth is a willing but not anxious licensor and the Contractor is a willing but not anxious licensee; and
 - b. take into account all relevant matters as at the relevant Market Review Date, including:
 - (i) the licence fee value or equivalent rental value (other than values that have been escalated to a predetermined amount or in accordance with movements in the consumer price index or another index) at the Market Review Date of comparable premises in the locality in which the Commonwealth Premises in which the GFF Licensed Area is located is located, whether that value is in respect of new lettings with vacant possession or occupied premises;
 - (ii) the GFF Permitted Purpose for the GFF Licensed Area subject to the GFF Licence Fee;
 - (iii) the period Market Review Dates, or if there is no further Market Review Date, the remaining period of the GFF Licence Term;
 - (iv) the increased value of the GFF Licensed Area resulting from the Commonwealth upgrading or improving the GFF Licensed Area (or any part of it, including the Licensed Fittings) or any services available to the GFF Licensed Area;
 - (v) any increase in value in the GFF Licensed Area as a result of any structural alterations or other improvements made to the GFF Licensed Area (including repair or replacement of, and provision of additional, Licensed Fittings) by the Commonwealth (having regard to any contribution by the Contractor to the costs of those improvements, including by way of paying for outgoings);

- (vi) the terms and conditions generally of the GFF Licence; and
- (vii) any period for which no GFF Licence Fee is payable, and any financial or capital contribution of the Commonwealth,
but not take into account:
- (viii) any partitions and other improvements installed in or made to the GFF Licensed Area by or for the Contractor, a permitted sublicensee or a predecessor of any of them during the term of the GFF Licence;
- (ix) any special interest of the Contractor;
- (x) goodwill occasioned by the Contractor, a permitted sublicensee or a predecessor of any of them during the GFF Licence Term;
- (xi) areas other than the GFF Licensed Area (except as provided for by clause 4.2.6b(i); or
- (xii) amounts equivalent to GST paid or payable in respect of a taxable supply for which the Commonwealth is entitled to an input tax credit.

4.2.7 A determination of a valuer made in accordance with this clause 4.2 binds the parties.

4.3 Operating Expenses

4.3.1 If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor's obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in Operating Expenses that, in the opinion of the Commonwealth Representative, is attributable to that use.

4.3.2 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.3.1 within 20 Working Days after the date of the notice.

4.3.3 The Contractor shall pay to the Commonwealth an amount in respect of Operating Expenses if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of the GFF Licensed Area by the Contractor in relation to a GFF Permitted Purpose.

4.4 Utilities and telecommunications facilities

4.4.1 If the Contractor uses a GFF Licensed Area for a purpose other than performing the Contractor's obligations under and in connection with the Contract, the Commonwealth Representative may, at any time, by notice to the Contractor, require the Contractor pay to the Commonwealth the amount of any increase in the costs of:

- a. Defence internal and external telephone and fax facilities and internal and external data link facilities; and
 - b. electricity, gas, water, sewerage and drainage services,
- that, in the opinion of the Commonwealth Representative, is attributable to that use.

4.4.2 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 4.4.1 within 20 Working Days after the date of the notice.

4.4.3 The Contractor shall pay to the Commonwealth an amount in respect of the costs of utilities or telecommunications facilities (to the extent not included in an amount referred to in clause 4.3), if the Commonwealth is reasonably satisfied the amount is attributable to an unreasonable or extravagant use of those facilities by the Contractor in relation to a GFF Permitted Purpose.

and, if the Commonwealth requires the Contractor to install separate metering for a particular GFF Licensed Area, add ...

4.4.4 The Contractor shall, at its cost, install separate electricity, telecommunications or other metering to the GFF Licensed Area at Annex [INSERT ANNEX #] to Attachment

O no later than three months after the GFF Licence Application Date for that area or a later time agreed by the Commonwealth Representative.

Note to drafters: Defence is obliged, under the Energy Efficiency in Government Operations Policy 2006 (EEGO) to install progressively sub-meters at relevant Commonwealth Premises used by Defence to measure and monitor energy usage and to identify efficiency opportunities, address problems and evaluate outcomes.

Advice should be sought from [Defence's environmental team] or the Australian Greenhouse Office before agreeing to deleting or modifying clause 8.4.4.

Please also consider the cost implications for Defence, as well as the broader EEGO requirements, before agreeing to pay the Contractor's costs of installing separate digital electricity metering.

and include the following definition in the Glossary in its appropriate alphabetical position ...

GFF Licence Fee means **[INSERT AMOUNT]** adjusted as provided in clause 8.2 of Attachment O.

Market Review Date means each of the following dates:
a. **[INSERT DATES]**.

F. Airfield rights

Note to drafters: If a GFF Licensed Area includes airfield facilities, add the following clause as a new clause 3.3.

5 RIGHTS UNDER THE GFF LICENCE

5.1 Airfield rights

- 5.1.1 The Commonwealth shall provide the Contractor with reasonable access to and use of the Airfield and the navigational facilities, air traffic control, aviation rescue, firefighting facilities and meteorological services on the Commonwealth Premises in which the GFF Licensed Area at Annex **[INSERT ANNEX #]** to Attachment O is located to enable the Contractor to carry out its obligations under the Contract.
- 5.1.2 The Commonwealth Representative may, by notice to the Contractor, require the Contractor to pay to the Commonwealth so much of the amounts incurred by the Commonwealth in relation to the Airfield and the services referred to in clause 5.1.1 as, in the opinion of the Commonwealth Representative, is attributable to the Contractor's access to and use of the Airfield.
- 5.1.3 The Contractor shall pay to the Commonwealth an amount notified to it in accordance with clause 3.3.2 within 20 Working Days after the date of the notice.

and include the following definition in the Glossary in its appropriate alphabetical position ...

Airfield	means the area so identified on the plan at Appendix 1 of an annex to Attachment O.
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ATTACHMENT P

CONTRACT GOVERNANCE FRAMEWORK

1 GOVERNANCE OVERVIEW**1.1 Scope**

- 1.1.1 This Attachment sets out the governance arrangements through which the Commonwealth and the Contractor will manage their bilateral relationship, oversee and guide performance of the Contract, and perform their respective obligations under the Contract to maximise achievement against the objectives specified in clause 1.3 of the COC ('the Objectives').
- 1.1.2 This Attachment addresses:
- the general principles and aims of the governance arrangements; and
 - the bilateral framework and governance bodies that will oversee and guide performance of the Contract.
- 1.1.3 Nothing in this Attachment, or agreements resulting from the application of this Attachment, changes the scope of the Contract without the change being implemented through a CCP or Approval, as applicable to the nature of the change.
- 1.1.4 For the purposes of this Attachment, 'Enterprise' refers to the combination of the systems program office or program office, capability manager, Contractor and Subcontractors, and other 'fundamental inputs to capability', that together deliver the most effective and efficient Capability outcome for Defence.

1.2 Aim

- 1.2.1 The aim of the governance arrangements is to facilitate the performance of the Contract, including the parties' obligations under the Contract, to achieve the Objectives and to promote 'best for Enterprise' decision making by:
- providing leadership, oversight and guidance on performance of the Contract;
 - facilitating informed, effective and timely decision making;
 - facilitating problem solving and Dispute resolution;
 - maximising the value of the skills and knowledge and experience available within the Commonwealth's and the Contractor's organisations by appointing or inviting (as applicable) suitably skilled, knowledgeable and experienced individuals to the governance bodies; and
 - ensuring the governance arrangements operate efficiently and effectively.

2 STEERING COMMITTEE GOVERNANCE ARRANGEMENTS**2.1 Membership**

- 2.1.1 The members of the Steering Committee are:

Note to drafters: Add details for members of the Steering Committee, consistent with the functions described below. Permanent members of the Steering Committee, including external parties, should have a long-term involvement with the Capability and/or Contract.

- the Senior Representatives specified in the Details Schedule;
- [...INSERT Capability Manager or senior representative...];** and
- [...INSERT OTHER MEMBERS AS REQUIRED...].**

2.2 Functions

- 2.2.1 The principal function of the Steering Committee is to be the most senior forum for the management of the relationship of the parties. Accordingly, the Steering Committee will provide the overarching, high level governance of the Contract in terms of providing strategic oversight and guidance and initiation of action within the Commonwealth and the Contractor

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to maximise the extent to which the Objectives are achieved through performance of the Contract.

2.2.2 The functions of the Steering Committee include:

- a. to exchange views about key matters relevant to work under the Contract, particularly where the work may affect the achievement of the Objectives;
- b. to provide guidance to the Leadership Team;
- c. to provide guidance in relation to, and to prioritise and co-ordinate, any significant CCPs in a manner consistent with achievement of the Objectives;
- d. to act as an advocate for the Enterprise;
- e. to agree key messaging for external communications in relation to the Contract;
- f. to act as the final internal point of Dispute resolution if the Dispute cannot be resolved by the Leadership Team, including by supporting the Senior Representatives to resolve a Dispute in accordance with the Dispute resolution procedure set out in clause 13.1 of the COC; and
- g. to discharge any other function that the parties agree in writing is to be a function of the Steering Committee.

2.3 Meetings

- 2.3.1 The Steering Committee shall meet twice yearly, or at such other times as either party may require. At least 10 Working Days' prior notice shall be given for meetings. Reduced notice may be given, as is reasonable in the circumstances.
- 2.3.2 The Steering Committee may invite external advisers and observers to attend Steering Committee meetings from time to time.
- 2.3.3 The parties agree that meetings shall be conducted in accordance with the arrangements for extraordinary meetings set out in clause 3.9 of the SOW as if the Commonwealth is the party calling the meeting.

3 LEADERSHIP TEAM GOVERNANCE ARRANGEMENTS

3.1 Membership

- 3.1.1 The members of the Leadership Team are:

Note to drafters: Add details for members of the Leadership Team, consistent with the functions described below. Permanent members of the Leadership Team should have a long-term involvement with the Capability and/or Contract, and may include representatives from key Approved Subcontractors and Capability Manager's representatives from Other Capabilities.

- a. the Management Representatives specified in the Details Schedule; and
- b. [...INSERT OTHER MEMBERS AS REQUIRED...].

3.2 Functions

- 3.2.1 The principal functions of the Leadership Team are to:
 - a. be a forum for the management of the relationship of the parties;
 - b. oversee and provide guidance on key concerns relevant to the performance of work under the Contract (including coordination with related programs, projects or sustainment activities); and
 - c. report to the Steering Committee on significant risks impacting the performance of the Contract or achievement against the Objectives.
- 3.2.2 The functions of the Leadership Team include:
 - a. to exchange views about matters relevant to the work under the Contract;
 - b. to monitor performance of the Contract and identify and review key opportunities and risks;

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- c. to ensure that appropriate action is taken to mitigate risks and that such action is managed by Personnel best suited to do so;
- d. to monitor the parties' progress towards achieving the Objectives;
- e. to co-ordinate and collaborate with related programs, projects or sustainment activities, as needed, to ensure the effective performance of the Contract and any related programs, projects or sustainment activities;
- f. to assess the health of the relationship between the parties, and take rectification action, as necessary and appropriate;
- g. to give guidance to the Contract Team and to hold the Contract Team to account for the performance of its functions;
- h. to respond to matters referred for consideration by the Contract Team;
- i. to give advice to the Steering Committee, as required, including generally on the status of the Contract and Disputes that have not been resolved;
- j. to act as a further internal point of Dispute resolution if the Dispute is not resolved by the Contract Team, including by supporting the Management Representatives to resolve a Dispute in accordance with the Dispute resolution procedure set out in clause 13.1 of the COC; and
- k. to discharge any other function that the parties agree in writing is to be a function of the Leadership Team.

3.3 Meetings

- 3.3.1 The Leadership Team shall meet at least three times a year, or at such other times as the parties may agree, generally scheduled to coincide with a Combined Services Performance Review, Contract Performance Review, or other significant review or Milestone.
- 3.3.2 The Leadership Team may invite the Commonwealth Representative and the Contractor Representative to attend meetings as advisers.
- 3.3.3 The Leadership Team may invite external advisers and observers to attend Leadership Team meetings from time to time.
- 3.3.4 The parties agree that meetings shall be conducted in accordance with the arrangements for extraordinary meetings set out in clause 3.9 of the SOW as if the Commonwealth is the party calling the meeting.

4 CONTRACT TEAM GOVERNANCE ARRANGEMENTS**4.1 Membership**

- 4.1.1 The members of the Contract Team are:

Note to drafters: Add details for members of the Contract Team that will perform the functions described below. Permanent members of the Contract Team should have a long-term involvement with the Contract, and may include representatives from Approved Subcontractors, Other Capabilities, and other Associated Parties including ADF regulatory / assurance agencies and customer units.

- a. the Commonwealth Representative;
- b. the Contractor Representative; and
- c. **[...INSERT OTHER MEMBERS AS REQUIRED...]**.

4.2 Functions

- 4.2.1 The principal functions of the Contract Team are to:
 - a. be responsible for the day to day performance of the Contract; and
 - b. report to the Leadership Team on material risks impacting the performance of the Contract or achievement against the Objectives.
- 4.2.2 The functions of the Contract Team include:

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- a. to be informed and keep up to date about the progress of work under the Contract;
- b. to exchange views about matters relevant to the work under the Contract;
- c. to ensure the parties' obligations under the Contract are being appropriately monitored and managed, with prompt action taken as necessary and appropriate by the relevant party (eg, through reallocation of resources, closer management oversight, as necessary) to support performance of the Contract;
- d. to consider and implement, where appropriate, improvements to working level arrangements and activities between the parties to achieve efficiencies and improvements in the quality of performance of the delivery of the Capability;
- e. to identify and review opportunities and risks;
- f. to ensure that appropriate action is taken to give effect to opportunities and to mitigate risks, with such action managed by Personnel best suited to do so;
- g. to assess the health of the relationship between the parties, and take rectification action, as necessary and appropriate;
- h. to give advice to the Leadership Team, as required, including by promptly escalating risks appropriately, particularly those risks which may have a material impact on achievement against the Objectives;
- i. to act as the first internal point of Dispute resolution for the parties for the purposes of the Dispute resolution procedure set out in clause 13.1 of the COC; and
- j. to discharge any other function that the parties agree in writing is to be a function of the Contract Team.

4.3 Meetings

- 4.3.1 Without limiting the Contract (including any requirement to conduct progress meetings or extraordinary meetings as required or permitted by the SOW), the Contract Team shall meet or otherwise communicate on an ongoing basis to ensure the effective performance of the Contract.
- 4.3.2 The Contract Team may invite external advisers and observers to attend Contract Team meetings from time to time.