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ENTERPRISE SUPPORT SERVICES AGREEMENT

This agreement is made on January 2018

BETWEEN

Commonwealth of Australia represented by the Department of Defence ABN 68 706 814 312
(**Commonwealth**); and

(**MSP**)

(collectively, **the Parties**).

RECITALS

- A. The Commonwealth has a requirement to establish strategic partnerships with selected consortia who have the capability and capacity to deliver strategic outcomes for the Commonwealth requiring the integration of services across a number of skill sets and skill levels in order to meet the Joint Objectives.
- B. Following a competitive process, the Commonwealth has identified the MSP as having this capability and capacity, and has accepted the MSP's offer to do so in accordance with this ESSA and subsequent Service Contracts.
- C. The Commonwealth intends that the MSP will provide the following kinds of services:
 - (a) 'strategic partner services' which will include assisting the Commonwealth with workforce planning and management, industry and supply chain development and management, workforce development, and work package planning and development;
 - (b) 'capability partner services', particularly through supporting the CASG Centres of Expertise (**CASG Function**) by providing an agreed annual level of effort;
 - (c) 'integrated work partner' services, through undertaking larger and more complex integrated work packages:
 - (i) across most or all of the **CASG Function**;
 - (ii) throughout the Capability Life Cycle; and
 - (iii) across some or all of the CASG domains (being the Air, Business Management, Joint Systems, Land and Maritime domains); and
 - (d) other services requested by the Commonwealth from time to time.
- D. To achieve the Joint Objectives when providing the MSP Services, the Commonwealth and the MSP have agreed a strong collaborative project governance approach to ensure that they will work collaboratively together through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.

GENERAL CONDITIONS

PART 1 – PRELIMINARY

1. ESSA FRAMEWORK

1.1 What this ESSA comprises

1.1.1 This ESSA comprises:

- (a) these General Conditions;
- (b) the Schedules (and any Attachments to the Schedules); and
- (c) where another document or a provision of another document is expressly incorporated as a provision of this ESSA – that document or provision, as the case may be.

1.2 How this ESSA is intended to operate

1.2.1 The ESSA establishes the overarching framework for the achievement by the Parties of the Joint Objectives outlined in Part 2 [Joint Objectives, Governance and Management] of this ESSA through a collaborative approach to performance of the Strategic Partner Services, Capability Partner Services or Integrated Work Partner Services (collectively, the **MSP Services**).

1.2.2 In this context, the ESSA provides for:

- (a) standardised terms and conditions, and a simplified and standardised approach to determining the pricing and performance metrics, relating to the provision by the MSP of the MSP Services to the Commonwealth; and
- (b) a mechanism for the Commonwealth to engage the MSP on specific Capability Partner Services Tasks or Integrated Work Packages on the terms and conditions set out in Schedule 2 [MSP Services Terms and Conditions] of this ESSA (and any relevant Special Conditions), under the standing offers to provide the Capability Partner Services and the Integrated Work Partner Services respectively that is made by the MSP in Part 4 [MSP Services] of this ESSA.

2. INTERPRETATION AND DEFINITIONS

2.1.1 In this ESSA, unless the contrary intention expressly appears, words and expressions have the meanings given to them in, and are interpreted in accordance with, Part 8 [Glossary and Interpretation].

3. COMMENCEMENT AND TERM

3.1 ESSA Initial Services Period

3.1.1 Subject to the operation of Part 7 [General], the MSP will be appointed for an initial term that begins on the Effective Date and ends 5 years after the Effective Date.

3.2 Extension of Services Period

- 3.2.1 The Commonwealth may extend this ESSA with the MSP for 2 consecutive periods of 3 years each by giving the MSP a notice exercising the relevant option not less than 3 months before the date on which this ESSA would otherwise expire.
- 3.2.2 The Commonwealth may decide to extend the Services Period on the basis that amendments are made to this ESSA as specified in a notice to the MSP. If the MSP agrees to the amendments specified in the notice, this ESSA will be taken to be amended in accordance with the notice.

3.3 Services Contracts

- 3.3.1 Any Services Contracts arising out of the ESSA commence on the date specified in the relevant Services Contract.
- 3.3.2 Subject to the exercise by the Commonwealth of its rights under the ESSA, the MSP agrees to fulfil all Services Contracts entered into during the Services Period on the terms and conditions of the relevant Services Contract, notwithstanding that completion of the relevant Services Contract may occur after the date on which the ESSA has been terminated or expired (as the case may be).

PART 2 – JOINT OBJECTIVES, GOVERNANCE AND MANAGEMENT

4. MULTIPLE PARTIES

4.1 MSP Team

- 4.1.1 The members of the MSP Team are set out in Item 1 of Schedule 1 [ESSA Details].
- 4.1.2 The arrangements entered into between the MSP Team members are described in the MSP's Services Management Plan. Without limiting the relevant provisions of the Services Management Plan, those arrangements are, in summary:
- (a) , as the prime contractor, is responsible to CASG for the delivery of MSP Services.
 - (b) The other members of the MSP Team are, each of which has been engaged by as independent subcontractors.
- 4.1.3 Notwithstanding any arrangements entered into between the MSP Team members referred to in clause 4.1.2, each MSP Team member is a member of the core team responsible for the delivery of the MSP Services in accordance with this ESSA and any Services Contract, such that behaviour and performance of each MSP Team member will be taken to be the behaviour and performance of the MSP for the purposes of assessing performance against the Performance Management Framework and compliance with this ESSA and any Services Contract.

5. JOINT OBJECTIVES AND OVERARCHING PRINCIPLES

5.1 Joint Objectives

- 5.1.1 The Parties acknowledge and agree that the joint objectives of the Commonwealth and the MSP in entering into this ESSA are to:
- (a) recognise industry's importance as a fundamental input to capability;
 - (b) more effectively engage with industry to better leverage resources and experience;
 - (c) make the most efficient and effective use of 'above the line' industry resources to work with internal resources (APS and ADF personnel) in an integrated way to deliver the CASG and broader Defence capability outcomes;
 - (d) promote collaborative behaviours, and strategic, co-operative and constructive working relationships, between the Commonwealth and industry, and within industry (including Small Business in the MSP's supply chain);
 - (e) ensure that the Commonwealth has the appropriate intellectual property rights in relation to any Deliverables;
 - (f) ensure the MSP makes a reasonable return on its investment in being an MSP and performing the MSP Services, being a return that appropriately reflects the properly managed risks assumed by the MSP;

- (g) deliver better value for money to the Commonwealth, including through highly competitive labour rates, pre-agreed terms and conditions for the various kinds of services and optimising economies of scale;
- (h) minimise operating costs for both the Commonwealth and industry (including costs of tendering and other transaction costs);
- (i) maintain a viable and vibrant Small Business sector for 'above the line' subject matter expertise, through the MSP supply chain;
- (j) maximise the continuity and stability of the MSP's personnel (including Small Business personnel in the MSP supply chain) involved in the performance of support services for Defence; and
- (k) ensure that an enhanced and sustainable capability exists within both Defence and industry to support current and future Commonwealth work requirements.

5.1.2 Each Party agrees to perform its obligations and enforce its rights under this ESSA or a Services Contract, as the case may be, having regard to, and with the aim of, satisfying the Joint Objectives.

5.2 Principles for achieving the Joint Objectives

5.2.1 Without limiting any obligation in this ESSA or any Services Contract, the Commonwealth and the MSP agree that the Joint Objectives are intended to be achieved through the adoption and use of the following principles:

- (a) the Parties cooperating, consulting and collaborating with each other and the Other MSPs in the planning, tasking, managing and performing the MSP Services and other work contemplated under this ESSA;
- (b) the Parties acting and communicating with openness and honesty;
- (c) contributing to and working cooperatively through, and in accordance with, the governance and management arrangements contemplated in clause 6 of this ESSA;
- (d) establishing and maintaining an environment that fosters innovation, continuous improvement and cost efficiency;
- (e) the MSP adopting an "open book" approach in relation to the performance of the MSP Services and other work contemplated under this ESSA and any Services Contract;
- (f) committing to the prompt, cooperative and mutual identification and resolution of disputes, differences and other issues; and
- (g) the Parties communicating in a timely manner and sharing documents, information, views, opinions and data,

all as provided for under this ESSA.

5.3 Commonwealth authorities and powers

5.3.1 Despite the other provisions of this ESSA, the Parties acknowledge that:

- (a) this ESSA is not intended to require a Party to act inconsistently with its obligations under a written law (including, in the case of the Commonwealth, the *Public Governance, Performance and Accountability Act 2013* (Cth));
- (b) the Commonwealth is also subject to Commonwealth policies that apply to, or in respect of, the Commonwealth, and that this ESSA is not intended to restrict or otherwise affect the Commonwealth's compliance with those policies.

5.4 Parties to act in good faith

5.4.1 Without limiting any other provision of this ESSA or any Services Contract, in the exercise of their respective rights and performance of their respective obligations under this ESSA and any Services Contract, the Parties must each act reasonably and in good faith towards the other.

5.4.2 For clause 5.4.1, a Party will not be acting in good faith if, in the exercise of rights and performance of obligations under this ESSA or any Services Contract:

- (a) it fails to act honestly;
- (b) it fails to cooperate with the other Party, Other MSPs, Commonwealth Contractors, or Subcontractors;
- (c) it acts arbitrarily, capriciously, unreasonably or recklessly; or
- (d) it acts oppressively or unfairly so as to deprive the other Party of the substantial benefits of this ESSA or any Services Contract,

but, for the avoidance of doubt, clause 5.4.1 does not require a Party to subordinate its interests to the interest of the other Party.

5.4.3 The Parties acknowledge and agree that nothing in this ESSA or any Services Contract creates or implies a partnership, a joint venture or a fiduciary relationship between them.

5.5 General obligations – MSP

5.5.1 Without limiting any other provision of this ESSA, to meet the Joint Objectives, the MSP agrees that it will:

- (a) provide the Commonwealth with access to high quality industry personnel and expertise on a flexible basis to deliver projects and sustainment activities which are subject to variable work volume;
- (b) implement mechanisms that allow Small Businesses on the DSS Panel, that are working through the MSP's supply chain to maintain and promote their own brand and to protect their intellectual property;
- (c) apply a system of work that ensures personnel and materiel safety, and compliance with all laws and other regulatory requirements; and
- (d) ensure that the Commonwealth has the appropriate intellectual property rights arising out of, or in connection with, the provision of the MSP Services, where this is necessary for the purposes of enabling whole of life support and disposal of the relevant materiel capability by the Commonwealth.

5.6 General obligations – Commonwealth

- 5.6.1 Without limiting any other provision of this ESSA, to meet the Joint Objectives, the Commonwealth will:
- (a) proactively engage with the MSP through the agreed governance and management structure as contemplated in clause 6 of this ESSA;
 - (b) work collaboratively with the MSP to plan and develop a range of tasks and any Services Contracts to be undertaken by the MSP during the Services Period;
 - (c) will promptly provide any necessary Government Furnished Materiel, access to necessary Government Furnished Facilities, and other support as agreed with the MSP to enable the MSP to deliver the MSP Services;
 - (d) have the facilities and systems in place to ensure personnel and materiel safety, and compliance with all laws and other regulatory requirements; and
 - (e) in all other respects, work collaboratively, co-operatively, strategically and constructively with the MSP in relation to the MSP's delivery of the MSP Services.

5.7 Parties to cooperate

- 5.7.1 Without limiting any obligation in this ESSA or in any Services Contract, the Parties agree that they will cooperate and collaborate in the performance of the MSP Services with the intention of achieving the Joint Objectives, including as follows:
- (a) by informing each other in a timely way of events and circumstances that may have an impact on:
 - (i) the performance of the MSP Services; or
 - (ii) the achievement of the Joint Objectives;
 - (b) by the MSP informing the Commonwealth in a timely way of events and circumstances that may have an impact on the MSP's ability to perform the MSP Services to the standard required in the Performance Management Framework (or any other similar measure in any Services Contract);
 - (c) subject to Defence Security Requirements, Commonwealth policy requirements and the Parties' respective confidentiality obligations, by sharing documents, information, views, opinions and data, including through formal review meetings;
 - (d) by participating in the governance and management arrangements contemplated in clause 6;
 - (e) by holding meetings as required by this ESSA or any Services Contract and otherwise as appropriate to achieve the Joint Objectives;
 - (f) by consulting together and each Party taking reasonable account of the views and recommendations of the other Party in relation to the performance of the MSP Services;
 - (g) by identifying and mitigating risks;

- (h) by striving to resolve differences and disputes between them as early as practicable;
- (i) by discussing all issues in a frank and open manner with a view to resolving them in a way that best leads to the achievement of the Joint Objectives; and
- (j) by taking all reasonable steps to ensure that their respective Personnel (including, in the case of the MSP, its Subcontractors and Subcontractor Personnel) act in accordance with the following principles:
 - (i) honest, open and ethical communications and actions;
 - (ii) acting with trust, integrity and respect;
 - (iii) developing and encouraging a culture of accountability and responsibility;
 - (iv) cooperating and collaborating with, and supporting, each other in relation to the performance of the MSP Services; and
 - (v) acting to deliver high quality outcomes through training, knowledge transfer and support.

6. GOVERNANCE AND MANAGEMENT

6.1 Governance and management structure

- 6.1.1 The MSP acknowledges that the Commonwealth may establish governance and management structures to manage and have oversight of the DSS Panel and the Major Service Provider arrangements.
- 6.1.2 The Parties agree that the MSP governance and management structure referred to in clause 6.1.1 will be based on cooperative relationship-based principles which seek to maximise the opportunities for consultation and collaboration between the Parties, and among the Major Service Providers, with the intention of achieving the Joint Objectives.
- 6.1.3 The governance and management structure is likely to be as follows:
 - (a) Steering Committee (see clause 6.3);
 - (b) Operations Board (see clause 6.4); and
 - (c) SPPMO (see clause 6.5).
- 6.1.4 The Parties will agree the form and role of any bodies in the governance and management structure as soon as possible after the commencement of the initial Services Period.

6.2 Obligations of Parties with respect to governance and management structure

- 6.2.1 The Parties agree to do all things necessary to ensure that the governance and management structure established by the Commonwealth operate as contemplated by this ESSA and any other documents that describe or relate to the operation of the governance structure. This obligation includes an obligation to:

- (a) make available the personnel who are to be members of the governance bodies established as part of the governance and management structure to carry out their functions as such members and (in the case of the MSP) including by providing appropriate Personnel or Subcontractor Personnel;
- (b) ensure that their respective Personnel who are members of the governance bodies established as part of the governance and management structure carry out their functions in a manner consistent with this ESSA;
- (c) make information available to the governance bodies established as part of the governance and management structure to assist them in carrying out their functions and (in the case of the MSP) to ensure the MSP Team members do the same; and

in the case of the MSP also includes an obligation to cooperate and collaborate with any bodies or Personnel in the governance and management structure in the performance of the MSP's work under this ESSA and any Services Contracts to achieve the Joint Objectives.

6.2.2 The MSP acknowledges and agrees that:

- (a) the MSP Management Fee includes an allowance for the MSP's participation in the governance and management structure established by the Commonwealth as contemplated by this clause 6; and
- (b) the MSP is not entitled to claim any additional cost or expense associated with compliance with this clause 6.

6.3 Steering Committee

6.3.1 The Commonwealth may establish a Steering Committee.

6.3.2 The role of any such Steering Committee would be to provide strategic oversight of the Major Service Provider arrangements in accordance with any terms of reference developed by the Commonwealth.

6.3.3 The Commonwealth may determine the frequency with which the Steering Committee meets but it is envisaged that it would meet at least quarterly.

6.3.4 The Steering Committee may consist of:

- (a) a Chair, being the Group Business Manager, CASG or such other CASG senior executive with responsibility for the MSP arrangement;
- (b) the Commonwealth SPPMO lead;
- (c) a senior representative from each of the CASG **Functions**;
- (d) a senior representative from each of the five CASG Domains; and
- (e) a senior executive representative from the MSP and the Other MSPs.

6.3.5 If a Steering Committee is established, the Parties will work collaboratively, both together and with the Other MSPs, to determine the membership of the Steering Committee, its terms of reference, operation and governance.

6.4 Operations Board

- 6.4.1 The Commonwealth may establish an Operations Board.
- 6.4.2 The role of the Operations Board would be to have oversight of the planning and implementation of the MSP Services, and of workload across the Major Services Providers.
- 6.4.3 The Commonwealth may determine the frequency with which the Operations Board meets but it is envisaged that it would meet at least monthly.
- 6.4.4 The Operations Board may consist of:
 - (a) a Chair, who is likely to be the Commonwealth lead for the SPPMO;
 - (b) the operational lead from the MSP and the Other MSPs;
 - (c) the operational lead from each of the CASG **Functions**; and
 - (d) a Business Manager from each of the CASG Domains.

6.5 Strategic Panels Program Management Office

- 6.5.1 The Commonwealth may establish a dedicated Strategic Panels Program Management Office (**SPPMO**) to manage and oversee the Major Service Provider arrangements.
- 6.5.2 The role of the SPPMO may include:
 - (a) day to day monitoring and management of the Major Service Provider arrangements as well as oversight of the operation of the DSS Panel;
 - (b) monitoring and managing the MSP's performance against the Performance Management Framework;
 - (c) workforce planning and resource allocation, support services engagement decisions, work scope development (including for the Integrated Work Packages), career development, and portfolio management; and
 - (d) monitoring the engagement and treatment of Small Businesses and other SMEs to ensure a broad distribution of work and fair treatment.
- 6.5.3 It is envisaged that the MSP operational lead will be co-located with the SPPMO.

7. REPORTING TO THE COMMONWEALTH

7.1 Reporting to the Commonwealth

- 7.1.1 The Commonwealth requires reporting by the MSP to the Commonwealth on a regular basis on a number of metrics including:
 - (a) MSP Services completed during the reporting period;
 - (b) changes in the availability of competent Personnel (whether the MSP's Personnel, or those of its Subcontractors);

- (c) training undertaken by the MSP or planned to support maintenance of the capability of the MSP and its Subcontractors;
- (d) any performance or other issues that arise in relation to the MSP Services during the reporting period;
- (e) details of all Subcontractors used by the MSP in the delivery of MSP Services during the relevant period. The MSP acknowledges that the Commonwealth may be required to disclose such information;

Note to MSP: the level of information that will be required in relation to Subcontractors includes at least the information listed under clause 7.3 of the DSS Panel Deed.

- (f) a summary of the MSP's risk log, including any mitigation actions; and
- (g) such other information as requested by the Commonwealth from time to time.

7.1.2 The Commonwealth expects that the MSP will generate this reporting as and when requested by the Commonwealth, in the format requested by the Commonwealth, which may be the MSP's own, or preferred, standard-form format.

PART 3 – MSP AND MSP TEAM

8. MSP TEAM AND DSS PANEL MEMBERSHIP

8.1 Ongoing membership of DSS Panel and MSP Team

8.1.1 All members of the MSP Team must be members of the DSS Panel.

8.1.2 No member of the MSP Team may be:

- (a) a member of an Other MSP; or
- (b) a subcontractor to an Other MSP in relation to provision of MSP Services by that Other MSP unless approved by the Commonwealth (through the SPPMO).

8.1.3 Subject to clause 8.1.2 and to any requirements to avoid or manage conflicts of interest, a member of the MSP Team may provide services (other than MSP Services) as a subcontractor to another MSP or to another member of the DSS Panel.

Note to MSP: The Commonwealth expects that subject to clauses above all members of the DSS Panel will be available to work for all MSPs, or directly to the Commonwealth in their own right

8.1.4 Except in relation to members of the MSP Team and to the extent permitted by clause 8.1.5, the MSP agrees not to enter into exclusive arrangements with any member of the DSS Panel for the provision of MSP Services.

8.1.5 The MSP acknowledges and agrees that, following collaborative consideration between the Commonwealth, the MSP and Other MSPs as appropriate, the Commonwealth (through the SPPMO) may, at its absolute discretion, permit the MSP to enter into exclusive arrangements with members of the DSS Panel in relation to a specific IWP Contract or CPS Task.

8.1.6 Where an exclusive arrangement is permitted by the Commonwealth in accordance with clause 8.1.5, this will be indicated in the relevant draft IWP Tasking Request or CPS Tasking Request, as appropriate.

8.2 Engagement of MSP Team members under DSS Panel

Note to MSP: The intent is that MSPs would not generally be competing with DSS Panel Members for miscellaneous or other minor CASG tasks, as MSPs will be focused on delivering MSP Services. However, in appropriate cases, an individual MSP or MSP Team Member could be approached by CASG to provide services directly through the DSS Panel (on a competitive or non-competitive basis).

8.2.1 The Parties acknowledge and agree that the MSP (or individual members of the MSP Team) may be engaged under the DSS Panel to deliver services (not being MSP Services) to:

- (a) CASG;
- (b) other parts of Defence; and
- (c) other Australian Government agencies.

9. CHANGES TO MSP OR MSP TEAM

9.1 Removals from MSP Team

- 9.1.1 The MSP must discuss with the Commonwealth promptly if any member of the MSP Team proposes to:
- (a) cease to be a member of the DSS Panel;
 - (b) join an Other MSP (either by way of merger or by being nominated to another MSP Team); or
 - (c) otherwise cease to be a member of the MSP Team.
- 9.1.2 If any of the circumstances in clause 9.1.1 arise, the Parties agree to work collaboratively determine the impact, if any, on the MSP's capacity to perform the MSP Services in accordance with this ESSA and any relevant Services Contract, and the management or mitigation of any such impact. Without limitation, this may include consideration of the extent to which the MSP can continue to perform the MSP Services or whether a suitable replacement can be identified for the relevant MSP Team member.
- 9.1.3 The MSP acknowledges that if an acceptable outcome cannot be agreed under clause 9.1.2, then the Commonwealth may determine that clause 25 applies as if the MSP had withdrawn from the ESSA.

9.2 Additions to MSP Team

- 9.2.1 At any time during the Services Period the MSP may seek the Commonwealth's approval to add members to its MSP Team.
- 9.2.2 Subject to clause 8.1, the Commonwealth may grant or withhold its approval at its absolute discretion.

9.3 Change to MSP

- 9.3.1 Changes to the MSP contracting party to this ESSA will be dealt with in accordance with clause 8.1 of the MSP Services Terms and Conditions.

9.4 Appointment of additional Major Service Providers

- 9.4.1 The MSP acknowledges that the Commonwealth may appoint additional Major Service Providers at any time.

9.5 Change of Control

- 9.5.1 Subject to clause 9.5.2, the MSP shall ensure that any Change of Control of the MSP or MSP Team members is notified to the Commonwealth Representative as soon as practicable following the Change of Control, in order to obtain the Commonwealth's written consent to remain an MSP or MSP Team Member.
- 9.5.2 If the MSP becomes aware that there may be, or has been, a Change of Control of the MSP or a MSP Team member, the MSP shall promptly provide any information required by the Commonwealth, including details of:
- (a) the ownership and management arrangements of the MSP or MSP Team member that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the MSP or MSP Team member became aware of the prospective change;

- (b) the ownership and management arrangements of the MSP or MSP Team member 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 MSP or MSP Team member reasonably expects to be put in place if the change occurs;
 - (c) the impact (if any) that the change has had on the MSP's ability to meet its obligations under the Services Contract or, if the change has yet to occur, that the MSP reasonably expects the change to have on that ability; and
 - (d) the steps the MSP or MSP Team member has taken or proposes to take to minimise the impact of the change or prospective change.
- 9.5.3 The Commonwealth Representative's consent under clause 9.5.1 may be given subject to any conditions that the Commonwealth Representative considers appropriate, and the MSP or MSP Team member shall comply with such conditions.
- 9.5.4 The MSP acknowledges that if the Commonwealth's consent under clause 9.5.1 is not given, or the MSP does not accept the conditions for the consent under clause 9.5.3, then the Commonwealth may determine that clause 25 applies as if the MSP had withdrawn from the ESSA.

PART 4 – MSP SERVICES

10. MSP SERVICES

10.1 MSP Services

10.1.1 The MSP Services consist of:

- (a) the Strategic Partner Services;
- (b) the Capability Partner Services;
- (c) the Integrated Work Partner Services; and
- (d) Other Services.

10.2 Services are not exclusive

10.2.1 The MSP acknowledges and agrees that:

- (a) the Commonwealth may source services that are the same as, or similar to, the MSP Services from Other MSPs;
- (b) the MSP or MSP Team member (as appropriate) will not be the sole provider to the Commonwealth of services that are the same as, or similar to, the MSP Services;
- (c) the Commonwealth may review the Major Service Provider arrangements at any time;
- (d) nothing in this ESSA or any Services Contract prevents the Commonwealth, in its absolute discretion, from undertaking itself, or from entering an arrangement with a person other than the MSP for the person to perform services that are the same as, or similar to, the MSP Services; and
- (e) the Commonwealth makes no representation that it will place a specific number of orders, or any orders at all, with the MSP during the Services Period.

10.2.2 For the avoidance of doubt, no other agencies (or parts of Defence other than CASG, NSSG and NPST) can purchase Capability Partner Services or Integrated Work Partner Services under this ESSA.

10.2.3 The MSP agrees that the Commonwealth has the absolute discretion to decide:

- (a) whether or not the MSP is tasked to deliver CPS Tasks and/or IWP Tasks;
- (b) whether or not the Commonwealth will seek a quotation in respect of a draft IWP Tasking Request from more than one Major Service Provider on a competitive basis;
- (c) the extent, in terms of level of effort, to which the MSP is tasked to deliver any Capability Partner Services and Integrated Work Partner Services; and
- (d) whether, and if so, to what extent, the MSP's performance in accordance with the Performance Management Framework in delivering the MSP Services, is taken into account when determining any or all of the matters referred to in clauses 10.2.3(a), 10.2.3(b) and 10.2.3(c).

10.3 Performance of MSP Services

- 10.3.1 The MSP will perform the MSP Services in accordance with this ESSA, any Services Contract, and the Services Management Plan.
- 10.3.2 The MSP will perform the MSP Services in a manner by which it can easily increase or decrease the volume and type of MSP Services provided from one Tasking Request Period to another to assist the Commonwealth to meet its obligations under, obtain the full benefit of, and exercise its rights in relation to, any Services Contract or other contract as directed by the Commonwealth Representative.

10.4 Services Management Plan

- 10.4.1 The Parties agree that the Services Management Plan will outline how the MSP will provide the MSP Services, particularly the Strategic Partner Services, in accordance with this ESSA.
- 10.4.2 Following consultation between the Parties regarding the MSP's draft services management plan, the MSP must submit its final services management plan to the Commonwealth by the Effective Date as a Deliverable under this ESSA.
- 10.4.3 Following receipt of the final services management plan, the Commonwealth may either:
 - (a) approve the services management plan; or
 - (b) request that the Services Management Plan submitted by the MSP be refined to reflect any matters reasonably requested by the Commonwealth.
- 10.4.4 In the situation outlined in clause 10.4.3(b), the Parties agree to work collaboratively and co-operatively in accordance with this ESSA to finalise the MSP's services management plan within a reasonable timeframe.
- 10.4.5 Once approved by the Commonwealth, the Services Management Plan will form part of this ESSA.
- 10.4.6 The Parties agree that the Services Management Plan may need revising from time to time to accommodate fluctuations in workshare tasked to the MSP and the progressive maturity and development of the Major Service Provider arrangement. The Parties agree that the Services Management Plan will be reviewed by the Parties as follows:
 - (a) six months after the commencement of the Services Period;
 - (b) 12 months after the commencement of the Services Period; and
 - (c) after the review referred to in clause 10.4.6(b), every 12 months,
 or at such other times agreed by the Parties.
- 10.4.7 Any variation to the Services Management Plan will be effected through a similar process as outlined in this clause 10.4 in relation to approval of the Services Management Plan.

10.5 Key Persons

- 10.5.1 The Key Persons for Strategic Partner Services are identified in the Services Management Plan.
- 10.5.2 The Key Persons must meet the requirements of clause 8.9 of the MSP Services Terms and Conditions.

- 10.5.3 Subject to clause 10.5.4, the MSP agrees that it will not change or remove any Key Persons other than in accordance with clause 8.9 of the MSP Services Terms and Conditions, and will otherwise comply with clause 8.9 of the MSP Services Terms and Conditions in relation to Key Persons.
- 10.5.4 The MSP agrees that if it proposes to change or remove any Key Persons, it will not do so without discussing this with the Commonwealth in advance.

10.6 Representatives

- 10.6.1 The representatives of the Commonwealth and the MSP in respect of this ESSA are set out in Item 2 and Item 3 respectively of Schedule 1 [ESSA Details] of this ESSA.
- 10.6.2 The representatives of the Commonwealth and the MSP in respect of any Services Contracts will be detailed in the relevant Services Contract.
- 10.6.3 Both the MSP Representative and the Commonwealth Representative may delegate their functions, or authorise that their functions be carried out on their behalf. Each Party agrees to notify the other Party in writing of the persons who are delegated functions or authorised to carry out functions on behalf of the MSP Representative or Commonwealth Representative (as applicable), from time to time, and the scope of their delegation or authorisation.

10.7 Commonwealth Representative

- 10.7.1 Subject to the governance and management arrangements established as contemplated in clause 6 of this ESSA and to the terms of any Services Contract:
- (a) the Commonwealth Representative is responsible for administering the ESSA or the relevant Services Contract on behalf of the Commonwealth; and
 - (b) the MSP must comply with all directions of the relevant Commonwealth Representative in relation to the administration of the ESSA or the relevant Service Contract.
- 10.7.2 The relevant Commonwealth Representative has no authority to waive, amend or vary the terms and conditions under which this ESSA or any Service Contract is administered – unless that occurs in accordance with clause 8.1 of the MSP Services Terms and Conditions.

10.8 MSP Representatives

- 10.8.1 Subject to the governance and management arrangements established as contemplated in clause 6 of this ESSA and to the terms of any Services Contract, the relevant MSP Representative is responsible for administering this ESSA or the relevant Service Contract on behalf of the MSP.
- 10.8.2 Subject to the governance and management arrangements established as contemplated in clause 6 of this ESSA, the relevant MSP Representative will consult with the Commonwealth regarding the administration of this ESSA.

11. STRATEGIC PARTNER SERVICES

11.1 Strategic Partner Services

- 11.1.1 The Strategic Partner Services include:

- (a) proactive participation by the MSP in the governance and management structure established in accordance with clause 6 of this ESSA to discuss service delivery arrangements, collaboratively agree work scope, undertake performance reviews, and otherwise deal with any issues that arise during the Services Period;
- (b) assisting the Commonwealth with workforce planning and development, consistent with CASG's workforce plan, including supporting the CASG Functions and the SPPMO with workforce planning and resource allocation;
- (c) working collaboratively with the Commonwealth to plan and develop tasks or work packages, whether these are sourced by CASG through the MSP, Other MSPs, or the DSS Panel;
- (d) developing and implementing an industry development strategy, including creating long term strategic alliances (with the Commonwealth and other industry partners), maximising the involvement of SMEs (including Small Business on the DSS Panel), Indigenous enterprises and other local industry activities;
- (e) managing, mentoring and developing SMEs in the MSP's supply chain, including Small Business engaged through the DSS Panel, in delivering the MSP Services to the Commonwealth;
- (f) implementing mechanisms that allow Small Business on the DSS Panel that are in the MSP's supply chain to maintain and promote their own brand and to protect their intellectual property; and
- (g) developing and implementing a workforce management and development strategy, including:
 - (i) establishing or participating in graduate schemes, apprenticeship schemes, and training programs;
 - (ii) implementing skills transfer initiatives (to transfer skills to APS and ADF personnel, as well as within the MSP's own supply chain);
 - (iii) undertaking succession planning; and
 - (iv) giving effect to other initiatives to strengthen the skills and capabilities of the 'above the line' workforce; and
- (h) any Additional Strategic Partner Services offered through the Services Management Plan.

11.2 Provision of Strategic Partner Services

11.2.1 The MSP will deliver and manage the Strategic Partner Services in accordance with this ESSA and the MSP Services Terms and Conditions, and:

- (a) by implementing the Services Management Plan;
- (b) at prices calculated in accordance with the Commercial Model; and
- (c) to a standard that meets the required level of performance outlined in Schedule 4 [Performance Management Framework] of this ESSA.

11.2.2 Additional or alternative terms and conditions for secondments of APS or ADF personnel (i.e. reverse secondments), or the MSP's Personnel, must be agreed by the Parties in writing.

- 11.2.3 The MSP acknowledges and agrees that the Commonwealth may seek services that are the same as, or similar to, the Strategic Partner Services from Other MSPs or another service provider, or undertake the Strategic Partner Services itself.

12. CAPABILITY PARTNER SERVICES

12.1 Standing offer to provide Capability Partner Services

- 12.1.1 Without limiting any other clause in this ESSA, this ESSA constitutes a standing offer by the MSP to provide the Capability Partner Services to CASG on and from the commencement of the Initial Services Period in accordance with the provisions of this ESSA and any relevant Services Contract, and the directions given by the Commonwealth Representative.
- 12.1.2 The MSP acknowledges and agrees that not all CASG Functions may task the MSP in any one CPS Services Period.

12.2 Capability Partner Services

- 12.2.1 The Capability Partner Services include:
- (a) providing CASG with access to high quality industry personnel and expertise on a flexible basis to deliver tasks to meet the contracted level of effort, as directed by the CASG Functions (or SPOs or the SPPMO as the case requires);
 - (b) working collaboratively with the CASG Functions and Other MSPs to allocate and undertake tasks on a 'best for Defence' basis;
 - (c) working collaboratively with the CASG Functions to ensure that resources are utilised effectively and efficiently; and
 - (d) delivering the Services and Deliverables as required under a CPS Contract.

12.3 Allocation of CP Standing Offer Budget

- 12.3.1 For the initial CP Services Period, the Commonwealth allocates to the MSP the budget (**CP Standing Offer Budget**) for the provision of Capability Partner Services specified in Attachment 3 to Schedule 5 [MSP Services – Commercial Model].
- 12.3.2 For subsequent CP Services Periods, following consultation with the MSP and prior to the commencement of the relevant CP Services Period, the Commonwealth will allocate to the MSP a budget for the provision of the CP Services for individual supported CASG Functions and SPOs for that CP Services Period.
- 12.3.3 This will be completed through a contract change to Attachment 3 to Schedule 5 [MSP Services – Commercial Model] in accordance with clause 8.1 of the MSP Services Terms and Conditions.
- 12.3.4 The MSP must notify the Commonwealth Representative as soon as practicable if the MSP anticipates or becomes aware that the total fees to be invoiced to the Commonwealth in respect of a CPS Contract will, or is likely to, exceed 80% of the CP Standing Offer Budget for any one or more supported CASG Functions and SPOs for the relevant CP Services Period.

12.4 Tasking of Capability Partner Services

- 12.4.1 The Commonwealth envisages that Capability Partner Services will be mainly tasked through the CASG Functions; however, the Commonwealth may, in its discretion,

determine that other areas in CASG may task Major Service Providers with individual CPS Tasks.

Note to MSP: CPS tasks will generally be pre-Gate 0 or immediately post-Gate 0. However, this does not limit the kinds of tasks that may be issued by the Commonwealth as CPS Tasks.

- 12.4.2 Without limiting anything in this ESSA, the MSP agrees and acknowledges that the Commonwealth (whether through the CASG Functions, the SPOs or the SPPMO) may liaise collaboratively with the Major Service Provider to develop a process by which CPS Tasks are issued to, or allocated between, the MSP and Other MSPs.
- 12.4.3 The MSP acknowledges and agrees that the Commonwealth may seek services that are the same as, or similar to, the Capability Partner Services from Other MSPs or another service provider, or undertake the Capability Partner Services itself.
- 12.4.4 If the Commonwealth Representative issues a CPS Tasking Request, and the MSP agrees to accept the CPS Tasking Request, the MSP will submit to the Commonwealth Representative a CPS Task Plan which identifies the level of effort and the prices (calculated in accordance with the Commercial Model) for performing the CPS Task, for all CPS Resources that the MSP considers will be required to complete the relevant CPS Task. The MSP may provide a CPS Task Plan to the Commonwealth Representative in the form specified at Attachment 2 to Schedule 6 or another format agreed by the MSP and the relevant CASG Function.
- 12.4.5 Following submission by the MSP of the CPS Task Plan under clause 12.4.4:
- (a) the Commonwealth Representative may Approve the CPS Task Plan; or
 - (b) the Commonwealth and the MSP will work collaboratively and otherwise in accordance with this ESSA to review and revise the CPS Task Plan.
- 12.4.6 If and when:
- (a) the Commonwealth Representative approves the CPS Task Plan; and
 - (b) the Parties execute the CPS Tasking Request,
- a separate contract (**CPS Contract**) is formed, under which the MSP agrees to perform the CPS Task:
- (c) in accordance with this ESSA, the CPS Tasking Request (including any Special Conditions listed in the CPS Task Request), the CPS Task Plan and the MSP Services Terms and Conditions;
 - (d) for the price set out in the Approved CPS Task Plan;
 - (e) to a standard that meets the required level of performance outlined in Schedule 4 [Performance Management Framework] of this ESSA.
- 12.4.7 The MSP must not commence work on any Capability Partner Services or any CPS Task until that work has been authorised by the Commonwealth Representative.

12.5 Commonwealth Representative's Directions

- 12.5.1 Without limiting the terms of any CPS Contract, the Commonwealth Representative may, by notice to the MSP's Representative in relation to a CPS Contract:

- (a) require the MSP to cease or suspend work on all or part of a CPS Task or to prioritise a particular CPS Task; or
 - (b) take any other reasonable action in connection with the performance of a CPS Task including for example, amending a CPS Task to change any requirement, process, criteria or procedure in relation to the CPS Task.
- 12.5.2 The MSP acknowledges that if the Commonwealth requires the MSP to cease work permanently in respect of the whole or part of a CPS Task, the Commonwealth may perform that work itself or enter into an arrangement with a person other than the MSP to undertake that work (whether in whole or in part).
- 12.5.3 Subject to clause 8.12 of the MSP Services Terms and Conditions, if the Commonwealth Representative gives notice under clause 12.5.1(a), the MSP agrees to:
- (a) comply with the notice;
 - (b) comply with any directions given to the MSP by the Commonwealth; and
 - (c) if necessary, mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the notice, including the relevant CPS Task, including those arising from affected Subcontracts.
- 12.5.4 If the Commonwealth Representative gives a notice under clause 12.5.1(a), the Parties agree to discuss the implications of the notice (for example, in terms of the prioritisation of CPS Tasks, the MSP's level of effort, or the fees payable to the MSP in relation to the relevant Capability Partner Services) and, if necessary, to vary any relevant CPS Contract in accordance with the MSP Services Terms and Conditions to reflect the notice given.

13. INTEGRATED WORK PARTNER SERVICES

13.1 Standing offer to provide Integrated Work Partner Services

- 13.1.1 Without limiting any other clause in this ESSA, this ESSA constitutes a standing offer by the MSP to provide the Integrated Work Partner Services to CASG for the Services Period in accordance with the provisions of this ESSA and any IWP Contract, and the directions given by the relevant Commonwealth Representative.
- 13.1.2 It is the Commonwealth's intent that work currently conducted under Integrated Support Contracts existing between the Commonwealth and the MSP at the Effective Date will be transitioned to the IWP framework when appropriate. The Parties agree to discuss the transition of such Integrated Support Contracts to the IWP Contract framework on a case by case basis, and agree on a process for such a transition as and when appropriate.

13.2 Integrated Work Partner Services

- 13.2.1 Integrated Work Partner Services include:
- (a) working collaboratively with CASG (through the SPPMO, SPOs or CASG Functions, as the case requires) to develop IWPs, including evolving the Integrated Work Partner model over time as necessary to meet evolving CASG needs for alternative project delivery arrangements (for example, managing the delivery of the relevant activity on behalf of the relevant SPO);
 - (b) providing sufficient skills and resources to:
 - (i) deliver the Integrated Work Partner Services;

- (ii) enable CASG to meet its obligations under, obtain the full benefit of, and exercise its rights in relation to, the acquisition or sustainment contracts to which the IWP relates;
- (iii) proactively monitor the delivery of each IWP Contract, including working with the SPPMO, SPO or CASG Functions as the case requires to increase or decrease the volume and type of services provided from one IWP to the next, or between different IWPs, and by introducing efficiencies and continuous improvement;
- (iv) collaborate and co-operate with both CASG and any acquisition or sustainment contractors engaged by the Commonwealth throughout the IWP Contract period;
- (v) achieve the additional objectives (if any) specified in the relevant IWP Contract; and
- (vi) deliver the Deliverables as required by this ESSA and any IWP Contract.

13.3 Tasking of Integrated Work Packages

- 13.3.1 The MSP acknowledges and agrees that the Commonwealth may seek services that are the same as, or similar to, the Integrated Work Partner Services from Other MSPs or another service provider, or undertake the Integrated Work Partner Services itself.
- 13.3.2 If the Commonwealth, in its sole and absolute discretion, requires any Integrated Work Partner Services from the MSP, the Commonwealth will deliver a draft IWP Tasking Request to the MSP and invite the MSP to submit a quotation based on the requirements set out in the draft IWP Tasking Request.
- 13.3.3 The draft IWP Tasking Request shall contain a proposed statement of work which may be comprised of any one or more of the Skill Sets and Skill Levels covered by the DSS Panel.
- 13.3.4 The Commonwealth Representative may also specify any data items or other Deliverables it wishes the MSP to supply with its quotation.
- 13.3.5 On receipt of a draft IWP Tasking Request, the MSP will provide to the Commonwealth either a quotation or a notice declining the invitation, in writing within the time specified in the relevant draft IWP Tasking Request from receipt of the request.
- 13.3.6 The MSP's quotation should contain:
 - (a) all the information required by the draft IWP Tasking Request;
 - (b) any data items or other Deliverables specified by the Commonwealth Representative; and
 - (c) the proposed pricing, which must include all costs associated with performance of the proposed Integrated Work Partner Services outlined in the draft IWP Tasking Request, and be calculated in accordance with the Commercial Model.
- 13.3.7 The Commonwealth will evaluate any quotations based on best value for money and in accordance with its requirements in respect of the particular IWP, outlined in the draft IWP Tasking Request.
- 13.3.8 The Parties may meet to discuss the MSP's quotation and/or agree to undertake an interactive and collaborative process during which the MSP's quotation is refined or improved.

- 13.3.9 The Commonwealth may interview any Personnel specified by name in the MSP's quotation, or any other Personnel proposed to be used in the performance of the IWP outlined in the draft IWP Tasking Request.
- 13.3.10 If the Commonwealth, in its sole and absolute discretion, is prepared to approve the MSP's quotation (as may be amended to reflect the outcome of any discussions under clause 13.3.8), the Commonwealth will prepare a final IWP Tasking Request, and the Commonwealth and the MSP will execute that final IWP Tasking Request.
- 13.3.11 If the parties execute a IWP Tasking Request approved by the Commonwealth under clause 13.3.10, a separate contract (**IWP Contract**) will be formed, under which the MSP agrees to perform the Integrated Work Partner Services that are the subject of the executed IWP Tasking Request (including any attachments to the IWP Tasking Request):
- (a) on the terms and conditions set out in the MSP Services Terms and Conditions in Schedule 2 of this ESSA, as well as any Special Conditions set out in the executed IWP Tasking Request;
 - (b) at prices calculated in accordance with the Commercial Model as set out in the executed IWP Tasking Request; and
 - (c) to a standard that meets the level of performance set out in Schedule 4 [Performance Management Framework].
- 13.3.12 The MSP agrees that no Integrated Work Partner Services will be performed by the MSP, and no amount will become payable to the MSP in respect of any Integrated Work Partner Services, unless and until an IWP Contract has been entered into by the parties in accordance with this clause 13.3.
- 13.3.13 The MSP acknowledges and agrees that it will not make, nor will it be entitled to bring, any claim (in respect of any loss, damage, liability, cost or expense) arising out of or in connection with the process outlined in this clause 13.3.

14. OTHER SERVICES

14.1 Commonwealth and MSP may agree on Other Services

- 14.1.1 From time to time, during the Services Period, the Commonwealth and the MSP may agree on:
- (a) the performance by the MSP of services in addition to the MSP Services (**Other Services**);
 - (b) the pricing payable for the performance of those Other Services; and
 - (c) the terms and conditions on which those Other Services will be provided.
- 14.1.2 For the avoidance of doubt, the provisions of this ESSA (in particular, without limitation, the provisions in Part 2 [Joint Objectives, Governance and Management]) will apply to:
- (a) any discussions between the Commonwealth and the MSP with respect to the nature of any Other Services that may be required; and
 - (b) the performance by the MSP of any Other Services that the Commonwealth engages it to provide.

PART 5 – FEES, PERFORMANCE AND SUPPLY CHAIN**15. COMMERCIAL MODEL – PRINCIPLES****15.1 Overview**

- 15.1.1 The MSP will operate under the commercial model set out in Schedule 5 [MSP Services – Commercial Model].
- 15.1.2 The Commercial Model includes a model for determining the prices to be charged by the MSP for provision of each of the Strategic Partner Services, the Capability Partner Services and the Integrated Work Partner Services.
- 15.1.3 Subject to this clause 15, and performance against the relevant Performance Management Framework in Schedule 4 of this ESSA and under a Services Contract, the MSP will be paid:
- (a) the MSP Management Fee;
 - (b) fees for providing Capability Partner Services which are calculated annually in accordance with the Commercial Model and paid monthly in arrears under a CPS Contract;
 - (c) fees calculated in accordance with the Commercial Model for providing Integrated Work Partner Services and payable under an IWP Contract;
 - (d) fees for providing Additional Strategic Partner Services; and
 - (e) fees for providing Other Services in accordance with clause 14.1.
- 15.1.4 The Commercial Model and calculation of pricing are based on the principles set out below:
- (a) transparency of price build-up;
 - (b) agreed mark-ups on the rates of Subcontractors who are DSS Panel members; and
 - (c) Performance Payments linked to performance as measured under the Performance Management Framework in Schedule 4 of this ESSA.

15.2 Rates

- 15.2.1 The Commercial Model includes a table in Attachment 1 [Rates] to Schedule 5 [Commercial Model] detailing the rates for each of the MSP Services to be provided by the MSP. These rates will align with the Skill Sets and Skill Levels.
- 15.2.2 All fees must be calculated at rates that do not exceed the rates set out in, plus any mark-up allowed by, the Commercial Model.

15.3 Value for money

- 15.3.1 The Parties acknowledge that the Joint Objectives emphasise the importance of value for money for both the Commonwealth and the MSP from the MSP arrangements, including:

- (a) the delivery of better value for money to the Commonwealth through the highly competitive labour rates, pre-agreed terms and conditions for the various kinds of services and optimising economies of scale; and
- (b) ensuring the MSP makes a reasonable return on its investment in being an MSP and performing the MSP Services, being a return that appropriately reflects the properly managed risks assumed by the MSP.

15.3.2 Consistent with the Joint Objectives, and subject to pricing and other obligations under the DSS Panel, the Commonwealth expects that the MSP will seek and obtain competitive pricing for any MSP Services it subcontracts including through the conduct of a competitive process with proposed Subcontractors.

Note to MSP: Having regard to the Joint Objectives, the extent to which the MSP can achieve value for money through its Subcontracts will be measured through the KRAs set out in the Performance Management Framework.

15.4 Transparency

- 15.4.1 All pricing submitted by the MSP (whether or not on a competitive basis):
- (a) must be consistent with the Defence Cost Principles; and
 - (b) is subject to cost investigation.
- 15.4.2 Without limiting any provision of the ESSA, or of a Services Contract, the MSP must provide the Commonwealth any information requested by it concerning the basis of any pricing on an Open Book Basis.

15.5 Cost Principles

- 15.5.1 Without affecting any provisions of this ESSA or a Services Contract, the Commonwealth may, at its discretion, apply the Defence Cost Principles, as amended from time to time, when considering any:
- (a) price for any change to the Services Contract under clause 8.1 of the MSP Services Terms and Conditions in Schedule 2; or
 - (b) claim for costs if a Services Contract is terminated.

15.6 Reimbursable Expenses

- 15.6.1 The MSP may claim expenses incurred in performing MSP Services in accordance with this clause 15.6. The MSP may claim only the following as expenses (**Reimbursable Expenses**):
- (a) for each night that the Commonwealth requires and pre-approves, in its absolute discretion, that Personnel be located greater than 100km from their normal place of residence for the purposes of providing MSP Services:
 - (i) accommodation expenses, which shall be reimbursed, up to the relevant maximum per night rate in accordance with Defence non-SES rates (as amended by the Commonwealth from time to time); and
 - (ii) a Per Diem Amount, to cover meals and incidental expenses;
 - (b) airfare expenses (including reasonable airport parking expenses) which shall be reimbursed if the Commonwealth requires, in its absolute discretion, and

pre-approves, Personnel traveling for the purposes of a Services Contract and the distance of such travel is greater than 100km. Domestic airfares will be reimbursed only for economy-class travel. International airfares will be reimbursed in accordance with the relevant Services Contract. The MSP may propose, and Commonwealth may at its absolute discretion approve, reimbursement of an alternative form of transport;

- (c) local ground transport expenses (including car hire, car parking fees, tolls, petrol, taxis and public transport) which shall be reimbursed up to a reasonable limit that is commensurate with the work performed under a Services Contract. The Commonwealth, in its absolute discretion shall define and set such limit and advise the MSP accordingly; and
- (d) any expenses specified as reimbursable by the Commonwealth in the relevant Services Contract.

Note to MSP: The Commonwealth may approve, in advance, disbursements which will be reimbursed to the MSP at cost. Examples of such disbursements might include items such as software licences, training materials, and venue hire as appropriate and if agreed by the Commonwealth.

- 15.6.2 Unless set out in a Services Contract or otherwise agreed with the relevant Commonwealth Representative, if the MSP is required to travel under a Services Contract, the hours spent travelling are not billable work hours, and do not constitute a Reimbursable Expense.
- 15.6.3 Unless otherwise agreed by the Commonwealth, the maximum allowable billable hours for each day shall be eight hours (a 'standard work day').
- 15.6.4 The MSP shall submit all claims for Reimbursable Expenses on a valid Tax Invoice in accordance with clauses 5.3 and 5.4 of the MSP Services Terms and Conditions.

15.7 Pricing is inclusive

- 15.7.1 Subject to clause 15.6 of this ESSA, no amounts are payable to the MSP under this ESSA or under a Services Contract other than the:
 - (a) MSP Management Fee;
 - (b) the fees set out in a CPS Contract;
 - (c) the fees set out in an IWP Contract;
 - (d) the fees payable for any Additional Strategic Partner Services; or
 - (e) the fees payable for any Other Services in accordance with clause 14.1.
- 15.7.2 Without limiting the generality of this, and as set out in the MSP Services Terms and Conditions in Schedule 2, the fees referred to in clause 15.7.1 include:
 - (a) GST and all taxes, duties and government charges imposed or levied in Australia or overseas;
 - (b) remuneration to the MSP's Personnel, including salaries, wages, fees, superannuation, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract with the MSP or under any award, statute or at common law;

- (c) costs in respect of procuring and maintaining the insurances required by this ESSA or any Services Contract;
 - (d) costs of compliance with all other statutory, award or other legal or contractual requirements with respect to the MSP's Personnel; and
 - (e) costs of complying with various ongoing requirements that the MSP will be required to comply with, including (without limitation) requirements relating to maintenance of security clearances, participation in certain reviews, and reporting under this ESSA or any Services Contract.
- 15.7.3 The Commonwealth is not responsible for any cost or expense incurred by a MSP or its Personnel in complying with this ESSA or a Services Contract, to the extent that such cost or expense is not otherwise included in the fees described in clause 15.7.1 for the performance by the MSP of the relevant MSP Services.
- 15.7.4 The MSP acknowledges and agrees that the Commonwealth is entitled, without limiting any other rights it may have, to defer payment of a claim until the MSP has completed, to the satisfaction of the relevant Commonwealth Representative, that part of the MSP Services to which the claim relates.

15.8 Payment and Claims for Payment

- 15.8.1 The MSP must submit claims for payment in respect of its performance of the MSP Services in accordance with, and its entitlement to be paid is set out in, clause 5 of the MSP Services Terms and Conditions.

15.9 Ownership

- 15.9.1 The passing of ownership of Deliverables or partially completed Deliverables is dealt with as provided in clause 4.7 of the MSP Services Terms and Conditions.
- 15.9.2 If ownership of the Deliverables vests in the Commonwealth, the MSP must deliver to the Commonwealth all Deliverables remaining in its possession upon expiration or termination of this ESSA or the relevant Services Contract (unless otherwise provided in that Services Contract).
- 15.9.3 Notwithstanding any other provision of this ESSA or the MSP Services Terms and Conditions, to the extent that the MSP's work papers and Deliverables do not contain Commonwealth classified material, the MSP may retain one copy of such work papers and Deliverables, which may contain the Commonwealth's Confidential Information, for quality assurance and risk management purposes and shall maintain the confidentiality of any Confidential Information contained in such work papers and Deliverables.

16. PERFORMANCE MANAGEMENT

16.1 Key Result Areas

- 16.1.1 The Key Result Areas (**KRAs**) applicable to the performance of:
- (a) Strategic Partner Services and Capability Partner Services are set out in Attachment 1 to Schedule 4 [Performance Management Framework]; and
 - (b) Integrated Work Partner Services are set out in Attachment 2 to Schedule 4 [Performance Management Framework].

- 16.1.2 The MSP's performance (including the performance of each MSP Team member) against the KRAs will be measured and reported in accordance with Schedule 4 [Performance Management Framework] and, in relation to performance of Integrated Work Partner Services, also in accordance with Attachment 2 to Schedule 4 [Performance Management Framework].
- 16.1.3 The Parties agree that the KRAs are intended to be:
- (a) a means of assessing the strength of this ESSA and the relationship between the Parties; and
 - (b) one of the factors the Commonwealth will use in determining whether or not the Commonwealth will award a Services Contract to the MSP.
- 16.1.4 The Parties acknowledge and agree that additional performance measurement approaches and metrics may be included in a CPS Contract which are specific to those particular CPS Contracts, providing the relevant approaches and metrics are developed in accordance with any requirements set out in Schedule 4 [Performance Management Framework].
- 16.1.5 The Parties acknowledge and agree that performance against the additional performance measurement approaches and metrics referred to in clause 16.1.4 should be considered as an element of the overall measurement of the MSP's performance against the KRAs.

16.2 Reporting on Key Result Areas

- 16.2.1 In addition to any targets set out in its Service Management Plan and any other reporting obligations in this ESSA or a Services Contract, the MSP must report on its performance against the KRAs in accordance with Schedule 4 [Performance Management Framework].
- 16.2.2 Without limiting anything the ESSA or in a Services Contract, the MSP agrees to meet with the Commonwealth Representative at any time reasonably required by the Commonwealth Representative to discuss the MSP's performance against the performance metrics set out in the ESSA or the relevant Services Contract.

17. SUPPLY CHAIN MANAGEMENT

17.1 Overview

- 17.1.1 The MSP acknowledges and agrees that the Joint Objectives emphasise the importance of promoting an enhanced and sustainable local industry, and the need to maintain a viable and vibrant SME sector, through:
- (a) more effectively engaging with industry to better leverage resources and experience; and
 - (b) promoting collaborative, co-operative and constructive working relationships within industry (including Small Business in the MSP's supply chain).
- 17.1.2 For the avoidance of doubt, any provision relating to Subcontractors in this ESSA or a Services Contract does not apply to the tasking of MSP Team members in relation to the performance of the MSP Services.

17.2 Small Business and other SMEs as Subcontractor

Note to MSP: An MSP will not be able to meet the Small Business KRA or SME KPIs by engaging only organisations that are part of its MSP Team or supply chain.

- 17.2.1 Given the context outlined in clause 17.1, in order to facilitate the achievement of the Joint Objectives, the MSP is encouraged to subcontract expertise from SMEs including Small Businesses on the DSS Panel, in order to perform the MSP Services.
- 17.2.2 In entering into Subcontracts, the MSP commits to:
- (a) carrying out the obligation in clause 5.5.1(b) of this ESSA to implement mechanisms that allow Small Businesses on the DSS Panel that are working through the MSP's supply chain to maintain and promote their own brand and to protect their intellectual property; and
 - (b) working with Small Business and other SMEs that are engaged as Subcontractors in a way that will achieve the Joint Objectives and otherwise complies with this ESSA and any relevant Services Contract.
- 17.2.3 For the avoidance of doubt, compliance by the MSP of its obligation to grant a licence for the Background IP described in clause 4.2 of the MSP Services Terms and Conditions will not result in the MSP being non-compliant with clause 17.2.2(a).
- 17.2.4 If a Small Business or other SME on the DSS Panel is a part of a MSP Team, work delivered by that organisation will count towards the assessment of the MSP's performance against the Performance Management Framework in Schedule 4 of this ESSA.
- 17.2.5 Any services delivered by a Related Body Corporate of a MSP Team member will not count towards the assessment of the MSP's performance against the SME and Small Business elements of the Performance Management Framework in Schedule 4 of this ESSA unless otherwise agreed by the Commonwealth.

17.3 Engagement of Subcontractors

Note to MSP: MSPs will have visibility of other DSS Panel members through the SPPMO and will be able to approach DSS Panel Members to provide MSP Services.

- 17.3.1 The MSP may engage Subcontractors (including members of the DSS Panel) on the terms and conditions set out in Schedule 3 [Template MSP Subcontractor Terms and Conditions], or such other terms as the MSP determines.
- 17.3.2 The MSP acknowledges and agrees that any Subcontract will be on terms and conditions that enable both the MSP and the Commonwealth to achieve the Joint Objectives and otherwise meet their obligations under this ESSA or under a Services Contract.
- 17.3.3 The MSP agrees that the engagement of Subcontractors on the terms and conditions set out in Schedule 3 [Template MSP Subcontractor Terms and Conditions] does not relieve it from liability or any obligations the MSP has under this ESSA or any Services Contract.

PART 6 – CORE REQUIREMENTS

18. DEFENCE SECURITY

18.1 Overview

- 18.1.1 The MSP agrees that it must comply with any and all Defence security requirements set out in clause 8.8 of the MSP Services Terms and Conditions.
- 18.1.2 Without limiting anything in a Services Contract, the MSP must:
- (a) ensure that its Personnel, and Subcontractors, undertake any security checks, clearances or accreditations as required by the Commonwealth;
 - (b) promptly notify the relevant Commonwealth Representative and the relevant Commonwealth sponsor of the clearance, of any changes to circumstances which may affect the MSP's capacity to provide the MSP Services in accordance with the Commonwealth's security requirements;
 - (c) provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth; and
 - (d) ensure that all its Personnel and Subcontractors providing MSP Services under a Services Contract meet all security requirements specified in that Services Contract, including with respect to security accreditation and levels of security clearances.
- 18.1.3 Without limiting anything in this ESSA or a Services Contract, the MSP acknowledges that the Commonwealth expects that the MSP will ensure that it and each member of the MSP Team maintain their respective security accreditation and clearances.
- 18.1.4 If the MSP requires access to any Commonwealth Premises under the control or responsibility of Defence, the MSP must:
- (a) comply with any security requirements (including those contained in the Defence Security Principles Framework (**DSPF**)) notified to the MSP by the SPPMO or relevant Commonwealth Representative from time to time; and
 - (b) ensure that its Personnel, and Subcontractors, are aware of and comply with the Commonwealth's security requirements.
- 18.1.5 If the MSP breaches any of its obligations under this clause 18, the Commonwealth may terminate this ESSA (and any Services Contract) by written notice of termination under clause 23.

18.2 Access to the Defence Protected Network and Defence Secret Network

- 18.2.1 Subject to clause 18.1, the MSP may be provided access to the DPN and DSN to facilitate its performance of the MSP Services.
- 18.2.2 The MSP must not:
- (a) connect or in any other way attach any non-accredited equipment to the DPN or DSN; or

- (b) access the DPN or DSN for any purpose other than to the extent necessary for the purpose of performing its obligations under this ESSA or a Services Contract.
- 18.2.3 The MSP must comply with all Commonwealth directions and instructions relating to DPN and DSN security requirements.
- 18.2.4 The MSP must take all reasonable steps to ensure that any use of the DPN or DSN under this ESSA or a Services Contract does not damage, interfere with or otherwise compromise the DPN or DSN, or any information contained within it.
- 18.2.5 The MSP must not establish any interface between the DPN, or DSN, and any information system owned or controlled by the MSP, or by a third party, without the prior written consent of the Commonwealth Representative.

19. INTELLECTUAL PROPERTY

19.1 Overview

- 19.1.1 The Parties acknowledge that the Joint Objectives include the objectives regarding:
 - (a) ensuring that the Commonwealth has the appropriate intellectual property rights in relation to any Deliverables;
 - (b) promoting collaborative behaviours and constructive working relationships within industry (including SMEs in the MSP supply chain); and
 - (c) maintaining a viable and vibrant SME sector, through the MSP supply chain.
- 19.1.2 The MSP acknowledges the obligation in clause 5.5 that it implement mechanisms that allow Small Business on the DSS Panel that are working through the MSP's supply chain to maintain and promote their own brand and to protect their intellectual property.
- 19.1.3 The MSP acknowledges and agrees that the provisions in this clause 19 do not limit the provisions of any Services Contract which relate to Intellectual Property.

19.2 Ownership of Intellectual Property

Clause 4 of the MSP Services Terms and Conditions in Schedule 2 operates with respect to Intellectual Property (including licensing of Intellectual Property) in relation to the performance of the MSP Services.

19.3 Moral Rights

Clause 4.6 of the MSP Services Terms and Conditions in Schedule 2 operates with respect to Moral Rights in relation to the performance of the MSP Services.

19.4 Intellectual Property Warranties

Without limiting, and in addition to, any warranty in the MSP Services Terms and Conditions in Schedule 2, the MSP warrants the provision of any MSP Services provided in connection with this ESSA or any Services Contract (and the Commonwealth's use of any Deliverables or material developed or supplied under this ESSA or any Contract) will not infringe the Intellectual Property or Moral Rights of any person.

20. CONFLICTS OF INTEREST

Note to MSP: The Commonwealth is concerned to ensure conflicts of interest are identified early and dealt with appropriately.

20.1 Overview

20.1.1 The MSP acknowledges and agrees that:

- (a) it will assist the Commonwealth to comply with its legal and accountability obligations in relation activities carried out under this ESSA and any Services Contract;
- (b) the identification, management and avoidance of any conflicts of interest of and by its suppliers:
 - (i) is key to the Commonwealth being able to comply with its legal and accountability obligations; and
 - (ii) are 'best for Defence' in the context of the Performance Management Framework in Schedule 4.

20.1.2 In this regard, the Parties acknowledge that the MSP and each MSP Team member is subject obligations with respect to conflicts of interest and probity under the DSS Panel Deed.

20.1.3 The MSP acknowledges and agrees that:

- (a) any provisions relating to conflicts of interest in this ESSA or any Services Contract are not limited by the MSP's obligations with respect to conflicts of interest and probity under the DSS Panel Deed; and
- (b) any provisions in this ESSA relating to conflicts of interest do not limit any provisions in any Services Contract that relate to conflicts of interest.

20.1.4 For the avoidance of doubt, and without limiting the potential circumstances in which a conflict of interest may exist, the circumstances described in clause 28.1.1, clause 28.1.4 and clause 28.1.6 in relation to employment of ADF members or Defence APS employees constitute a conflict of interest for the purposes of this clause 20.

20.2 Conflict of interest warranty

20.2.1 The MSP warrants that, to the best of its knowledge after making diligent inquiry at the date of signing this ESSA, no conflict of interest exists or is likely to arise in the performance of its obligations under this ESSA or any Services Contract by itself or by any of its Personnel or Subcontractors or Subcontractor Personnel.

20.2.2 The MSP further warrants that, to the best of its knowledge after making diligent enquiries at the date of entering into any subsequent Services Contracts, no conflict exists or is likely to arise in the performance of its obligations under the relevant Services Contract by itself or by any of its Personnel or Subcontractors.

20.2.3 The MSP agrees that it will not, and will ensure that any of its Personnel do not, engage in any activity or obtain any interest during the Services Period that is likely to conflict with or restrict the MSP in providing the MSP Services to the

Commonwealth fairly and independently and in accordance with this ESSA or a Services Contract.

20.3 Management of conflicts of interest

- 20.3.1 If, during the Services Period, a conflict of interest arises, or risk of such a conflict of interest arises, the MSP agrees that it will promptly notify the Commonwealth in writing.
- 20.3.2 Without limiting anything in the Services Management Plan, the MSP and the Commonwealth agree to promptly discuss the conflict of interest with a view to working collaboratively and cooperatively to resolve the conflict of interest or its potential or actual impact on the Commonwealth's ability to fulfil its legal and accountability obligations, in a timely manner.
- 20.3.3 Within five Working Days after giving notice under clause 20.3.1 and after discussing it with the Commonwealth as required under clause 20.3.2, the MSP shall notify the Commonwealth, in writing, of the steps the MSP will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the MSP to resolve the issue in a manner proposed by the Commonwealth.
- 20.3.4 If the Commonwealth considers that any steps proposed by the MSP for resolving the conflict of interest are inadequate, or the MSP cannot identify or implement such steps in a timely manner, the MSP agrees that it will take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict.
- 20.3.5 The MSP acknowledges and agrees that by entering into a Services Contract it may be excluded for reasons of conflict of interest or of probity from subsequently tendering for, or being contracted to perform other work directly or indirectly related to, the MSP Services performed under that Services Contract.
- 20.3.6 The MSP further acknowledges and agrees that the Commonwealth may also apply the exclusion in clause 20.3.5 to its Personnel, Subcontractors, Subcontractor Personnel and the MSP's Related Bodies Corporate. The MSP undertakes to obtain the acknowledgment and agreement of those persons to this provision.
- 20.3.7 The MSP acknowledges and agrees that:
 - (a) whether or not a conflict of interest exists, or other probity reasons exist, is a matter to be determined solely by the Commonwealth Representative in its absolute discretion, and
 - (b) each determination referred to in paragraph 20.3.7(a):
 - (i) shall be final and binding on the parties and not subject to the dispute resolution provisions in clause 22; and
 - (ii) shall not under any circumstances give rise to any liability on the part of the Commonwealth to the MSP or any third party.
- 20.3.8 The MSP shall include rights of the Commonwealth equivalent to those contained in clause 20.3 in all Subcontracts.

20.4 Commonwealth remedies

- 20.4.1 If:

- (a) the MSP fails to notify the Commonwealth in accordance with clause 20.3.1 or clause 20.3.3;
- (b) the MSP is unable or unwilling to resolve the conflict of interest as required by the Commonwealth; or
- (c) in the opinion of the Commonwealth, the conflict of interest cannot be satisfactorily resolved,

the Commonwealth may give the MSP a notice of termination or suspension for default of the ESSA in accordance with clause 23.2, or may terminate a Services Contract under a notice of termination for default under clause 10.2.1(c) of the MSP Services Terms and Conditions.

- 20.4.2 The MSP acknowledges and agrees that, without limiting any other provision of this ESSA, the Commonwealth may take the MSP's behaviour in relation to the matters that are the subject of this clause 20 into account when assessing the performance of the MSP or when deciding whether or not to issue the MSP with a CPS Tasking Request or an IWP Tasking Request.
- 20.4.3 The MSP will, if requested by the Commonwealth, provide the Commonwealth with such information as the Commonwealth reasonably requests in order to satisfy itself that any steps agreed or notified to it by the Commonwealth with respect to any conflict of interest has been complied with and remains sufficient to enable the Commonwealth to comply with its legal and accountability obligations.

PART 7 – GENERAL

21. LIABILITY, INDEMNITIES AND INSURANCE

21.1 Indemnity

The agreement of the Parties regarding the provision by the MSP of an indemnity is set out in clause 6 of the MSP Services Terms and Conditions.

21.2 Intellectual Property Indemnity

The agreement of the Parties regarding the provision by the MSP of an indemnity with respect to Intellectual Property and rights in Intellectual Property is set out in clause 6.3 of the MSP Services Terms and Conditions.

21.3 Liability

21.3.1 The liability of the MSP arising out of the performance of this ESSA will be determined in accordance with clause 6.4 of the MSP Services Terms and Conditions.

21.4 Insurance

21.4.1 The MSP shall effect and maintain (or be insured under):

- (a) the insurances as specified in this clause 21.4; and
- (b) any additional insurances required in a Services Contract.

21.4.2 For the avoidance of doubt, the terms of this clause 21.4 do not alter the allocation of risk or liability between the parties as provided for under any clause of the ESSA or any Services Contract (or both).

21.4.3 The MSP shall use its best endeavours to ensure that its Subcontractors are insured as required by this clause 21.4, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the MSP.

21.4.4 **(workers' compensation)** The MSP shall effect and maintain workers' compensation insurance or registrations as required by law, in respect of the MSP's liability to its employees engaged in the performance of any obligation or the exercise of any right under this ESSA or any Services Contract (or both). Where permitted under the relevant statutory workers' compensation or accident compensation scheme, the insurance or registrations shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the MSP. However, the requirements of this clause 21.4.4 (workers' compensation) do not apply to the extent and for such time as the MSP is a licensed self-insurer or exempt employer in the relevant jurisdiction.

21.4.5 **(public liability)** The MSP shall effect and maintain public liability insurance written on an occurrence basis with a limit of indemnity of \$10 million each occurrence which covers the MSP and its Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the ESSA or any Services Contract (or both) by the MSP, its Personnel, Subcontractors or Subcontractor Personnel.

- 21.4.6 **(professional indemnity)** The MSP shall effect and maintain professional indemnity insurance for breach of duty owed in a professional capacity by the MSP under this ESSA or any Services Contract (or both) or at common law to the value of \$10 million per claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the MSP at general law arising from a negligent breach of duty owed in a professional capacity by reason of any act or omission of the MSP, its Personnel, Subcontractors or Subcontractor Personnel.
- 21.4.7 The insurances and registrations referred to in:
- (a) the following clauses shall be effected before the MSP commences work under the ESSA or any Services Contract, and thereafter be maintained until all work under the ESSA or any Services Contract, as the case may be, is completed:
 - (i) clause 21.4.4 (workers' compensation); and
 - (ii) clause 21.4.5 (public liability); and
 - (b) clause 21.4.6 (professional indemnity) shall be effected before the MSP commences work under this ESSA or any Services Contract (or both), and thereafter be maintained until the earlier of:
 - (i) 7 years following completion of the work under this ESSA or any relevant Services Contract, as the case requires; or
 - (ii) 7 years following the earlier termination of this ESSA or the relevant Services Contract, as the case requires.
- 21.4.8 To the extent that the MSP's insurances and registrations required by clause 21.4 of this ESSA are in fact written on a claims made basis (notwithstanding any requirements of any Services Contract for such insurances to be written on an occurrence basis) then the MSP shall maintain those insurances and registrations until the earlier of:
- (a) 7 years following completion of the work under this ESSA or any relevant Services Contract; or
 - (b) 7 years following the earlier termination of this ESSA or the relevant Services Contract, as the case requires.
- 21.4.9 The MSP shall, on request, produce evidence satisfactory to the Commonwealth Representative, acting reasonably, of the currency and the following details of each of the insurances referred to in this clause 21.4:
- (a) name of the insurer(s);
 - (b) type of insurance;
 - (c) terms and coverage of the insurance, including person(s) insured, conditions and exclusions (if any);
 - (d) limits of indemnity per claim or occurrence, and details of any aggregate limits or relevant sub-limits which apply;
 - (e) for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the

tenderer's ability to meet its obligations under any the ESSA or any Services Contract;

- (f) coinsurance, self-insured retention or deductible amounts; and
- (g) period of insurance.

21.4.10 The Commonwealth agrees that the requirements of clause 21.4.9 will be satisfied if the MSP permits an agent of the Commonwealth, under confidentiality arrangements satisfactory to the MSP, to review the currency and details outlined in clause 21.4.9 of the insurances referred to in this clause 21.4 held by the MSP and to certify to the Commonwealth that those insurances comply with this clause 21.4.

21.4.11 The Parties agree that they will collaboratively explore the potential for implementing an initiative similar to CASG's existing Approved Contractor Insurance Program (ACIP) in relation to processes for verification and validation of insurances held by the MSP.

22. RESOLUTION OF DISPUTES

22.1.1 If a dispute arising between the Commonwealth and the MSP relating to the arrangements under this ESSA cannot be settled by discussion or negotiation (including discussion or negotiation between senior line management of the Parties) within 30 days, the Parties will escalate the dispute through the governance framework established in accordance with this ESSA as follows:

- (a) to the Commonwealth operations lead on the SPPMO and the MSP operational lead;
- (b) if the dispute cannot be resolved within 5 Working Days under clause 22.1.1(a), to the Chair of the Steering Committee and the MSP senior executive representative on the Steering Committee.

22.1.2 If the dispute cannot be resolved within a further 10 Working Days, or such other period as agreed by the Parties, then either Party may refer the matter to alternative dispute resolution or commence litigation.

22.1.3 The MSP agrees that it will continue to perform under this ESSA and, if relevant and without limiting the provisions of any Services Contract, under any Services Contract, when there is a dispute.

22.1.4 For the avoidance of doubt, disputes relating to or arising under any Services Contract will be dealt with in accordance with clause 10 of the MSP Services Terms and Conditions in Schedule 2.

23. TERMINATION OR SUSPENSION OF ESSA

23.1 Overview

23.1.1 The Parties acknowledge and agree that there may be certain circumstances in which they, respectively, wish to terminate or withdraw from the arrangements established under this ESSA. These are dealt with in clauses 23 to 26 of this ESSA.

- 23.1.2 For the avoidance of doubt, the Parties agree that the termination, suspension or ceasing of any Services Contracts will occur in accordance with the relevant provisions in the MSP Services Terms and Conditions.

23.2 Termination or suspension of ESSA

- 23.2.1 Without limiting clause 25, the Commonwealth may, by notice in writing to the MSP Representative for this ESSA:

- (a) terminate this ESSA either in whole or in part (for example, by terminating provisions with respect to one or more of the MSP Services); or
 - (b) suspend this ESSA either in whole or in part; or
 - (c) require the removal of any MSP Team member,
- if:
- (d) the MSP's performance against the Performance Management Framework is consistently poor and, in the opinion of the Commonwealth, incapable of being remedied and will materially adversely impact on the ability of the MSP to perform this ESSA;
 - (e) following discussions between the Parties, the Commonwealth reasonably considers that the MSP or a member of the MSP Team is unable or unwilling to resolve an actual, potential or perceived conflict of interest to the Commonwealth's satisfaction;
 - (f) the MSP or a member of the MSP Team fails to comply with its security, privacy, or confidentiality obligations in a way that, in the reasonable opinion of the Commonwealth, is not trivial or is not capable of being remedied;
 - (g) an Insolvency Event occurs; or
 - (h) the MSP or a member of the MSP Team otherwise commits a material breach of this ESSA that in the reasonable opinion of the Commonwealth is not capable of being remedied and will materially adversely impact on the ability of the MSP to perform this ESSA.

- 23.2.2 If a notice is issued to the MSP in accordance with clause 23.2.1, the Commonwealth will not be liable for any costs or expenses the MSP has incurred, or may incur, other than payments under the payment terms of a Services Contract for work conducted before the effective date of termination, suspension or reduction in scope of the ESSA by the Commonwealth.

24. TERMINATION OR REDUCTION FOR CONVENIENCE

24.1 Termination or Reduction for convenience

- 24.1.1 In addition to any other rights it has under this ESSA or under a Services Contract, the Commonwealth may at any time terminate, reduce the scope of, or suspend this ESSA by notifying the MSP in writing.
- 24.1.2 For the avoidance of doubt, the Commonwealth's rights to terminate, reduce the scope of, or suspend a Services Contract are set out in the MSP Services Terms and Conditions in Schedule 2.

24.1.3 If the Commonwealth issues a notice under clause 24.1.1, the MSP must:

- (a) stop, reduce or suspend work in connection with this ESSA in accordance with the notice;
- (b) comply with any directions given to the MSP by the Commonwealth; and
- (c) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, reduction or suspension, including those arising from affected Subcontracts.

24.1.4 The Commonwealth will only be liable for:

- (a) payments owed by the Commonwealth for any MSP Service provided under this ESSA (other than under a Services Contract) up to the date of the notice issued under clause 24.1.1; and
- (b) any reasonable costs incurred by the MSP that are directly attributable to the termination, reduction or suspension under clause 24.1,

provided that:

- (c) the MSP substantiates these amounts to the satisfaction of the Commonwealth;
- (d) the MSP complies with any directions given by the Commonwealth;
- (e) the MSP mitigates all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, reduction or suspension, including those arising from affected Subcontracts; and
- (f) the MSP is not entitled to any profit anticipated on any part of this ESSA that is terminated, reduced or suspended for convenience, or to make any other claim (at law or in equity) arising out of or in connection with the termination, reduction or suspension for convenience.

25. MSP'S RIGHT OF WITHDRAWAL

25.1 MSP Right of withdrawal

25.1.1 Without limiting any rights or obligations of the Parties under this ESSA or any Services Contract (including the obligation to fulfil any Services Contract that may exist at the relevant time), the MSP may at any time elect, by written notice to the Commonwealth, to withdraw from:

- (a) this ESSA; or
- (b) the standing offer to provide the Capability Partner Services made in clause 12.1; or
- (c) the standing offer to provide the Integrated Work Partner Services made in clause 13.1.

25.2 Commonwealth's liability for costs

25.2.1 If the MSP gives the Commonwealth a written notice under clause 25.1, the Commonwealth will only be liable for:

- (a) payments owed by the Commonwealth for any MSP Service provided under this ESSA (other than under a Services Contract) up to the date of the notice issued under clause 25.1;

provided that:

- (b) the MSP substantiates these amounts to the satisfaction of the Commonwealth;
- (c) the MSP complies with any directions given by the Commonwealth;
- (d) the MSP mitigates all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, reduction or suspension, including those arising from affected Subcontracts; and
- (e) the MSP is not entitled to any profit anticipated on any part of this ESSA, or to make any other claim (at law or in equity) arising out of or in connection with the withdrawal.

25.2.2 Unless otherwise agreed by the Commonwealth, the MSP shall continue to perform its obligations under existing CPS Contracts and IWP Contracts and the Commonwealth will be liable for charges invoiced in accordance with the existing CPS Contracts and IWP Contracts.

26. TRANSITION ARRANGEMENTS AFTER TERMINATION, WITHDRAWAL OR EXPIRATION

26.1 Transition arrangements

26.1.1 If:

- (a) the MSP exercises its rights under clause 25.1;
- (b) the Commonwealth exercises its rights under clause 23.2;
- (c) the Commonwealth exercises its rights under clause 24.1; or
- (d) the Services Period expires,

then, unless otherwise directed by the Commonwealth, the Parties will work collaboratively together to ensure that:

- (e) any outstanding IWP Contracts; and
- (f) where any termination does not occur at the end of a 12 month period, any CPS Contracts,

are closed out, managed to completion or transitioned to the Commonwealth, an Other MSP or other service provider.

26.1.2 Where tasks are transferred to the Commonwealth, an Other MSP or other service provider, the MSP will work collaboratively with the Commonwealth, the Other MSP or other service provider as the case requires to ensure orderly and appropriate transition, including by:

- (a) transferring information and documents;

- (b) making its Personnel available to explain work in progress; and
- (c) provision of any proprietary software required to continue to work on tasks (if any).

27. COMPLIANCE WITH COMMONWEALTH POLICY REQUIREMENTS

27.1 Indigenous Procurement Policy

- 27.1.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 27.1.2 In the performance of this ESSA, and any Services Contract, the MSP must use best endeavours to increase its purchasing from Indigenous enterprises, and employment of Indigenous Australians. For this clause, 'Indigenous enterprise' has the meaning given by the Commonwealth's Indigenous Procurement Policy (IPP). Supply Nation maintains a list of enterprises that meet the definition of 'Indigenous enterprise' (www.supplynation.org.au).
- 27.1.3 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the MSP's supply chain.
- 27.1.4 The MSP must provide such written reports and evidence of its compliance with this clause 27.1 as is reasonably requested by the Commonwealth at least once per year during the Services Period.
- 27.1.5 If during the Service Period, this ESSA or a Services Contract becomes a "high value contract" for the purposes of the IPP, the MSP must, within 60 days after becoming a high value contract:
 - (a) develop an Indigenous participation plan that addresses:
 - (i) how the MSP intends on meeting the mandatory minimum requirements in the IPP;
 - (ii) the MSP's current rate of Indigenous employment and supplier use;
 - (iii) the MSP's commitment to Indigenous participation; and
 - (iv) if any part of this ESSA or relevant Services Contract is being or will be delivered in a "remote area" as defined in the IPP, how the MSP will ensure that its provision of MSP Services will deliver significant Indigenous employment or supplier use outcomes in that remote area; and
 - (b) submit the draft Indigenous participation plan to the Commonwealth for its approval.
- 27.1.6 Upon approval of the draft Indigenous participation plan, the MSP must:
 - (a) comply with the Indigenous participation plan (which will by an approved amendment become an attachment to this ESSA or the relevant Services Contract);

- (b) report against its compliance with the Indigenous participation plan quarterly during the Services Period or the term of the relevant Services Contract; and
- (c) comply with any directions issued by the Commonwealth Representative in relation to the MSP's implementation of the Indigenous participation plan.

27.1.7 The MSP acknowledges and agrees that:

- (a) its Indigenous participation plan may be made publicly available;
- (b) its Indigenous participation plan will not be considered to be the MSP's confidential information; and
- (c) the Commonwealth may take compliance with the MSP's Indigenous participation plan into account for the purposes of assessing the MSP's performance under the Performance Management Framework or under the relevant Services Contract as the case requires.

27.2 Australian Industry Capability

27.2.1 The MSP will comply with the AIC commitments set out in the Services Management Plan.

27.2.2 The MSP acknowledges that:

- (a) it may be required by the Commonwealth to prepare a separate AIC Plan in relation to the AIC commitments set out in the Services Management Plan;
- (b) compliance with any AIC Plan does not relieve the MSP from its liabilities or obligations under the ESSA or Services Contract;
- (c) acceptance of any MSP Services by the Commonwealth does not relieve the MSP from meeting its obligations under any AIC Plan; and
- (d) the public AIC Plan section of any AIC Plan will be made publicly available on a Commonwealth internet website.

27.3 Unpaid judicial decisions

27.3.1 If, during the Services Period, the MSP has a judicial decision against it (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to employee entitlements where the resulting order has not been satisfied, the MSP must promptly notify the Commonwealth.

27.3.2 The Commonwealth will not enter into a Services Contract with a MSP which has a judicial decision against it (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to employee entitlements where any resulting order has not been satisfied.

28. POST DEFENCE SEPARATION EMPLOYMENT

28.1.1 Except with the prior written approval of the Commonwealth Representative, the MSP shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding 12-month period was engaged or involved in:

- (a) the preparation or management of this ESSA;
- (b) the preparation or management of the relevant Services Contract;
- (c) the assessment or selection of the MSP; or
- (d) the planning or performance of the procurement or any activity relevant or related to a Services Contract,

to perform, contribute or to advise in relation to the performance of the MSP Services or the relevant Services Contract.

- 28.1.2 To avoid doubt, the 12-month period referred to in clause 28.1.1 applies from the date which is 12 months before the date on which the MSP proposes that the person start performing or contributing to the performance of the Services Contract or this ESSA, as the case requires.
- 28.1.3 The Commonwealth Representative shall not unreasonably withhold approval under clause 28.1.1 and, in making a decision, shall consider:
- (a) the character and duration of the engagement, services or work that was performed by the person during the relevant 12-month period;
 - (b) any information provided by the MSP about the character and duration of the Services to be performed by the person under the ESSA or the relevant Services Contract;
 - (c) the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of the Contract in the manner proposed under clause 28.1.3(b), and the arrangements which the MSP proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
 - (d) any information provided by the MSP concerning any significant effect which withholding approval will have on the person's employment or remuneration opportunities or the performance of this ESSA or the relevant Services Contract; and
 - (e) the policy requirements set out in DI ADMINPOL Annex C AG5 and the *Integrity Policy Manual*, as applicable.
- 28.1.4 Except with the prior written approval of the Commonwealth Representative, the MSP shall not offer employment to any CASG employee, or any person who has been a CASG employee at any time within the preceding 3-month period. The Commonwealth Representative shall not unreasonably withhold approval under this clause 28.1.4.
- 28.1.5 The MSP shall include rights of the Commonwealth equivalent to those contained in this clause 28 in all Subcontracts.
- 28.1.6 Without limiting this clause 28, for the purposes of delivering MSP Services under this ESSA or any Services Contract, the MSP agrees that it will not nominate as Key Persons, seek to employ, employ, or otherwise engage any person who is a serving ADF member or current APS employee of Defence.
- 28.1.7 This clause 28 does not apply to members of the ADF Reserve (SERCAT 2 to SERCAT 5).

29. GENERAL PROVISIONS

29.1 Governing law

The laws of the Australian Capital Territory apply to this ESSA and any Services Contract. The courts of that Territory will have non-exclusive jurisdiction to decide any matter arising out of this ESSA or any Services Contract.

29.2 Compliance with laws

29.2.1 The MSP must, in the performance of this ESSA or any Services Contract, comply with and ensure its Personnel and Subcontractors comply with the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the ESSA or Services Contract is to be carried out by the MSP, those Personnel or those Subcontractors as the case may be. For the avoidance of doubt, this clause is not intended to, and does not, extend the requirement to comply with the relevant laws to any MSP's Personnel or any Subcontractors that are not providing services under the ESSA or under a Services Contract in the relevant jurisdiction.

29.2.2 The MSP must provide to the Commonwealth Representative within 10 Working Days after a request by the Commonwealth written confirmation that, to the best of the MSP's knowledge and based on reasonable enquiries undertaken by the MSP, the MSP and its Personnel, Subcontractors and Subcontractor Personnel, are compliant with all laws (including applicable foreign laws) regarding the offering of unlawful inducements in connection with the performance of this ESSA and any Services Contract and Subcontracts.

29.3 Waiver

Failure by either Party to enforce a term of this ESSA or a Services Contract will not be construed as in any way affecting the enforceability of that term or the ESSA or relevant Service Contract as a whole.

29.4 Survivorship

Any provision of the ESSA which expressly or by implication from its nature is intended to survive the termination or expiration of the ESSA and any rights arising on termination or expiration shall survive, including provisions relating to Transition Out, Conflict of Interest, Confidential Information, Privacy, Intellectual Property and the Right of the Commonwealth to Recover Money, Defence Security and any warranties, guarantees, licences, indemnities given under the ESSA and any Service Contract (or both).

29.5 Notices under this ESSA

29.5.1 Any notice or communication under this ESSA is effective if it is in writing, signed and delivered to the Commonwealth Representative or the MSP Representative, as the case may be, in accordance with the details set out in Item 4 and Item 5 respectively of Schedule 1 [ESSA Details].

29.5.2 Any notice or communication under a Service Contract is effective if it is in writing, signed and delivered to the Commonwealth Representative or MSP Representative for the relevant Services Contract, as the case may be, in accordance with the details set out in the relevant Services Contract.

29.5.3 A notice given in accordance with clauses 29.5.1 and 29.5.2 is deemed to be delivered:

- (a) if sent by pre-paid post, in three Working Days from when the notice was sent 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 addressee if sooner; or
- (c) if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,

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

- 29.5.4 Any requirement to replace any of the MSP's Personnel during the Service Period (whether at the request of the Commonwealth or not) shall not constitute an act or event that is beyond the reasonable control of the MSP in meeting the requirements of this ESSA and any Services Contract where applicable.

PART 8 – GLOSSARY AND INTERPRETATION

30. INTERPRETATION AND GLOSSARY

30.1 Interpretation

30.1.1 In this ESSA and any Services Contract, unless the contrary intention appears:

- (a) headings are for the purpose of convenient reference only and do not form part of this ESSA or any Service Contract;
- (b) the singular includes the plural and vice-versa;
- (c) a reference to one gender includes the others;
- (d) a reference to a person includes a body politic, body corporate or 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 must be done no later than the end of the next Working Day;
- (f) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (g) a reference to a clause includes a reference to a subclause of that clause;
- (h) a reference to a 'dollar', '\$', '\$A' or '\$AUD' means the Australian dollar unless otherwise stated;
- (i) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date specified at the Details Schedule and updated from time to time, or alternatively, a reference to another version of the document if agreed in writing between the Parties;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to a Party includes that Party's administrators, successors, and permitted assignees, including any person to whom that party novates any part of the ESSA or relevant Services Contract.

30.1.2 All information provided as part of the MSP Services under this ESSA or any Services Contract must be written in English. Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurements Act 1960* (Cth) or, if MSP Services are imported, units of measurement as agreed by the SPPMO.

30.2 Entire agreement

To the extent permitted by law, this ESSA (including each document incorporated by express reference into this ESSA) and each Service Contract represents the Parties entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

30.3 Precedence of documents

If there is any inconsistency between the terms of any documents that form part of this ESSA, a descending order of precedence will be accorded to:

- 30.3.1 the terms and conditions of this ESSA (including Schedule 1);
 - 30.3.2 the Services Management Plan;
 - 30.3.3 the Schedules to this ESSA (other than Schedule 1);
 - 30.3.4 the Attachments to the respective Schedules to the ESSA;
 - 30.3.5 any document incorporated by express reference as part of the ESSA,
- so that the term in the higher ranked document, to the extent of the inconsistency, prevails.

30.4 Glossary

Term	Definition
Additional Strategic Partner Services	means any additional Strategic Partner Services outlined in the Services Management Plan.
ADF	Australian Defence Force.
ADF Reserve	has the same meaning as in the <i>Defence Act 1903</i> (Cth).
Adjustment Date	means each anniversary of the Effective Date, starting from the second anniversary of the Effective Date.
Adjustment Payment	means the payment described in clause 3.3.4 of Schedule 5 [MSP Services - Commercial Model].
AIC Plan	means an Australian Industry Capability Plan developed in accordance with Commonwealth Representative direction.
Approval or Approve	means the act of the Commonwealth Representative approving a particular claim, proposal or course of action as a basis for further work under a Services Contract. 'Approve' has a corresponding meaning.
Approved Tasking Request	means a Tasking Request executed by the Commonwealth under clause 12.4.6 (in the case of a CPS Tasking Request) or under clause 13.3.10 (in the case of an IWP Tasking Request).
APS	Australian Public Service.
Asbestos Containing Material	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
At-Risk Percentage	has the meaning given in clause 1.4 of Schedule 5 [MSP Services - Commercial Model].
At-Risk Amount	has the meaning given in clause 2.2 of Schedule 5 [MSP Services - Commercial Model].

Authorisation	means a licence, accreditation, permit, registration, regulatory approval or other documented authority (however described), required by law and necessary for the provision of the MSP Services.
Background IP	means pre-existing IP, or IP created other than as a result of the performance of the ESSA or a Services Contract, in respect of any Deliverables, or that is embodied in, or attaches to, the MSP Services, or is otherwise necessarily related to the functioning or operation of the MSP Services.
Capability Partner Services	means the capability partner services described in clause 12.2.1 of this ESSA.
CASG	Capability Acquisition and Sustainment Group
CASG Domains	the five CASG Domains being: <ul style="list-style-type: none"> • Aerospace • Business Management • Joint Systems • Land • Maritime
CASG Function	the CASG Functions, being: <ul style="list-style-type: none"> • Commercial • Corporate Performance • Decision Support • Engineering and Technical • Materiel Logistics • Program Management
Change of Control	means a situation or occurrence where the relevant person (the first person) comes under the Control of a person who did not Control that first person at the date of the ESSA or the relevant Services Contract, as the case requires.
Commercial Model	means the commercial model for the MSP Services in Schedule 5.
Commonwealth Agreement	means an agreement between the Commonwealth and another contractor.
Commonwealth Personnel	means any officers, employees or agents of the Commonwealth.
Commonwealth Premises	means any of the following that is owned or occupied by the Commonwealth: <ul style="list-style-type: none"> (a) an area of land or any other place (whether or not it is enclosed or built on); (b) a building or other structure; and (c) a vehicle, vessel or aircraft.
Commonwealth Representative	means:

	<p>(a) in relation to the ESSA, the representative specified in Item 2 of Schedule 1 – ESSA Details; or</p> <p>(b) in relation to a Services Contract, the representative specified in the relevant Approved Tasking Request,</p> <p>as the context requires.</p>
Confidential Information	<p>means information (whether or not owned by the Commonwealth) that:</p> <p>(a) is specifically identified in a Services Contract;</p> <p>(b) is commercially sensitive (i.e. the information should not generally be known or ascertainable);</p> <p>(c) disclosure would cause unreasonable detriment to the owner of the information or another party (e.g. disclosure of a contractor's profit margin); and</p> <p>(d) was provided with an express or implied understanding that it would remain confidential;</p> <p>(e) but does not include information which:</p> <p>(f) is or becomes public knowledge other than by breach of this ESSA or a Services Contract (or both);</p> <p>(g) is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or</p> <p>(h) has been independently developed or acquired by the receiving Party.</p>
conflict of interest	may arise (without limitation) in the circumstances described in clause 2.3 of the DSS Panel Deed, and includes actual, potential or perceived conflicts of interest.
Contract Price	in Schedule 2 [MSP Services Terms and Conditions], means the price payable by the Commonwealth under a Services Contract.
Control	has the meaning in s 50AA of the <i>Corporations Act 2001</i> (Cth).
CPS Contract	<p>means a contract formed in accordance with clause 12, which comprises:</p> <p>(a) the executed CPS Tasking Request including any attachments to it and any Special Conditions;</p> <p>(b) the CPS Task Plan;</p> <p>(c) the MSP Terms and Conditions in Schedule 2 of this ESSA.</p>
CPS Contract Fee	means the amounts payable by the Commonwealth to the MSP for the provision of Capability Partner Services in accordance with the ESSA and the relevant CPS Contract.
CPS Resources	means those resources (including the MSP's Personnel and/or Subcontractor Personnel) required to perform the CPS Annual Level of Effort in accordance with this ESSA and any CPS Contract.

CPS Services Period	means each 12-month period during which the MSP's provision of the CPS Annual Level of Effort is measured commencing on the date detailed in the CPS Contract.
CP Standing Offer Budget	means the allocation of an annual level of effort in accordance with Attachment 3 to Schedule 5.
CPS Task	means, as the context requires: <ul style="list-style-type: none"> (a) a Capability Partner Services task as described by the Commonwealth in a CPS Tasking Request; or (b) the Capability Partner Services in respect of which the Commonwealth has agreed a CPS Contract with the MSP in accordance with clause 12.
CPS Task Plan	means the plan for a CPS Task developed by the MSP in the form of Attachment A [CPS Task Plan] to Schedule 6 [Capability Partner Services – Template CPS Tasking Request].
CPS Tasking Request	means a request by the Commonwealth to the MSP in the form of Schedule 6 [Capability Partner Services – Template CPS Tasking Request].
Defence	Australian Government Department of Defence.
Defence Cost Principles	means the Defence Cost Principles available on the Department of Defence website as updated from time to time.
Defence Personnel	means any officers, employees, agents or advisers of Defence.
Defence Purposes	means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to that purpose.
Defence Security Requirement	means a requirement relating to security matters imposed by or under any of the following: <ul style="list-style-type: none"> (a) a provision of this ESSA; (b) a provision of a Contract; (c) the Defence Security Principles Framework; (d) the Defence Industry Security Program; another Commonwealth document or an agreement with the Commonwealth, so far as it relates to the Major Service Provider arrangements.
Defence Service Provider	means a person, other than Defence Personnel, involved in work relating to or connected with the Defence portfolio, or engaged by the Department of Defence or the Australian Defence Force.
Deliverable(s)	means any service, information, document, hardware, software or other thing which is, or is required by this ESSA or a Services Contract to be,

	delivered or provided by the MSP or its Personnel to the Commonwealth or its agents in the course of the performance of the MSP Services.
DISP	means the Defence Industry Security Program.
DPN	means Defence Protected Network.
DSPF	means the Defence Security Principles Framework, as updated from time to time.
DSN	means Defence Secret Network.
DSS Panel	Defence Support Services Panel.
DSS Panel Deed	Deed of Standing Offer between the Commonwealth and DSS Service Providers.
Details Schedule	means Schedule 1 of this ESSA.
Effective Date	means the date specified in Item 6 of Schedule 1 – ESSA Details or, if no date is specified, 1 February 2018.
ESSA	Enterprise Support Services Agreement.
Foreground IP	means all IP created under or in connection with the ESSA or a Services Contract.
General Interest Charge Rate	means the Australian Taxation Office sourced general interest charge rate determined under section 8AAD of the <i>Tax Administration Act 1953</i> (Cth).
Government Furnished Material	means any material (which may include access to the DPN and DSN) to be provided to the MSP under a Services Contract by the Commonwealth and which may be listed in the relevant Services Contract.
Initial Services Period	means the period referred to in clause 3.1 of this ESSA.
Insolvency Event	<p>means, in respect of a person:</p> <ul style="list-style-type: none"> (a) the person becoming bankrupt or insolvent; (b) the person becoming subject to one of the forms of external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth), including: <ul style="list-style-type: none"> (i) the appointment of a person to administer a scheme or compromise in relation to the person in accordance with Part 5.1 of the <i>Corporations Act 2001</i> (Cth); (ii) the appointment of a controller or managing controller to the whole or any part of the assets or undertakings of the person in accordance with Part 5.2 of the <i>Corporations Act 2001</i> (Cth); (iii) the appointment of an administrator under Part 5.3A of the <i>Corporations Act 2001</i> (Cth) in relation to the person; or (iv) the appointment of a liquidator or provisional liquidator in relation to the person;

	<p>(c) the person becoming subject to any form of administration under the laws of a non-Australian jurisdiction which is the same as, or substantially equivalent to, one of those referred to in clause b of this definition;</p> <p>(d) the person is wound up by resolution or an order of the court;</p> <p>(e) the person suffers execution against any of its assets which has an adverse effect on the Service Provider's ability to perform its obligations under the Deed or a Contract;</p> <p>(f) the person makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;</p> <p>(g) the person becomes an insolvent under administration; or</p> <p>(h) the person ceases to carry on business.</p>
Integrated Work Packages (IWPs)	means the integrated work packages tasked to MSPs under an IWP Contract.
Integrated Work Partner Services	means the integrated work partner services described in clause 13 (Integrated Work Partner Services).
Intellectual Property (IP)	means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
IP Schedule	means the intellectual property schedule in the form included in an Approved Tasking Request.
IWP Contract	means a contract entered into in accordance with clause 13 of this ESSA.
IWP Contract Period	means each 6 month period as detailed in the Price and Payment Schedule detailing the Deliverables and milestones for completion in a planning period in relation to an individual IWP Contract.
IWP Contract Price	means the amounts payable by the Commonwealth for the to the MSP for the provision of Integrated Work Partner Services in accordance with the ESSA and the relevant IWP Contract.
IWP Delivery Plan	means the plan for the relevant IWP Contract in the form of Attachment H to the IWP Tasking Request as set out in Schedule 7 to this ESSA..
IWP Services Period	means the term of each IWP Contract.
IWP Statement of Work (SOW)	means a statement of work in relation to an IWP Task in the form set out in Attachment 2 to Schedule 7 [Integrated Work Partner Services].

IWP Tasking Request	means a request for Integrated Work Partner Services issued by the Commonwealth in the form set out in Attachment 1 of Schedule 7 [Integrated Work Partner Services].
Joint Objectives	the joint objectives of the Commonwealth and the MSP set out in clause 5.1 (Joint Objectives) of this ESSA.
Key Persons	means the individuals identified as such in the Services Management Plan or as replaced or notified from time to time by the MSP in accordance with clause 8.9 of the MSP Services Terms and Conditions.
KPIs or Key Performance Indicators	means the key performance indicators specified in the relevant Performance Management Framework.
KRA or Key Result Area	means the key result areas specified in the relevant Performance Management Framework.
Licence	means a royalty-free, irrevocable, world-wide, perpetual and non-exclusive licence, including a right to sub-license.
Loss	means any liability, loss, damage, compensation, costs and expenses.
Major Service Provider	includes the MSP, the MSP Team and Other MSPs.
Moral Rights	means any of the following: (a) a right of attribution of authorship; (b) a right not to have authorship falsely attributed; and (c) a right of integrity of authorship.
MSP Management Fee	means the management fee for Strategic Partner Services, as set out in Attachment 2 to Schedule 5 [Commercial Model] of this ESSA).
MSP Representative	means: (a) in relation to the ESSA, the representative specified in Item 3 of Schedule 1 – ESSA Details; or (b) in relation to a Services Contract, the representative specified in the relevant Approved Tasking Request, as the context requires.
MSP Services	Strategic Partner Services, Capability Services, Integrated Work Partner Services, and Other Services.
MSP Services Terms and Conditions	means the terms and conditions applicable to the performance of the MSP Services as set out in Schedule 2 of this ESSA.

MSP Team	subject to clause 9, companies that are set out in Item 1 of Schedule 1 [ESSA Details] of this ESSA; and a 'member of the MSP Team' or 'MSP Team' member refers to each of those companies.
Notifiable Incident	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).
NPST	means the Nuclear Powered Submarine Taskforce.
NSSG	means the National Shipbuilding and Sustainment Group.
Open Book Basis	means the provision of any pricing, costing and other information on an open book basis, to enable an assessment of actual costs and profit margins, cost savings, including a breakdown of all relevant preliminaries, insurances, labour, equipment, materials, Subcontract costs, margins, and discount rates used to calculate net present values in a clear and transparent manner.
Operations Board	means the operations board established in accordance with clause 6.4 of the ESSA.
Other MSPs	other providers of the MSP Services under an agreement on similar terms to this ESSA.
Other Services	services other than the MSP Services, in accordance with clause 14 of the ESSA.
Party	means a party to this ESSA; and 'Parties' has the corresponding meaning.
Per Diem Amount	means the amount that is equivalent to 60% of the Defence non-SES high cost centres meals and incidentals allowances (set out in the Travel Budget Calculator), rounded to the nearest dollar, GST inclusive, as adjusted from time to time.
Performance Payments	the amount payable by the Commonwealth to the MSP calculated in accordance with Part 5 of Schedule 5.
Performance Management Framework (PMF)	means the performance management framework set out in Schedule 4 [Performance Management Framework] of this ESSA.
Personal Information	has the same meaning as in the <i>Privacy Act 1998</i> (Cth).
Personnel	means personnel involved in any aspect of the performance or delivery of the MSP Services, this ESSA or a Services Contract.
Phase Out	means the set of activities undertaken by the MSP and the Commonwealth respect of, and to prepare for, the expiry or earlier termination of this ESSA or an IWP Contract (or both), or where there is a reduction in scope of the ESSA or an IWP Contract (or both).
Proportionate Liability Law	means any of the following: (a) <i>Civil Liability Act 2002</i> (NSW) – Part 4; (b) <i>Wrongs Act 1958</i> (Vic) – Part IVAA;

	<p>(c) <i>Civil Liability Act 2002</i> (WA) – Part 1F;</p> <p>(d) <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2;</p> <p>(e) <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A;</p> <p>(f) <i>Proportionate Liability Act 2005</i> (NT);</p> <p>(g) <i>Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001</i> (SA) – Part 3;</p> <p>(h) <i>Civil Liability Act 2002</i> (Tas) – Part 9A;</p> <p>(i) <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA;</p> <p>(j) <i>Corporation Act 2001</i> (Cth) – Part 7.10, Div 2A; and</p> <p>(k) <i>Australian Securities & Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.</p>
Provisional Payments	means the payment described in clause 7.4.1 of Schedule 5 [MSP Services - Commercial Model].
Reduction Amount	means the amount referred to in clause 5.2.7(a) of Schedule 2 [MSP Services Terms and Conditions].
Reduction Date	the date referred to in the clause 10.2.3(c) of Schedule 2 [MSP Services Terms and Conditions].
Reduction Notice	means a notice issued by the Commonwealth in accordance with clause 10.2.3(a)(i) of Schedule 2 [MSP Services Terms and Conditions].
Reimbursable Expenses	means the expenses referred to in clause 15.6 of the ESSA.
Related Body Corporate	has the meaning given in Section 9 of the <i>Corporations Act 2001</i> (Cth).
Reporting Period	means, in relation to an IWP Contract, the period over which the MSP's performance is measured, as identified in the relevant IWP Contract.
Review Period	means the quarterly period referred to in clause 2.1 of Schedule 4 [Performance Management Framework].
SERCAT	means the Service Categories that comprise the Service Spectrum in the ADF Total Workforce Model (or equivalent from time to time).
Services Contract	means a CPS Contract or an IWP Contract, or both, as the context requires.
Services Management Plan (SMP)	means the MSP's services management plan approved by the Commonwealth under clause 10.4 (as varied from time to time) that is a part of this ESSA in accordance with clause 10.4.
Services Period	has the meaning given in clause 3.1 of this ESSA including any such further periods as extended under clause 3.2 of this ESSA.
Skill Level	means the predetermined hierarchy governing the complexity of skills and experience of individuals furnishing the services that may be provided by a member of the DSS Panel under the DSS Panel arrangements.

Skill Set	means the discrete categories of services that may be provided under the DSS Panel, and in the case of an individual member of the DSS Panel, are those detailed in the annexes to the Scope of Services attached to the DSS Panel Deed.
Small Business	has the same meaning as in the <i>Australian Small Business and Family Enterprise Ombudsman Act 2015</i> (Cth).
SME	has the meaning given in the paragraph 5.4 of the Commonwealth Procurement Rules, namely an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. SME includes but is not limited to Small Businesses on the DSS Panel.
Special Conditions	means any terms and conditions that are designated as special conditions in an Approved Tasking Request.
SPO	means a Defence Systems Program Office.
SPPMO	means the Strategic Panels Program Management Office.
Statement of Work (SOW)	means an IWP Statement of Work.
Strategic Partner Services	means the strategic partner services set out in clause 11.1 of this ESSA.
Steering Committee	means the steering committee established in accordance with clause 6.3 of the ESSA.
Subcontractor	means any person, other than the Commonwealth, for the purposes of provision of the MSP Services, furnishes goods or services to the MSP or indirectly to the MSP through another person; and "Subcontract" has the corresponding meaning.
Subcontractor Personnel	means any officer, employee or agent of a Subcontractor.
Suspension Notice	means a notice issued by the Commonwealth in accordance with clause 8.12.1 of Schedule 2 [MSP Services Terms and Conditions].
Tasking Request Period	means the term of each Approved Tasking Request as specified in the relevant Approved Tasking Request.
Tax Invoice	means a tax invoice in the form as determined by the Australian Taxation Office.
Technical Data	means all technical know-how and information reduced to material form produced, acquired or used by the Service Provider or Subcontractors in relation to the MSP Services and includes all data, databases, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, training materials, source code, software design data, test results, software and software updates and other

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	items describing or providing information relating the MSP Services or their operations.
Third Party IP	means that IP which is owned by a person other than the Commonwealth or the MSP and is embodied in the MSP Services, or attached to the MSP Services or is otherwise necessarily related to the functioning or operation of the MSP Services, and is limited to commercial off the shelf and military off the shelf items.
WPS or Weighted Performance Score	means the score calculated in accordance with the relevant Performance Management Framework.
Working Day	in relation to the doing of an action in a place, means any day in that place other than: (a) Saturday, Sunday or a 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).

EXECUTED AS A DEED

SIGNED for and on behalf of:

THE COMMONWEALTH OF AUSTRALIA

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

In the presence of:

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

SIGNED, SEALED and DELIVERED for and on behalf of (the **MSP**) in accordance with the Corporations Act 2001 (Cth) per section 127(1).

.....
Signature of Chief Executive Officer

.....
Print name

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In the presence of:

.....
(signature of witness)

.....
(print name of witness)

.....
(date)

Schedule 1 ESSA Details

	Details	
Item 1. MSP Team		
Item 2. Commonwealth representative	Function	Commonwealth representative
	Administration of this ESSA	MR Rodger Phillips
Item 3. MSP representative	Function	MSP representative
	Administration of this ESSA.	
Item 4. Commonwealth address for Notices under ESSA	c/o Mr Rodger Phillips Strategic Panel Program Management Office Email: MSP.Administration@defence.gov.au Postal Address: BP25-3 PO Box 7938 Canberra BC ACT 2610 Physical Address: BP25-3 25 Brindabella Circuit Canberra Airport ACT 2609	
Item 5 MSP Address for Notices under ESSA	c/o Postal Address: Physical Address:	
Item 6. Effective Date	1 February 2018	

Schedule 2 MSP Services Terms and Conditions

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10	Disputes and Termination

1. **SERVICES CONTRACT FRAMEWORK**

1.1 **Interpretation and objectives**

- 1.1.1 In the Services Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meanings given to them by the Glossary at Part 8 of the ESSA. The Glossary also contains a list of documents referred to in these terms and conditions, and details of the version that is applicable to the Services Contract.
- 1.1.2 Without limiting the Joint Objectives in the Enterprise Services Support Agreement (**ESSA**) between the MSP and the Commonwealth, the objectives of the Services Contract are:
 - (a) to ensure that, for the Services Contract price, the MSP provides the MSP Services that are the subject of the Services Contract to the required level of performance, safety, quality and capability and otherwise in accordance with the Services Contract;
 - (b) to develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the MSP;
 - (c) to obtain value for money for the Commonwealth on an ongoing basis in relation to the provision of the MSP Services;
 - (d) to obtain for the MSP, as a commercial entity, a reasonable return on its investment when it performs the Services Contract efficiently and successfully, being a return that appropriately reflects the properly managed risks assumed by the MSP in the performance of the Services Contract;
 - (e) for the Commonwealth to have appropriate Intellectual Property rights arising out of or in connection with the provision of the MSP Services;

- (f) to facilitate the retention and enhancement of industry capabilities within Australia;
- (g) to encourage the most efficient use of resources in the performance of the MSP Services;
- (h) to work within a framework that ensures the safety of persons, materiel safety, and complies with all laws;
- (i) to assign MSP resources on a best-for-project basis and continually strive to achieve the provision of the best overall value for money MSP Services to the Commonwealth;
- (j) to achieve these joint objectives through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.

1.1.3 Without in any way affecting or overriding the other terms of the Services Contract, each party agrees to perform its obligations and enforce its rights under the Services Contract having regard to, and with the aim of, satisfying the Joint Objectives set out in the ESSA and the objectives described in clause 1.1.2.

1.2 Commencement

The Services Contract commences on the date detailed in the relevant CPS Contract or IWP Contract unless it is terminated earlier in accordance with the Services Contract or otherwise.

1.3 Entire Agreement

- 1.3.1 The Services Contract and the ESSA represent the Parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 1.3.2 If the ESSA is terminated, reduced or suspended by either Party, the clauses of the ESSA will continue to apply in relation to the Services Contract as if the ESSA had not been terminated, reduced or suspended.

1.4 Precedence of Documents

- 1.4.1 If there is any inconsistency between provisions of the Services Contract, a descending order of precedence shall be accorded to:
 - (a) the terms and conditions of the ESSA (including Schedule 1 of the ESSA);
 - (b) the Services Management Plan;
 - (c) in relation to a CPS Contract and an IWP Contract:
 - (i) the relevant Approved Tasking Request (including any Special Conditions);
 - (ii) these conditions of contract;
 - (d) in relation to IWP Contracts:
 - (i) the Statement of Work (**SOW**) and its Annexes;
 - (ii) the Attachments other than the SOW;

- (e) Schedule 4 (Performance Management Framework) and Schedule 5 (Commercial Model) of the ESSA: and
- (f) any other document incorporated by express reference or otherwise referenced as part of the Services Contract,

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

- 1.4.2 In the event of inconsistency between the provisions of documents at the same level in the list in clause 1.4.1, the Commonwealth Representative shall determine and advise the MSP how that inconsistency is to be resolved.

1.5 Non-exclusivity

- 1.5.1 The MSP acknowledges and agrees that nothing in the Services Contract prevents the Commonwealth, in its absolute discretion, from undertaking itself, or from entering into an arrangement with a person other than the MSP for the person to perform, services the same as or similar to the MSP Services.

2. ROLES AND RESPONSIBILITIES

2.1 Commonwealth Representative

- 2.1.1 The Commonwealth Representative named in the relevant Approved Tasking Request is responsible for administering the Services Contract on behalf of the Commonwealth.

2.2 MSP Representative

- 2.2.1 The MSP Representative named in the relevant Approved Tasking Request is responsible for administering the Services Contract on behalf of the MSP.

2.3 Notices

- 2.3.1 Unless the contrary intention appears, any notice or communication under the Services Contract shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or MSP Representative, as the case may be, at the address specified in the relevant Approved Tasking Request.

2.4 Governance Arrangements

- 2.4.1 Without limiting the ESSA, the MSP acknowledges that the Commonwealth may establish a range of governance arrangements or bodies related to the performance of the MSP Services under the Services Contract. The MSP shall support the operation of those arrangements and bodies, including by:
- (a) participating in those arrangements and bodies, including by providing appropriate MSP Personnel, as required by the Commonwealth; and
 - (b) cooperating with and collaborating in any governance arrangements and bodies in the performance of its work under the Services Contract so as to achieve the objectives set out in clause 1.1.2.
- 2.4.2 The Parties shall agree the form and role of such arrangements and bodies as soon as practicable after the Effective Date.
- 2.4.3 The MSP acknowledges and agrees that the MSP is not entitled to claim any additional cost or expense associated with compliance with this clause 2.4.

3. PROVISION OF THE SERVICES

3.1 Contracted Requirement

- 3.1.1 The MSP shall, for the Contract Price, provide the MSP Services in accordance with the Services Contract and the ESSA.

3.2 MSP Services

- 3.2.1 The MSP shall perform the MSP Services and fulfil all its other obligations set out in this Services Contract, and in particular shall:
- (a) ensure that the MSP Services provided under the Services Contract shall be fit for the purpose or purposes for which MSP Services of that kind would be reasonably expected to be applied by the Commonwealth;
 - (b) perform the relevant MSP Services in a manner that allows the MSP and the Commonwealth to adequately plan and manage the current and anticipated workloads associated with the Approved Tasking Request;
 - (c) ensure that all Personnel (whether MSP Personnel or Subcontractor Personnel) who perform the relevant MSP Services have the necessary skills and experience at the relevant Skill Sets and Skill Levels;
 - (d) provide the Deliverables, and achieve Approval of any Deliverables (if applicable), by the relevant dates and in the manner required;
 - (e) perform the MSP Services and deliver the Deliverables by the relevant dates and in the manner required by the Approved Tasking Request;
 - (f) for any KRA contained in an Approved Tasking Request, achieving or exceeding the minimum level of performance for the KRA required to be achieved by the MSP for each reporting period, as specified in the relevant Approved Tasking Request;
 - (g) in relation to those MSP Services to which no KRA relates, achieve a level of performance that a competent MSP would achieve when providing services of the same type as those MSP Services; and
 - (h) perform the MSP Services in a manner by which it can easily increase or decrease the volume and type of Services provided to assist the Commonwealth:
 - (i) to manage effectively the acquisition and transition into service of the relevant capability; and
 - (ii) to meet its obligations under, obtain the full benefit of, and exercise its rights in relation to, the Services Contract.
- 3.2.2 The MSP acknowledges that the MSP Services include all services, functions and responsibilities that are reasonably related to, or required for, the proper provision of the MSP Services, even if they are not otherwise expressly mentioned in the Services Contract.

3.3 Co-ordination and Co-operation

- 3.3.1 The MSP shall coordinate and cooperate with other Commonwealth contractors, including Other MSPs where relevant, and other entities in the delivery of the MSP Services under the Services Contract.

3.4 Language and Measurement

- 3.4.1 All information delivered as part of the MSP Services under the Services Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960*, or, if MSP Services are imported, units of measurement as agreed by the Commonwealth Representative.

3.5 Authorisations

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

3.6 Use of Commonwealth Property

- 3.6.1 The MSP shall not, without the prior written Approval of the Commonwealth:
- (a) use Commonwealth property other than for the purposes of the Services Contract;
 - (b) modify Commonwealth property;
 - (c) transfer possession or control of Commonwealth property to any other person; or
 - (d) create or allow to be created any lien, charge, mortgage or encumbrance over any Commonwealth property.

3.7 Continuous Improvement and Efficiencies

- 3.7.1 Nothing in this clause 3.7 limits the MSP's obligations under the ESSA, including the obligation to deliver the MSP Services in accordance with the Services Management Plan. In particular, in relation to the provision by the MSP of Strategic Partner Services, this clause 3.7 does not limit the provision by the MSP of those MSP Services.
- 3.7.2 The MSP shall continually monitor and consider, and shall ensure that the Commonwealth is kept informed in relation to, any possible efficiencies in the performance of the MSP Services and the potential application and effect of those efficiencies on the MSP Services.
- 3.7.3 The MSP shall, unless otherwise required by the Commonwealth, ensure that it continually incorporates or adopts more efficient processes and ways of performing the MSP Services during the Services Contract term.
- 3.7.4 The MSP shall regularly report to the Commonwealth on:
- (a) the efficiencies that the MSP has incorporated or adopted and the actual effect that the incorporation or adoption of the efficiency has had on the performance of the MSP Services (including the MSP's costs of performing and the Commonwealth's costs of receiving the MSP Services); and

- (b) all efficiencies identified by the MSP during the period since the last review and the potential effect of those efficiencies on the performance of the MSP Services.

3.7.5 Without affecting the MSP's other obligations under this clause 3.7, the MSP shall:

- (a) co-operate with the Commonwealth and other Commonwealth contractors, including Other MSPs where relevant;
- (b) take all steps, and do or refrain from doing all such things; and
- (c) liaise with, and provide all relevant information to, the Commonwealth,

as may be reasonably required by the Commonwealth to assist the Commonwealth to benefit from any efficiencies, whether directly relevant to the Services Contract, the MSP Services or otherwise.

3.8 Approval of Deliverables

3.8.1 The MSP shall produce, update and deliver all:

- (a) Deliverables under a CPS Contract to the Commonwealth in accordance with the Approved Tasking Request for CPS Tasks;
- (b) Deliverables under an IWP Contract to the Commonwealth in accordance with the IWP Statement of Work.

3.8.2 After reviewing any Deliverable produced under a CPS Contract or IWP Contract, the Commonwealth Representative may Approve or not Approve the Deliverable.

3.8.3 If the Deliverable requires Approval, then the Commonwealth Representative shall, within 14 Working Days, advise the MSP in writing that the Deliverable is either Approved or not Approved.

3.8.4 If the Commonwealth Representative determines that any Deliverable subject to Approval submitted by the MSP is not in accordance with the requirements of the relevant CPS Contract or IWP Contract, the Commonwealth Representative shall notify the MSP accordingly in writing. In such event, the Deliverable shall not be considered to have been submitted and the Deliverable shall be rectified at no additional cost to the Commonwealth.

3.8.5 If, pursuant to clause 3.8.4, the Commonwealth Representative provides the MSP with notice of non-Approval of a Deliverable, the Commonwealth Representative shall advise the MSP of the reasons for non-Approval, and the Commonwealth and the MSP shall work collaboratively to identify the details of any corrective action to be taken by the MSP and the timeframe for taking that corrective action, before the Deliverable is reconsidered by the Commonwealth for Approval.

3.8.6 The Commonwealth Representative may not withhold Approval for minor omissions or defects in the Deliverable. However, in addition to the reasons for non-Approval advised in clause 3.8.5, any subsequent Approval of an update to a Deliverable shall be subject to the MSP addressing any identified minor omissions or defects to the satisfaction of the Commonwealth Representative.

3.8.7 Deliverables rectified in accordance with clause 3.8.6 will be subject the Approval process described in clauses 3.8.2 to 3.8.6.

4. INTELLECTUAL PROPERTY

4.1 Ownership

- 4.1.1 Nothing in the ESSA or any Services Contract affects the ownership of Background IP.
- 4.1.2 Ownership of all Foreground IP vests on its creation in the Commonwealth.
- 4.1.3 For any Foreground IP that vests in the Commonwealth, the Commonwealth has the exclusive right to apply for registration of that Foreground IP in all countries of the world and the MSP shall provide any assistance that the Commonwealth may reasonably require for that purpose.

4.2 Intellectual Property Licence

- 4.2.1 The MSP grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence (including the right to sub-license) in respect of all Background IP for Defence Purposes.
- 4.2.2 In order to grant the licence referred to in clause 4.2.1, the MSP shall obtain a licence to the Background IP of its Subcontractors only to the extent needed by the MSP to perform the MSP Services under the Services Contract and to grant the licence to the Commonwealth referred to in clause 4.2.1.
- 4.2.3 The Commonwealth grants to the MSP limited royalty free, non-exclusive licence in respect of all Foreground IP, including the right to sub-license, for the purposes of enabling the MSP to perform its obligations under the ESSA or the Services Contract as the case requires. If requested by the Commonwealth, the MSP shall provide to the Commonwealth a confidentiality deed poll in a form similar to Attachment H to the DSS Panel Deed duly executed by the MSP and relevant MSP Personnel.
- 4.2.4 The licence granted under clause 4.2.1 does not, and the licence granted under clause 4.2.2 need not, permit the Commonwealth, or a person on behalf of the Commonwealth, to commercialise the licensed IP.

4.3 Provision of Technical Data

- 4.3.1 If the Commonwealth is granted a licence under clause 4, the MSP shall provide, with the MSP Services, all Technical Data (**TD**) necessary for the Commonwealth to exercise its IP rights for the purposes permitted by that licence.
- 4.3.2 For all Foreground IP that vests in the Commonwealth, the MSP shall provide with the MSP Services all TD in existence that relates to that Foreground IP.
- 4.3.3 The MSP shall ensure that all TD provided to the Commonwealth will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth in the exercise of its IP rights under clause 4.
- 4.3.4 The Commonwealth may provide TD to a third party to enable the Commonwealth to fully exercise its rights under clause 4.

4.4 IP Schedule

- 4.4.1 The MSP shall maintain and update an IP Schedule in the form included in the Approved Tasking Request.
- 4.4.2 The MSP shall deliver updated versions of the IP Schedule by submitting contract change proposals in accordance with clause 8.1, to reflect the changes to the IP Schedule.

- 4.4.3 Without limiting clauses 4.4.1 and 4.4.2, the MSP shall, as soon as possible, but no later than the submission of the final claim for payment under clause 5.2, deliver an updated IP Schedule to the Commonwealth.
- 4.4.4 The Commonwealth reserves the right to withhold payment of the final claim for payment under clause 5.2 until the MSP complies with its obligations under clause 4.4.3.
- 4.4.5 For the avoidance of doubt, the IP Schedule is for record management purposes and does not in any way alter or limit this clause 4. If there is any inconsistency between this clause 4 and the IP Schedule, this clause 4 shall to the extent of the inconsistency prevail.

4.5 Release to Third Parties

- 4.5.1 If the Commonwealth makes available to another person any Background IP owned by the MSP, the Commonwealth shall obtain from that person a deed of confidentiality.

4.6 Moral Rights

- 4.6.1 The MSP represents and warrants that the provision of the MSP Services and use of any Deliverables for Defence Purposes or other purposes permitted by the Services Contract will not infringe the Moral Rights of the officers, employees or agents of the MSP or its Subcontractors or any other person.
- 4.6.2 The MSP shall ensure that none of its:
 - (a) officers, employees or agents;
 - (b) Subcontractors; or
 - (c) Subcontractors' officers, employees or agents,
 institute, maintain or support any claim or proceeding against the Commonwealth or its officers, employees or agents for infringement of any of their Moral Rights.

4.7 Ownership and Control of Deliverables

- 4.7.1 Subject to clauses 4.1 to 4.6, ownership of Deliverables, or partially completed Deliverables, shall pass to the Commonwealth upon creation.
- 4.7.2 For the avoidance of doubt, ownership of the MSP's internal working documents or drafts, produced by the MSP in relation to completed Deliverables, shall not pass to the Commonwealth under clause 4.7.1.
- 4.7.3 If ownership of the Deliverables vests in the Commonwealth, the MSP must deliver to the Commonwealth all Deliverables remaining in its possession upon expiration or termination of the Services Contract or the ESSA (unless otherwise provided in the Services Contract).

5. PRICE AND PAYMENT

5.1 Price and Price Basis

- 5.1.1 The price payable to the MSP is the amount determined in accordance with the Commercial Model in Schedule 5 of the ESSA, and set out in any relevant Approved Tasking Request, and is payable, subject to satisfactory performance of the MSP Services, in accordance with clauses 5.2 and 5.3 and any relevant Approved Tasking Request. Subject to clause 8.1 and the Commercial Model in Schedule 5 of the ESSA, all prices and rates listed in the Services Contract are unalterable.

- 5.1.2 The Commonwealth shall be entitled, without derogating from any other rights it may have under the Services Contract or otherwise at law, to reject payment of a claim until the MSP has completed, to the satisfaction of the Commonwealth Representative, that part of the MSP Services to which the claim relates.

5.2 Payment

- 5.2.1 The MSP shall submit a claim for payment in accordance with clause 5.3.
- 5.2.2 On receipt of a claim for payment the Commonwealth Representative shall either:
- (a) approve the claim if it is submitted in accordance with clause 5.2.1; or
 - (b) reject the claim if it is not submitted in accordance with clause 5.2.1 or on the basis of clause 5.1.2.
- 5.2.3 When a claim is approved under clause 5.2.2(a), the Commonwealth shall make payment:
- (a) within 30 days of receipt of the claim for contracts valued above \$1 million (GST inclusive), or
 - (b) within 20 days of receipt of the claim for contracts valued up to and including \$1 million (GST inclusive).
- If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 5.2.4 If payment of an amount due under a contract is made late, the Commonwealth shall pay the interest accrued on the parts of the payment which are paid late in accordance with Supplier Pay On-Time or Pay Interest Policy (RMG 417) issued by the Department of Finance.
- 5.2.5 When the Commonwealth Representative rejects the claim under clause 5.2.2(b), the Commonwealth Representative shall, within 14 days of receipt of the claim, notify the MSP in writing of the need to resubmit the claim and the reasons for rejection and any action to be taken by the MSP for the claim to be rendered correct for payment.
- 5.2.6 Upon receipt of a notice issued pursuant to clause 5.2.5, the MSP shall immediately take all necessary steps to make the claim for payment conform to the requirements of the Services Contract, or to complete the performance of the relevant MSP Services if clause 5.1.2 applies, and shall submit a revised claim to the Commonwealth Representative when such action is complete. The resubmitted claim shall be subject to the same conditions as if it were the original claim.
- 5.2.7 If the Commonwealth agrees to Approve Deliverables despite any minor omissions or defects or other non-compliance, or if any other MSP Services have not been performed in accordance with the relevant Services Contract, the Commonwealth may, after consultation with the MSP:
- (a) determine a revised Contract Price reflecting the reduction in value for money of the omission, defect or non-compliance (**Reduction Amount**); and
 - (b) exercise its rights under clause 10.3 in respect of the Reduction Amount.

5.3 Claims for Payment

- 5.3.1 The MSP shall be entitled to submit claims for payment in accordance with the Approved Tasking Request.

5.3.2 All claims for payment submitted by the MSP shall:

- (a) be correctly addressed to the Commonwealth Representative, calculated in accordance with the Services Contract and otherwise meet the requirements of the Services Contract;
- (b) subject to clause 5.2.7, only claim payment for MSP Services that meet the requirements of the Services Contract;
- (c) be in the form of a valid tax invoice in accordance with clause 5.4;
- (d) contain a statement by the MSP that the information in the claim is complete and accurate;
- (e) contain the following information:
 - (i) the title of the MSP Services and the name of the MSP Representative;
 - (ii) the name and phone number of the Commonwealth Representative;
 - (iii) the Services Contract number and details of the relevant MSP Services to which the invoice relates;
 - (iv) resource expenditure/consumption for the relevant period, and where applicable invoice build-up details in the relevant form attached to Attachment 4 to Schedule 5.
 - (v) the amount of the claim;
 - (vi) in relation to any claim for Reimbursable Expenses, the amount of the claim; and
- (f) be accompanied by any documentation requested by the Commonwealth Representative or required by the Approved Tasking Request in order to establish that the MSP Services meet the requirements of the Services Contract or that the claim is in accordance with the Services Contract, and by satisfactory evidence to substantiate a claim for reimbursement of Reimbursable Expenses.

5.4 Taxes and Duties

- 5.4.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Services Contract shall be met by the MSP and shall be included within the price for that Services Contract.
- 5.4.2 The price set out in the relevant Attachment to a Services Contract includes Goods and Services Tax (**GST**) for the Services to be delivered under that Services Contract which are taxable supplies within the meaning of the GST Act.
- 5.4.3 The MSP shall submit each claim for payment in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the MSP in relation to that claim for payment as a separate item.
- 5.4.4 Where the MSP incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the MSP shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 5.4.5 If the Commonwealth makes, or is assessed by the Australian Taxation Office (**ATO**) as having made, a taxable supply to the MSP under or in connection with a Services Contract, the Commonwealth shall be entitled to recover from the MSP upon presentation

of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.

- 5.4.6 Any amount of GST to be paid by the MSP under clause 5.4 shall be a debt recoverable by the Commonwealth in accordance with clause 10.3.

6. INSURANCE AND LIABILITY

6.1 MSP's Employees

- 6.1.1 The MSP shall indemnify the Commonwealth against liability of the Commonwealth for death of, or personal injury to, any MSP Personnel performing work under the ESSA or a Services Contract, except to the extent that such death or injury results from an unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting (but not including the MSP or MSP Personnel).

6.2 General Indemnity

- 6.2.1 The MSP shall indemnify the Commonwealth and Commonwealth Personnel (**those indemnified**) against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the MSP or MSP Personnel, except to the extent that the indemnity under clause 6.1.1 applies.
- 6.2.2 The MSP's liability to indemnify those indemnified shall be reduced proportionally to the extent that any unlawful or negligent act or omission on the part of those indemnified contributed to the liability, loss, damage, costs or expenses.
- 6.2.3 The Commonwealth shall hold on trust for all Commonwealth Personnel the benefit of the indemnity granted in clause 6.2.1 and that indemnity may be exercised by the Commonwealth as trustee or by the Commonwealth Personnel as beneficiaries under that trust.

6.3 Intellectual Property Indemnity

- 6.3.1 The MSP shall indemnify the Commonwealth Personnel and Commonwealth licensees and sub-licensees (**those indemnified**) 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 any of those indemnified which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
- (a) Infringement or alleged infringement of that third party's IP rights including Moral Rights when the infringement or alleged infringement arises out of any activity permitted under any licence or assignment referred to in clause 4 or otherwise under the Services Contract; or
 - (b) Breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission on the part of the MSP or any MSP Personnel, whether or not such act or omission constitutes a breach of the Services Contract.
- 6.3.2 For the purposes of this clause 6.3, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990, section 96 of the Designs Act 2003, section 183 of the *Copyright Act 1968*, and section 25 of the *Circuits Layout Act 1989*, constitute an infringement.

- 6.3.3 The Commonwealth shall hold on trust for all Commonwealth Personnel the benefit of the indemnity granted in clause 6.2.1 and that indemnity may be exercised by the Commonwealth as trustee or by any Commonwealth Personnel as beneficiaries under that trust.

6.4 Liability

- 6.4.1 Subject to any legislative scheme in force that limits the liability of the MSP, the liability of the MSP shall be determined in accordance with the law determined by the High Court of Australia.
- 6.4.2 Despite clause 6.4.1, the MSP is not liable to pay compensation or damages under or in relation to the ESSA or a Services Contract, or make a payment under an indemnity in the ESSA or a Services Contract, for Loss resulting from damage to reputation or exemplary or punitive damages incurred by the Commonwealth or diminished revenue, profits or business opportunity suffered by the Commonwealth.

6.5 Exclusion of proportionate liability

- 6.5.1 The Parties agree that, to the extent permitted by law, the provisions of the ESSA and any Services Contract:
- (a) are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
 - (b) exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

7. WARRANTIES

7.1 General Warranty

- 7.1.1 The MSP warrants that:
- (a) it has, and will at all times during the Services Period under the ESSA or the term of this Services Contract, as the case may be, have the expertise, experience, capacity, and capability required to provide the MSP Services to the standard and requirements of the ESSA or the Services Contract, as the case may be;
 - (b) the MSP Services shall conform with and meet the requirements of the ESSA and the Services Contract as the case requires.
- 7.1.2 Without limiting any other provisions of the ESSA or the Services Contract, the MSP warrants that all work in the performance of the MSP Services will be undertaken in accordance with a standard of care, skill and diligence that would be exercised by a competent supplier of similar services.

7.2 Capability Partner Services Warranty

- 7.2.1 In relation to a CPS Contract, the MSP shall ensure and warrant that the MSP, and any specified personnel in any CPS Contract have, and will continue to have, during the Services Period or the term of the relevant CPS Contract:
- (a) the necessary expertise, skill, experience, capacity and capability required to perform the Capability Partner Services in accordance with a standard of care, skill and diligence that would be exercised by a competent supplier of such services; and

- (b) that the Capability Partner Services will conform with the requirements of this ESSA and the relevant CPS Contract.

7.3 Integrated Work Partner Services Warranty

7.3.1 In relation to an IWP Contract, the MSP shall ensure and warrants that the MSP Services (including any advice and recommendations) shall:

- (a) be consistent with the Commonwealth's requirements and obligations under any Commonwealth Agreements as notified to the MSP and to which the relevant MSP Services relate; and
- (b) allow the Commonwealth to meet its obligations under any Commonwealth Agreements as notified to the MSP and to which the relevant MSP Services relate.

7.4 Acknowledgement and agreement in relation to relevant capability

7.4.1 The MSP acknowledges that:

- (a) the Commonwealth relies upon the skill, care, diligence and experience of the MSP in performing the MSP Services to fulfil the Commonwealth's obligations under, obtain the full benefit of, and exercise rights in relation to, the relevant capability set out in the Approved Tasking Request; and
- (b) a failure by the MSP to perform the MSP Services in accordance with the ESSA or the Services Contract (as the case may be), including in a timely manner or to the required standard, may result in the Commonwealth being in breach of, unable to obtain the full benefit of, or exercise its rights in relation to, the relevant capability set out in the Approved Tasking Request and suffering loss and damage.

7.4.2 The MSP shall ensure that:

- (a) it does not, through its acts or omissions, and the MSP's Personnel and any Subcontractor's Personnel do not, through their acts or omissions, do or omit to do anything which the MSP knows will place the Commonwealth in breach of, unable to obtain the full benefit of, or to exercise its rights in relation to, the relevant capability set out in the Approved Tasking Request; and
- (b) it does all that it reasonably can to mitigate any loss and damage suffered by the Commonwealth arising from the Commonwealth being in breach of, unable to obtain the full benefit of, or to exercise its rights in relation to, the relevant capability set out in the Approved Tasking Request when that is caused or contributed to by the MSP, the MSP's Personnel or any Subcontractor's Personnel.

8. CONTRACT MANAGEMENT

8.1 Change to the Contract

- 8.1.1 The ESSA and the Services Contract (including any Approved Tasking Request) may only be changed in accordance with this clause 8.1. The Parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the change is agreed in accordance with this clause 8.1.
- 8.1.2 Either party may propose a change to the Services Contract or to the ESSA.
- 8.1.3 The ESSA will be changed if the change is in writing and signed by the Commonwealth Representative in Item 2 of Schedule 1 [ESSA Details] of the ESSA, and the MSP.

- 8.1.4 The Services Contract will be changed if the change is in writing and is signed by the relevant Commonwealth Representative and the MSP Representative as detailed in the relevant Approved Tasking Request.
- 8.1.5 A change takes effect on the date on which the change is signed by the Parties in accordance with this clause 8.1, or if signed on separate days, the date of the last signature.
- 8.1.6 The parties agree that anything done by the parties in working together as referred to in clause 8.1 will not result in:
- (a) any express provision of the ESSA or the Services Contract being amended;
 - (b) any right or entitlement additional to those expressly conferred by the ESSA or in the Contract being created;
 - (c) any rights under the ESSA or the Services Contract being waived; or
 - (d) any obligations under the ESSA or the Services Contract being released,
- and the parties agree that they will not assert that any of those things has occurred on the basis of a party acting in accordance with this clause 8.1.

8.2 Confidential Information

- 8.2.1 Each Party shall ensure that Confidential Information provided or made available by the other party is not disclosed, except to the extent the disclosure is:
- (a) required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by parliament or a parliamentary committee;
 - (b) necessary for the conduct of any legal proceedings arising in relation to the Services Contract;
 - (c) necessary for a party to fulfil its obligations under the Services Contract; or
 - (d) necessary to enable the Commonwealth to exercise its IP rights under the Services Contract,
- unless the other Party has provided its prior written consent to the disclosure.
- 8.2.2 Clause 8.2.1 does not apply to a disclosure to a professional adviser, insurer, financier or auditor of a Party.
- 8.2.3 The MSP shall, if required by the Commonwealth, ensure that MSP Personnel engaged in the performance of the ESSA or the Services Contract give a written undertaking in the form required by the Commonwealth prior to the disclosure of Confidential Information.
- 8.2.4 The MSP shall not, in marking information supplied to the Commonwealth, misuse the term "Confidential Information" or the MSP's equivalent. The marking of information as "Confidential Information" or equivalent is not determinative as to whether the information is Confidential Information for the purposes of the ESSA or the Services Contract.
- 8.2.5 The MSP 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 making of a demand by the Commonwealth; or

- (b) the time the documents and other material are no longer required for the purposes of the ESSA or the Services Contract, as the case may be.

- 8.2.6 If the Commonwealth makes a demand under clause 8.2.5, and the MSP has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then the MSP 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.
- 8.2.7 The MSP, 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.
- 8.2.8 Return or destruction of the documents referred to in this clause 8.2 does not release the MSP from its obligations under the Services Contract.

8.3 Assignment and Novation

- 8.3.1 Neither Party may, without the prior written consent of the other, assign in whole or in part, its rights under the ESSA or the Services Contract.
- 8.3.2 If the MSP proposes to enter into any arrangement that will require the novation of:
 - (a) the ESSA – it must notify and seek the consent of the Commonwealth Representative identified in Item 2 of Schedule 1 of the ESSA at least 60 Working Days prior to the proposed novation;
 - (b) the Services Contract – it must notify and seek the consent of the Commonwealth Representative set out in the Approved Tasking Request at least 25 Working Days prior to the proposed novation.

8.4 Negation of Employment and Agency

- 8.4.1 Neither the MSP nor MSP Personnel are by virtue of the ESSA or a Services Contract, taken to be an employee or agent of the Commonwealth.
- 8.4.2 Except as set out in the Services Contract or ESSA, the MSP has no authority to bind the Commonwealth or act on the Commonwealth's behalf at any time. The MSP is not entitled to any benefit from the Commonwealth usually attributable to an employee.
- 8.4.3 The MSP must not represent itself, and must ensure that the MSP personnel and Subcontractors do not represent themselves, as being employees or agents of the Commonwealth.

8.5 Commonwealth Access

- 8.5.1 During the performance of the Services Contract or the Services Period under the ESSA, whichever is longer, the Commonwealth Representative, or any person authorised by the Commonwealth Representative, may reasonably require (including giving reasonable notice in the circumstances), and the MSP must permit, access to the MSP's premises, and access to any of its records or accounts relevant to or impacting on the performance of work under the ESSA or the Services Contract. The Commonwealth may copy any records or accounts for the purposes of the ESSA or the Services Contract.
- 8.5.2 Without limiting clause 8.5.1, the MSP acknowledges and agrees that:
 - (a) the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the MSP and Subcontractors in relation to the ESSA or the Services Contract;

- (b) the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the ESSA or the Services Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
 - (c) the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts for the purposes of clause 8.5.1.
- 8.5.3 Without limiting or otherwise affecting the generality of clause 8.5.1 or 8.5.2, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:
 - (a) investigating the reasonableness of proposed prices or costs in any change to the ESSA or to the Services Contract; and
 - (b) assessing the performance of the MSP, including against the Performance Management Framework or other performance metrics contained in the ESSA or the Services Contract
- 8.5.4 The Commonwealth agrees to comply with, and agrees to require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable MSP or Subcontractor safety and security requirements or codes of behaviour for the premises.
- 8.5.5 If the MSP enters into a Subcontract for the purposes of providing the MSP Services, the MSP agrees to ensure the Subcontract requires the Subcontractor to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Subcontractor's premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy records and accounts.

8.6 MSP Access

- 8.6.1 The Commonwealth shall allow the MSP and its relevant personnel access to Commonwealth Premises as necessary for the purpose of performing the ESSA and the Services Contract.
- 8.6.2 The MSP shall comply with, and ensure that persons afforded access under clause 8.6.1 to comply with, any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth Premises.
- 8.6.3 The Commonwealth retains the right to deny access on occasions to the MSP or its relevant personnel because of safety and security arrangements or as a result of failure by the MSP or Key Persons to comply with clause 8.6.2.
- 8.6.4 The MSP acknowledges that it may be provided with the ability to access Commonwealth-held information in connection with its performance of the Services, including through access to Commonwealth information technology systems. Without limiting or otherwise affecting the MSP's other obligations under the ESSA, the Services Contract or otherwise at law or in equity, the MSP shall not seek to access or use Commonwealth-held information except to the extent strictly required for the provision of the MSP Services.

8.7 Subcontracts

- 8.7.1 The Parties acknowledge that the MSP may Subcontract part or the whole of the work under the ESSA or the Services Contract.
- 8.7.2 Despite clause 8.7.1, the MSP shall ensure it Subcontracts in accordance with the Services Management Plan and in accordance with clause 17 (Supply Chain Management) of the ESSA.

- 8.7.3 The MSP shall ensure that each Subcontractor:
- (a) has sufficient expertise to carry out the work under the Subcontract;
 - (b) has in place adequate resources and Personnel who are appropriately experienced and skilled to perform the Subcontractor's obligations under the Subcontract including, without limitation, who have the required Skill Levels and Skill Sets to perform the Subcontractors obligations;
 - (c) has in place adequate security arrangements to satisfy the security and confidentiality provisions of the Subcontract as required by the Contract; and
 - (d) is of sufficient financial standing to enable it to perform its obligations under the Subcontract.
- 8.7.4 The MSP, by subcontracting any part of the work under the ESSA or the Services Contract shall not be relieved of its liabilities or obligations under the ESSA or the Services Contract as the case may be, and shall be responsible for all Subcontractors. The MSP shall not attempt to reduce its liability for any loss, damage, cost or expense suffered or incurred by the Commonwealth by claiming that a Subcontractor is a concurrent wrongdoer under proportionate liability legislation.
- 8.7.5 As permitted in the ESSA, but subject to clauses 17.3.1 and 17.3.2 of the ESSA, the MSP may engage Subcontractors (including members of the DSS Panel) on the terms and conditions set out in Schedule 3 [Template MSP Subcontractor Terms and Conditions], or such other terms as the MSP determines.
- 8.7.6 The MSP shall ensure that the work of Subcontractors is properly managed and supervised, and shall ensure performance of all Subcontractors' obligations under all Subcontracts.
- 8.7.7 The MSP shall not enter into a Subcontract under the Services Contract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012*.
- 8.7.8 The MSP, if requested by the Commonwealth Representative, shall provide the Commonwealth Representative with, in respect of its Subcontractors, the information set out in clause 7.3.1 of the DSS Panel Deed as required, and a copy of any Subcontract including any pricing information in the Subcontract.
- 8.7.9 The MSP acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractors' participation in the performance of the Services Contract, and the MSP shall obtain its Subcontractors' express, written consent to such disclosure.
- 8.8 Defence Security**
- 8.8.1 The Defence security obligations in clause 8.8 are in addition to the obligations set out in the ESSA.
- 8.8.2 The MSP shall ensure that MSP Personnel, Subcontractors and Subcontractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth and as notified from time to time.

Note to MSP: For information on security classification and required facility accreditations refer to Principle 16, Principle 40 and Principle 10 of the DSPF. For information on the Defence Industry Security Program refer to Principle 16 of the DSPF. For access to the DSPF participants should contact the Contact Officer.

- 8.8.3 The security classification of work to be performed under the Services Contract will be up to and including the level specified in the Approved Tasking Request. The MSP shall:
- (a) if required in the Approved Tasking Request, obtain and maintain membership of DISP in accordance with Principle 16 of the DSPF;
 - (b) if not required to be a member of the DISP, comply with the classification and protection of official information requirements of Principle 10 of the DSPF;
 - (c) ensure that all required personnel (if any) possess a personnel security clearance specified in the Approved Tasking Request, and comply with the requirements and procedures of Principle 40 of the DSPF; and
 - (d) possess a facility accreditation (if any) and an ICT system accreditation (if any) specified in the Approved Tasking Request and comply with the requirements and procedures of Principle 16 in the DSPF.
- 8.8.4 With respect to security classified information, the MSP shall:
- (a) ensure that no security classified information furnished or generated under the ESSA or the Services Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative;
 - (b) promptly report to the Commonwealth Representative any security incident, as defined by the DSPF, including instances in which it is known or suspected that security classified information furnished or generated under the ESSA or the Services Contract has been lost or disclosed to unauthorised parties, including a representative of another country; and
 - (c) ensure that all security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Principle 71 of the DSPF.
- 8.8.5 If there has been a breach by the MSP, MSP Personnel, a Subcontractor, or Subcontractor Personnel, of clause 8.8, the Commonwealth Representative may give the MSP a notice of termination for default under clause 10.2.

8.9 Key Persons and other Personnel

- 8.9.1 The MSP shall ensure that the MSP Services are performed:
- (a) in the case of Strategic Partner Services, by the Key Persons identified in the Services Management Plan and any other Personnel who are suitably qualified, with appropriate skills and experience;
 - (b) in the case of Capability Partner Services and Integrated Work Partner Services:
 - (i) by a sufficient number of Personnel who are suitably qualified, with appropriate skills and experience in the relevant Skill Sets and Skill Levels identified in the Approved Tasking Request; and
 - (ii) in the case of Integrated Work Partner Services, by any Personnel (if any) specified in the Approved Tasking Request or by the Personnel identified in the relevant IWP Delivery Plan, as the case requires; and
 - (c) hold all appropriate and current certificates, authorisations or accreditation at all times during the provision of the MSP Services.

- 8.9.2 If any Key Persons or other specified Personnel are unable to undertake work in respect of the Services Contract for a period of two consecutive weeks or more, the MSP shall immediately discuss this with the Commonwealth, and if required by the Commonwealth, the MSP shall provide replacement personnel acceptable to the Commonwealth at no additional charge and at the earliest opportunity.
- 8.9.3 The Commonwealth may, at its absolute discretion, give notice requiring the MSP to remove a Key Person or other Personnel from work in respect of the Services if the Commonwealth determines that the Key Person or other Personnel has breached the security requirements in clause 8.8 or the ESSA.
- 8.9.4 If the Commonwealth gives notice to the MSP under clause 8.9.3, the MSP shall arrange for their replacement at the earliest opportunity with Personnel of appropriate skills and experience. Any replacement Key Person must be acceptable to the Commonwealth.
- 8.9.5 If the MSP is unable to provide a replacement Key Person acceptable to the Commonwealth or sufficient Personnel with suitable skills or in a sufficient time to enable the MSP to complete the MSP Services under the Services Contract without delay, the Commonwealth may:
- (a) give the MSP a notice of termination for default under clause 10.2.1(c) if a notice was issued under clause 8.9.3; or
 - (b) agree an alternative course of action with the MSP.
- 8.9.6 Any requirement to replace any of the Personnel during the course of a Services Contract (whether at the request of the Commonwealth or not) shall not constitute an act or event that is beyond the reasonable control of the MSP or its Subcontractors for the purposes of assessing the MSP's performance.
- 8.10 Post Defence Separation Employment**
- 8.10.1 Post Defence separation employment requirements are dealt with in the ESSA, and apply equally to this Services Contract.
- 8.11 Conflict of Interest**
- 8.11.1 Conflicts of interest are dealt with in the ESSA, and apply equally to this Services Contract.
- 8.12 Suspension of Services**
- 8.12.1 The Commonwealth Representative may, at any time and for any reason, give a direction to the MSP to suspend the performance of all, or specified, MSP Services being performed under a specific Services Contract for a specified period (**Suspension Notice**). The specified period commences on the effective date for suspension as set out in the Suspension Notice or, if no date is specified, from the date of the Suspension Notice. The specified period continues for the period specified in the Suspension Notice.
- 8.12.2 The Commonwealth may, at any time after issuing a Suspension Notice, give a direction to the MSP to recommence the performance of the whole or any part of the relevant MSP Services that are the subject of the Suspension Notice. The MSP shall promptly comply with such a direction.
- 8.12.3 Subject to clause 8.12.4, if the Commonwealth gives the MSP a Suspension Notice:
- (a) the MSP is not entitled to be paid for the relevant MSP Services not performed as a result of the suspension; and
 - (b) the Commonwealth shall only be liable for:

- (i) payments under the payment terms of the relevant Services Contract for MSP Services performed before the commencement of the suspension;
 - (ii) payments under the payment terms of the relevant Services Contract for any MSP Services the performance of which have not been suspended; and
 - (iii) the reasonable and substantiated costs incurred by the MSP during the period of suspension directed under clause 8.12.1 and directly related to the suspended MSP Services.
- 8.12.4 The MSP is not entitled to any amount pursuant to clause 8.12.3(b)(iii) if the reason for the Commonwealth giving the Suspension Notice is:
- (a) a failure by the MSP to comply with any of its obligations under this Services Contract; or
 - (b) any unlawful act or omission by the MSP or MSP Personnel.
- 8.12.5 The MSP shall take all reasonable steps to mitigate the costs and expenses incurred as a result of a suspension directed under clause 8.12.1.

9. POLICY AND LAW

9.1 Applicable Law

- 9.1.1 The laws of the Australian Capital Territory shall apply to the Services Contract. The courts of that Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Services Contract.

9.2 Australian Industry Capability & IPP

- 9.2.1 The MSP's obligations in relation to Australian Industry Capability and the Indigenous Procurement Policy are set out in the ESSA.

9.3 Policy Requirements

- 9.3.1 The MSP shall (without limitation) comply with, and require MSP's Personnel to comply with, the following Commonwealth and Defence policies of general application relevant or applicable to the ESSA or any Services Contract:

- (a) DI ADMINPOL, and in particular:
 - i. Annex C, AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
 - ii. Annex C, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual;
 - iii. Annex J, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
- (b) ADF alcohol policy detailed in DI(G) PERS 15-1;
- (c) Public Interest Disclosure policy detailed at:

<https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>;

- (d) Performance Exchange Scorecard policy. (This program is currently undergoing redevelopment and this clause will need to be amended when available);
 - (e) Defence Stocktaking and Assurance Checking policy as at <http://authoritslbweb/DEFLOGMAN/index.htm#85792.htm> Part 2, Volume 5, Chapter 17.
- 9.3.2 The MSP and its Subcontractors must fully comply with any judgment against it from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.
- 9.3.3 If the Services Contract is a High Value Contract within the meaning of the Commonwealth's Indigenous Procurement Policy (IPP) (<https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>), the mandatory minimum requirements for Indigenous participation under the IPP may apply
- 9.3.4 The MSP shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- 9.3.5 If the MSP becomes non-compliant with the WGE Act during the term of the Services Contract or the Services Period under the ESSA, the MSP shall notify the Commonwealth Representative.
- 9.3.6 The MSP must comply with the payment timeframes and interest payment requirements set out in the Commonwealth's Supplier Pay On-Time or Pay Interest Policy (RMG 417) (<https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417>), including as revised with effect from 1 January 2020, including where the MSP enters into other terms of engagement with Subcontractors as permitted by clause 17.3.1 of the ESSA.
- 9.4 Work Health and Safety**
- 9.4.1 The MSP shall comply with, and shall ensure that all Subcontractors comply with, the applicable WHS Legislation when performing work under the under the ESSA or the Services Contract including the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Commonwealth and any other person who, concurrently with the MSP, has a work health and safety duty under the WHS Legislation in relation to the same matter.
- 9.4.2 Without limiting the MSP's obligations under the Services Contract or at law (and subject to any relevant foreign government restrictions), the MSP shall provide, and shall use its best endeavours to ensure that a Subcontractor provides, to the Commonwealth within 14 days (or such other period as may be agreed by the Commonwealth in writing) of a request by the Commonwealth any information or copies of documentation requested by the Commonwealth and held by the MSP or a Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation in relation to the Contract.
- 9.4.3 The MSP shall not use Asbestos Containing Material in providing the MSP Services and shall not take Asbestos Containing Material onto Commonwealth Premises in connection with providing the MSP Services.
- 9.4.4 If a Notifiable Incident occurs at Commonwealth Premises or involves Commonwealth Personnel in connection with the MSP Services or the Services Contract, the MSP shall immediately report the incident to the Commonwealth, promptly provide the Commonwealth with copies of any notices or other documentation provided to or issued by the relevant Commonwealth, State or Territory regulator in relation to the Notifiable

Incident, and provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by Comcare of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AC563 Defence Work Health and Safety (WHS) Incident Report (as such form may be amended or replaced from time to time)) and provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.

- 9.4.5 To the extent not inconsistent with the express requirements of the Services Contract, the Commonwealth may direct the MSP to take specified measures that the Commonwealth considers reasonably necessary to comply with applicable legislation relating to work health and safety, including the WHS Legislation, in relation to the provision of the MSP Services. The MSP shall comply with the direction unless the MSP demonstrates to the reasonable satisfaction of the Commonwealth that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 9.4.6 The MSP shall ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the MSP Services for the purposes for which they are intended without the Commonwealth or Commonwealth Personnel contravening any applicable legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any Commonwealth or Defence policy relating to work health and safety.
- 9.4.7 From time to time the Commonwealth may advise the MSP of hazards to health and safety that have been identified at, or in the proximity of, Commonwealth Premises where MSP and/or Subcontractor personnel may be working.
- 9.4.8 On receipt of advice from the Commonwealth under clause 9.4.7, the MSP shall undertake necessary risk assessments, identify control measures and advise MSP and/or Subcontractor personnel of the hazards and risks and relevant control measures.
- 9.4.9 The MSP shall ensure that all Subcontracts contain equivalent provisions to those set out in this clause 9.4.

9.5 Environmental Obligations

- 9.5.1 The MSP shall perform its obligations under the Services Contract in such a way that:

- (a) the Commonwealth is not placed in breach of; and
- (b) the Commonwealth is able to support and to make full use of the MSP Services (including Deliverables) for the purposes for which they are intended without being in breach of,

any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999*.

9.6 Severability

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

9.7 Privacy

- 9.7.1 The MSP shall:

- (a) if it obtains Personal Information in the course of performing the ESSA or the Services Contract, use or disclose that Personal Information only for the purposes of the Services Contract subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
- (b) comply with its obligations under the *Privacy Act 1988* (Cth); and
- (c) as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.

9.7.2 The MSP shall notify the Commonwealth as soon as reasonably practicable if:

- (a) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 9.7, whether by the MSP, a Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the ESSA or the Services Contract, as the case may be; or
- (b) in relation to Personal Information obtained in the course of performing the ESSA or the Services Contract, as the case may be:
 - (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
 - (ii) it is approached by the Privacy Commissioner.

9.7.3 The MSP shall ensure that the MSP Personnel who deal with Personal Information for the purposes of the ESSA or the Services Contract, as the case may be, are aware of, and comply with, this clause 9.7.

9.7.4 The MSP shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the ESSA or the Services Contract, contains provisions to ensure that the Subcontractor complies with clauses 9.7.1, 9.7.2 and 9.7.4.

9.8 Payment of Subcontractors

9.8.1 The MSP shall ensure that any Subcontract entered into for the purposes of fulfilling its obligations under the ESSA or the Services Contract contains provisions that require the MSP to make any payments due to be made to the Subcontractor within 30 days of receiving a correctly rendered invoice from the Subcontractor, or such time specified in the Commonwealth's Supplier Pay On Time or Pay Interest Policy from time to time.

10. DISPUTES AND TERMINATION

10.1 Resolution of Disputes

10.1.1 If a dispute arising between the Commonwealth and the MSP in relation to a Services Contract or the MSP Services otherwise being performed in accordance with these terms and conditions cannot be settled by negotiation (including negotiation between senior line management of the parties) within 30 days, the parties will escalate the dispute through the governance framework established in accordance with this ESSA as follows:

- (a) to the Commonwealth lead on the SPPMO and the MSP operational lead;
- (b) if the dispute cannot be resolved within 5 Working Days under clause 10.1.1(a), to the Chair of the Steering Committee and the MSP senior executive representative on the Steering Committee.

10.1.2 If the dispute cannot be resolved within a further 10 Working Days, or such other period as agreed by the Parties, then either Party may refer the matter to alternative dispute resolution or commence litigation.

10.1.3 The MSP shall at all times during the dispute continue to fulfil its obligations under the Services Contract.

10.2 MSP Default

10.2.1 In addition to its other rights, the Commonwealth may immediately terminate the Services Contract or reduce the scope of the Services Contract by notice in writing to the MSP, if:

- (a) an Insolvency Event occurs;
- (b) the MSP becomes subject to any form of administration or assigns its rights otherwise than in accordance with the Services Contract;
- (c) the MSP commits any breach for which the Services Contract provides a notice of termination for default may be given;
- (d) the MSP fails to take action to remedy a default by the MSP of another obligation to be performed or observed under the Services Contract within 14 days of being given notice in writing by the Commonwealth Representative to do so or, when action is taken within 14 days, the MSP fails to remedy the default within the period specified in the notice;
- (e) the MSP breaches any of its obligations under clause 4, 8.8 or 9.4;
- (f) the MSP fails to obtain or maintain any Authorisation required to enable it to comply with its obligations under the Services Contract, except to the extent that the failure was outside of the MSP's reasonable control;
- (g) following discussions between the Parties, the Commonwealth reasonably considers that the MSP or a member of the MSP Team is unable or unwilling to resolve an actual, potential or perceived conflict of interest relating to the performance of the Services Contract to the Commonwealth's satisfaction;
- (h) in relation to an IWP Contract only, the MSP's performance for any two KRAs are in the Poor or Fair performance band for the same Reporting Period;
- (i) in relation to an IWP Contract only, the MSP's performance for the same KRA is in the Poor or Fair performance band for three or more consecutive Performance Periods; or
- (j) the MSP has otherwise regularly or persistently failed to meet a requirement of the Services Contract, whether or not the Commonwealth has required the MSP to remedy a default under clause 10.2.1(d).

10.2.2 If the Services Contract is terminated under this clause 10 or otherwise:

- (a) the MSP shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of the MSP Personnel, which contain or relate to any Confidential Information or which are security classified;
- (b) subject to clause 10.4, the parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;

- (c) subject to the process set out in clause 10.5, rights to recover damages, including full contractual damages, shall not be affected;
- (d) the MSP shall deliver to the Commonwealth the TD for Services produced prior to the date of termination, within 30 days of receipt of the notice of termination, or other period agreed by the parties;
- (e) the MSP shall return to the Commonwealth all Commonwealth property in its possession, power or control or in the possession, power or control of the MSP Personnel; and
- (f) to the extent that title in the Deliverables has passed to the Commonwealth, but the Deliverables have not yet been delivered to the Commonwealth, the MSP shall deliver such Deliverables to the Commonwealth.

10.2.3 If the scope of the Contract is reduced by the Commonwealth under this clause 10.2, clause 10.5 or otherwise:

- (a) The MSP shall:
 - (i) stop work in accordance with the notice to reduce the scope given by the Commonwealth (**Reduction Notice**);
 - (ii) comply with any written directions given to the MSP by the Commonwealth; and
 - (iii) mitigate all loss, costs (including costs of its compliance with any directions) and expenses in connection with the reduction in scope, including those arising from affected Subcontracts;
- (b) the MSP shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of the MSP Personnel, which contain or relate to any Confidential Information or which are security classified and which only relate to the part of the scope which has been reduced;
- (c) subject to clause 10.4, the parties shall be relieved from future performance of the part of the scope which has been reduced, without prejudice to any right of action that has accrued at the later of the date of service of the Reduction Notice or the effective date for the reduction of scope as set out in the Reduction Notice (**Reduction Date**);
- (d) subject to the process set out in clause 10.5, the Commonwealth's rights to recover damages, including full contractual damages, in respect of the circumstances leading to the reduction in scope or for any other reason shall not be affected;
- (e) the MSP shall, within 30 days after receipt of the Reduction Notice or other period agreed by the parties, deliver the TD for Services produced prior to the Reduction Date and which form part of the scope which has been reduced;
- (f) the MSP shall, within 30 days after receipt of the Reduction Notice or other period agreed by the parties, return all Commonwealth property in its possession, power or control or in the possession, power or control of the MSP Personnel and which only relate to the part of the scope which has been reduced; and
- (g) the Commonwealth shall either prepare, or require the MSP to prepare at no cost, a contract change proposal in accordance with clause 8.1 in order to give effect to the reduction, including to reduce the amounts payable to the MSP under this Contract to reflect the reduction in scope.

10.3 Right of Commonwealth to Recover Money

10.3.1 Without limiting the Commonwealth's rights or remedies under the ESSA or the Services Contract or at law, if the MSP owes any debt to the Commonwealth in relation to the ESSA or the Services Contract (including any amount paid to it under a Services Contract to which the MSP is not entitled), the Commonwealth may at its discretion do one or both of the following:

- (a) deduct the amount of the debt from payment of any claim; or
- (b) give the MSP written notice of the existence of a debt recoverable which shall be paid by the MSP within 30 days of receipt of notice.

10.3.2 If any sum of money owed to the Commonwealth is not received by its due date for payment, the MSP agrees that it will pay to the Commonwealth interest at the General Interest Charge Rate current at the date the payment was due for each day the payment is late.

10.4 Survivorship

10.4.1 Any provision of the Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Services Contract and any rights arising on termination or expiration shall survive, including provisions relating to Confidential Information, privacy, Intellectual Property and the right of the Commonwealth to recover money, Defence Security and any warranties, guarantees, licences, indemnities or financial and performance securities given under the Contract.

10.5 Termination or Reduction for Convenience

10.5.1 In addition to any other rights it has under the ESSA or the Services Contract, the Commonwealth may at any time terminate the Services Contract or reduce the scope of the Services Contract by notifying the MSP in writing.

10.5.2 If the Commonwealth Representative issues a notice under clause 10.5.1, the MSP shall:

- (a) stop or reduce work in accordance with the notice;
- (b) comply with any directions given to the MSP by the Commonwealth; and
- (c) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction, including those arising from affected Subcontracts.

10.5.3 The Commonwealth shall only be liable for:

- (a) payments under the payment terms of the Services Contract for work conducted before the effective date of termination or reduction of the Services Contract; and
- (b) any reasonable costs incurred by the MSP that are directly attributable to the termination or reduction,

provided that

- (c) the MSP substantiates these amounts to the satisfaction of the Commonwealth
- (d) the MSP complies with any directions given by the Commonwealth;

- (e) the MSP mitigates all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction, including those arising from affected Subcontracts; and
 - (f) the MSP is not entitled to any profit anticipated on any part of the Services Contract that is terminated or reduced for convenience, or to make any other claim (at law or in equity) arising out of or in connection with the termination or reduction for convenience.
- 10.5.4 The MSP shall, in each Subcontract, secure the right of termination and reduction and terms for compensation functionally equivalent to that of the Commonwealth under clause 10.5.

GENERAL CONDITIONS

DETAILS SCHEDULE

MSP **Team** represented by [insert]
ABN [insert] (**MSP**)

MSP Representative:	<i>(INSERT NAME)</i>	
Notice Details:	Address:	<i>(INSERT POSTAL ADDRESS)</i>
	Fax:	<i>(INSERT FAX NUMBER)</i>
	Email:	<i>(INSERT EMAIL ADDRESS)</i>

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

Contractor Representative:	<i>(INSERT NAME)</i>	
Notice Details:	Address:	<i>(INSERT POSTAL ADDRESS)</i>
	Fax:	<i>(INSERT FAX NUMBER)</i>
	Email:	<i>(INSERT EMAIL ADDRESS)</i>

Item	Information		
Item 1	Services:	<i>[INSERT OR ANNEX DESCRIPTION OF SERVICES INCLUDING ANY DELIVERABLES. IF AN ANNEX IS USED, INCLUDE THE FOLLOWING HERE: "REFER TO ANNEX".]</i>	
Item 2 (clause 1.1)	Term:	Effective Date:	<i>(INSERT DATE OF EXECUTION OF CONTRACT)</i>
		Commencement Date:	<i>(INSERT DATE SERVICES ARE TO COMMENCE)</i>
		Expiry Date:	<i>(INSERT DATE IF APPLICABLE)</i>
Item 3 (clause 4.1a)	Service Requirements:	<i>[INSERT SERVICE REQUIREMENTS]</i>	
Item 4 (clause 4.1a)	Location of Services:	<i>[INSERT LOCATION OF SERVICES]</i>	
Item 5 (clause 4.1a)	Timing for Delivery of Services:	<i>[INSERT TIMING FOR DELIVERY OF SERVICES]</i>	
Item 6 (clause 4.1b)	Personnel to be used in the Provision of the Services:	<i>(INSERT PERSONNEL TO BE USED IN THE PROVISION OF THE SERVICES IF APPLICABLE)</i>	

Item	Information		
Item 7 (clause 8.1)	Contract Price:	(INSERT AMOUNT AND MANNER OF PAYMENT, INCLUDING INSTALMENTS OR MILESTONES)	
Item 8 (clause 12.1)	Out of Pocket Expenses:	(INSERT REIMBURSIBLE OUT OF POCKET EXPENSES IF APPLICABLE)	
Item 9 (clause 19.1)	Contractor Insurance Requirements: Note to drafters: Insert other insurance policies as applicable.	Public liability insurance	<input type="checkbox"/> Yes / <input type="checkbox"/> No [INSERT AMOUNT] each and every public liability occurrence.
		Products liability insurance	<input type="checkbox"/> Yes / <input type="checkbox"/> No [INSERT AMOUNT] each and every product liability occurrence and in the annual aggregate for all product liability occurrences.
		Professional indemnity insurance	<input type="checkbox"/> Yes / <input type="checkbox"/> No [INSERT AMOUNT] each claim and in the annual aggregate for all claims. Such insurance shall be maintained for 7 years following the date on which the Contract expires (or any earlier termination).
Item 10 (clause 31.1)	Governing Law:	[INSERT JURISDICTION GOVERNING THE CONTRACT]	
Item 11	Special Conditions	<input type="checkbox"/> Yes / <input type="checkbox"/> No	

GENERAL CONDITIONS

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1. TERM

- 1.1 The Contract takes effect on the Effective Date. The Services commence on the Commencement Date and unless terminated earlier in accordance with the Contract or otherwise, end on the Expiry Date or completion of the Services if no Expiry Date is specified.

2. SERVICES

- 2.1 The Contractor agrees to provide the Services to the MSP and the MSP agrees to purchase the Services in accordance with the terms of the Contract.

3. CONTRACT DOCUMENTS

- 3.1 The Contract between the MSP and the Contractor comprises the General Conditions of Contract (including the Details Schedule) and the Special Conditions.
- 3.2 If there is any ambiguity or inconsistency between the documents comprising the Contract, the Special Conditions will have precedence to the extent of the ambiguity or inconsistency

4. PROVISION OF SERVICES

- 4.1 The Contractor shall provide the Services to the MSP:
- a. for the period, at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Details Schedule;
 - b. using the personnel identified in the Details Schedule (if any) or otherwise using appropriately qualified, skilled and experienced personnel;
 - c. ensure that the Services are provided with a standard of care, skill and diligence that would be exercised by a competent supplier of similar services and, without limiting clause 4.1a, in a timely manner;
 - d. to the satisfaction of the MSP Representative; and
 - e. in accordance with any other requirements specified in the Contract.
- 4.2 The Contractor shall promptly notify the MSP if the Contractor or any of its officers, employees, agents or subcontractors becomes aware that the Contractor will be unable to provide all or part of the Services in accordance with the requirements of this clause 4.
- 5. REPLACEMENT SERVICES**
- 5.1 If the Contractor fails to provide the Services in accordance with the Contract, the Contractor shall, at its cost, provide replacement Services or take any other action to rectify any aspect of the Services which do not comply with the Contract, as directed by the MSP.
- 6. NATURE OF ENGAGEMENT**
- 6.1 The MSP engages the Contractor to provide the Services as an independent contractor and not as the MSP's agent or employee. The Contractor has no authority to bind the MSP or act on the MSP's behalf at any time. The Contractor is not entitled to any benefit from the MSP usually attributable to an employee.
- 7. REMOVAL OF CONTRACTOR'S PERSONNEL**
- 7.1 The MSP, acting reasonably, may give notice requiring the Contractor to remove any personnel from work in respect of the Services. The Contractor shall promptly arrange for their replacement with personnel of appropriate qualifications, skills and experience acceptable to the MSP at no additional cost to the MSP.

8. PAYMENT

Note to MSP: While this clause 8 requires payment within 30 days of receipt of a correctly rendered invoice, the Australian Government has announced that the Pay On Time or Pay Interest Policy will be revised from 1 July 2019 to mandate a 20 calendar day payment time for contracts valued up to and including \$1 million. As such, clause 8 will need to be amended to reflect these revised timeframes The Commonwealth will work with the MSP to transition to

implementation of the policy change. However, the MSP is encouraged to transition to a 20 calendar payment time earlier if possible.

- 8.1 Subject to clause 10, the Details Schedule, and any Special Conditions, the MSP shall pay:
- a. the Contract Price to the Contractor within 30 days after receipt of a correctly rendered invoice; or
 - b. if the Details Schedule provides for the payment of the Contract Price by way of:
 - (i) instalments, the amount of the relevant instalment to the Contractor within 30 days after receipt of a correctly rendered invoice; or
 - (ii) milestone payments, the amount of the relevant milestone payment to the Contractor within 30 days after receipt of a correctly rendered invoice; and
 - c. if the Details Schedule provides for the reimbursement of Out of Pocket Expenses, the amount of those Out of Pocket Expenses which have been incurred by the Contractor in accordance with the Contract, within 30 days after receipt of a correctly rendered invoice.
- 8.2 If the MSP fails to pay a correctly rendered invoice within 30 days after the date of receipt and the Contract Price is valued up to and including A\$1 million, the MSP shall pay interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day that the payment was late.
- 8.3 The MSP shall pay interest whether or not the Contractor has submitted a separate invoice for the interest amount. Interest shall only be payable in accordance with this clause 8 if the interest amount exceeds A\$10.

9. INVOICE

- 9.1 An invoice is correctly rendered under clause 8 if:
- a. the amount claimed for payment is calculated in accordance with the Contract and the Details Schedule provides that the amount is due for payment;
 - b. the Services meet the requirements of the Contract; and
 - c. the invoice:
 - (i) is set out in a manner that enables the MSP to ascertain the Services to which the invoice relates and that part of the Contract Price payable in respect of those Services;
 - (ii) if Item 8 of the Details Schedule provides for the reimbursement of Out of Pocket Expenses, the invoice separately itemises all expenses for which reimbursement is being sought. Copies of invoices substantiating the Out of Pocket Expenses shall be attached to the invoice;
 - (iii) contains the Contract number, the name and phone number of the Contractor Representative and is addressed as specified in the Details Schedule; and
 - (iv) is a valid tax invoice in accordance with the GST Act.
- 9.2 The Contractor shall promptly provide to the MSP such supporting documentation and other evidence reasonably required by the MSP to substantiate performance of the Contract by the MSP or payment of the Contract Price by the MSP.

10. DEDUCTION FROM PAYMENT

- 10.1 The MSP may deduct from any payment of the whole or part of the Contract Price any taxes, charges, insurance premiums or levies imposed by law upon the MSP which are ordinarily required to be paid by the Contractor as a result of the MSP providing the Services. In doing so, the Contractor will be the entity that is taken to be complying with legislative requirements and the MSP will not be seen to be treating the Contractor or any of its officers, employees, agents and subcontractors as anything other than an independent contractor.

11. PRICE BASIS

11.1 The Contract Price is inclusive of:

- a. GST and all taxes, duties and government charges imposed or levied in Australia or overseas;
- b. remuneration to the Contractor's officers, employees, agents and subcontractors, including salaries, wages, fees, superannuation, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract with the MSP or under any award, statute or at common law;
- c. costs in respect of procuring and maintaining the insurances required under clause 19; and
- d. costs of compliance with all other statutory, award or other legal or contractual requirements with respect to the MSP's officers, employees, agents and subcontractors.

12. OUT OF POCKET EXPENSES

Note to MSP: Out of Pocket expenses must not be set at a level, or include anything, that is inconsistent with the clauses of the ESSA relating to Travel, Accommodation, etc.

12.1 Except as provided for in the Details Schedule, the Contractor shall perform its obligations under the Contract at its own cost and neither the Contractor nor any of its officers, employees, agents and subcontractors will be entitled to be reimbursed for any Out of Pocket Expenses incurred in providing the Services.

13. WARRANTY

13.1 The Contractor warrants that:

- a. the Services will be undertaken in accordance with the standard of care, skill and diligence that would be exercised by a competent supplier of similar services; and
- b. the Services will be provided by appropriately qualified, skilled and experienced personnel.

14. USE OF MSP ITEMS

14.1 The Contractor shall not, and shall ensure that its officers, employees, agents and subcontractors do not, use any MSP Items for any purpose other than:

- a. a purpose for which that MSP Item was designed, manufactured or constructed; and
- b. for the provision of the Services.

14.2 The Contractor shall protect all MSP Items from loss or damage, maintain the MSP Items in good order and promptly return the MSP Items to the MSP upon request by the MSP, when they are no longer required to provide the Services or otherwise upon termination of the Contract.

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

15. INTELLECTUAL PROPERTY

15.1 Subject to clause 15.2, ownership of all Intellectual Property created under or in connection with this Contract ('**Foreground IP**') vests on its creation in the Commonwealth. The Contractor agrees to execute all documents and do all acts and things required by the Commonwealth to give effect to this clause.

15.2 The vesting of ownership in the Commonwealth of all Foreground IP does not apply to pre-existing Intellectual Property or Intellectual Property created other than as a result of the performance of this Contract, in respect of any Deliverables, or that is embodied in, or attaches

to, the Services, or is otherwise necessarily related to the functioning or operation of the Services ('**Background IP**'). In such circumstances, the Contractor grants to the Commonwealth (or shall ensure the grant of) a royalty free, irrevocable, non-exclusive, perpetual, worldwide licence (including the right to sub licence) of the Background IP for Defence Purposes.

- 15.3 The Contractor grants to the MSP (or shall ensure the grant of) a royalty free, irrevocable, non-exclusive licence (including the right to grant a sub-licence to the Commonwealth) of the Background IP to the extent needed by the MSP in relation to, and only for the purpose of, the Services to which this Contract relates.
- 15.4 As permitted by law, the Contractor unconditionally and irrevocably:
- a. consents, and will obtain all other necessary unconditional and irrevocable consents, to any act or omission that would otherwise infringe any moral rights in any work that is included in a deliverable or material comprised in the Services, whether occurring before or after a consent is given; and
 - b. waives, and will obtain all other necessary unconditional and irrevocable written waivers of, moral rights,
- for the benefit of the Commonwealth, its licensees and anyone authorised by any of them.
- 15.5 The Contractor warrants the provision of the Services (and the Commonwealth's use of any deliverable or material developed or supplied under the Contract) will not infringe the Intellectual Property or moral rights of any person.
- 15.6 If a licence is granted to the Commonwealth or the MSP by the Contractor under this clause 15, the Contractor shall provide, with the Services, all Technical Data (**TD**) necessary for the Commonwealth or the MSP, as the case may be, to exercise its Intellectual Property rights for the purposes permitted by the relevant licence.
- 15.7 For all Foreground IP that vests in the Commonwealth, the Contractor shall provide with the Services all TD in existence that relates to that Foreground IP.
- 15.8 The Contractor shall ensure that all TD provided to the Commonwealth or the MSP, as the case may be, will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth or the MSP, as the case may be, in the exercise of its respective IP rights under clause 15.
- 15.9 The Contractor agrees that the Commonwealth may provide TD to a third party to enable the Commonwealth to fully exercise its rights under clause 15.

16. TERMINATION

- 16.1 The MSP may terminate the Contract if the Contractor:
- a. does not provide, or notifies the MSP that it will be unable to provide, all of the Services for the period, at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Details Schedule;
 - b. does not provide replacement personnel acceptable to the MSP in accordance with clause 7;
 - c. breaches the Contract and the breach is not capable of remedy;
 - d. does not remedy a breach of the Contract which is capable of remedy within the period specified by the MSP in a notice of default issued by the MSP to the Contractor requiring the Contractor to remedy the breach;
 - e. becomes bankrupt or insolvent;
 - f. breaches any of its obligations under clause 18; or
 - g. breaches its obligations under clause 24.

17. TERMINATION FOR CONVENIENCE

- 17.1 In addition to any other rights it has under the Contract, the MSP may at any time terminate the Contract by notifying the Contractor in writing. If the MSP issues such a notice, the Contractor shall stop work in accordance with the notice, comply with any directions given by the MSP and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected subcontracts.
- 17.2 The MSP will only be liable for payments to the Contractor for Services provided to the MSP before the effective date of termination and any reasonable costs incurred by the Contractor that are directly attributable to the termination, if the Contractor substantiates these amounts to the satisfaction of the MSP.
- 17.3 The Contractor will not be entitled to profit anticipated on any part of the Contract terminated.

18. SECURITY AND SAFETY

- 18.1 If the MSP provides, or facilitates, the Contractor with access to any place, area or facility, the Contractor shall comply with any security and safety requirements notified to the Contractor by the MSP or of which the Contractor is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.
- 18.2 The Contractor shall:
- a. comply with, and shall ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract; and
 - b. where applicable, comply with, and shall ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the MSP, the Contractor or the subcontractors (as the case may be) and any other person who, concurrently with the MSP, the Contractor or the subcontractor (as the case may be), has a work health and safety duty under the WHS Legislation in relation to the same matter.
- 18.3 Without limiting the Contractor's obligations under the Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Services, provide, and shall use its reasonable endeavours to ensure that a subcontractor provides, to the MSP within 14 days (or such other period as agreed by the MSP in writing) of a request by the MSP any information or copies of documentation requested by the MSP and held by the Contractor or subcontractor (as the case may be) to enable the MSP to comply with its obligations under the WHS Legislation.
- 18.4 The Contractor shall not use Asbestos Containing Material in providing the Services and shall not take any Asbestos Containing Material onto MSP or other premises in connection with providing the Services.
- 18.5 If a Notifiable Incident occurs in connection with work carried out under the Contract:
- a. on MSP premises, or other premises provided by the MSP for the purposes of delivering the Services;
 - b. which involves MSP personnel; or
 - c. which involves a MSP specified system of work;
- the Contractor shall:
- d. immediately report the incident to the MSP;
 - e. promptly provide the MSP with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
 - f. provide the MSP with such other information as may be required by the MSP to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation; and

- g. provide other reasonable assistance required by the MSP to undertake mandatory incident reporting.
- 18.6 To the extent not inconsistent with the express requirements of the Contract, the MSP may direct the Contractor to take specified measures that the MSP considers reasonably necessary to comply with applicable legislation relating to work health and safety, including the WHS Legislation, in relation to the provision of the Services. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the MSP that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 18.7 The Contractor shall ensure that the MSP and MSP personnel are able to make full use of the Services for the purposes for which they are intended, and to maintain, support and develop the Services, without the MSP or MSP personnel contravening any applicable legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any MSP policy or other applicable policy as notified to the MSP by the MSP relating to work health and safety.
- 18.8 From time to time the MSP may advise the Contractor of hazards to health and safety that have been identified at, or in the proximity of, MSP or other premises where Contractor and/or subcontractor personnel may be working in connection with the Services.
- 18.9 On receipt of advice from the MSP under clause 18.8, the Contractor shall undertake necessary risk assessments, identify control measures and advise Contractor and/or subcontractor personnel of the hazards and risks and relevant control measures.

19. INSURANCE

- 19.1 The Contractor shall procure and maintain:
 - a. workers compensation insurance or registration as required by law;
 - b. the insurances specified in the Details Schedule (if any); and
 - c. such other insurances and on such terms and conditions as a prudent contractor, providing services similar to the Services, would procure and maintain.

20. SET OFF

- 20.1 If the Contractor owes any debt to the MSP in connection with the Contract, the MSP may deduct the amount of the debt from payment of the Contract Price.

21. INDEMNITY

- 21.1 The Contractor indemnifies the MSP, its officers, employees and agents 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 arising out of or in any way in connection with:
 - a. a default or any unlawful, wilful or negligent act or omission on the part of the Contractor, its officers, employees, agents or subcontractors; or
 - b. any action, claim, dispute, suit or proceeding brought by any third party in respect of any infringement or alleged infringement of that third party's Intellectual Property or moral rights in connection with the Services.
- 21.2 The Contractor's liability to indemnify the MSP under clause 21.1a is reduced to the extent that any wilful, unlawful, or negligent act or omission of the MSP, its officers, employees or agents contributed to the liability, loss, damage, cost, compensation or expense

22. EXCLUSION OF PROPORTIONATE LIABILITY

- 22.1 The Parties agree that, to the extent permitted by law, the provisions of the Contract:
 - a. are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and

- b. exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

23. PRIVACY

23.1 The Contractor shall:

- a. if it obtains Personal Information in the course of performing the Contract, use or disclose that Personal Information only for the purposes of the Contract subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
- b. comply with its obligations under the *Privacy Act 1988* (Cth); and
- c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the MSP, would be a breach of the Australian Privacy Principles.

23.2 The Contractor shall notify the MSP as soon as reasonably practicable if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 23, whether by the Contractor, subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
- b. in relation to Personal Information obtained in the course of performing the Contract:
 - (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
 - (ii) it is approached by the Privacy Commissioner.

23.3 The Contractor shall ensure that its officers, employees and agents who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause 23.

23.4 The Contractor shall ensure that any subcontract entered into for the purposes of fulfilling its obligations under the Contract, contains provisions to ensure that the subcontractor complies with clauses 23.1, 23.2a and 23.4.

24. CONFIDENTIALITY

24.1 The Contractor shall not disclose any Commonwealth Confidential Information or MSP Confidential Information to any third party without the prior written consent of the MSP or the Commonwealth, as the case may be. The Contractor will not be in breach of this clause in circumstances where it is required by law to disclose any Commonwealth Confidential Information or MSP Confidential Information.

24.2 The Contractor shall, if required by the MSP or the Commonwealth, ensure that the Contractor Personnel engaged in performance of the Contract give a written undertaking in the form required by the MSP or the Commonwealth as the case requires, prior to the disclosure of the Confidential Information.

25. CONFLICT OF INTEREST

25.1 The Contractor warrants that, to the best of its knowledge after making diligent enquiries at the Effective Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its officers, employees, agents or subcontractors.

25.2 If during the Term a conflict of interest arises, or appears likely to arise, the Contractor shall promptly notify the MSP in writing and take steps as the MSP may require in its absolute discretion to resolve the conflict.

25.3 If:

- a. the Contractor fails to notify the MSP in accordance with clause 25.2;
- b. the Contractor is unable or unwilling to resolve the conflict of interest as required by the MSP;
- c. in the opinion of the MSP the conflict of interest cannot be satisfactorily resolved; or

- d. the Contractor fails to comply with clause 25.2,
- the MSP may exercise its rights to terminate the Contract under clause 16.1.

26. NOTICES

- 26.1 Any notice or communication under the Contract will be effective if it is in writing, signed and delivered to the Contractor Representative or the MSP Representative, as the case may be, at the address, email or fax number set out in the Details Schedule.

27. ASSIGNMENT

- 27.1 The Contractor shall not assign any of its rights under the Contract without the prior written consent of the MSP.

28. SUBCONTRACTING

- 28.1 The Contractor shall not subcontract the whole or part of its obligations under the Contract without the prior written consent of the MSP. Subcontracting the whole or part of the Contractor's obligations under the Contract will not relieve the Contractor from any of its obligations under the Contract. Upon request the Contractor shall make available to the MSP the details of all subcontractors engaged to provide the Services under the Contract. The Contractor acknowledges that the MSP may be required to disclose such information.

29. APPROVALS AND COMPLIANCE

- 29.1 The Contractor shall obtain and maintain in full force any necessary export licences, licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the provision of the Services.
- 29.2 The Contractor must, in the performance of this Contract, comply with and ensure that its Personnel and Subcontractors comply with the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.
- 29.3 The Contractor must provide to the MSP within 10 working days after a request by the MSP written confirmation that, to the best of the Contractor's knowledge and based on reasonable enquiries undertaken by the Contractor, the Contractor and its Personnel, Subcontractors and Subcontractor's Personnel, are compliant with all laws (including applicable foreign laws) regarding the offering of unlawful inducements in connection with the performance of any Services in relation to this Contract and any subcontracts.

30. COMMONWEALTH ACCESS

- 30.1 During the performance of the Contract, the Contractor shall permit the Commonwealth access to its premises, and access to any of its records or accounts relevant to or impacting on the performance of work under the Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.
- 30.2 Without limiting or otherwise affecting clauses 30.1, and 30.3, the Contractor acknowledges and agrees that:
- a. the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the MSP and Subcontractors in relation to the Contract;
 - b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
 - c. the Commonwealth may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 30.1 or 30.3.
- 30.3 Without limiting or otherwise affecting the generality of clause 30.1, the purposes for which the Commonwealth may require access include:

- a. investigating the reasonableness of proposed prices or costs under the Contract. For the purpose of this investigation, the Contractor shall permit the Commonwealth to, or facilitate the Commonwealth being able to access records and premises of Related Bodies Corporate (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 to the extent that such records relate to the Contract;
 - b. inspecting MSP Items, attending, checking or conducting stocktakes of MSP Items, including viewing and assessing the Contractor's inventory control and stocktaking systems, and removing MSP Items that are no longer required for the performance of the Contract; and
 - c. monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Services.
- 30.4 If the Contractor enters into a Subcontract, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth, access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
- 30.5 The Commonwealth shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.
- 30.6 In this clause 30, Commonwealth includes its relevant advisers and other persons acting for or on behalf of the Commonwealth.
- 31. WORKPLACE GENDER EQUALITY**
- 31.1 The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act), if any. The Contractor shall notify the MSP if it becomes non-compliant with the WGE Act.
- 32. GOVERNING LAW**
- 32.1 The laws of the jurisdiction specified in the Details Schedule apply to the Contract.
- 33. ENTIRE AGREEMENT**
- 33.1 The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- 34. MSP HOLDS BENEFIT OF CONTRACT ON TRUST FOR COMMONWEALTH**
- 34.1 The Contractor acknowledges and agrees that the MSP enters into, and holds the benefit of, this Contract:
 - a. for itself; and
 - b. in relation to the provisions of this Contract that relate to the Commonwealth, as trustee for the Commonwealth.
- 35. DEFINITIONS**
- 35.1 In the Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them in the Details Schedule or this clause 34:

'Asbestos Containing Material' has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth).

'Australian Privacy Principles' has the same meaning as in the *Privacy Act 1988* (Cth).

'Commonwealth Confidential Information' means information that by its nature is confidential to the Commonwealth or is otherwise notified to the MSP or the Contractor from time to time as being confidential information, but does not include information that is or becomes public knowledge other than by a breach of this contract or any other confidentiality obligation.

‘Contract’ has the meaning given in clause 3.

‘Contract Price’ means the price payable by the MSP under the Contract.

‘Defence Purposes’ means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes activities for the purposes of peacekeeping and emergency aid to the civil community, and purposes that are necessary or incidental to that purpose.

‘General Interest Charge Rate’ means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

‘GST’ means a Commonwealth goods and services tax imposed by the *GST Act*.

‘GST Act’ means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

‘Intellectual Property’ or **‘IP’** means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

‘MSP Confidential Information’ means any information provided by the MSP to the Contractor or which comes into the possession of the Contractor in connection with the Services which the MSP has identified as confidential or the Contractor ought reasonably to know is confidential.

‘MSP Items’ means any information (including MSP Confidential Information or Commonwealth Confidential Information), property or facilities (including those of the MSP in the Commonwealth) made available by the MSP to the Contractor for the purpose of the Services.

‘Notifiable Incident’ has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth).

‘Personal Information’ has the same meaning as in the *Privacy Act 1988* (Cth).

‘Personnel’ means personnel involved in any aspect of the performance or delivery of the Services.

‘Privacy Commissioner’ has the same meaning as in the *Australian Information Commissioner Act 2010* (Cth).

‘Related Body Corporate’ has the meaning given in Section 9 of the *Corporations Act 2001* (Cth).

‘Subcontractors’ means any person, other than the MSP, who for the purposes of provision of the Services, furnishes goods or services to the Contractor or indirectly to the Contractor through another person; and “Subcontract” has the corresponding meaning.

‘WHS Legislation’ means:

- a. the Work Health and Safety Act 2011 (Cth) and the Work Health and Safety Regulations 2011 (Cth); and
- b. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of

The MSP:

(INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE)

SIGNED for and on behalf of

Major Service Provider – Final

THE CONTRACTOR:

(INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE)

Schedule 4 Performance Management Framework

1. Overview

- 1.1 The Performance Management Framework (**PMF**) will measure the MSP's overall performance in delivering its contribution to achieving the Joint Objectives, as a single score for the entire MSP Team.
- 1.2 Attachment 1 to this Schedule 4 defines the performance assessment framework, which is used to measure and assess the MSP's performance against the outcomes required by the Commonwealth in relation to the ESSA (including the Strategic Partner Services) and the Capability Partner Services.
- 1.3 Attachment 2 to this Schedule 4 defines the IWP performance assessment framework, which is used to measure and assess the MSP's performance against the outcomes required by the Commonwealth in relation to Integrated Work Partner Services.

2. Performance Management and Reporting

- 2.1 The MSP shall conduct quarterly self-assessments of their performance to review and report on:
- 2.1.1 the performance of MSP Services provided in the period just completed against the requirements of the ESSA and any Services Contracts;
 - 2.1.2 the estimated requirements for MSP Services in the next and future periods;
 - 2.1.3 performance metrics; and
 - 2.1.4 any issues or risks that could affect the provision of MSP Services in future periods.
- 2.2 The performance reviews shall be held within 10 Working Days after the end of each quarter of a calendar year (unless otherwise agreed by the Parties).
- 2.3 Subject to clause 2.4, the MSP shall prepare a report for the Commonwealth, in a format that is similar to the reporting format required under the DSS Panel Deed, and deliver the outcomes from the review, including the MSP's self-assessment of its performance against the KRAs, to the Commonwealth 10 Working Days after completion of the review.
- 2.4 When reporting against the performance metrics and KRAs, the MSP's report to the Commonwealth shall include for the relevant Review Period:
- 2.4.1 the MSP's collation of performance data, including the MSP's evaluation and analysis of that data;
 - 2.4.2 the MSP's calculation of:
 - (a) the weighted performance score (**WPS**) for each KRA; and
 - (b) the Performance Payments; and

- 2.4.3 the identification of any restrictions on certain payments or performance relief sought.
- 2.5** The MSP's analysis of the performance data for the relevant Review Period shall include, for each KRA, in terms of the metric used for the relevant KRA:
 - 2.5.1 the MSP's self-assessed performance score against each KRA;
 - 2.5.2 where the MSP's performance for a KRA was a rating of 'Poor' as defined by the relevant KRA:
 - (a) identify and summarise the reasons for the rating; and
 - (b) provide an assessment of the resources or other factors needed to achieve an improved rating in future Review Periods;
 - 2.5.3 summarise the progress made against any remediation plans, that are related to Performance Measures, during the Review Period; and
 - 2.5.4 provide a comparison with results from previous review periods to enable the identification of performance trends.
- 2.6** The MSP shall make a recommendation of the amount of the Performance Payment in respect of the relevant Review Period, calculated in accordance with the MSP Services – Commercial Model in Schedule 5.
- 2.7 If the Parties do not agree regarding the measurement and calculation of:
 - 2.7.1 any performance information; or
 - 2.7.2 the Performance Payment payable to the MSP;
 then, during the performance review:
 - 2.7.3 the Parties shall jointly review the performance measurement data and performance information and recalculate the WPS for each KRA, evaluate any adjustments to the WPS, and re-calculate the Performance Payments (if applicable); and
 - 2.7.4 the Commonwealth Representative shall make a determination regarding the calculation of the performance results and the WPS for each KRA, and the Performance Payments.
- 2.8 The Commonwealth may request further information from the MSP to support its assessment of the performance information or the Performance Payment payable to the MSP, and the MSP agrees to supply that further information in a timely manner.
- 2.9 If the MSP's WPS is less than 100% in any Review Period:
 - (a) the MSP shall take all reasonable steps to mitigate the effects of the MSP's performance, including any losses of the parties arising as a result; and
 - (b) the Commonwealth may direct the MSP to take any measures the Commonwealth Representative considers reasonably necessary to remedy the MSP's performance and the MSP shall comply with the direction at no additional cost to the Commonwealth.

- 2.9.2 The MSP shall, within 5 Working Days after becoming aware that its WPS for a Review Period will be, or is likely to be less than 100% for any reason, notify the Commonwealth Representative in writing of the matter and provide details of:
- (a) the MSP's actual or anticipated WPS during the Review Period;
 - (b) the events or circumstances which affected or are likely to affect the MSP's performance during the Review Period; and
 - (c) the effects of the MSP's performance during the Review Period on the provision of the Services.
- 2.9.3 The MSP shall, within 5 Working Days after a notification under clause 2.9.2 above, notify the Commonwealth Representative in writing:
- (a) of the steps it will take to mitigate the effects of the MSP's performance;
 - (b) of the period during which the MSP expects that its WPS will be, or is likely to be less than 100%; and
 - (c) whether it will be claiming relief in respect of performance under a Services Contract.

3. Glossary for Schedule 4

- 3.1 In this Schedule 4, the following capitalised terms have the corresponding definition:

Term	Definition
Review Period	means the quarterly period referred to in clause 2.1 of this Schedule 4 [Performance Management Framework].
WPS (Weighted Performance Score)	means the score calculated in accordance with the relevant Performance Management Framework.

Attachment 1 MSP Performance Management Framework

(Continued on next page)

INTEGRATED WORK PACKAGE (IWP) PERFORMANCE MANAGEMENT FRAMEWORK							
PERFORMANCE MEASURE PROFILE							
Performance Measure Name: Integrated Work Package (IWP) Performance							
ALIGNMENT AND ACCOUNTABILITY							
Purpose (Outcome/Output/Process Measured)							
<div>1. This performance measure represents, as a percentage, the Service Provider’s performance in delivery of the Services defined in the ESSA.</div> <div>2. The purpose of this performance measure is to monitor the Service Provider’s performance against the following Key Result Areas (KRAs):<div><div>‘Best for Defence’ behaviours cognisant of commercial imperatives and acknowledging that successful delivery requires an integrated ‘one team’ approach (see ‘Best for Defence’ KRAs);</div><div>positive working relationships with the Commonwealth and other third parties (see ‘Relationship’ KRA);</div><div>delivery of high quality, effective and efficient MSP Services (see ‘Service Delivery’ KRA);</div><div>positive engagement of Small Medium Enterprises (SMEs) and Small Businesses off the Defence Support Services (DSS) panel, including quantity and type of work, flow-down of commercial terms, mentoring and development, use of indigenous business etc. (see ‘Small Business Enterprise / Small Business Engagement’ KRA);</div><div>improved capability and capacity of workforce (both Defence and industry), including employment of entry level resources (e.g. graduates, trainees, etc.), training, development and professionalisation, mentoring etc. (see ‘Capability and Capacity' KRA); and</div><div>timely and accurate reporting and invoicing, responsiveness to queries and positive management of probity, conflict of interest, Workplace Health and Safety (WHS) and security matters, including those related to subcontractors (see "MSP Administration" KRA).</div></div></div>							
BUSINESS RULES							
<div>1. MSP Performance is self-assessed by the Service Provider by assessing against the individual MSP Service Performance Attributes for each KRA set out in the Table below, and then aggregating the resulting weighted scores, using the following rating scale:<div><div>a. Superior - As per the rating descriptors contained in the table;</div><div>b. Good (Always) - every time without exception and as per the relevant individual rating descriptors;</div><div>c. Fair (Often) – generally, most times; and as per the relevant individual rating descriptors; and</div><div>d. Poor (Sometimes) – occasionally, now and again and as per the relevant individual rating descriptors;</div></div></div> <div>2. Where more than one assessment rating can apply within an individual MSP Service Performance Attribute (e.g. KPI 4.3), the assessed score for that MSP Service Performance Attribute is the lowest assessment rating irrespective of whether one or more elements are met (i.e. if one element within KPI 4.3 MSP Service Performance Attribute described below is assessed as “Poor” and another is assessed as “Good”, the overall rating for KPI 4.3 is “Poor”).</div> <div>3. The Service Provider shall provide their self-assessment as required by ESSA.</div>							
KRA	KRA Description	IWP Service Provider Attributes Team	Frequency of Occurrence During the Reporting Period				
			Superior (Always with significant changes to schedule/Scope)	Good (Always)	Fair (Often)	Poor (Sometimes)	
KRA 1 - Best for Defence	This measure represents the service provider's ability to demonstrate 'Best for Defence' behaviour's as part of the IWP arrangement.	KPI 1.1 - has delivered the Defence outcome even if not expressly contracted to do so by adopting a holistic approach to project delivery maintaining Defence's reputation without 'hiding behind the contract'					
		KPI 1.2 - has high incidences of ‘gold card’ behaviours (i.e. behaviours that represent positive outcomes for Defence), which may include activities that deliver the warfighter outcome, do not directly benefit the Service Provider, delivery of services that are out of scope, minimising cost to Defence through efficiencies, transparency of processes and costs, etc.					
		KPI 1.3 - has low instances of 'red card' behaviours (i.e. behaviours that represent a negative outcome to Defence) which may include activities that erode trust and jeopardise healthy relationships and successful Defence outcomes through selfish behaviour, putting service provider outcomes before Defence outcomes, failing to take a long-term view of Defence outcomes, 'poaching' of Defence / other IWP staff etc.					
KRA 2 - Relationship	This measure represents the service provider's ability to demonstrate positive working relationships with the Commonwealth and other third parties as part of the IWP arrangement, including SMEs and small businesses on the DSS panel, other MSPs and the Strategic Panels PMO.	KPI 2.1 - resolves disputes reasonably and equitably					
		KPI 2.2 - approaches problem solving in a joint manner (fix the problem not the blame)					
		KPI 2.3 provides prompt notification of material issues and risks, including changes to staff, schedule or price					
		KPI 2.4. is willing to share critical information					
		KPI 2.5 - is willing to share resources, including staff, facilities and equipment					
KRA 3 - Service Delivery	This measure represents the service provider's ability to deliver high-quality, effective and efficient IWP services.	KPI 3.1 - has provided appropriate personnel with the right skill sets to meet the requirements of the relevant tasking statement					
		KPI 3.2 - has delivered IWP services IAW the SMP					
		KPI 3.3 - the IWP services delivered are at the quality required and did not require re-submission					
KRA 4 - Small to Medium Enterprise (SME) / Small Business Engagement	This measure represents the Service Provider's ability to demonstrate positive engagement with SMEs and Small Businesses off the DSS panel as part of the MSP arrangement, including quantity and type of work, flow-down of commercial terms, mentoring and development, use of indigenous business etc.	KPI 4.1 - has provided an actual workshare ('x%') as a percentage of total MSP consortium revenue over the previous 12 months to SMEs					
		KPI 4.2 - has provided an actual workshare ('y%') as a percentage of total MSP consortium revenue over the previous 12 months to small business off the DSS panel					
		KPI 4.3 - delivered a workshare to SMEs and small businesses that represents a valuable contribution to the Defence outcome and neither trivial nor piecemeal work, including using indigenous businesses, and engaging SMEs and small business under commercial terms that are no less favourable than the standard terms and conditions provided for under the ESSA					
		KPI 4.4 - has developed SMEs and small business (including indigenous business) skills through the sustained delivery of training and coaching / mentoring IAW the SMP					
KRA 5 - Capability and Capacity	This measure represents the Service Provider's ability to demonstrate actions taken to improve the capability and capacity of Defence and industry workforce, including employment of graduates trainees, training, development, and professionalisation, mentoring, etc	KPI 5.1 - has employed and developed entry level resources (e.g. graduates, trainees, etc.) in relevant DSS panel skills and disciplines IAW SMP					
		KPI 5.2 - has actively trained, developed and professionalised Defence and industry workforce, including through secondments, embedding workforce and learning and development programs IAW SMP.					
		KPI 5.3 - has actively mentored and coached Defence and industry personnel to improve skills and manage career development IAW SMP.					
KRA6 - MSP Administration	This measure represents the service provider's ability to meet MSP administration requirements	KPI 6.1 - has delivered reporting requirements, including invoices, on time without error, and provided a timely constructive approach to contract administration					
		KPI 6.2 - answered queries completely in a succinct, accurate and coherent manner, and which are fully consistent with previous advice (or explains the differences)					
		KPI 6.3 - has managed probity / conflict of interest matters, including in relation to subcontractors, IAW the IWP management plan					
		KPI 6.4 - has managed security and WHS matters, including in relation to subcontractors, IAW the IWP management plan					
IWP PERFORMANCE SCORE							

Attachment 2 IWP Performance Management Framework

(Continued on next page)

INTEGRATED WORK PACKAGE (IWP) PERFORMANCE MANAGEMENT FRAMEWORK						
PERFORMANCE MEASURE PROFILE						
Performance Measure Name: Integrated Work Package (IWP) Performance						
ALIGNMENT AND ACCOUNTABILITY						
Purpose (Outcome/Output/Process Measured)						
<p>1. This performance measure represents, as a percentage, the IWP Service Provider’s performance in delivery of the Services defined in the Integrated Work Package (IWP).</p> <p>2. The purpose of this performance measure is to monitor the Service Provider’s performance against the following Key Result Areas (KRAs):</p> <p> a. ‘Best for Capability’ behaviours cognisant of commercial imperatives and acknowledging that successful delivery requires an integrated ‘one team’ approach (see ‘Best for Capability’ KRA);</p> <p> b. positive working relationships with the Commonwealth and other third parties (see ‘Relationship’ KRA);</p> <p> c. delivery of high quality, effective and efficient IWP Services (see ‘Service Delivery’ KRA); and</p> <p> d. timely and accurate reporting and invoicing, responsiveness to queries and positive management of probity, conflict of interest, Workplace Health and Safety (WHS) and security matters, including those related to subcontractors (see ‘IWP Administration’ KRA).</p>						
BUSINESS RULES						
<p>1. IWP Performance is self-assessed by the Service Provider by assessing against the individual IWP Service Performance Attributes for each KRA set out in the Table below, and then aggregating the resulting weighted scores, using the following rating scale:</p> <p> a. Superior - (Always) – (every time without exception) with significant changes to schedule / scope;</p> <p> b. Good (Always) - every time without exception;</p> <p> c. Fair (Often) – generally, most times; and as per the relevant individual rating descriptors; and</p> <p> d. Poor (Sometimes) – occasionally, now and again as per the relevant individual rating descriptors; (Where "Not Always" is whenever an exception has been observed.)</p> <p>2. Where more than one assessment rating can apply within an individual IWP Service Performance Attribute (e.g. KPI 4.3), the assessed score for that IWP Service Performance Attribute is the lowest assessment rating irrespective of whether one or more elements are met (i.e. if one element within KPI 4.3 IWP Service Performance Attribute described below is assessed as “Poor” and another is assessed as “Good”, the overall rating for KPI 4.3 is “Poor”).</p> <p>3. The assessment against the Schedule Service Performance Attribute in KPI 3.2 includes the impact of delay in Deliverables on Defence capability, cost, schedule, risk, reputation, legal and regulatory, health and safety and the environment.</p> <p>4. The Service Provider shall provide their self-assessment as required by the IWP.</p>						
KRA	KRA Description	IWP Service Provider Attributes Team	Frequency of Occurrence During the Reporting Period			
			Superior (Always with significant changes to schedule/Scope)	Good (Always)	Fair (Often)	Poor (Sometimes)
KRA 1 - Best for Defence	This measure represents the Service Provider's ability to demonstrate ‘Best for Capability’ behaviours as part of the IWP arrangement.	KPI 1.1 - has delivered the Defence outcome even if not expressly contracted to do so by adopting a holistic approach to project delivery maintaining Defence's reputation without 'hiding behind the contract'				
		KPI 1.2 - has high incidences of ‘gold card’ behaviours (i.e. behaviours that represent positive outcomes for Defence), which may include activities that deliver the warfighter outcome, do not directly benefit the Service Provider, delivery of services that are out of scope, minimising cost to Defence through efficiencies, transparency of processes and costs, etc.				
		KPI 1.3 - has low instances of 'red card' behaviours (i.e. behaviours that represent a negative outcome to Defence) which may include activities that erode trust and jeopardise healthy relationships and successful Defence outcomes through selfish behaviour, putting service provider outcomes before Defence outcomes, failing to take a long-term view of Defence outcomes, 'poaching' of Defence / other IWP staff etc.				
KRA 2 - Relationship	This measure represents the Service Provider's ability to demonstrate positive working relationships with the Commonwealth and other third parties as part of the IWP arrangement, including SMEs and Small Businesses on the DSS panel, other IWPs and the SPPMO.	KPI 2.1 - resolves disputes reasonably and equitably				
		KPI 2.2 - approaches problem solving in a joint manner (fix the problem not the blame)				
		KPI 2.3 provides prompt notification of material issues and risks, including changes to staff, schedule or price				
		KPI 2.4. is willing to share critical information				
		KPI 2.5 - is willing to share resources, including staff, facilities and equipment				
KRA 3 - Service Delivery	This measure represents the Service Provider's ability to deliver of high quality, effective and efficient IWP Services	KPI 3.1 - has provided appropriate personnel with the right skill sets to meet the requirements of the relevant tasking statement				
		KPI 3.2 - has delivered IWP services IAW the SMP				
		KPI 3.3 - the IWP services delivered are at the quality required and did not require re-submission				
KRA4 - MSP Administration	This measure represents the service provider's ability to meet MSP administration requirements	KPI 4.1 - has delivered reporting requirements, including invoices, on time without error, and provided a timely constructive approach to contract administration				
		KPI 4.2 - answered queries completely in a succinct, accurate and coherent manner, and which are fully consistent with previous advice (or explains the differences)				
		KPI 4.3 - has managed probity / conflict of interest matters, including in relation to subcontractors, IAW the IWP management plan				
		KPI 4.4 - has managed security and WHS matters, including in relation to subcontractors, IAW the IWP management plan				
IWP PERFORMANCE SCORE						

Schedule 5 MSP Services – Commercial Model

PART 1 – PRELIMINARY

1. COMMERCIAL MODEL OVERVIEW

- 1.1 This Commercial Model is structured around the three types of services that comprise the MSP Services which will be delivered by the MSP in accordance with the ESSA and any Services Contract.
- 1.2 Clause 14 of the ESSA also contemplates the provision of Other Services by the MSP but the scope and commercial model applicable to these Other Services will be determined and agreed by the Parties as required.
- 1.3 An agreed component of the MSP's price will be 'at risk'. This will be effected through the Performance Management Framework (**PMF**).
- 1.4 Full payment of the MSP's agreed price will be linked to performance, and paid in accordance with the applicable PMF for the relevant MSP Services. The MSP will have a percentage of its price (**At-Risk Percentage**) linked to the assessment of its performance against the KRAs in the applicable PMF.
- 1.5 The operation of the At-Risk Percentage against the relevant PMF has been outlined in detail together with the proposed pricing model for each of the MSP Services, as follows:
 - 1.5.1 Part 2 of this Schedule 5 - Pricing model for Strategic Partner Services;
 - 1.5.2 Part 3 of this Schedule 5 - Pricing model for Capability Partner Services; and
 - 1.5.3 Part 4 of this Schedule 5 - Pricing model for IWP Services.

2. PRICE AND PAYMENT

- 2.1 The MSP will be paid for provision of the MSP Services monthly in arrears.
- 2.2 The amount that is the 'at risk' component of the MSP's price (**At-Risk Amount**) will be calculated quarterly by applying the At-Risk Percentage to the MSP's total monthly invoices (less Reimbursable Expenses) for the relevant MSP Services in the relevant Review Period, and adjusted by reference to the WPS.
- 2.3 Any amount payable following the adjustment referred to in clause 2.2 will be paid in the month following the end of the relevant quarter referred to in clause 2.2.
- 2.4 The obligations of the Commonwealth under this Commercial Model are subject to the:
 - 2.4.1 MSP making a claim for payment in accordance with clause 15 of the ESSA and clauses 5.2 and 5.3 of Schedule 2 [MSP Services Terms and Conditions]; and
 - 2.4.2 other provisions of the ESSA or Services Contract as applicable.

- 2.5 Except where expressly indicated to the contrary, the amounts set out in this Commercial Model are inclusive of all costs and other payments associated with providing the MSP Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the MSP Services under the ESSA and any Services Contract. This includes all licence fees, royalty payments, overseas taxes, duties and charges, Australian (Federal, State and Local Government) taxes including GST, customs and other duties and charges and arranging customs clearance and services of representatives.

3. RATES AND ESCALATION

3.1 Rates

- 3.1.1 The price payable by the Commonwealth to the MSP for provision of the Strategic Partner Services (including any Additional Strategic Partner Services) will be the MSP Management Fee.

- 3.1.2 The price payable by the Commonwealth to the MSP for the Capability Partner Services will be calculated using the rates set out in the table below:

Organisation providing the Capability Partner Services	Rates
MSP Team member	The rates in Attachment 1 to this Schedule 5.
DSS Panel member which is not an MSP Team member	The rates negotiated by the MSP up to the maximum rates applicable under the DSS Panel Deed plus a contracted mark up of x%.
Subcontractor that is not a DSS Panel member or MSP Team member	Unless otherwise agreed by the Commonwealth, the rates negotiated by the MSP (noting that the MSP has committed in the Services Management Plan that the average expected mark up will be x%), not exceeding the rates set out in Attachment 1 to this Schedule 5.

- 3.1.3 The price payable for by the Commonwealth to the MSP for the Integrated Work Partner Services will be calculated using the rates set out in the table below:

Organisation providing the Integrated Work Partner Services	Rates
MSP Team member	Rates not exceeding the rates set out in Attachment 1 to this Schedule 5.
DSS Panel member which is not an MSP Team member	The rates negotiated by the MSP up to the maximum rates applicable under the DSS Panel Deed plus a contracted mark up of x%.
Subcontractor that is not a DSS Panel member or MSP Team member	Unless otherwise agreed by the Commonwealth, the rates negotiated by the MSP (noting that the MSP has committed in the Services Management Plan that the average expected mark up will be x%) not exceeding the rates set out in Attachment 1 to this Schedule 5.

3.2 Escalation

- 3.2.1 From the second anniversary of the Effective Date (as defined in the DSS Panel Deed) (**Initial Adjustment Date**), the rates set out in Attachment 1 to this Schedule 5 (**Rates**) shall be subject to annual adjustment to reflect changes in the cost of labour in accordance with clause 3.3 below.
- 3.2.2 The adjusted Rates shall apply on and from the Initial Adjustment Date, or subsequent applicable anniversary of the Effective Date (as defined in the DSS Panel Deed) (**Adjustment Date**), as the case requires, until the next applicable Adjustment Date. However, unless otherwise agreed by the Commonwealth and stated in an Approved IWP Tasking Request, the adjustment shall not be applied to IWP Fixed Task Service (as defined in Part 4 of this Schedule 5) that has already been commenced within the relevant period.
- 3.2.3 If an MSP is included on the DSS Panel after the Effective Date (as defined in the DSS Panel Deed), there will be no Rates variation before the second anniversary of the Inclusion Date (as defined in the DSS Panel Deed) applicable to the MSP's inclusion on the DSS Panel for the particular Skill Set and/or Skill Level. At the second anniversary of the Inclusion Date (as defined in the DSS Panel Deed) of the MSP, Rates variations shall be calculated using the index number applicable at that date to the next applicable Adjustment Date. Subsequent Rates variations shall be in accordance with clauses 3.2.1 and 3.2.2 above.
- 3.2.4 If the Commonwealth exercises an option to extend the term of the ESSA then the MSP Rates are subject to adjustment in accordance with this clause 3.2 and clause 3.3 below.

3.3 Adjustment Formula

- 3.3.1 The Rates are subject to adjustment in accordance with the following formula and index:

$$AUP = EDP \times \frac{V}{V_0}$$

where:

- AUP = adjusted Rates.
- EDP = Rates at the Effective Date (as defined in the DSS Panel Deed), or the Inclusion Date (as defined in the DSS Panel Deed), or the most recent Adjustment Date, whichever is the later.
- V = the index number for the quarter preceding the quarter containing the applicable Adjustment Date.
- V₀ = the index number for the quarter containing the second anniversary of the Effective Date (as defined in the DSS Panel Deed), or the first anniversary of the Inclusion Date (as defined in the DSS Panel Deed), or the most recent Adjustment Date, whichever is the later.

- 3.3.2 The index is as follows:

Description of Index	Table	Group
Wage Price Index, Australia - ABS Catalogue 6345.0 Total hourly rates of pay excluding bonuses: sector by Industry, original	9b Series ID A2638879J	Government Administration and Defence Private Administrative and Support Services

- 3.3.3 No later than three months after the publication of the indices for an Adjustment Date, the MSP shall submit a contract change proposal in accordance with clause 8.1 of Schedule 2 [MSP Services Terms and Conditions] to update Schedule 5 [MSP Services – Commercial Model] to reflect the adjustment to the Rates as determined in accordance with clauses 3.2, 3.3.1 and 3.3.2.
- 3.3.4 No later than three months after the publication of the indices for an Adjustment Date, the MSP shall determine if, as a result of the adjustment under clauses 3.2, 3.3.1 and 3.3.2, an adjustment is required to any claim for payment that had been submitted after the Adjustment Date but prior to the date the contract change proposal under clause 3.3.3 takes effect (**Adjustment Payment**). If such Adjustment Payment:
- (a) is to the credit of the MSP, the MSP may claim that amount as a separate claim for payment; or
 - (b) is to the credit of the Commonwealth, the MSP shall notify the Commonwealth in writing of the amount of the credit.
- 3.3.5 The Commonwealth shall not be liable for any claims for payment under clause 3.3.4(a) submitted after the end of the three month period mentioned in clause 3.3.4.
- 3.3.6 If an Adjustment Payment calculated in accordance with clause 3.3.4 is to the credit of the Commonwealth, the Commonwealth may recover the amount in accordance with clause 10.3 of Schedule 2 [MSP Services Terms and Conditions] of this ESSA.

PART 2 – STRATEGIC PARTNER SERVICES

4. STRATEGIC PARTNER SERVICES – FEES PAYABLE

- 4.1 This Part 2 [Strategic Partner Services] describes the amounts payable by the Commonwealth to the MSP for the provision of Strategic Partner Services in accordance with the ESSA and Attachment 2 to this Schedule 5 (the **MSP Management Fee**).
- 4.2 The Commonwealth shall, for the provision of the Strategic Partner Services as described in the Services Management Plan, pay to the MSP the MSP Management Fee (less the At-Risk Amount), monthly in arrears.
- 4.3 For each Review Period, the Performance Payment (if any) for that Review Period will be paid in accordance with Part 5 - Performance Payments of this Schedule 5.
- 4.4 The MSP may submit a claim for payment of each monthly MSP Management Fee following the last Working Day of the relevant month.
- 4.5 Where the MSP through the Services Management Plan offers additional services (**Additional Strategic Partner Services**) to the Commonwealth on an as required basis, the Commonwealth shall, for the provision of those Additional Strategic Partner Services, pay to the MSP, subject to the assessment of the MSP's performance under the Performance Management Framework, the amounts specified in the Services Management Plan monthly in arrears.

PART 3 – CAPABILITY PARTNER SERVICES

5. CAPABILITY PARTNER SERVICES – FEES PAYABLE

Note to MSP: the Take or Pay model for CPS tasks will be implemented by CCP for the 2018/19 financial year.

5.1 Overview

- 5.1.1 This Part 3 [Capability Partner Services] describes the amounts payable by the Commonwealth to the MSP for the provision of Capability Partner Services in accordance with the ESSA and the relevant CPS Contract (the **CPS Contract Fee**).

5.2 CP Standing Offer Budget

- 5.2.1 The CP Standing Offer Budget is set out in Attachment 3 to this Schedule 5 as varied in accordance with clause 8.1 of Schedule 2 (MSP Services Terms and Conditions).
- 5.2.2 Once the CP Standing Offer Budget has been allocated by the Commonwealth, the CASG Functions and the supported SPOs may issue to the MSP CPS Tasking Requests for the provision of Capability Partner Services in accordance with the process detailed in clause 12.4 of this ESSA.
- 5.2.3 The Parties agree that the CP Standing Offer Budget may need revising from time to time to accommodate fluctuations in Capability Partner Services tasked to the MSP within a CPS Services Period. The Parties agree that the CP Standing Offer Budget will be reviewed by the Parties six months after the commencement of each CPS Services Period, or at such other times agreed by the Parties, with a view to determining whether, and if so how, the CP Standing Offer Budget for that CPS Services Period should be varied.
- 5.2.4 If the limit of the CP Standing Offer Budget for any one SPO or CASG Function is reached prior to the end of the CP Services Period then:
- (a) the Commonwealth and the MSP will work collaboratively to reallocate unused the CP Standing Offer Budget between the SPOs and CASG Functions where appropriate; and/or
 - (b) the Commonwealth may issue to the MSP further CPS Tasking Requests as required.

5.3 Price and Payment

- 5.3.1 The price payable under any one CPS Contract (less the At-Risk Amount) will be payable to the MSP as progressive payments, monthly in arrears, calculated as a factor of the labour rates defined in the ESSA, the allowable hours expended on the task and any reimbursable expenses as defined in the ESSA.
- 5.3.2 The MSP may submit a claim for payment of each progress payment following the last Working Day of the relevant month.
- 5.3.3 Any claims for payment relating At-Risk Amount shall be made in accordance with Part 5 - Performance Payment of this Schedule 5.

- 5.3.4 If at the end of the CPS Services Period a CASG Function or SPO has not entered into CP Contracts to the value of the CP Standing Offer Budget, the MSP may submit a claim for payment to the Commonwealth for the balance of the current year CP Standing Offer Budget following the last Working Day of the relevant CPS Services Period.

PART 4 – INTEGRATED WORK PARTNER SERVICES

6. INTEGRATED WORK PARTNER SERVICES – FEES PAYABLE

6.1 Overview

- 6.1.1 This Part 4 [Integrated Work Partner Services] describes the amounts payable by the Commonwealth to the MSP for the provision of Integrated Work Partner Services in accordance with the ESSA and the relevant IWP Contract (**the IWP Contract Price**).

6.2 Price and Payment

- 6.2.1 Subject to the terms and conditions of the relevant IWP Contract, the Commonwealth shall, for the provision of the Integrated Work Partner Services described in an IWP Contract, pay to the MSP the IWP Contract Price (less any applicable At-Risk Amount) for the relevant period, calculated in accordance with the Price and Payment Schedule at Attachment B to the relevant Approved IWP Tasking Request, monthly in arrears.
- 6.2.2 The IWP Contract Price is comprised of:
- (a) the Core Team Fixed Payments;
 - (b) the Fixed Task Services detailed in the Price and Payment Schedule of the relevant IWP Approved Tasking Request;
 - (c) Time & Materials Costs; and
 - (d) Reimbursable Expenses (if any).
- 6.2.3 The MSP may only submit a claim for payment following the last Working Day of the relevant month.
- 6.2.4 Any claims for payment relating to the At- Risk Amount shall be made in accordance with Part 5 - Performance Payments of this Schedule 5.

6.3 Price and Payment Schedule Update

- 6.3.1 The Price and Payment Schedule at Attachment B of the relevant Approved IWP Tasking Request will include the IWP Delivery Plan for that relevant IWP Contract. The MSP will update the Price and Payment Schedule and will submit any updates to the Price and Payment Schedule to the Commonwealth Representative for approval:
- (a) as required during an IWP Contract Period to reflect agreed adjustments to any WBS elements (including associated costs and MR) to be performed in the current IWP Contract Period; and
 - (b) prior to the commencement of the next IWP Contract Period to reflect the revised Price and Payment Schedule for that IWP Contract Period.

6.4 Management Reserve

- 6.4.1 Management Reserve (**MR**) is allocated against WBS items in the Approved IWP Tasking Request to reflect the anticipated levels of risk and uncertainty associated with the IWP that is the subject of the relevant Approved IWP Tasking Request.
- 6.4.2 The Price and Payment Schedule at Attachment B in the relevant Approved IWP Tasking Request will detail the allocation by the MSP of MR to WBS items associated with the relevant IWP and will be supported by a risk matrix prepared by the MSP included in that Price and Payment Schedule that details the risk and the MR allocated to that risk.
- 6.4.3 The MSP will be responsible for the management and allocation of the MR under an IWP Contract. Subject to clause 6.4.4 below, MSP will be entitled to submit a claim for payment if a risk event occurs, in accordance with the Price and Payment Schedule in Attachment B of the relevant Approved IWP Tasking Request.
- 6.4.4 The MSP must notify the Commonwealth Representative as soon as practicable of the occurrence of an event or events likely to result in, or that has resulted in, the MSP drawing upon the MR.
- 6.4.5 The Commonwealth Representative may request the MSP to provide evidence to justify the drawing down of MR by the MSP, and the MSP will provide such evidence as soon as practicable.

6.5 Glossary for Part 4

- 6.6 In this Part 4 of Schedule 5, the following capitalised terms have the corresponding definition:

Term	Definition
Core Team Fixed Payments	means the amount in column C of Attachment B to the Approved IWP Tasking Request.
Fixed Task Services	means the amount in column D of Attachment B to the Approved IWP Tasking Request.
Management Reserve	means the amount allocated against WBS items in column B of Attachment B to the Approved IWP Tasking Request.
Time & Materials Costs	means the amount in column A of Attachment B to the Approved IWP Tasking Request.
IWP Contract Period	means each 6 month period during the term of the relevant IWP Contract.
WBS	Work Breakdown Structure.

PART 5 – PERFORMANCE PAYMENTS

7. PERFORMANCE PAYMENTS

7.1 Overview

- 7.1.1 This Part 5 describes the basis on which Performance Payments are calculated and payable by the Commonwealth to the MSP in accordance with the ESSA or a Services Contract.

7.2 At-Risk Amounts

- 7.2.1 Subject to clause 7.5 below, the At-Risk Percentage in respect of a Review Period is 15% of each monthly invoice amount less Reimbursable Expenses.
- 7.2.2 The At-Risk Amount is allocated to each KRA in accordance with Table 1 and 2 below (based on a rating of “Good (Always)”).

Table 1: At-Risk Amounts and Review Periods for each KRA – MSP Performance Management Framework

KRA	Weighting (%) (based on a rating of “Good (Always)”)	Review Period
KRA-01: Best for Defence	14%	3mths
KRA-02: Relationship	15%	3mths
KRA-03: Service Delivery	20%	3mths
KRA-04: Small Medium Enterprise (SME) / Small Business Engagement	21%	3mths
KRA-05: Capability and Capacity	18%	3mths
KRA-06: MSP Administration	12%	3mths

Total 100%

Table 2: At-Risk Amounts and Review Periods for each KRA – IWP Performance Management Framework

KRA	Weighting (%) (based on a rating of “Good (Always)”)	Review Period
KRA-01: Best for Capability	28%	3mths
KRA-02: Relationship	20%	3mths
KRA-03: Service Delivery	32%	3mths
KRA-03: IWP Administration	20%	3mths

Total 100%

7.3 Performance Payments

- 7.3.1 The Commonwealth shall pay to the MSP the Performance Payment, which is the sum of the amounts calculated in accordance with clause 7.3.2 below.
- 7.3.2 Where the MSP's Weighted Performance Score (**WPS**) for the relevant Performance Management Framework for the Review Period is determined to be 95%-105% inclusive, the MSP's WPS shall be deemed, for the purposes of calculating the Performance Payment in accordance with clause 7.3.3 below, to be 100%.
- 7.3.3 For each performance management framework and for each Review Period the MSP's entitlement to the At-Risk Amount shall be calculated in accordance with the following formula:

$$\text{PARA} = F \times \text{ARP} \times \text{WPS}$$

where:

- PARA = the MSP's entitlement to the At-Risk Amount for the KRA for a Review Period
- F = the fee payable under the relevant performance management framework for the Review Period (less Reimbursable Expenses)
- ARP = the At-Risk Percentage
- WPS = the Weighted Performance Score (WPS) for the relevant performance management framework for the Review Period

7.4 Provisional Payments and true up

- 7.4.1 Except for the final month in a Review Period, the MSP is entitled to claim in respect of each applicable Performance Management Framework a monthly payment (**Provisional Payment**) representing the At-Risk Amount attributable to that Performance Management Framework for the month, on account of the MSP's potential future entitlement to the At-Risk Amount for that Performance Management Framework as determined under clause 7.3.
- 7.4.2 Following determination by the Commonwealth of the MSP's performance in the Review Period for the relevant Performance Management Framework, the Commonwealth shall calculate the MSP's entitlement to a Performance Payment for the relevant Performance Management Framework for the Review Period in accordance with clause 7.3 and:
- (a) if the Performance Payment for the relevant Performance Management Framework for the Review Period is more than the sum of the Provisional Payments claimed for the relevant Performance Management Framework during the Review Period, then the MSP is entitled to submit a claim for the amount of the difference; or
 - (b) if the Performance Payment for the relevant Performance Management Framework for the Review Period is less than the sum of the Provisional Payments claimed for the relevant Performance Management Framework during the Review Period, then the amount of the difference shall be a debt owed by the MSP to the Commonwealth, and the Commonwealth may recover the amount from the MSP as an offset against the monthly invoice amounts attributable to the following Review Period or in accordance with clause 10.3 of Schedule 2 [MSP Services Terms and Conditions] of this ESSA

7.5 Performance Implementation Period

- 7.5.1 The MSP Performance Management Framework will have a Performance Implementation Period (**PIP**) that shall commence at the start of the first Review Period and continue for two Review Periods.
- 7.5.2 During the PIP the MSP shall record and report its actual performance against all KRAs.
- 7.5.3 No PIP will apply to any IWP Performance Management Framework.
- 7.5.4 During the PIP, the operation of clause 7.2 is subject to the modifications in this clause 7.5. After the PIP has completed, clause 7.2 has full effect in accordance with its terms.
- 7.5.5 During the PIP:
- (a) the weightings for KRA 01 to KRA 05 and KPI 6.1 and 6.2 are 0%; and
 - (b) the weightings KPI 6.3 and 6.4 are 50% each.
- 7.5.6 For KPIs 4.1 and 4.2, which are assessed on a 12-month basis, the performance of the MSP will be deemed as 'Good' for the purposes of calculating the MSPs WPS for the first three Review Periods. For the fourth and subsequent Review Periods the MSP's performances against KPIs 4.1 and 4.2 will be assessed on a rolling 12-month period commencing from the initial Review Period, against the MSP's actual performance as recorded and reported by the MSP.

Attachment 1 Rates

Attachment 2 MSP Management Fee and Additional Strategic Partner Services

1. The MSP Management Fee for the period from 1 February 2018 – 31 July 2018 is \$ GST inclusive.
2. The MSP Management Fee for the period from 1 August 2018 – 30 September 2019 is \$ GST inclusive.
3. The MSP Management Fee for the period from 1 October 2019 – 30 June 2020 is \$ GST inclusive.
4. The MSP Management Fee for the period from 1 June 2020 – 30 June 2021 is \$ GST inclusive.
5. The MSP Management Fee for the period from 1 June 2021 – 30 June 2022 is \$ GST inclusive.
6. The Parties acknowledge and agree that the basis for which the MSP Management Fee has been calculated is set out in the Work Breakdown Structure in the Excel spreadsheet provided separately to the ESSA.

Attachment 3 CP Standing Offer Budget

The Commercial Model for the provision of Capability Partner Services considers the allocation of an annual level of effort for one or more CASG Functions (individually) and any SPO supported by the MSP.

SPO or CASG Function	Indicative Skill Sets	CP Standing Offer Budget

Attachment 4 Invoicing

Schedule 6 Capability Partner Services – Template CPS Tasking Request

Once executed by the parties, this Task Request is legally binding on and from the Effective Date, in accordance with the Enterprise Support Services Agreement (**ESSA**).

Nothing in this Task Request, or the Commonwealth's Approval of this Task Request, limits or otherwise affects the MSP's obligations set out under the ESSA or the Capability Partner Services Contract (**CPS Contract**).

1. **Task Request No.**

2. **Project number and
title**

3. **Commonwealth
Representative and
contact details for
notices**

4. **MSP Representative
and contact details
for notices**

5. **Quotation delivery
information**

6. **Background**

7. **Project description
and objective**

8. **Capability**

9. **Documents
comprising the
Tasking Request**

This CPS Contract is comprised of all of the following documents:

1. this CPS Tasking Request Form, including the CPS Details and the CPS Special Conditions;
2. the MSP Services Terms and Conditions in Schedule 2 of the ESSA;
3. Attachment A – CPS Task Plan
 - Table 1 - Tasking Request Requirements;
 - Table 2 - Tasking Request Outcomes and Work Effort;
 - Table 3 - Rates
4. Attachment B - Intellectual Property Schedule;
5. Attachment C - Supplementary Glossary; [Insert this attachment only if you want to add new definitions or otherwise vary the Glossary in the

- MSP Services Terms and Conditions in Schedule 2 of the ESSA];
6. Attachment D - Government Furnished Material (GFM) Schedule; **[Insert this attachment only if the Commonwealth will provide GFM.];**
 7. Attachment E – Reimbursable Expenses; and
 8. [...INSERT ANY CPS TASK SPECIFIC ATTACHMENT REQUIRED...]
- 9.
10. **Terms and conditions** To the extent of any inconsistency between the documents comprising this Tasking Request, clause 1.4.1 of the CPS Contract Terms shall apply.
 11. **Contract Period**
 1. **Effective Date:** (INSERT DATE OF EXECUTION OF CONTRACT)
 2. **Commencement Date:** (INSERT DATE SERVICES ARE TO COMMENCE)
 3. **Expiry Date:** (INSERT DATE IF APPLICABLE)
 12. **CPS Tasking Request Special Conditions**
- [Note to drafters: If you want to change the terms of the Services Contract, do so by specifying the change here]**
13. **Exclusivity:**

[DELETE AS APPROPRIATE]

Option 1

*The MSP is **not** permitted to enter into exclusive arrangements with members of the DSS Panel for the purposes of this Tasking Request.*

OR

Option 2

The MSP is permitted to enter into exclusive arrangements with members of the DSS Panel for the purposes of this Tasking Request.

The MSP may enter into exclusive arrangements with respect to the following skill sets:

[Insert relevant skill sets]

14. **Facilities**

***Note to drafters:
Specify if the
Commonwealth will
provide facilities
and/or if the MSP is
to provide facilities
(including the
number of
Commonwealth
Personnel to be
accommodated by
the MSP, if any).***

Major Service Provider – Final

SIGNED AS AN AGREEMENT

SIGNED for and behalf of

THE COMMONWEALTH OF AUSTRALIA

.....
(signature)

.....
(print name and position)

.....
(date)

In the presence of:

.....
(signature of witness)

.....
(print name of witness)

.....
(date)

SIGNED, SEALED and DELIVERED for and on behalf of (the
Company)

In accordance with the Corporations Act 2001 (Cth):- per
section 127(1) - without affixing the Common Seal

.....
Signature of Company Secretary

.....
Signature of Company Director

Print name and address of Company Secretary

Print name and address of Director

Attachment A to Schedule 6 – CPS Task Plan

TABLE 1 - TASKING REQUEST REQUIREMENTS

Note to drafters: The Commonwealth or MSP has included its proposed Deliverables for this Tasking Request in Table 1 below. The version of this table that will be put “on contract” will be subject to negotiation between the parties.

Deliverable No.	Title of Deliverables	Deliverable Requirements	Deliverable Delivery Date	Required Commonwealth Action (i.e. Review or Approval)

TABLE 2 – TASKING REQUEST OUTCOMES AND WORK EFFORT

Milestone Criteria								
Milestone No.	First Deliverable Date	Final Deliverable Date	Interval	Deliverables to be Completed				
				KEY PERSONS	FULL NAME (IF KEY PERSON)	POSITION TITLE / SKILL LEVEL	DESCRIPTION OF ALLOCATED TASKS IN RELATION TO DELIVERABLE	NUMBER OF WORK HOURS REQUIRED TO COMPLETE ALLOCATED TASKS

Total ROE: [Insert]

TABLE 3 – RATES

Note to drafters: This table should set out the Skill Sets and Skill Levels and Hourly Rates for personnel the MSP proposes to use to carry out this Tasking Request.

Major Service Provider – Final

Skill Sets and Skill Levels	Rates

Attachment B to Schedule 6 – Intellectual Property

Notes

1. Unless recorded in Table 1 below, nothing in this Task Request (including Approval of this Task Request), limits or otherwise affects the IP rights provided under the ESSA and CPS Contract.
2. Any Third Party IP proposed to be utilised under this Task Request must be specified in this table, detailing the licence terms in accordance with the requirements of the CPS Contract. In accordance with the CPS Contract, the Commonwealth may in its absolute discretion Approve or reject the MSP's request to use the Third Party IP proposed.
3. The CPS Contract IP Schedule is to be populated to contain all Foreground, Background and Third Party IP under the CPS Contract.

Tasking Request Number	Deliverable Number	Source and Ownership of IP	Limitations on the IP		Background (B) / Foreground (F) / Third Party (T)	Management of Technical Data	IP transition
			Usage	Licensing Rights			
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(I)

Schedule 7 Integrated Work Partner Services - Template Tasking Request

INTEGRATED WORK PACKAGE TASKING REQUEST

Once executed by the parties, this Tasking Request constitutes an IWP Contract as defined in the ESSA between the MSP and the Commonwealth and is legally binding on and from the Effective Date.

1.	Integrated Work Package No:	
2.	Project number/title:	
3.	Commonwealth Representative and contact details	
4.	MSP Representative and contact details	
5.	Quotation delivery information:	
6.	Background:	
7.	Project description and objective:	
8.	Capability:	
9.	Documents comprising the Integrated Work Package:	<p>This IWP Contract is comprised of all of the following documents:</p> <ol style="list-style-type: none"> 1. this Integrated Work Package Tasking Request Form, including the Integrated Work Package Details and the Integrated Work Package Special Conditions; 2. the MSP Services Terms and Conditions in Schedule 2 of the ESSA; 3. Attachment A – Statement of Work (SOW) including all of its annexes; 4. Attachment B - Price and Payment Schedules; 5. Attachment C - Intellectual Property Schedule; 6. Attachment D - Confidential Information; 7. Attachment E - Supplementary Glossary; [Note to Drafters: Insert this attachment only if you want to add new definitions or otherwise vary the Glossary in the MSP Services Terms and Conditions in Schedule 2 of the ESSA]; 8. Attachment F - Government Furnished Material (GFM) Schedule; [Note to Drafters: Insert this attachment only if the Commonwealth will provide GFM.] 9. Attachment G – IWP PMF [Note to Drafters – this will be based on the Performance Management Framework in Attachment 2 of Schedule 4 of the ESSA]; 10. Attachment H – IWPDP Data Item Description to this Work Package (IWP Delivery Plan); and 11. Attachment I – Specified Personnel; 12. [...insert any IWP specific attachment required...]

10.	Terms and conditions:	To the extent of any inconsistency between the documents comprising this Integrated Work Package, clause 1.4.1 of the IWP Contract shall apply.
11.	Contract Period:	<ol style="list-style-type: none"> Effective Date: (INSERT DATE OF EXECUTION OF CONTRACT) Commencement Date: (INSERT DATE SERVICES ARE TO COMMENCE) Expiry Date: (INSERT DATE IF APPLICABLE)
12.	Integrated Work Package Special Conditions: Note to drafters: If you want to change the terms of the Contract, do so by specifying the change here.	<p style="text-align: center;">Work on Commonwealth Premises</p> <p>Unless otherwise agreed by the Commonwealth in writing, the MSP shall, in accordance with clause 8.6.1 of the MSP Services Terms and Conditions, be entitled to access Commonwealth Premises to provide the MSP Services between the hours of 0700 - 1900 Monday to Friday (excluding a public holiday).</p> <p>Training</p> <p>In accordance with clauses 8.6.2 of the MSP Services Terms and Conditions, the MSP shall ensure that all its Personnel and its Subcontractors providing the MSP Services on Commonwealth Premises participate in and undertake all mandatory training or site-specific training (including site induction briefings) required, as notified to the MSP by the Commonwealth.</p> <p>The MSP shall ensure that all training notified by the Commonwealth is completed by the applicable person as soon as reasonably possible after the training is made available, except where the applicable person has completed the required training within 12 months of the notice issued by the Commonwealth, in which case the MSP shall notify the Commonwealth of completion of the training specified by the Commonwealth, and upon request by the Commonwealth, shall produce to the Commonwealth satisfactory evidence of the training completed.</p> <p>Media and Communication (including Social Media use)</p> <p>The MSP shall ensure that MSP Personnel comply with the requirements of the Department of Defence Media and Communication Policy, as if those individuals were Defence personnel. The current version of the policy signed by the Associate Secretary and the Vice Chief of the Defence force is available at Media and Communication Policy</p>
13.	Exclusivity:	<p>[Note to Drafters: DELETE AS APPROPRIATE]</p> <p>Option 1</p> <p><i>The MSP is not permitted to enter into exclusive arrangements with members of the DSS Panel for the purposes of this Tasking Request and the resultant IWP Contract (if any).</i></p> <p>OR</p>

		<p>Option 2</p> <p><i>The MSP is permitted to enter into exclusive arrangements with members of the DSS Panel for the purposes of this Tasking Request and the resultant IWP Contract (if any).</i></p> <p><i>The MSP may enter into exclusive arrangements with respect to the following Skill Sets:</i></p> <p><i>[Insert relevant Skill Sets]</i></p>
14.	<p>Facilities</p> <p>Note to drafters: Specify if the Commonwealth will provide facilities and/or if the MSP is to provide facilities (including the number of Commonwealth Personnel to be accommodated by the MSP, if any).</p>	

SIGNED AS AN AGREEMENT**SIGNED** for and on behalf of**THE COMMONWEALTH OF AUSTRALIA**_____
(signature)_____
(print name and position)_____
(date)

In the presence of:

(signature of witness)_____
(print name of witness)_____
(date)**SIGNED** for and on behalf of**THE MSP:**

Major Service Provider – Final

(the **Company**)

In accordance with the Corporations Act 2001 (Cth) per
section 127(1) - without affixing the Common Seal

.....
Signature of Company Secretary

.....
Signature of Company Director

Print name and address of Company Secretary

Print name and address of Director

[...INSERT ALL ATTACHMENTS TO WORK PACKAGE

Attachments to Schedule 7 Integrated Work Partner Services – Template

ATTACHMENT A - STATEMENT OF WORK

1. SCOPE

Note to drafters: The content of the Statement of Work is highly dependent upon the nature of the services being sought. For example, the structure of the IWP workforce may comprise:

- a. An autonomous MSP team who reports to a single Commonwealth contract manager, or
- b. An integrated team of Commonwealth and MSP personnel who collectively work together to deliver the project outcomes.

In addition, drafters are to tailor the Statement of Work to deal with the capability lifecycle of the project at hand. The deliverables, maturity of project documentation, and fidelity of schedules and work breakdown structures will differ significantly for pre-gate zero projects when compared to post second gate projects or sustainment tasks.

Drafters should also contemplate two stage IWP delivery whereby a preferred MSP conducts detailed planning under cost reimbursement arrangements with a follow-on contract to deliver the services under a flexible fixed price model or a hybrid approach where only some elements of the scope of work are not yet clearly defined.

Note to drafters: These clauses will require tailoring to meet the specific needs of the IWP Contract. Further guidance may be found in the SOW Tailoring Guide.

1.1 Purpose

- 1.1.1 The purpose of this SOW is to state the Commonwealth's requirements for work to be carried out under the IWP Contract relating to the provision of Integrated Work Partner Services, and to allocate work responsibilities between the Commonwealth and the MSP.

2. GENERAL REQUIREMENTS

2.1 Relationship Charter

Note to drafters: inclusion of a project charter or joint vision statement depends upon the nature of the Project. Drafters are free to modify the Charter to suit their unique project requirements.

The charter should be consistent with the ESSA Joint objectives and the MSP's commitments in the SMP.

3. The MSP and Commonwealth will work collaboratively to deliver the project outcomes under the following principles:

OUR MISSION: To achieve timely and cost effective delivery of the mission and support systems.

OUR VISION: Provide a cohesive, high performing team working collaboratively to deliver the agreed outcomes.

We agree that to be successful in meeting our mission and vision we must work together and uphold the following:

- Communication. Open, effective and timely communication to ensure knowledge exchange and informed decision making across all stakeholders to enable delivery of the project.
- Joint Working. Integration of skills, experience and resources to achieve the successful development and delivery of mutually agreed project objectives in a harmonious and transparent working environment.
- Accountability and Responsibility. We are accountable for our actions and will respect the boundaries of our scope of work.
- Problem Solving. Problems are solved collaboratively to ensure we minimise consequences.
- Continuous Improvement. To create a culture which works to cultivate creativity and one where there is mutual benefit in being able to realize innovative initiatives which contribute to operational excellence and continuous improvement across all facets of the enterprise and its boundaries.

3.1 Scope of Requirement

Note to drafters: Not all IWP Contracts will require all activities listed below. Tailor as required. It may also be necessary to clearly state what tasks are excluded (i.e. what is out of scope)

3.1.1 The MSP shall perform all activities necessary for the provision of Integrated Work Partner Services associated with supporting the Program/Capability/Project *[delete as appropriate]* in accordance with the IWP Contract.

3.2 Schedule

3.2.1 The Integrated Work Partner Services to be provided under the IWP Contract shall be delivered in accordance with the relevant project schedule

3.2.2 The MSP shall develop an IWP master schedule and ensure this IWP master schedule aligns to the relevant project schedule.. The relevant project schedule may change from time to time and the MSP will be responsible for maintaining and updating the IWP master schedule.

4. TASK DESCRIPTION

4.1 Overview

Note to drafters. The task may be defined in general or specific terms. In general terms, the MSP may be required to develop detailed planning documentation after contract signature. In specific

terms the detailed planning documents including the WBS may be developed prior to release of the RFT by the SPPMO.

- 4.1.1** The MSP shall develop and deliver a detailed WBS of the tasks required to be completed for the IWP and shall provide all services in support of the WBS based on the high-level WBS at Annex A to this SOW.

4.2 Integrated Work Package Delivery Plan

- 4.2.1** The MSP shall develop, deliver and update an Integrated Work Package Delivery Plan (IWPDP) in the MSP's own format but covering the requirements at Attachment H.
- 4.2.2** The IWPDP may refer, where appropriate to higher-level plans contained in the SMP..
- 4.2.3** The MSP shall manage and perform the Integrated Work Partner Services in accordance with the Commonwealth Approved IWPDP.
- 4.2.4** The MSP shall Review and Update the IWPDP and as necessary the Price and Payment Schedule attached to Schedule 5 at least six monthly to align with the IWP Contract Periods or otherwise as required.

4.3 Review and Reporting Requirements

- 4.3.1** The MSP shall respond to planned and ad-hoc reporting requirements commensurate with the scale and scope of the services.
- 4.3.2** The MSP shall submit a progress report in the MSPs own format in support of any claims for payment. The Commonwealth may direct the MSP to supply additional information in the progress report.
- 4.3.3** The MSP shall meet all reporting requirements in Schedule 4 of the ESSA, and as:
- a. set out in the IWP Contract, including this SOW and the Approved IWPDP;
 - b. which are reasonably necessary or desirable for the proper performance of the Integrated Work Partner Services; and
 - c. which are reasonably required by the Commonwealth from time to time.
- 4.3.4** The MSP shall prepare and deliver all necessary information and documentation in relation to the Integrated Work Partner Services to enable the Commonwealth to meet the following reporting requirements, including:
- d. Project monthly reporting system;
 - e. CASG executive Project reporting requirements; and
 - f. biannual budget estimates.
- 4.3.5** Meeting Agenda and Meeting Minutes
- g. If requested by the Commonwealth, the MSP shall prepare and deliver agendas and minutes of meetings.
 - h. When requested, the MSP shall deliver agendas containing the required level of detail reasonably in advance of the relevant meeting.
 - i. The MSP shall deliver accurate and comprehensive minutes to the Commonwealth within five Working Days after the applicable meeting.

4.4 Coordination and Cooperation

- 4.4.1** The MSP acknowledges that the performance of its obligations under the IWP Contract may require:
- j. interoperation and integration with capabilities that are provided and maintained by the Commonwealth and / or by third parties under separate contractual arrangements with the Commonwealth ('**Other Capabilities**'); and
 - k. co-ordination and co-operation with other entities (including other contractors, Other MSPs, and other Commonwealth organisations) performing activities related to the

Integrated Work Partner Services or otherwise having a connection with the activities being performed by the MSP under the IWP Contract (**‘Associated Parties’**).

4.4.2 The MSP shall:

- l. co-operate with all Associated Parties, as may be necessary or required by the Commonwealth, to ensure the integration with Other Capabilities;
- m. co-operate, as may be required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Integrated Work Partner Services are provided in accordance with the requirements of the IWP Contract;
- n. co-operate as may be necessary or required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Integrated Work Partner Services do not impact on or interfere with the performance of Other Capabilities or the completion of activities by Associated Parties; and
- o. bring any causes, or likely causes, of interruption to the operation of the mission system or to the performance of the Integrated Work Partner Services to the attention of the Commonwealth Representative as soon as practicable after becoming aware of those causes.

4.5 Ad Hoc Meetings

4.5.1 When scheduling ad hoc meetings, the party calling the meeting shall provide the other party with reasonable notice of such meetings.

4.5.2 If the Commonwealth Representative calls the meeting, the Commonwealth Representative shall advise the MSP of the specific requirements for the meeting, the nature of the issues to be discussed, and the requirements for preparation and delivery of associated information by the MSP.

4.5.3 If the MSP calls the meeting, the MSP shall advise the Commonwealth Representative of the specific requirements for the meeting, the nature of the issues to be discussed, and the requirements for preparation and delivery of associated information by the Commonwealth.

4.5.4 The party calling the ad hoc meeting shall chair the meeting unless otherwise mandated by the Commonwealth Representative.

4.5.5 The party calling the ad hoc meeting shall deliver an agenda to the other party before each ad hoc meeting.

5. GOVERNMENT FURNISHED INFORMATION

5.1.1 Currently available Project documentation (Project Office Documents) is listed at Attachment F

5.1.2 Where responsible, the MSP shall ensure that the Project Office Documents are reviewed and updated in accordance with the IWPDP.

Note to MSP: Any project plans or additional information supplied by the Commonwealth, as part of the quotation process, must not be relied upon in terms of completeness or accuracy. The MSP must make its own assessment of the information (if any) provided by the Commonwealth.

6. PERFORMANCE MEASUREMENT

Note to drafters. This section must be consistent with Attachment 2 to Schedule 4 of the ESSA.

ATTACHMENT B – PRICE AND DELIVERY SCHEDULE

ATTACHMENT C – INTELLECTUAL PROPERTY SCHEDULE

Deliverable Number	Source and Ownership of IP	Limitations on the IP		Background (B) / Foreground (F) / Third Party (T)	Management of Technical Data	IP transition
		Usage	Licensing Rights			

ATTACHMENT D – CONFIDENTIAL INFORMATION

ATTACHMENT E – GLOSSARY

Note to Drafters: Include a Glossary if required to explain unique terms applicable to the task

ATTACHMENT F - GOVERNMENT FURNISHED INFORMATION

Note to Drafters: Include all relevant Government Furnished Information here that is applicable to the delivery of the IWP Contract services. As part of the Tasking Request process, some key documentation may need to be provided to the prospective MSP.

PROJECT OFFICE DOCUMENTS

AUSTRALIAN DEFENCE STANDARDS

AUSTRALIAN DEFENCE INSTRUCTIONS

ATTACHMENT G – PERFORMANCE MANAGEMENT FRAMEWORK

Attachment H – Data Item Deliverable - INTEGRATED WORK PACKAGE DELIVERY PLAN

Note to MSP: The DID is meant for guidance only and MSPs are free to modify the template to provide the Commonwealth with the best possible information on the MSP's planned approach to delivering the Integrated Work Package.

TITLE: INTEGRATED WORK PACKAGE DELIVERY PLAN**1. DESCRIPTION AND INTENDED USE**

- 1.1** The Integrated Work Package Delivery Plan (IWPDP) is the top-level plan that describes the Major Service Provider's (MSPs) strategy, plans, methodologies, and processes for meeting the requirements of the IWP Contract, showing how the processes fit together to form a totally integrated management system for the provision of Integrated Work Partner Services.
- 1.2** The MSP uses the IWPDP, including or supplemented by, subordinate plans (as required), to:
- a. provide direction and guidance to the MSP's team (including Subcontractors) responsible for conduct of the work;
 - b. define, manage, and monitor its program of activities for the provision of Integrated Work Partner Services; and
 - c. ensure that those parties (including Subcontractors) who are providing Integrated Work Partner Services understand their respective responsibilities and the processes to be used.
- 1.3** The Commonwealth uses the IWPDP to:
- a. gain visibility into the MSP's planning;
 - b. understand and evaluate the MSP's approach to managing and delivering the Integrated Work Partner Services;
 - c. provide the SPPMO with an overview of resources required to deliver the Integrated Work Partner Services;
 - d. ensure SME participation is appropriate;
 - e. confirm a common understanding of Commonwealth interfaces with the MSP's management organisation; and
 - f. provide input into the Commonwealth's planning.

2. INTER-RELATIONSHIPS

- 2.1** The IWPDP is the primary plan for the IWP Contract.

3. PREPARATION INSTRUCTIONS**3.1 Generic Format and Content**

- 3.1.1** The IWPDP shall be a stand-alone document that provides sufficient information to allow the reader to understand how various aspects of service delivery will be managed without referring to other documents.
- 3.1.2** The IWPDP shall be the master planning document, integrating, summarising, and referencing other plans (if any) and schedules for the provision of Integrated Work Partner Services, as required in this template and elsewhere in the SOW.
- 3.1.3** The IWPDP need not be developed as one document. It may be divided into volumes, sections and/or sub-plans provided that the head document links all sub documents together as a cohesive whole.
- 3.1.4** The data item shall include a traceability matrix that defines how each specific content requirement, as contained in this template, is addressed by sections within the data item.

3.2 Specific Content – Services Delivery Management

3.2.1 General

- 3.2.1.1 The IWPDP shall describe the objectives, scope, constraints, and assumptions associated with the MSP's program of activities for the delivery of Integrated Work Partner services delivered under an IWP Contract to the Project. The IWPDP shall describe the risk-management strategies associated with any risks associated with the provision of Integrated Work Partner Services under the IWP Contract.
- 3.2.1.2 The following paragraphs outline the framework of the IWPDP. This framework should not limit the MSP in developing the IWPDP, which must reflect the way in which the MSP wishes to manage the IWP functions for the project during the IWP Contract.

3.2.2 Scope

- 3.2.2.1 The IWPDP shall clearly identify:
- the scope of work to be undertaken for this project by the MSP and Subcontractors; and
 - areas that are not within scope.

3.2.3 Organisation

- 3.2.3.1 The IWPDP shall describe the organisational structure responsible for managing and providing Services under the IWP Contract, including:
- the MSP's company organisational structure, in so far as it relates to the IWP Contract;
 - the MSP's IWP Contract delivery organisation;
 - the MSP's contractual relationship with Subcontractors for the purposes of the IWP Contract; and
 - each Subcontractor's organisational arrangements (to the extent applicable to the IWP Contract), including the relationships between the Subcontractors' teams and the MSP's teams to enable the provision of Integrated Work Partner Services.
- 3.2.3.2 The IWPDP shall describe the major interfaces within the Integrated Work Partner Services, including organisational and process interfaces, and how the various elements of the Integrated Work Partner Services will be integrated to produce a cost-effective solution for the IWP Contract period. These interfaces include:
- The Commonwealth Business Unit,
 - The SPPMO,
 - Other relevant service providers, and
 - Strategic Partner and Capability Partner services.
- 3.2.3.3 To the extent applicable to the IWP Contract, the respective IWPDP interface descriptions shall include:
- Accountabilities and Responsibilities,
 - Communication strategies,
 - Tasking strategies,
 - Collaboration opportunities, and
 - Disputes and issues resolution processes.
- 3.2.3.4 The IWPDP shall identify, and describe the make-up and purpose of, each element to be employed in performance of the IWP Contract.

3.2.4 Staff Management

- 3.2.4.1 The IWPDP shall describe the MSP's methodology for identifying staff to provide the Integrated Work Partner Services, including:
- a. the identification of specific staff the within the MSP's and Subcontractors' organisations that will support the Project;
 - b. the definition of the person/position specifications, or responsibilities and authorities for each position and the skill sets needed to fill that position (e.g., Maintenance Manager with 10 years' experience in managing large-scale, deeper maintenance activities); and
 - c. the identification of relevant background skills and experience.

3.2.5 Business Resource Planning

- 3.2.5.1 The IWPDP shall demonstrate that MSP resources are available to meet the current and future obligations of this IWP Contract. The IWPDP shall address:
- a. the MSP's obligations in regard to current and future work;
 - b. use of resources such as:
 - c. human capital in relation to current and envisaged contracts,
 - d. financial resources,
 - e. physical resources,
 - f. Intellectual Property resources,
 - g. other organisational resources, and
 - h. Subcontractor relationships and other supply arrangements;
 - i. details of the MSP's capabilities to satisfactorily discharge its responsibilities under the IWP Contract in relation to the use of the identified resources; and
 - j. arrangements for reprioritising resources across the MSP's span of commitment, including the criteria used to determine when this reprioritising will be required.

3.2.6 Planning and Control

- 3.2.6.1 The IWPDP shall contain an overview of the processes and tools used by the MSP to ensure the integration of technical, cost and schedule planning and control for the management of the work associated with the Project.
- 3.2.6.2 The IWPDP shall identify the tools to be used in support of contract management and services management, and shall describe the planned purpose and method of usage of each tool. Example of tools that may be addressed are management information systems, databases, spreadsheets, cost estimating tools, network scheduling tools and decision analysis tools.

3.2.7 Specific Management Mechanisms

- 3.2.7.1 The IWPDP shall describe the visibility into Integrated Work Partner Services that will be provided to the Commonwealth to enable the Commonwealth to be assured that value for money is being obtained throughout the IWP Contract term.
- 3.2.7.2 The IWPDP shall describe the MSP's systems and processes for the management of the Integrated Work Partner Services to be provided under the IWP Contract.

3.2.8 Performance Management

- 3.2.8.1 The IWPDP shall describe how the MSP will measure and manage the performance of the work under the IWP Contract, including:
- a. the identification, collection, recording and analysis of data in relation to any contracted Performance Measures, including (as applicable):
 - b. Key Result Areas (KRAs) and Key Performance Indicators (KPIs); and

- c. any other measure of performance, which are required under the IWP Contract;
- d. the data-management systems to be used by the MSP to collect, document, disseminate, coordinate, control and share performance data;
- e. the validation of performance measurement data to ensure that it is current, accurate, and applicable, including:
- f. methods to minimise data corruption or misreporting during the collection process;
- g. references to any IWP Contract requirements for data validation or for supporting data; and
- h. methods for assessing and including the impact of Commonwealth actions on the performance measurement data;
- i. the use of the performance measurement data to ensure that the IWP Contract performance requirements are being achieved and improved where necessary;
- j. the mechanisms for reporting achievement to the Commonwealth against the IWP Performance Management Framework; and
- k. the integration of the performance-management activities with the Quality Management program.

3.2.9 Risk, Issues, and Opportunities Management

- 3.2.9.1 The IWPDP shall describe the MSP's processes to be used for managing risks, issues, and opportunities for the Project and how they will be integrated into the Project's systems and processes.

3.2.10 Stakeholder Interface

- 3.2.10.1 The IWPDP shall describe the interfaces between the Commonwealth, the MSP and other contractors that are required to meet the requirements of the IWP Contract and successful delivery of the Project.
- 3.2.10.2 The IWPDP shall provide an overview of the processes to be used by the MSP for, and the responsibilities associated with, the management of the following types of issues:
- a. alerting the Commonwealth Representative of any disagreement occurring across the customer organisation; and
 - b. ensuring customer expectations are consistent with the budget and IWP Contract.
- 3.2.10.3 The IWPDP shall describe the MSP's expectations with respect to Commonwealth services and resources to enable the MSP to meet its obligations under the IWP Contract, including an indication of types, quantities, and time scales, and where these requirements will be detailed.

3.2.11 Subcontract Management

- 3.2.11.1 The IWPDP shall describe how the MSP intends to manage Subcontractors (if any), including:
- a. the integration of Subcontractors into the support program, including how the support program requirements will be flowed down to Subcontractors and how outputs from Subcontractors will be validated against those requirements;
 - b. the communications, meeting and review plan for each Subcontractor;
 - c. the method for ensuring that each Subcontractor has an integrated technical, cost and schedule control mechanism in place;
 - d. the method for ensuring that each Subcontractor is collecting and analysing relevant project metrics to enable progress to be tracked against plan; and
 - e. the method for ensuring that the Subcontractors prepare subcontract status reports for inclusion in the any contract status reports.

3.2.12 Communications Management

- 3.2.12.1 The IWPDP shall define the processes and information flows associated with IWP Contract communications, including:
- a. within the MSP's organisation;
 - b. between the MSP's project team and the Commonwealth's project team;
 - c. between the MSP and other contractor/stakeholders; and
 - d. where appropriate and agreed, between other stakeholders.
- 3.2.12.2 The IWPDP shall identify the reports, including any non-routine reports to be provided to the Commonwealth to meet the IWP Contract requirements, including the identification of any linkages between reports, and the timeframes for delivering reports.
- 3.2.12.3 The IWPDP shall describe any data-delivery systems to be implemented under the IWP Contract.
- 3.2.12.4 The IWPDP shall describe how the MSP proposes to conduct performance reviews to enable the MSP to report on the performance of Integrated Work Partner Services delivered in the period and to forecast requirements for the provision of Integrated Work Partner Services in the next and future periods.

3.2.13 Government Furnished Material, Facilities, and Services

- 3.2.13.1 The IWPDP shall describe the MSP's arrangements for the receipt, custody, storage, care, maintenance, and use, as applicable, of any Government Furnished Material (GFM), Government Furnished Facilities (GFF) and Government Furnished Services (GFS) provided to the MSP under the IWP Contract.
- 3.2.13.2 If applicable, the IWPDP shall describe any GFM, GFF or GFS provided to the MSP under a separate Commonwealth contract and utilised for this IWP Contract.

3.2.14 Intellectual Property Management

- 3.2.14.1 The IWPDP shall describe the arrangements for managing Intellectual Property (IP) under the IWP Contract.

3.3 Specific Content – Service Delivery

Note to Drafters: These items will need to be drafted in response to the scope of work applicable to the IWP Contract and any obligations or requirements arising out of the inclusion of any special conditions in the Tasking Request.

For Example:

Engineering Management

The IWPDP shall describe the strategy, management arrangements, methodology, processes, and tools to be used by the MSP to ensure that the Engineering requirements of the IWP Contract are satisfied, including (as applicable):

- a. *the identification of the scope of Engineering Services for which the MSP has been designated as having engineering responsibility;*
- b. *the organisational arrangements and processes for the provision of Engineering Services;*
- c. *the achievement and maintenance of any Technical Regulatory Framework requirements, including a description of the Engineering Management System (EMS) to be employed;*
- d. *the management of Engineering Services, including the identification of any engineering-related information-management systems to be employed;*
- e. *the standards to be applied for undertaking Engineering Services (e.g., in relation to configuration management and systems engineering);*
- f. *the interfaces between the MSP's Engineering Support systems, Acquisition Contractors Engineering Support system and the Commonwealth's Engineering Support systems and processes;*

Integrated Logistics Support (ILS) Program

The IWPDP shall describe the strategy, management arrangements, methodology, processes, and tools to be used by the MSP to ensure that the ILS requirements of the IWP Contract are satisfied, including (as applicable):

- a. *the identification of the scope of ILS Services for which the MSP has been designated as having engineering responsibility;*
- b. *the organisational arrangements and processes for the provision of ILS Services;*
- c. *the standards to be applied for undertaking ILS Services;*
- d. *the interfaces between the MSP's ILS systems, Acquisition Contractors support systems and the Commonwealth's ILS Support systems and processes;*

3.4 Transition Management

- 3.4.1.1 The IWPDP shall contain an overview of the MSP's transition in activities and transition out activities in the event of IWP Contract termination or project closure.

13. - Intellectual Property Schedule;
14. Attachment D - Confidential Information;
15. Attachment E - Supplementary Glossary; **[Insert this attachment only if you want to add new definitions or otherwise vary the Glossary in the MSP Services Terms and Conditions in Schedule 2 of the ESSA];**
16. Attachment F - Government Furnished Material (GFM) Schedule; **[Insert this attachment only if the Commonwealth will provide GFM.];**
17. Attachment G – IWP PMF **[Note – this will be based on the Performance Management Framework in Attachment 2 of Schedule 4 of the ESSA];** Attachment H – Reimbursable Expenses;

Attachment I – Specified Personnel;

Major Service Provider – Final

This Attachment will form Attachment D to the Approved IWP Tasking Request.

Attachment E to Schedule 7 – Supplementary Glossary

This Attachment will form Attachment E to the Approved IWP Tasking Request

Attachment F to Schedule 7 – Government Furnished Material

This Attachment will form Attachment F to the Approved IWP Tasking Request.

Attachment G to Schedule 7 – IWP PMF

This Attachment will form Attachment G to the Approved IWP Tasking Request.

Attachment H to Schedule 7 – Reimbursable Expenses

This Attachment will form Attachment H to the Approved IWP Tasking Request.

Attachment I to Schedule 7 – Specified Personnel

This Attachment will form Attachment I to the Approved IWP Tasking Request.