

## ASDEFCON LINKAGES MODULE AMENDMENT INSTRUCTIONS

## CONTRACT (SUPPORT)

The following are amendments to be made to the *ASDEFCON (Support) V4.0* template draft conditions of contract as part of a linked request for tender package using the ASDEFCON Linkages Module.

Drafters should make the necessary ancillary formatting or grammatical changes needed when adding any new provisions or amending existing provisions into their templates.

## INFORMATION TABLE

**Insert** the following items into the Information Table:

|                                  |   |  |
|----------------------------------|---|--|
| <b>Item 22</b><br>(Attachment M) | <b>Contract (Acquisition)</b><br>(Core)   | Contract number <b>(INSERT CONTRACT NUMBER)</b> dated on or about the date of this Contract between the Commonwealth and the Contractor (Acquisition) to provide the Supplies. |
| <b>Item 23</b><br>(Attachment M) | <b>Contractor (Acquisition)</b><br>(Core) | (INSERT NAME OF CONTRACTOR)<br>ABN (INSERT CONTRACTOR'S ABN)   |

**Insert new optional clauses 1.5.1g and 1.5.1h:**

**Option: If Transition Support Services are included in the SOW and Attachment B as a Recurring Service, then include this clause.**

- (g) the obligation to pay any Recurring Services Fees that have been explicitly identified in the Contract to be provided before the Operative Date, including the Transition Support Services in clause 2.6.8 of the SOW.

**Option: If Transition Support Services are included in the SOW are to be paid under and S&Q Order, then include this clause.**

- (h) the obligation to pay for the Transition Support Services described in clause 2.6.8 of the SOW, under an S&Q Order executed by the Commonwealth Representative.

**Amend clause 1.5.3 as follows:**

1.5.3 On or before the Planned Operative Date:

- a. the Contractor shall:
- (i) achieve **[INSERT 'AEO/AMO accreditation' AS REQUIRED]**;
  - (ii) ensure the Contractor (Acquisition) achieves the **[INSERT RELEVANT MILESTONE OR MILESTONES UNDER THE CONTRACT (ACQUISITION)]** under the Contract (Acquisition);
  - (iii) have the necessary Support Resources available, including all required Facilities and arrangements established for sourcing Stock Items, to be able to provide the Services;
  - (iv) introduce the DMS into operational use in accordance with clause 2.3 of the SOW;
  - (v) complete all Phase In activities required under the Approved Phase In Plan and the SOW to be completed on or before the Planned Operative Date;

- (vi) if Products are to be supplied by the Contractor under a contract other than this Contract or the Contract (Acquisition), achieve **[INSERT EITHER "Final Acceptance" OR "Acceptance of those Products"]** as defined in that contract;
- (vii) obtain from the Contractor (Acquisition) the data items required to be obtained by the Contractor prior to the Planned Operative Date and/or which are required to be provided to the Contractor by the Contractor (Acquisition) prior to the Planned Operative Date;
- (viii) deliver to the Commonwealth the data items required by the CDRL to be delivered on or before the Planned Operative Date and, if required under the CDRL, achieve Approval or Acceptance of those data items;
- (ix) provide the financial securities required under clauses 7.5 and 7.6;
- (x) obtain all personnel security clearances for Contractor Personnel that are necessary for the performance of the Services from OD in accordance with clause 11.10;
- (xi) hold and provide to the Commonwealth Representative copies of all of the necessary facility licences and approvals for the nature of the work to be performed in each of the Facilities to be used by the Contractor for the purposes of the Contract;

**Note to drafters: If clause 9.1.28 is included in the draft contract, then include the text in square brackets below, otherwise delete.**

- (xii) **[subject to clause 9.1.28]** provide to the Commonwealth Representative copies of evidence of the insurance required to be effected and maintained under clause 9.1;
- (xiii) obtain all relevant Authorisations and provide copies of those Authorisations to the Commonwealth Representative;
- (xiv) **[INSERT OTHER ITEMS AS REQUIRED]**; and
- (xv) **[INSERT LAST ITEM OF LIST]**; and

**Amend clause 1.5.8 as follows:**

- 1.5.8 If the Commonwealth issues a waiver in accordance with clause 1.5.5b, which includes a condition that the obligations in the waiver shall be performed by a specified date, the Commonwealth may (without limiting the Commonwealth's other rights under the Contract, the Contract (Acquisition) or at law or in equity and despite any other provision of the Contract):

**Amend clause 1.5.12a.(i) as follows:**

- (i) constitute a waiver or election of any of the Commonwealth's rights under the Contract, the Contract (Acquisition) or otherwise at law or in equity in respect of that breach or in respect of any other breach; or

**Follow** the note to drafters at clause 12.1 and **delete** clauses 1.12.2 and 1.12.3 (Option A) and **insert** Option B and **amend** clauses 1.12.4a. and c. as follows:

- a. except to the extent agreed in writing by the Commonwealth Representative, ensure there is no interruption to the Capability due to an act or omission of the Contractor or the Contractor (Acquisition);
- ...
- c. cooperate as reasonably necessary with the Contractor (Acquisition) and Commonwealth Contractors that are establishing or configuring their support capabilities for the Materiel Systems; and

**Amend clause 1.13.3c. as follows:**

- c. cooperate as reasonably necessary with the Contractor (Acquisition) and Commonwealth Contractors that are establishing or configuring their support capabilities for the Materiel Systems; and

*Insert new clause 1.14 as follows:*

**1.14 Option for Further Quantities and Optional Extras (Optional)**

**Note to drafters: If clause 1.8 of the conditions of contract in the draft Contract (Acquisition) has been used, drafters should consider whether an option should be included in this Contract to enable the Commonwealth to require the Contractor to provide additional Services in respect of the further quantities of the Supplies under the Contract (Acquisition). If additional Services are required, an appropriate clause will need to be included in this Contract. The clause could be based on the drafting of clause 1.8 of the conditions of contract in the draft Contract (Acquisition). Drafters will need to give careful consideration to how the clause links in with clause 1.8 of the conditions of contract in the draft Contract (Acquisition) to ensure that any optional Services only commence and are only paid for when the additional quantities are supplied under the Contract (Acquisition).**

*Amend clauses 3.2.1c. and insert a new clause 3.2.1d. as follows:*

- c. ensure that the Deliverables are compatible with and do not restrict the performance of, or adversely affect, other equipment specified or referred to in the Contract or the Contract (Acquisition) that will or may be used with the Deliverables or the Supplies; and
- d. ensure that the Services will not restrict the performance of, or adversely affect the performance of the Contract (Acquisition), or adversely affect the provision of the Supplies.

*Amend clause 3.3.1 as follows:*

- 3.3.1 The Contractor shall ensure that the Services are fit for the purposes provided for in the Contract and the Contract (Acquisition), except to the extent that the failure of the Services to be fit for purpose results from a Commonwealth Default.

*Amend clause 3.6.3 as follows:*

- 3.6.3 The Contractor acknowledges and agrees that:
- a. the Commonwealth's obligations to provide GFM on the dates or at the times described in Attachment E or the GFM section of an S&Q Order are subject to the Contractor performing the Services in accordance with clause 6.1.1 and to the Contractor (Acquisition) meeting its obligations under the Contract (Acquisition); and
  - b. any delay of the Contractor in meeting its obligations under the Contract, or any delay of the Contractor (Acquisition) in meeting its obligations under the Contract (Acquisition), may result in the Commonwealth not being able to provide GFM to the Contractor, or access to Products, at the time the Contractor requires delivery of or access to the GFM or Products (as applicable).

*Amend clause 3.6.7 as follows:*

- 3.6.7 The Contractor shall ensure that the use of GFM does not adversely impact on the provision of the Services or Products or on the production, delivery or functionality of Supplies.

*Amend optional clause 3.6.10a. and Insert a new clause 3.6.10c. as follows:*

- a. a Defect that was present in the item when it was provided to the Commonwealth by or through the Contractor or the Contractor (Acquisition), or a Related Body Corporate of either of them, whether under the Contract, the Contract (Acquisition) or another contract;
- ...
- c. a Contractor (Acquisition) Default.

**Insert** new clause 3.6.11 as follows:

- 3.6.11 If an item of GFM is included in both Attachment E to the Contract and Attachment E to the Contract (Acquisition) the Contractor shall:
- a. coordinate with the Contractor (Acquisition) regarding the use of the item of GFM for each of the Contract and the Contract (Acquisition); and
  - b. not be entitled to postponement or performance relief under clause 6.4 as a result of the item of GFM being used by the Contractor (Acquisition) for the purposes of the Contract (Acquisition).

**Amend** clause 3.9.2 as follows:

- 3.9.2 If the Commonwealth fails to provide the GFS on the dates set out in Attachment E or the GFS section of an S&Q Order, the Contractor may make a claim for relief and relief costs in relation to the affected Services, except to the extent that the failure to provide the GFS was caused by a Contractor Default or a Contractor (Acquisition) Default. The process for submission and consideration of the claim shall be undertaken, and any rights of the Contractor determined, in accordance with clauses 6.2 and 6.4.

**Amend** optional clauses 3.9.3a. and **insert** a new clause 3.9.3c. as follows:

- a. any deficiency or other non-compliance in the GFS when it was provided to the Commonwealth by the Contractor or the Contractor (Acquisition), or a Related Body Corporate of either of them, whether under the Contract or another contract;
- c. a Contractor (Acquisition) Default.

**Amend** clause 5.3.3 to **insert** a new clause 5.3.3d. as follows:

- d. the Contractor (Acquisition) to Use the TD or Software, or to grant a further sublicense to Use the TD or Software, to enable the Contractor (Acquisition) to perform its obligations, functions or duties to the Commonwealth under the Contract (Acquisition).

**Amend** clause 5.4.2 to **insert** new clauses 5.4.2d, e and f as follows:

- d. the Contractor (Acquisition);
- e. an Approved Subcontractor (Acquisition); or
- f. a Related Body Corporate of the Contractor (Acquisition),

**Amend** clause 5.7.1b. to **insert** a new clause 5.7.1.b(iv) as follows:

- (iv) the Contractor (Acquisition) to Use the Contract Material, or to grant a further sublicense to Use the Contract Material to perform its obligations, functions and duties to the Commonwealth under the Contract (Acquisition).

**Amend clause 5.8.1b. as follows**

- b. the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth, the Contractor (Acquisition) or a Commonwealth Contractor;

**Amend clause 5.16.1a. as follows:**

- a. the rights granted to the Commonwealth in accordance with this clause 5 (including in relation to Commercial TD and Commercial Software), will not prevent the Products Being Supported from being used and supported as contemplated under either the Contract or the Contract (Acquisition) (as applicable);

**Amend clauses 5.17.3c. and d. as follows:**

- c. none of the Contractor, any Approved Subcontractor, the Contractor (Acquisition), or any Approved Subcontractor (Acquisition) is 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 Contractor, any Approved Subcontractor, the Contractor (Acquisition), or any Approved Subcontractor (Acquisition) in relation to any of the IP, and there is nothing that is likely to give rise to any such proceedings.

**Amend clause 5.17.4 as follows:**

- 5.17.4 The warranty under clause 5.17.1 and the obligations under clause 5.17.2 do not apply to the extent that the infringement arises from a failure by the Commonwealth, Commonwealth Personnel or a sublicensee of the Commonwealth (other than the Contractor (Acquisition) or a Subcontractor (Acquisition)) to comply with a relevant restriction specified in the TDSR Schedule.

**Amend clause 5.20.1 as follows:**

5.20.1 The licences, rights and obligations under this clause 5 are in addition to, and:

- a. do not affect any other licences, rights or obligations relating to IP under any other contracts between the parties; and
- b. are not limited by the IP rights granted or assigned to the Commonwealth under the Contract (Acquisition),

unless expressly stated otherwise for the purposes of this clause 5.

**Amend clause 6.1.4 as follows:**

- 6.1.4 Without limiting the Commonwealth's other rights and remedies under the Contract, the Contract (Acquisition) or at law, if the Contractor does not comply with its obligations under clause 6.1.1, the Commonwealth may be entitled to:

**Amend clause 6.2.1 as follows:**

- 6.2.1 Without affecting the Contractor's obligations under clause 6.1.1, the Contractor shall take all reasonable steps to prevent and minimise delay and to mitigate Losses incurred by the Commonwealth, the Contractor or the Contractor (Acquisition) due to delay.

**Amend clauses 6.2.2b. and d. as follows:**

- b. the steps that the Contractor, the Subcontractors, the Contractor (Acquisition) and the Subcontractors (Acquisition) are taking and will take to minimise the delay and mitigate the effects of the delay;

...

- d. whether the Contractor will be claiming Performance Relief or Postponement of the date for the provision of the Services or the Milestone Date under clause 6.4, or seeks any other change to the Contract or the Contract (Acquisition), on the basis of the delay.

**Amend clauses 6.4.1 as follows:**

6.4.1 Subject to clauses 6.4.3 to 6.4.8 [and 6.6], the Contractor shall be entitled to Performance Relief to the extent that a Performance Event:

- a. is beyond the reasonable control of the Contractor, its Subcontractors, the Contractor (Acquisition) and the Subcontractors (Acquisition) and could not have been reasonably contemplated and allowed for by the Contractor or its Subcontractors before entering into the Contract or by the Contractor (Acquisition) or the Subcontractors (Acquisition) before entering into the Contract (Acquisition); or
- b. resulted from:

...

**Option: For when GFF is included in the draft Contract (Acquisition).**

- (iv) a GFF Delay Event (Acquisition).

**Amend clause 6.4.2 as follows:**

6.4.2 Subject to clauses 6.4.3 to 6.4.8 [and 6.6], the Contractor shall be entitled to Postponement to the extent that a Postponement Event:

- a. is beyond the reasonable control of the Contractor, the Subcontractors, the Contractor (Acquisition) and the Subcontractors (Acquisition) and could not have been reasonably contemplated and allowed for by the Contractor or its Subcontractors before entering the Contract or by the Contractor (Acquisition) or the Subcontractors (Acquisition) before entering the Contract (Acquisition); or
- b. resulted from:

...

**Option: For when GFF is included in the draft Contract (Acquisition).**

- (iv) a GFF Delay Event (Acquisition).

**Amend clauses 6.4.3b. and c. as follows:**

- b. the work under the Contract or the Contract (Acquisition) cannot be performed in such a way as to meet the performance requirements at clause 6.1, as is reasonable having regard to any other relevant circumstances;
- c. the Contractor has made and continues to make all reasonable endeavours to minimise or prevent:

...

and the Contractor mitigates Losses incurred by the Commonwealth, the Contractor or the Contractor (Acquisition);

**Amend clause 6.4.4 as follows:**

6.4.4 The Contractor shall not be entitled to Performance Relief or Postponement to the extent that the relevant Performance Event or Postponement Event resulted from:

- a. a Contractor Default;

- b. a Contractor (Acquisition) Default;
- c. compliance with a direction under clause 12.4.10;
- d. compliance by the Contractor (Acquisition) with a direction under clause 12.4.10 of the Contract (Acquisition);
- e. a cessation of work under clause 11.3.3 of the SOW or the Commonwealth's inability to action a data item within the timeframes described in the CDRL in the circumstances described in clause 2.4.8.2 of the SOW;
- f. a cessation of work under clause 8.3.3 of Attachment A to the Contract (Acquisition) or the Commonwealth's inability to action a data item within the timeframes described in Annex C to Attachment A to the Contract (Acquisition) in the circumstances described in clause 2.4.8.2 of Attachment A to the Contract (Acquisition).

**Amend clause 6.5.1a. and c. and corresponding 'note to drafters' as follows:**

**Note to drafters: If GFF is included in the draft Contract or Contract (Acquisition) include the text in square brackets below, as applicable, otherwise delete.**

- a. the relevant Postponement Event resulted from a Commonwealth Default [or GFF Delay Event or GFF Delay Event (Acquisition)];
- ...
- c. the Contractor provides substantiating evidence to the satisfaction of the Commonwealth Representative of the costs and steps taken to mitigate Losses incurred by the Commonwealth, the Contractor and the Contractor (Acquisition) in connection with the Postponement Event.

**Amend clause 6.5.3 and corresponding 'note to drafters' as follows:**

**Note to drafters: If GFF is included in the draft Contract or Contract (Acquisition) include the text in square brackets below as applicable, otherwise delete.**

- 6.5.3 The Contractor shall only be entitled to Postponement costs equal to the unavoidable additional costs that are:
- a. incurred by the Contractor as a direct consequence of the Commonwealth Default [or a GFF Delay Event or GFF Delay Event (Acquisition)] referred to in clause 6.5.1a; and
  - b. not otherwise recovered by the Contractor (Acquisition) under the Contract (Acquisition).

**Amend clause 6.6.4a. as follows:**

- a. the Commonwealth is as well informed as is reasonably possible about the implications of a proposed direction for the Contract, the Contract (Acquisition) or any other contract between the Contractor and the Commonwealth; and

**Amend clause 6.6.5c. and corresponding 'note to drafters' as follows:**

**Note to drafters: If GFF is included in the draft Contract (or the Contract (Acquisition)) include the text in square brackets below as applicable, otherwise delete.**

- c. any relevant Excepted Risk, Commonwealth Default [or GFF Delay Event or GFF Delay Event (Acquisition)].

**Amend clause 6.7.1a. as follows:**

- a. the Commonwealth Representative has issued a direction under clause 6.6.1a, and the delay notified was caused by an act or omission of the Commonwealth in relation to the Contract or the Contract (Acquisition); or

**Amend** clause 6.7.3 as follows:

- 6.7.3 Subject to clause 6.7.4, the Contractor shall only be entitled to schedule recovery costs equal to the unavoidable additional costs that are:
- a. incurred by the Contractor as a direct consequence of complying with a direction under clause 6.6.1;
  - b. determined consistent with Attachment B; and
  - c. not otherwise recovered by the Contractor (Acquisition) under the Contract (Acquisition).
- Schedule recovery costs shall not include Postponement costs

**Amend** clause 6.7.4 as follows:

- 6.7.4 If the Commonwealth issues a direction under clause 6.1.1d subsequent to negotiation in accordance with clause 6.6.5, the Contractor shall be entitled to schedule recovery costs that are:
- a. equal to all reasonable costs, including loss of profit, if any, incurred by the Contractor as a direct consequence of complying with the direction;
  - b. determined by the Commonwealth in a manner which is consistent with Attachment B to the Contract and agreed in writing at the time of negotiation under clause 6.6.5; and
  - c. not otherwise recovered by the Contractor (Acquisition) under the Contract (Acquisition).

**Amend** clause 6.8.4a. as follows:

- a. without limiting the Contractor's obligations, rectify the Defect itself or by the Contractor (Acquisition) or procure a third party to rectify the Defect under clause 6.11; and

**Amend** clause 6.8.12 as follows:

- 6.8.12 Any action of:
- a. the Contractor in rectifying Defects in the Deliverables and in complying with the directions of the Commonwealth Representative under this clause 6.8; or
  - b. the Contractor (Acquisition) in rectifying defects in the Supplies and in complying with the directions of the Commonwealth representative under clause 6.8 of the Contract (Acquisition),
- shall not entitle the Contractor to claim Performance Relief or Postponement under clause 6.4, or relieve the Contractor from performing its obligations under the Contract.

**Amend** clause 6.10.1c.(ii)1) as follows:

- 1) delivery of the Deliverables to the Commonwealth, or, with the agreement of the Commonwealth, the Contractor (Acquisition) on behalf of the Commonwealth, in accordance with the Contract; or

**Amend** clause 6.10.4a. as follows:

- a. a transfer of care, custody or control of the item or component to the Contractor, a Subcontractor, the Contractor (Acquisition) or a Subcontractor (Acquisition);

**Amend** clause 7.5.5b. as follows:

- b. to recover any debts owing by the Contractor to the Commonwealth in relation to the Contract or by the Contractor (Acquisition) to the Commonwealth in relation to the Contract (Acquisition).

**Insert new clause 7.6.3b. and Amend now clause 7.6.3c. as follows:**

- b. to obtain compensation for Loss suffered in the event that the Contractor (Acquisition) fails to perform the Contract (Acquisition), including upon termination of the Contract (Acquisition) in accordance with clause 13.2 of the Contract (Acquisition); and
- c. to recover any debts owing by the Contractor to the Commonwealth in relation to the Contract or by the Contractor (Acquisition) to the Commonwealth in relation to the Contract (Acquisition).

**Insert new clause 7.9.1f. as follows:**

- f. an event under clause 7.9.1 of the Contract (Acquisition) occurs or the Commonwealth otherwise has the right to suspend any or all payments under the Contract (Acquisition).

**Insert new clause 7.11.2 as follows:**

- 7.11.2** Without limiting clause 7.9 or any other rights of the Commonwealth under the Contract or otherwise, the Commonwealth may determine that the Contractor shall not be entitled to Performance Incentives for a KPI if, during the relevant Review Period:
- a. the Contractor (Acquisition) did not achieve a Concurrent Contract Milestone during an Assessment Period;
  - b. the Commonwealth was entitled to claim liquidated damages under the Contract (Acquisition); or
  - c. the Commonwealth was entitled to terminate the Contract (Acquisition) for Contractor (Acquisition) Default under clause 13.2 of the Contract (Acquisition).

**Amend clause 8.2.2d.(iii) as follows:**

- (iii) a breach of a general law duty or an applicable law by an Unrelated Party, except to the extent that the Contractor is liable for such damage under clause 10.8.2 or the Contractor (Acquisition) is liable for such damage under the Contract (Acquisition).

**Amend clause 8.2.4 as follows:**

- 8.2.4** The Contractor's obligations under clause 8.2.1 do not require the Contractor to rectify a Defect in GFM except to the extent that the Defect:
- a. arose out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default; or
  - b. was present in the item when it was provided to the Commonwealth by or through the Contractor or the Contractor (Acquisition) or a Related Body Corporate of either of them, whether under the Contract, the Contract (Acquisition) or another contract.

**Amend clause 8.2.6 as follows:**

- 8.2.6** If the Contractor fails to rectify a Defect within the period specified in clause 8.2.1, the Commonwealth may rectify the Defect itself, or have the Defect rectified by the Contractor (Acquisition) or by a third party and:
- a. if the Commonwealth engages a third party (other than the Contractor (Acquisition)) to rectify the Defect, the Contractor's warranties and obligations will be reduced to the extent of the warranty given by the third party in relation to the rectification work;
  - b. the Commonwealth may elect to recover from the Contractor under clause 13.7 the amount of the Commonwealth's costs of rectifying the Defect, including any amount incurred under the Contract (Acquisition) in rectifying the Defect;

- c. no amount shall be owing to the Commonwealth under this clause 8.2.6 until the Commonwealth elects to recover the amount; and
- d. any action taken by the Commonwealth to require the Contractor (Acquisition) to rectify the Defect does not affect or limit the Commonwealth's rights under this Contract or at common law;

**Insert** new clause 8.2.10 as follows:

8.2.10 The Commonwealth may require a Defect in the Services to be rectified under clause 8.2.1 even if:

- a. the Defect may have arisen out of, or as a consequence of the performance of the Contract (Acquisition); or
- b. it is not clear to the Commonwealth whether or not the Defect arose out of or a consequence of the performance of the Contract or the Contract (Acquisition) or both.

**Insert** new clause 8.2.11 as follows:

8.2.11 The Commonwealth may, in a notice given under clause 8.2.1, require the Defect to be rectified under the Contract (Acquisition) and the Contractor shall:

- a. provide all assistance reasonably required by the Contractor (Acquisition) to enable it to rectify the Defect under the Contract (Acquisition); and
- b. not be entitled to any additional amount in respect of such assistance, except to the extent that the Contractor demonstrates that the Defect meets the requirements of clause 8.2.2.

**Amend** clause 10.1.1 as follows:

**10.1.1** The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with the death, personal injury, disease or illness of any employee or officer of the Contractor or the Contractor (Acquisition) in relation to the Contract.

**Amend** clause 10.2.1b. as follows:

- b. 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 Contractor, Contractor Personnel, the Contractor (Acquisition) or Contractor (Acquisition) Personnel.

**Amend** clause 10.3.1 as follows:

**10.3.1** The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party arising out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default, including a Claim in respect of:

**Insert** new clause 10.5.3 as follows:

**10.5.3** The Commonwealth may not recover from the Contractor an amount under an indemnity given by the Contractor under clause 10.1, 10.2 or 10.3 of this Contract to the extent that the Commonwealth has recovered that amount under an indemnity under clause 10.1, 10.2 or 10.3 of the Contract (Acquisition) in respect of the same Loss.

**Amend** clause 10.6.4c. as follows:

- c. to accept compensation (instead of the LD Amount) as agreed in writing between the parties, including from the Contractor (Acquisition); or

**Amend** 10.6.9 as follows:

- 10.6.9** If:
- a. the Commonwealth elects to accept compensation instead of liquidated damages (whether in the form of further supplies or services or otherwise); or
  - b. the Contractor provides compensation in respect of an amount of liquidated damages under the Contract (Acquisition),
- the Contractor shall prepare a CCP to effect a change to the Contract and any other contract between the Commonwealth and the Contractor that may be affected.

**Amend clause 10.8.2 as follows:**

- 10.8.2 The Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to:
- a. any Commonwealth Property (other than GFF) while it is:
    - (i) on any Contractor Premises;
    - (ii) on any Contractor (Acquisition) Premises, which may include GFF; or
    - (iii) being stored or transported by or on behalf of the Contractor, a Related Body Corporate of the Contractor, a Subcontractor, the Contractor (Acquisition), a Related Body Corporate of the Contractor (Acquisition) or a Subcontractor (Acquisition);

**Option: Insert clause 10.8.2b. if GFF is included in the draft Contract and include 'or' at the end of 10.8.2a.(iii) above.**

- b. any GFF (other than fair wear and tear) in respect of which the Contractor, a Subcontractor, the Contractor (Acquisition) or a Subcontractor (Acquisition) is responsible for controlling physical access,

in connection with the Contract, whether or not the loss or damage arises out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default.

**Amend clause 10.8.4 as follows:**

- 10.8.4 Without limiting clause 10.8.2, the Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to, Commonwealth Property arising out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default.

**Amend clause 10.10.4i. as follows:**

- i. **(Wilful Default)** a Wilful Default of the Contractor, Contractor Personnel, the Contractor (Support) or Contractor (Support) Personnel;

**Amend clause 11.1.2. as follows:**

- 11.1.2 Either party may propose a change to the Contract. CCPs shall:
- a. be in the format set out at Annex C to Attachment I; and
  - b. if the proposal involves a change to the Contract (Acquisition), the Contractor:
    - (i) agrees that the Commonwealth is not able to properly assess the CCP without assessing any potential impacts on the Contract (Acquisition);
    - (ii) shall identify and include in the CCP any potential impacts on the Contract (Acquisition);
    - (iii) where required, shall liaise with and assist the Contractor (Acquisition) to prepare a CCP to the Contract (Acquisition) in accordance with clause 11.1 of the Contract (Acquisition); and

- (iv) shall coordinate with the Contractor (Acquisition) to provide the CCP in relation to the Contract and a CCP in relation to the Contract (Acquisition) at the same time.

**Amend** clause 11.1.7e. as follows:

- e. any other CCP which is proposed or required to address any non-performance of the Contractor under the Contract or of the Contractor (Acquisition) under the Contract (Acquisition).

**Amend** clause 11.4.2 as follows:

**11.4.2 Each party shall ensure that, before disclosing Confidential Information under clause 11.4.1b or 11.4.1c, the recipient:**

- a. executes a confidentiality deed poll substantially in the form of Annex B of Attachment I;
- b. has executed an appropriate confidentiality deed poll under the Contract (Acquisition); or
- c. is otherwise subject to an obligation not to disclose the Confidential Information to any other person on terms substantially equivalent to those in Annex B of Attachment I.

**Amend** clauses 11.4.3b. and d.(iv) as follows:

- ...
- b. necessary for the conduct of any legal proceedings arising in connection with the Contract or the Contract (Acquisition);
- ...
- d. to any of the following persons:
  - ...
  - (v) an employee, officer or agent of the Contractor (Acquisition) who needs to know the information to enable the Contractor (Acquisition) to perform its obligations to the Commonwealth under the Contract (Acquisition) and to perform an obligation of the Contractor under this Contract.

**Amend** clause 11.5.2 as follows:

**11.5.2** If the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation. The notification from the Contractor must detail the impact of the proposed arrangement on the Contract (Acquisition) and on any existing arrangements the Contractor has in place with the Contractor (Acquisition).

**Amend** clause 11.7.1 as follows:

**11.7.1** During the performance of the Contract, the Contractor shall, subject to the Commonwealth giving five Working Days' prior notice to the Contractor, provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with access to its premises, records and accounts for any purpose related to the Contract or the Contractor's involvement, if any, in the Contract (Acquisition). 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 Contractor 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.

**Insert new** clause 11.7.4p. as follows:

- p. investigating the Contractor's involvement in relation to the Contract (Acquisition) including with respect to any allocation or attribution of the Contractor's obligations to the Contract (Acquisition).

**Amend** clause 11.7.5 as follows:

- 11.7.5** The Contractor shall permit the Commonwealth to, and shall facilitate the Commonwealth being able to, exercise its rights in this clause 11.7 to access Related Bodies' Corporate records (including subsidiary and parent company records) relating to transfer pricing, cross-subsidisation with Related Bodies Corporate and the allocation of overheads between the Contractor and the Related Bodies Corporate in connection with any investigation, audit or review referred to in clause 11.7.4. The Contractor shall also assist the Commonwealth to access any records of the Contractor (Acquisition) in accordance with the Commonwealth's rights under the Contract (Acquisition) and that are held by the Contractor.

**Amend** clauses 11.12.3a. to 11.12.3c. as follows:

- a. the ownership and management arrangements of the Contractor, the Guarantor, the Contractor (Acquisition) or the Guarantor (Acquisition) that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Contractor became aware of the prospective change;
- b. the ownership and management arrangements of the Contractor, the Guarantor, the Contractor (Acquisition) or the Guarantor (Acquisition) that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Contractor reasonably expects to be put in place if the change occurs;
- c. the impact (if any) that the change has had on the Contractor's, the Guarantor's, the Contractor (Acquisition)'s or the Guarantor (Acquisition)'s ability to meet its obligations under the Contract and the Contract (Acquisition) or, if the change has yet to occur, that the Contractor reasonably expects the change to have on that ability; and

**Insert** new clause 11.13 as follows:

**11.13 Contract (Acquisition) (Core)**

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- 11.13.1 The Contractor acknowledges and agrees that any failure to comply or delay in complying with its obligations under the Contract may result in the Commonwealth:
- a. not being able to comply with its obligations under the Contract (Acquisition);
- b. not being able to obtain the full benefit of the Supplies provided under the Contract (Acquisition);  
or
- c. suffering loss or damage in connection with the Contract (Acquisition).
- 11.13.2 The Contractor shall provide all necessary assistance to enable the Contractor (Acquisition) to comply with its obligations under the Contract (Acquisition) where such compliance requires the assistance of the Contractor.
- 11.13.3 Without limiting any other obligations and unless expressly stated otherwise in the Contract, if the Contractor requires the assistance of the Contractor (Acquisition) to comply with its obligations under this Contract, the Contractor shall obtain and co-ordinate such assistance without the involvement of the Commonwealth.
- 11.13.4 Unless expressly stated in the Contract, nothing in the Contract (Acquisition), or the exercise of rights by the Commonwealth under the Contract (Acquisition) limits the Commonwealth's rights and remedies or increases its obligations, including at law, arising under or in connection with the Contract.

**Insert** new clauses 13.1.8 and clause 13.1.9 as follows and renumber existing clause 13.1.8 to be clause 13.1.10:

- 13.1.8 If a Dispute may impact on the Contract (Acquisition), the Contractor shall notify the Contractor (Acquisition) and, where appropriate, require the Contractor (Acquisition) to participate in any negotiation, alternative dispute resolution or other processes referred to in clause 13.
- 13.1.9 If the Contractor is required by the Contractor (Acquisition) to participate in any negotiation, alternative dispute resolution or other process in respect of a dispute under the Contract (Acquisition) that impacts on the Contract, the Contractor shall participate in such negotiation, alternative dispute resolution or other process.

**Insert** new clause 13.2.1j. as follows:

- j. the Contract (Acquisition) is terminated in accordance with clause 13.2 of the Contract (Acquisition) or otherwise for default.

**Insert** new clause 13.4.5 as follows:

- 13.4.5 The Contractor is not entitled to the amounts at clause 13.4.3b. if the scope of the Contract is reduced for convenience and the Contract (Acquisition) is amended to substantially incorporate that scope.

**Amend** clause 13.7.1 as follows:

- 13.7.1 Without limiting the Commonwealth's other rights or remedies under the Contract, if:
- a. the Commonwealth elects, in accordance with the Contract, to recover an amount from the Contractor or the Contractor otherwise owes any debt to the Commonwealth in relation to the Contract; or
  - b. the Contractor (Acquisition) owes any debt to the Commonwealth in relation to the Contract (Acquisition),
- the Commonwealth may:
- c. deduct the amount from payment of any claim; or
  - d. give the Contractor a notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days after receipt of notice.

**Amend** clause 13.7.2 as follows:

- 13.7.2 The Commonwealth may exercise any or all of its rights in respect of any security provided in accordance with clauses 7.5 or 7.6 to recover any debt owing by the Contractor or the Contractor (Acquisition), except to the extent otherwise recovered by the Commonwealth under clause 13.7.1.

**Insert** new clause 13.7.5 as follows:

- 13.7.3 If the Commonwealth recovers an amount from the Contractor (Acquisition) in respect of a debt referred to in clause 13.7.1, the Commonwealth cannot recover that amount under this clause 13.7.