



Australian Government

Defence

[INSERT NAME OF CAPABILITY/SYSTEM] ACQUISITION CONTRACT

CONTRACT NO: (INSERT NUMBER)

DETAILS SCHEDULE

PARTIES

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

Commonwealth Representative:	(INSERT DETAILS)	
Notice Details:	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

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

Contractor Representative:	(INSERT DETAILS)	
Notice Details:	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

INFORMATION TABLE

Item	Information	
Item 1 (clause 1.3)	Effective Date: (Core)	(INSERT DATE)
Item 2 (clause 3.5)	Base Date: (Core)	[INSERT DATE] Note to drafters: Base Date should be the date one month prior to the date on which tenders close.
Item 3 (clause 7.4)	Exchange Rate: (Optional)	The spot selling rate of [INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES] relative to the Australian Dollar used by [INSERT THE RELEVANT FINANCIAL INSTITUTION].
Item 4 (clause 8.1.1)	Defect Notification Period: (Core)	From the Effective Date until [INSERT PERIOD] after expiry or earlier termination of the Contract.
Item 5 (clause 8.2.1)	Defect Rectification Period: (Core)	The period of [INSERT PERIOD] after Acceptance of the Supplies, or, for Supplies not subject to Acceptance, after completion of the Supplies in accordance with the Contract.
Item 6	Approved Contractor	<input type="checkbox"/> Yes / <input type="checkbox"/> No

Item	Information		
(clause 9.1)	Insurance Program Status: (Core)		
Note to drafters: Delete insurance policies if they do not apply	Limits of indemnity required insurances: (Core)	Public liability: (clause 9.1.5)	[\$[INSERT AMOUNT]] million
		Products liability: (clause 9.1.5b)	[\$[INSERT AMOUNT]] million
		Professional indemnity: (clause 9.1.6)	[\$[INSERT AMOUNT]] million
		Motor vehicle insurance: (clause 9.1.9b)	[\$[INSERT AMOUNT]] million
Item 7 (clause 10.6)	[Option A] Limitation Amount: (Optional)	Loss of or damage to Defence Property (other than Supplies): (clause 10.6.1a)	[\$[INSERT AMOUNT]] million
		Loss of or damage to Supplies (including loss of use of Supplies), and Losses other than those referred to in clause 10.6.1a: (clause 10.6.1b)	[\$[INSERT AMOUNT]] million
	[Option B] Overall Limitation Amount: (Optional)	Loss of any kind: (clause 10.6.3)	[\$[INSERT AMOUNT]] million
Item 8 (clause 11.8)	Defence Security: (Core)	Security Classification of information, assets and work to be performed under the Contract (clause 11.8.3)	[INSERT CLASSIFICATION]
		Personnel security clearance: (clause 11.8.3b)	[INSERT CLASSIFICATION]
		DISP membership required: (clause 11.8.4 or 11.8.5)	<input type="checkbox"/> Yes / <input type="checkbox"/> No
		Note to drafters: Delete DISP Governance Level, DISP Personnel Security Level, DISP Physical Security Level and DISP Information / Cyber Security Level if DISP membership is not required.	

Item	Information
	<div> <div>DISP Governance Level:</div> <div>Note to drafters: In accordance with Control 16.1 of the DSPF, the DISP membership level required for the Governance element must equal the highest DISP membership level required for the other elements.</div> <div>DISP Personnel Security Level:</div> <div>DISP Physical Security Level:</div> </div> <div> <div>[INSERT LEVEL]</div> <div>[INSERT SPECIFIC DETAILS IF REQUIRED]</div> <div>[INSERT LEVEL]</div> <div>[INSERT SPECIFIC DETAILS IF REQUIRED]</div> <div>[INSERT LEVEL]</div> <div>[INSERT SPECIFIC DETAILS IF REQUIRED]</div> </div>
	<div>DISP Information / Cyber Security Level:</div> <div>[INSERT LEVEL]</div> <div>[INSERT SPECIFIC DETAILS IF REQUIRED]</div>
	<div>Security Classification and Categorisation Guide included:</div> <div>(clause 11.8.7)</div> <div><input type="checkbox"/> Yes / <input type="checkbox"/> No</div>
	<div>COMSEC material:</div> <div>(clause 11.8.9 and 11.8.10)</div> <div><input type="checkbox"/> Yes / <input type="checkbox"/> No</div> <div><input type="checkbox"/> transmitted in Australia</div> <div><input type="checkbox"/> transmitted overseas</div>
Item 9 (clause 12.1)	<div>Governing Law:</div> <div>(Core)</div> <div>[INSERT RELEVANT STATE OR TERRITORY]</div>

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1 CONTRACT FRAMEWORK

1.1 Definitions (Core)

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

1.2 Interpretation (Core)

- 1.2.1 In the Contract, unless the contrary intention appears:
- a. headings are for the purpose of convenient reference only and do not form part of the Contract;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to one gender includes any other;
 - d. a reference to a person includes a body politic, body corporate or a partnership;
 - e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the end of the next Working Day;
 - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - g. a reference to a clause includes a reference to a subclause of that clause;
 - h. a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar;
 - i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the Effective Date specified in the Details Schedule, or alternatively, a reference to another version of the document if agreed in writing between the parties;
 - j. the word "includes" in any form is not a word of limitation;
 - k. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Contract; and
 - l. a provision stating that a party 'may' agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval.

1.3 Effective Date (Core)

- 1.3.1 The Contract commences on the Effective Date specified in the Details Schedule.

1.4 Entire Agreement (Core)

- 1.4.1 To the extent permitted by law, the Contract represents the parties' entire agreement in relation to the subject matter of the Contract and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

1.5 Precedence of Documents (Core)

- 1.5.1 If there is any inconsistency between parts of the Contract, a descending order of precedence shall be accorded to:
- a. the COC (including the Details Schedule) and the Glossary (other than the referenced documents in the Glossary);
 - b. the SOW and its annexes;
 - c. the attachments other than the SOW and the Glossary; and

- d. any document incorporated by express reference or otherwise referenced as part of the Contract,

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

1.6 Contracted Requirement (Core)

- 1.6.1 The Contractor shall, for the Contract Price and any other payment required under the Contract, provide the Supplies and comply with all of its other obligations under the Contract.

1.7 Option for Further Quantities and Optional Extras (Optional)

- 1.7.1 The Contractor grants the Commonwealth the option to purchase additional quantities of the Supplies and optional extras as set out in Annex B to Attachment B, at any time prior to (...INSERT DATE...) under the terms of the Contract, including those detailed in Annex B to Attachment B.
- 1.7.2 The Commonwealth may exercise the option by giving a notice to the Contractor identifying the optional extras or quantity and type of additional quantities of Supplies (as appropriate) to be purchased. The Contractor shall, within 30 days after receipt of the notice, submit a CCP in accordance with clause 11.1 to give effect to the exercise of the option.

2 CONTRACT GOVERNANCE

2.1 Representatives (Core)

- 2.1.1 The Commonwealth Representative is responsible for managing the Contract on behalf of the Commonwealth.
- 2.1.2 The Contractor shall comply with the reasonable directions of the Commonwealth Representative made within the scope of the Contract.
- 2.1.3 If given orally, a direction shall be confirmed in writing by the Commonwealth Representative within 10 Working Days. Unless otherwise specified in the Contract, the Commonwealth Representative has no authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 11.1 or clause 6.2 of the SOW.
- 2.1.4 The Contractor Representative has the authority to represent the Contractor for the purposes of the Contract.
- 2.1.5 The Commonwealth Representative or the Contractor Representative:
 - a. shall advise of a change in representative; and
 - b. may delegate their functions under the Contract, or authorise another person on their behalf to carry out their functions under the Contract,
 by giving a notice to the other party (including updated Notice Details specified in the Details Schedule, and the scope of the delegation or authorisation, as applicable).
- 2.1.6 Unless authorised by the Contract, any work performed or cost incurred by the Contractor in response to a communication from the Commonwealth Representative is at the Contractor's sole risk.

2.2 Notices (Core)

- 2.2.1 Unless the contrary intention appears, any notice under the Contract shall be effective if it is in writing and sent from and delivered to the Commonwealth Representative or Contractor Representative, as the case may be, in accordance with the Notice Details specified in the Details Schedule.
- 2.2.2 A notice given in accordance with this clause 2.2 is deemed to be delivered:
 - a. if hand delivered, when received at the address;
 - b. if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or

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

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

3 PRODUCTION OF THE SUPPLIES

3.1 Language and Measurement (Core)

- 3.1.1 All information delivered as part of the Supplies under the Contract shall be written in English. If such documentation is a translation into the English language, the translation shall be accurate and free from ambiguity.
- 3.1.2 Measurements of physical quantity shall be in Australian legal units as prescribed under the National Measurement Act 1960 (Cth), or, if Supplies are imported, units of measurement as agreed in writing by the Commonwealth Representative.

3.2 Standards of Work and Conformity (Core)

- 3.2.1 The Contractor shall:
 - a. carry out its work under the Contract (including designing, developing, manufacturing, constructing, installing, integrating and testing the Supplies, and providing services):
 - (i) in accordance with the standards specified in the Contract and all applicable laws; and
 - (ii) otherwise in accordance with good industry practice;
 - b. ensure that the Supplies conform to the requirements of the Contract; and
 - c. ensure that the Supplies are compatible with and do not restrict the performance of, or adversely affect, other equipment specified or referred to in the Contract that will, or may, be used with the Supplies.
- 3.2.2 For the purpose of this clause, "good industry practice" means practices, methods and standards that would reasonably be expected from professional and experienced contractors in the relevant industry undertaking the same type of work as the Contractor in the same or similar circumstances.

3.3 Fitness for Purpose (Core)

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

3.4 Authorisations (Core)

- 3.4.1 The Contractor shall, and shall ensure that its Subcontractors:
 - a. obtain and maintain in full force all Authorisations (other than Export Approvals);
 - b. take all reasonable steps to obtain and maintain in full force all Export Approvals;
 - c. provide a copy of any Authorisations to the Commonwealth within five Working Days after request by the Commonwealth; and
 - d. ensure that all work under the Contract is performed and the Supplies are provided in accordance with all Authorisations.
- 3.4.2 The Contractor shall notify the Commonwealth Representative within five Working Days after receiving notification that an Authorisation is refused, revoked or qualified.
- 3.4.3 The Contractor shall notify the Commonwealth Representative within five Working Days after:
 - a. the application for an Export Approval; or
 - b. the grant of, or a new requirement for, an Export Approval.

- 3.4.4 The Commonwealth shall, on request by the Contractor, give the Contractor all assistance reasonably required to facilitate the provision of an Export Approval, including the provision of a certificate by the Commonwealth as to the end use of the Supplies.
- 3.4.5 If a party becomes aware of a breach of an Export Approval, it shall promptly notify the other party and co-operate with any investigation or disclosure to the relevant government authorities in relation to the breach.

3.5 Imported Supplies and Customs Entry (Optional)

- 3.5.1 The Contractor shall arrange customs entry and the payment of any customs duty applicable to the Supplies at no additional cost to the Commonwealth, except as provided in this clause 3.5.
- 3.5.2 The Contractor shall give the Commonwealth Representative a notice, including supporting evidence, of any variation to the rate of customs duty applicable to the Supplies between the Base Date specified in the Details Schedule and the relevant date of entry and:
- a. in the case of an increase, the Contractor may claim reimbursement of an amount equivalent to the extra customs duty payable as a consequence of the increase; or
 - b. in the case of a decrease, the Commonwealth may elect to recover under clause 13.4.2 an amount equivalent to the reduction in the customs duty payable as a consequence of the decrease. No amount shall be owing to the Commonwealth under this clause 3.5.2 until the Commonwealth elects to recover the amount.
- 3.5.3 The Commonwealth shall not be liable to reimburse the Contractor for any fine or penalty incurred by the Contractor under any Australian customs, excise or duty legislation applicable to the importation of the Supplies.

3.6 Commonwealth Property (Core)

- 3.6.1 The Contractor acknowledges that any Commonwealth Property provided to or used by the Contractor or a Subcontractor for the purposes of the Contract, remains the property of the Commonwealth.
- 3.6.2 The Commonwealth retains the right to identify Commonwealth Property as its property and the Contractor shall preserve any means of identification.
- 3.6.3 The Contractor shall only use Commonwealth Property:
- a. for the purposes of the Contract;
 - b. in a manner consistent with any applicable requirements for the Commonwealth Property, including as set out in the SOW; and
 - c. for the purposes for which the Commonwealth Property was designed, manufactured or constructed or otherwise as expressly permitted or required by any prior written Approval of the Commonwealth Representative.
- 3.6.4 The Contractor shall not, without the prior written approval of the Commonwealth Representative, do any of the following:
- a. modify Commonwealth Property;
 - b. move Commonwealth Property from the location to which it was delivered (except to return the property to the Commonwealth); and
 - c. transfer possession or control of Commonwealth Property to any other person,
- except to the extent reasonably necessary to enable the Contractor to satisfy an express requirement of the Contract.
- 3.6.5 The Contractor shall not, without the prior written approval of the Commonwealth Representative, create or allow to be created any Security Interest over any Commonwealth Property.
- 3.6.6 The Contractor shall return all items of Commonwealth Property that are required to be returned to the Commonwealth in accordance with the SOW or as otherwise directed by the Commonwealth Representative.

- 3.6.7 The Contractor acknowledges that it may be provided with the ability to access Commonwealth-held information in connection with its performance of the Contract, including through access to Commonwealth information technology systems. The Contractor shall not access or use Commonwealth-held information except to the extent strictly required for the performance of the Contractor's obligations under the Contract.
- 3.6.8 Without limiting the Contractor's obligations with respect to Commonwealth Property as set out in the SOW, the Contractor shall notify the Commonwealth Representative within five Working Days after becoming aware of any material loss or damage to, or any material defect in, any Commonwealth Property provided to, or used by, the Contractor or a Subcontractor for the purposes of the Contract.

4 AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

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

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

If the expected value of any resultant Contract is at or above \$4 million and less than \$20 million (including GST), then include this clause 4.

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

Drafters can consult with:

CASG AIC Division at aic.delivery@defence.gov.au; and

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

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

4.1 General AIC Requirements (Core)

Note to tenderers: *Tenderers should refer to Annex E to Attachment A to the Conditions of Tender for more details on including an AIC program.*

- 4.1.1 The Contractor acknowledges the importance to the Commonwealth of the Australian Industry Capability (AIC) program, as set out in government and Defence policies, and the contribution made by the Contractor towards achieving the objectives for the AIC program, to:
- a. deliver capability to Defence, from Australian Industry, through solutions that provide value for money for the Commonwealth; and
 - b. maximise opportunities for competitive Australian Industry participation in Defence procurements.
- 4.1.2 The Contractor acknowledges that the AIC Schedule sets out:
- a. the AIC activities that it intends will be carried out by Australian Industry (whether by the Contractor or identified Subcontractors) in Australia or New Zealand in performing the Contract; and
 - b. the expected Australian Contract Expenditure (ACE) of its Subcontracts with the Subcontractors referred to in clause 4.1.2a.
- 4.1.3 The Contractor shall use reasonable endeavours to:
- a. ensure that the AIC activities specified in the AIC Schedule are performed in Australia or New Zealand by the Contractor or relevant Subcontractors identified in the AIC Schedule; and

- b. achieve the value of ACE specified in respect of each AIC activity specified in the AIC Schedule.
- 4.1.4 If the Contractor is required to calculate ACE and Imported Contract Expenditure (ICE) under the Contract, ACE and ICE shall be calculated in accordance with the ACE Measurement Rules and any alternate and/or additional deeming rates included in Table B-2 at Attachment B.

4.2 AIC Obligations (Core)

- 4.2.1 The Contractor shall maintain the accuracy, completeness and currency of the AIC Schedule.
- 4.2.2 When the Contractor proposes an update to the AIC Schedule, the Contractor shall submit a Contract Change Proposal in accordance with clause 11.1.
- 4.2.3 The Contractor shall:
- a. achieve the Total ACE Value; and
 - b. without limiting clause 4.1.3 or 4.2.3a, if the Contractor or a Subcontractor can no longer perform an AIC activity specified in the AIC Schedule, ensure that the opportunities are maximised for Australian Industry to perform that AIC activity in Australia or New Zealand.
- 4.2.4 The Contractor acknowledges and agrees that:
- a. compliance with clause 4.2.3 shall not relieve the Contractor from its liabilities or other obligations under the Contract; and
 - b. Acceptance of the Supplies shall not relieve the Contractor from complying with its obligations under clause 4.2.3 and its other obligations under the Contract relating to AIC.
- 4.2.5 Where the Contractor fails to comply with, or anticipates that it is likely to fail to comply with clause 4.2.3, it shall notify the Commonwealth Representative in writing as soon as reasonably practicable.

5 TECHNICAL DATA, SOFTWARE AND CONTRACT MATERIAL

5.1 Ownership of Intellectual Property (IP) (Core)

Note to drafters: If Commonwealth ownership of IP or broader IP rights for Defence Purposes is required (for example, if the Commonwealth will be funding the development of existing IP or the creation of new IP), or the Contractor will be provided with TD or Software as GFM, use of the ASDEFCON (Complex Materiel) Volume 2 template should be considered or appropriate clauses from that template should be included.

Note to tenderers: The Commonwealth's default position reflected in clause 5.1 is that the Contractor (or its nominee) will own all IP created under the Contract, and that ownership of newly created IP created under a subcontract will be determined by the terms of the relevant Subcontract between the Contractor and Subcontractor.

- 5.1.1 Nothing in the Contract affects the ownership of IP, except as expressly provided for in this clause 5.
- 5.1.2 All IP created under the Contract in respect of TD, Software or Contract Material is assigned to the Contractor (or its nominee) immediately upon its creation.

5.2 TD and Software (Core)

- 5.2.1 This clause 5.2 applies to all TD and Software delivered or required to be delivered to the Commonwealth or any other person under the Contract, other than Commercial TD or Commercial Software to which clause 5.3 applies.
- 5.2.2 The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 5.2 applies, to Use the TD or Software for any Defence Purpose, and to grant a sublicense to:

- a. a Commonwealth Service Provider to Use the TD or Software to enable the Commonwealth Service Provider to perform its obligations, functions or duties to the Commonwealth;
- b. any person to Use the TD or Software, or to grant a further sublicense to Use the TD or Software, for:
 - (i) installing, configuring, operating, maintaining, removing, uninstalling or disposing of the Supplies, integrating the Supplies with other systems or rectifying defects or undertaking training in relation to the Supplies; or
 - (ii) any other purpose, subject to any restrictions specified in the Technical Data and Software Rights (TDSR) Schedule; or
- c. any person for a purpose referred to in clause 11.3.2.

5.3 Commercial TD and Commercial Software (Core)

- 5.3.1 The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial TD and all Commercial Software delivered or required to be delivered to the Commonwealth or any other person under the Contract, on the best commercial terms available to the Contractor.
- 5.3.2 The Contractor shall ensure that any licence granted to the Commonwealth in respect of Commercial TD and Commercial Software under this clause 5.3 does not require the Commonwealth to pay a Royalty or other fee (not otherwise included in the Contract Price) unless the Commonwealth has agreed in writing to the payment.

5.4 Contract Material (Core)

- 5.4.1 The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material to Use the Contract Material for any Defence Purpose, and to grant a sublicense to:
 - a. a Commonwealth Service Provider to Use the Contract Material to perform its obligations, functions or duties to the Commonwealth;
 - b. any person to Use the Contract Material, or to grant a further sublicense to Contract Material, for a Defence Purpose; and
 - c. any person for a purpose referred to in clause 11.3.2.

5.5 No Commercialisation (Core)

- 5.5.1 A Licence or sublicense granted in accordance with this clause 5 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the TD, Software or Contract Material.
- 5.5.2 For the avoidance of doubt, clause 5.5.1 does not prevent the Commonwealth from granting a sublicense in accordance with the rights granted in this clause 5 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.

5.6 TDSR Schedule (Core)

- 5.6.1 The Contractor shall take all reasonable steps (including by submitting a CCP in accordance with clause 11.1) to ensure the TDSR Schedule is up to date and contains an accurate description of all restrictions applicable to the Commonwealth's rights in respect of TD or Software, delivered or required to be delivered under the Contract.

5.7 TD and Software required to be delivered (Core)

- 5.7.1 The Contractor shall deliver all TD and Software required to be delivered under the Contract to the recipients at the times and locations, and in the manner, specified in the Contract.
- 5.7.2 If the time, location or manner of delivery of any item of TD or Software required to be delivered under the Contract is not specified in the Contract, the Contractor shall deliver the relevant item in accordance with a notice given by the Commonwealth.

5.8 Markings (Core)

- 5.8.1 Where markings are used by the Contractor or a Subcontractor in relation to TD, Software or Contract Material, the Contractor:
- a. shall ensure that those markings accurately reflect the rights and obligations of the Commonwealth, the Contractor or any other person; and
 - b. acknowledges that the markings are not determinative as to the rights and obligations of the parties.

5.9 TD and Software Warranties (Core)

- 5.9.1 The Contractor warrants and shall ensure that:
- a. the TD and Software delivered under the Contract shall include all TD and Software necessary to enable:
 - (i) the relevant requirements of the Specification to be satisfied; and
 - (ii) the Commonwealth to use and support the Supplies for the purposes contemplated under the Contract;
 - b. the rights granted to the Commonwealth in accordance with this clause 5 will not prevent the Supplies from being used and supported for the purposes contemplated under the Contract;
 - c. all Software delivered or required to be delivered to the Commonwealth under the Contract or a Subcontract is free from Malware, at the time of delivery to the Commonwealth; and
 - d. no Malware will be installed on the Supplies or any other Commonwealth system as a result of an act or omission of any of the Contractor Personnel.

5.10 Intellectual Property Warranties (Core)

- 5.10.1 The Contractor warrants and shall ensure that, in respect of any IP licensed to the Commonwealth under or in connection with this Contract, at all times:
- a. the relevant licensor has the right, title or authority to license, and has been made aware of, the rights granted in respect of IP under this clause 5; and
 - b. as at the time of delivery and after making diligent enquiries, the Contractor has no notice of any challenge, claim or proceeding in respect of any such IP.
- 5.10.2 The Contractor shall notify the Commonwealth if the Contractor becomes aware of any challenge, claim or proceeding referred to in clause 5.10.1b arising in respect of any IP licensed to the Commonwealth under or in connection with this Contract.

5.11 Patents, Registrable Designs and Circuit Layouts (Core)

- 5.11.1 The Contractor warrants and shall ensure that a licence is granted or obtained under the Contract for the Commonwealth to exercise any Patent, Registrable Design or Circuit Layout that is necessary to use or support the Supplies for the purposes provided for under the Contract.

6 DELIVERY, ACCEPTANCE AND OWNERSHIP**6.1 Delivery (Core)**

- 6.1.1 The Contractor shall deliver Supplies in accordance with the Contract, including the Price and Delivery Schedule at Annex A to Attachment B and clause 2.2 of the SOW.

6.2 Acceptance (Core)

- 6.2.1 The Contractor shall, in accordance with Annex A to Attachment B (including the delivery points and dates specified in that attachment), offer to the Commonwealth Representative Supplies for Acceptance that conform with the requirements of the Contract.
- 6.2.2 The Contractor shall, when offering Supplies for Acceptance:

- a. develop and deliver a signed Supplies Acceptance Certificate, certifying that the Supplies listed on the Supplies Acceptance Certificate conform with the requirements of the Contract; and
 - b. provide any other supporting evidence required by the Commonwealth Representative.
- 6.2.3 The Commonwealth Representative shall, within 15 Working Days after an offer of Supplies for Acceptance:
 - a. Accept the Supplies by signing the Supplies Acceptance Certificate; or
 - b. reject the Supplies, in which case the Commonwealth Representative shall notify the Contractor of the reasons for the rejection.
- 6.2.4 The Contractor acknowledges and agrees that:
 - a. the specification of the requirements for the Supplies in the Contract is the result of resource-intensive Commonwealth definition, approval and procurement processes;
 - b. the Commonwealth has relied on the Contractor's representations about time (including as reflected in the Contract);
 - c. the Commonwealth has determined that the Contract is value for money on the basis that full Acceptance of all Supplies is achieved by the dates specified in Annex A to Attachment B; and
 - d. it is reasonable that the Commonwealth at all times during the period of the Contract has current knowledge:
 - (i) progress under the Contract;
 - (ii) risks to achievement of Acceptance or other milestones including potential minor omissions and defects;
 - (iii) any other potential or actual non-compliance with the Contract;
 - (iv) risk management by the Contractor including of emerging risks; and
 - (v) any potential delay in meeting any timing obligation in the Contract, for any reason, and whether or not the delay risk was foreseeable or has been previously identified.
- 6.2.5 The Contractor shall:
 - a. proactively ensure that the Commonwealth is kept informed of matters relevant to the issues set out in clause 6.2.3b, using the communication channels and reporting processes in the Contract; and
 - b. comply with any directions by the Commonwealth or the exercise of any other Commonwealth powers under or in relation to the Contract in dealing with such matters.
- 6.2.6 If the Commonwealth agrees that Acceptance may be achieved despite any minor omissions or defects or other non-compliance, the Commonwealth may, after consultation with the Contractor:
 - a. determine a revised Contract Price reflecting the reduction in value for money of the non-complying Supplies ('Reduction Amount');
 - b. direct the Contractor to provide an Application for a Deviation in accordance with clause 6.2 of the SOW that is consistent with this clause; and
 - c. exercise its rights under clause 13.4 in respect of the Reduction Amount.
- 6.2.7 The Commonwealth Representative may require the Contractor to retake possession of any item of Supplies within five Working Days when a notice rejecting the Supplies is issued under clause 6.2.3b. Repossession of Supplies shall not affect the obligation of the Contractor to provide conforming Supplies.
- 6.2.8 The Contractor shall bear all costs associated with replacing or rectifying rejected Supplies and of complying with the directions of the Commonwealth Representative.

- 6.2.9 Any action of the Contractor in correcting or replacing the Supplies and in complying with the directions of the Commonwealth Representative under this clause 6.2 shall not entitle the Contractor to claim postponement of the date of delivery of the Supplies, or relieve the Contractor from performing its obligations under the Contract.

6.3 Ownership (Core)

- 6.3.1 Subject to clause 5, ownership of Supplies shall pass to the Commonwealth upon payment of a claim relating to those Supplies in accordance with clause 7.2.
- 6.3.2 The Contractor warrants and shall ensure that, at the time ownership of any item of Supplies passes to the Commonwealth under clause 6.3.1:
- the Contractor has full power and authority to transfer full legal and beneficial ownership in those Supplies to the Commonwealth; and
 - the Commonwealth will obtain good title to those Supplies, free from any Security Interest.
- 6.3.3 When ownership of Supplies passes to the Commonwealth in accordance with clause 6.3.1 and those Supplies are subsequently rejected by the Commonwealth Representative in accordance with clause 6.2.3b, the Commonwealth Representative may elect to re-pass ownership of those Supplies to the Contractor by giving the Contractor notice within 10 Working Days after issuing a notice of rejection under clause 6.2.3b.

7 PRICE AND PAYMENT

7.1 Price and Price Basis (Core)

Option A: For when the Contract is a firm price Contract and no adjustment claims will be allowed.

- 7.1.1 The Contract Price is set out in Annex A to Attachment B and, subject to clause 11.1, is unalterable.

Option B: For when adjustment claims will be allowed.

- 7.1.2 The Contract Price is set out in Annex A to Attachment B and, subject to clauses 7.4 and 11.1, is unalterable.

- 7.1.3 The Contract Price is payable in accordance with the Contract.

7.2 Payment (Core)

Note to tenderers: It is Commonwealth policy to pay its suppliers by direct credit. If it has not done so in the past, the successful tenderer should, prior to Contract signature, provide the Commonwealth Representative with details of the bank account into which payments should be directed.

- 7.2.1 The Contractor shall submit a claim for payment in accordance with clause 7.3.
- 7.2.2 On receipt of a claim for payment the Commonwealth Representative shall either:
- Approve the claim if it is submitted in accordance with clause 7.2.1; or
 - reject the claim if it is not submitted in accordance with clause 7.2.1.

Note to drafters: Option A below should only be included where the Commonwealth intends to use the Pan-European Public Procurement On-Line (PEPPOL) framework under any resultant Contract. If the Commonwealth and Contractor agree to use the PEPPOL framework, the maximum payment term will be 5 days. However, the Commonwealth Pay On-Time Policy does not apply if the nature of the goods or services being procured, or the structure of the procurement, would make it impractical for the policy to be applied. If this is the case, and the Commonwealth does not intend to use the PEPPOL framework, Option A and the Note to tenderers should be removed prior to RFT release.

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

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

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

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

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

7.2.3 The Commonwealth and the Contractor shall use electronic invoices through the Pan-European Public Procurement On-Line (PEPPOL) framework for the purposes of delivery and receipt of payment claims under the Contract.

7.2.4 When a claim is Approved under clause 7.2.2a, the Commonwealth shall make payment within 5 days after Approval of the claim.

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

7.2.5 When a claim is Approved under clause 7.2.2a, the Commonwealth shall make payment within 20 days of Approval of the claim.

7.2.6 If the Commonwealth Representative rejects the claim under clause 7.2.2b, the Commonwealth Representative shall, within 10 Working Days after receipt of the claim, notify the Contractor of the need to resubmit the claim and the reasons for rejection and any action to be taken by the Contractor for the claim to be rendered correct for payment.

7.2.7 Upon receipt of a notice issued pursuant to clause 7.2.6, the Contractor shall promptly take all necessary steps to make the claim for payment conform to the requirements of the Contract and shall submit a revised claim to the Commonwealth Representative. The resubmitted claim shall be subject to the same conditions as if it were the original claim.

7.3 Claims for Payment (Core)

7.3.1 The Contractor shall be entitled to submit claims for payment in accordance with Attachment B.

7.3.2 All claims for payment submitted by the Contractor shall:

- a. be correctly addressed and calculated in accordance with the Contract;
- b. if the Supplies are subject to Acceptance, be accompanied by the Supplies Acceptance Certificate(s) signed by both parties that relate to the Supplies listed in the claim for payment;
- c. be in the form of a valid tax invoice in accordance with clause 7.5;
- d. contain the following information:
 - (i) the title of the Supplies and the name of the Contractor's Representative;
 - (ii) the name and phone number of the Commonwealth Representative;
 - (iii) the Contract number; and
 - (iv) the amount of the claim; and
- e. be accompanied by any documentation requested by the Commonwealth Representative for the purposes of clause 6.1.1 or in order to establish that the claim is in accordance with the Contract.

- 7.3.3 All claims for payment are to be submitted to the Commonwealth Representative in accordance with clause 2.2.1.

7.4 Adjustments (Optional)

Note to drafters: *Allowing for adjustments for fluctuations in exchange rates may be appropriate when the Contract Price is payable in Australian dollars only. Allowing for adjustments for fluctuations in labour and materials costs may be appropriate when the Contract will not be completed within 12 months of the Base Date. The CMV1PW includes an Adjustments worksheet (which may be hidden) to enable the identification of applicable labour and materials indices.*

If adjustments may be applicable to any resultant Contract, drafters should refer to the ASDEFCON Clausebank for appropriate clauses to be included in the RFT.

The ASDEFCON Clausebank can be found at:

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

If adjustments will not be included in the draft Contract, the heading should be retained and '(Not used)' added at the end of the heading.

7.5 Taxes and Duties (Core)

- 7.5.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract shall be met by the Contractor and the Contractor agrees that they are included within the Contract Price.
- 7.5.2 The Contract Price set out in Annex A to Attachment B includes GST for the Supplies to be delivered under the Contract which are taxable supplies within the meaning of the GST Act.
- 7.5.3 The Contractor shall submit each claim for payment under clause 7 in the form of a valid tax invoice. The tax invoice shall include the amount and method of calculation of any GST payable by the Contractor in relation to that claim for payment as a separate item.
- 7.5.4 If the Contractor incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid tax invoice, the Contractor shall issue to the Commonwealth a valid adjustment note in accordance with the GST Act.
- 7.5.5 If the Commonwealth makes, or is assessed by the ATO as having made, a taxable supply to the Contractor under or in connection with the Contract, the Commonwealth shall be entitled to recover from the Contractor upon presentation of a valid tax invoice, the amount of GST paid or payable by the Commonwealth to the ATO.
- 7.5.6 The Commonwealth may elect to recover from the Contractor under clause 13.4.2 any amount of GST to be paid by the Contractor under clause 7.5.5. No amount shall be owing to the Commonwealth under this clause 7.5.6 until the Commonwealth elects to recover the amount.

7.6 Late Payment (Core)

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

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

- 7.6.1 If payment of an amount due to the Contractor under the Contract is made late, the Commonwealth shall pay interest on the unpaid amount, whether or not the Contractor has submitted a separate invoice for the interest.
- 7.6.2 Interest payable by the Commonwealth under this clause 7.6 shall be calculated in accordance with the following formula:

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

where:

"I%" means the ATO sourced General Interest Charge rate current at the due date of payment expressed as a percentage;

"P" means the amount of the late payment; and

"n" means the number of days that the payment was late up to and including the day that payment is made.

- 7.6.3 Interest shall only be payable in accordance with this clause 7.6 if the interest amount exceeds A\$100.

7.7 Cost Principles (Core)

- 7.7.1 Without in any way affecting or overriding the other provisions of the Contract, the Contractor shall apply the Defence Cost Principles when preparing any:

Option: For use when Defence Cost Principles are applied

Note to drafters: Use unless not required as per cl 2.31. of the Defence Cost Principles

- a. price for any CCP under clause 11.1; or
- b. claim for costs if the Contract is terminated.

8 DEFECT NOTIFICATION AND RECTIFICATION

8.1 Notification of Defects (Core)

- 8.1.1 If during the Defect Notification Period specified in the Details Schedule the Contractor becomes aware of any defect in the Supplies which adversely affects, or is likely to adversely affect:
- a. the safety of Supplies or the safety of persons the Contractor shall notify the Commonwealth Representative of the defect within one Working Day; or
 - b. the operation or capability of the Supplies, the Contractor shall notify the Commonwealth Representative of the defect within five Working Days.
- 8.1.2 The Contractor shall, within 30 days after a notification under clause 8.1.1, provide the Commonwealth with a report on the nature of the defect, its cause and effects, and proposed rectification action.

8.2 Defect Rectification Obligations (Core)

- 8.2.1 If the Commonwealth Representative notifies the Contractor of a defect in Supplies during the Defect Rectification Period (specified in the Details Schedule) applicable to the Supplies, the Contractor shall, within **[INSERT PERIOD]** after the notification, or a longer period agreed in writing by the Commonwealth, by repair, replacement or modification:
- a. rectify the defect; and
 - b. rectify any damage or other adverse effect to the extent caused by the defect or the rectification of the defect,
- whether or not the defect arises out of or as a consequence of a Contractor Default.
- 8.2.2 The Contractor shall be entitled to claim for an additional amount (calculated on the same basis as the Contract Price) for any rectification work performed under clause 8.2.1, but only to the extent that the Contractor demonstrates that the defect arose out of or as a consequence of a Commonwealth Default or the Commonwealth wilfully damaging the Supplies.
- 8.2.3 Subject to clause 8.2.2, the Contractor shall, except to the extent that the Commonwealth Representative otherwise agrees, bear all costs of, and incidental to any rectification work performed under clause 8.2.1, including the costs of any removal, disassembly, packing, freight (not exceeding the freight cost between the Contract delivery point and the Contractor's nominated repair facility and return), relevant testing, re-assembly and reinstallation.
- 8.2.4 If the Contractor fails to rectify a defect within the period specified in clause 8.2.1, the Commonwealth may itself or by a third party ensure that the rectification is performed. The

Commonwealth may elect to recover from the Contractor under clause 13.4.2 the amount of the Commonwealth's costs of the rectification work. No amount shall be owing to the Commonwealth under this clause 8.2.4 until the Commonwealth elects to recover the amount.

8.2.5 Nothing under this clause 8.1.2 limits or affects:

- a. the obligations of the Contractor under clauses 3.1.2, 10.3 or 10.4; or
- b. any other right of the Commonwealth under the Contract or otherwise arising out of or as a consequence of a defect.

8.3 Manufacturer and Other Warranties (Optional)

Note to tenderers: This clause may be included if there are warranties that are available from the relevant manufacturer or supplier that will extend beyond the end of the relevant Defect Rectification Period and these warranties represent value for money for the Commonwealth. Tenderers should identify any warranties of this nature in their tenders, including the additional cost (if any) associated with such warranties.

8.3.1 The Contractor shall ensure that the Commonwealth obtains the benefit of any manufacturer, supplier or other third party warranty applicable to the Supplies (including after the expiry of the Defect Rectification Period for the relevant Supplies), including by taking all reasonable action to enforce such a warranty, until the expiry of the warranty.

9 INSURANCE

9.1 Insurance (Core)

Note to drafters: This clause is a shortened version of the long form insurance clause contained in the ASDEFCON Strategic Materiel and Complex Materiel Volume 2 templates. If the limit of indemnity for any one of the required liability, transit or contract works insurance policies in this clause meets (or exceeds) the monetary threshold nominated in DMI(PROC) 13-0-004 (ie \$25m) or any type of aviation or marine insurance policy is required drafters should use the long form clause or consult with the ACIP Management Team about tailoring this short form clause.

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

The ACIP Initiative applies to CASG procurements in accordance with DMI(PROC) 13-0-004 Mandatory Procurement Policy Requirements for the Approved Contractor Insurance Program Initiative. Drafters should refer to the ASDEFCON Insurance Handbook for guidance to assist with understanding and tailoring this clause. In accordance with paragraphs 28 to 31 of DMI(PROC) 13-0-004, material changes to this clause must be approved by the ACIP Management Team at ACIP.ManagementTeam@defence.gov.au. Information on the ACIP Initiative is available at:

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

For non-CASG procurements, drafters may seek approval to apply the ACIP Initiative from the ACIP.ManagementTeam@defence.gov.au.

Drafters using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, must delete the Note to tenderers below and also delete clause 9.1.16 and its associated Note to tenderers.

Note to tenderers: The operation of clause 9.1 will vary depending on whether the Contractor has Approved Contractor Insurance Program (ACIP) status and, where a Contractor has ACIP status, to the extent any of the policies required by clause 9.1 are within the Contractor's ACIP.

As per clause 9.1.16, for Contractors with ACIP status, the Contractor will be deemed compliant with relevant requirements of this clause where the policy is within the scope of the Contractor's ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at:

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

- 9.1.1 The Contractor shall effect and maintain the insurances (which, for the purposes of this clause 9.1, will be satisfied where the Contractor causes such insurances to be effected and maintained or where the Contractor is insured under such insurances) for the times and in the manner specified in this clause 9.1, without requiring insurance to be effected to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 9.1.
- 9.1.2 For the avoidance of doubt, the terms of this clause 9.1 do not alter the allocation of risk or liability between the parties as provided for under any other clause of the Contract.
- 9.1.3 The Contractor shall use its reasonable endeavours to ensure that Subcontractors and their employees, officers and agents are insured as required by this clause 9.1, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Contractor.

Option: For use if workers compensation insurance is required.

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

Option: For use if public and products liability insurance is required.

9.1.5 **(public and products liability)** The Contractor shall effect and maintain public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than:

- a. the amount specified in the Details Schedule each and every occurrence for public liability claims; and
- b. the amount specified in the Details Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period for products liability claims,

which covers the Contractor and Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract by the Contractor or Contractor Personnel. **[The following sentence is optional and should be used where the acquired items will not be used outside of Australia.]** This insurance shall have a territorial limit which includes Australia. **[The following sentence is optional and should be used where the acquired items may be used outside of Australia.]** This insurance shall have a worldwide territorial limit.

Note to drafters: Alternative clause 9.1.5 to be used where only products liability insurance is required. If this alternative clause is used, the clause number in this clause 9.1.5 will need to be automated and automatic cross-references elsewhere in clause 9.1 to this clause will need to be reinserted.

9.1.5 **(products liability)** The Contractor shall effect and maintain products liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period, which covers the Contractor and the Contractor Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product by the Contractor or Contractor Personnel. **[Note: The following sentence is optional and should be used where the acquired items will not be used outside of Australia.]** This insurance shall have a territorial limit which includes Australia. **[Note: The following sentence is optional and should be used where the acquired items may be used outside of Australia.]** This insurance shall have a worldwide territorial limit.

Option: For use if professional indemnity insurance is required.

9.1.6 **(professional indemnity)** The Contractor shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than the amount specified in the Details Schedule per claim and in the aggregate for all claims in any 12 month policy period, and including an automatic right of reinstatement, which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity. Such insurance shall have a retroactive date of no later than the earlier of the commencement of the work under the Contract or any earlier preparatory work by the Contractor. Such insurance shall also:

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

- a. extend to cover claims related to software and IT risks;
- b. extend to cover claims for unintentional breaches of IP rights; and
- c. have worldwide territorial and jurisdictional limits.

Option: For use if property insurance is required.

- 9.1.7 **(property)** The Contractor shall effect and maintain all risks property insurance covering:
- a. the tangible Supplies unless and to the extent that the Commonwealth has expressly retained the risk of such property;
 - b. GFE and any other property of the Commonwealth in the care, custody or control of the Contractor or its Subcontractors unless and to the extent that the Commonwealth has expressly retained the risk of such property; and
 - c. all other property, plant and equipment in the care, custody or control of the Contractor material to the Contractor's ability to perform its obligations under the Contract,
- against the risks of loss, damage or destruction by all commercially insurable risks, for the full replacement or reinstatement value of such insured property.

Option: For use if transit insurance is required.

- 9.1.8 **(transit)** The Contractor shall effect and maintain insurance covering any tangible property referred to in clause 9.1.7, against the risks of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit, where such transits are at the risk of the Contractor. The insurance shall insure the respective interests of the Contractor and the Commonwealth in the property insured.

Option: For use if motor vehicle insurance is required.

- 9.1.9 **(motor vehicle)** The Contractor shall effect and maintain:
- a. compulsory third party motor vehicle liability insurance as required by law; and
 - b. motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each and every occurrence covering:
 - (i) third party property loss or damage arising out of the use by the Contractor and Contractor Personnel of any registered or unregistered plant or vehicles; and
 - (ii) third party bodily injury, disease, illness or death arising out of the use by the Contractor or Contractor Personnel of any unregistered plant or vehicles and, any registered vehicles not required to be insured under compulsory third party insurance in a foreign jurisdiction,
- in connection with the work under the Contract by the Contractor or Contractor Personnel.

Option: For use if contract works insurance is required.

Note to drafters: 'Construction works', 'site' and 'defects correction period' are in square brackets in case there is a more appropriate defined or undefined term.

- 9.1.10 **(contract works)** The Contractor shall effect and maintain all risks insurance covering the whole of the [construction works] (including any temporary works), plant and equipment and any other property on [site] (including while in storage off [site] and while in transit to or from the [site]) for use in performing or incorporation into the [construction works] against the risks of loss, damage or destruction by all commercially insurable risks, for the full replacement or reinstatement value of such insured property.

- 9.1.11 The insurances and registrations referred to in:
- a. the following clauses shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed
[Note: include the following words in brackets only if contract works insurance

has been selected] (and all applicable **defects corrections periods]** in respect of any works have expired):

- (i) clause 9.1.4 (workers compensation); and
 - (ii) clause 9.1.7 (property);
- b. clause 9.1.5 (public and products liability **or products liability]**) shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed **[Note: Include the rest of this sentence only if the products supplied have a life which exceeds the contract period]** [and, in respect of product liability for **[Note: Insert period sufficient to cover the life of the product if it extends beyond the Contract term or, where this is commercially too long, some reasonable period eg. 7/10]** years following completion of the work under the Contract];
- c. clause 9.1.6 (professional indemnity) shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until the earlier of:
- (i) **[7/10]** years following completion of the work under the Contract; or
 - (ii) **[7/10]** years following an earlier termination of the Contract;
- d. clause 9.1.8 (transit) shall be effected on or before the start of each conveyance and maintained until the end of each conveyance by delivery at the **[site]**;
- e. clauses 9.1.9 (motor vehicle) shall be effected on or before the date the plant or vehicle is used in connection with the work under the Contract and maintained until such plant or vehicle ceases to be so used; and
- f. clause 9.1.10 (contract works) shall be effected on or before the **[construction works]** commence and maintained until the expiry of any **[defects correction period]** in relation to the **[construction works]** to which the insurance relates.
- 9.1.12 To the extent that the Contractor's insurances and registrations required by clause 9.1 of this Contract are in fact written on a claims made basis (notwithstanding any requirements of this Contract for such insurances to be written on an occurrence basis) then the Contractor must maintain those insurances and registrations until the earlier of:
- a. **[7/10]** years following completion of the work under the Contract; or
 - b. **[7/10]** years following an earlier termination of the Contract.
- 9.1.13 With the exception of statutory insurances, the insurances referred to in this clause 9.1 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably.
- 9.1.14 The Contractor shall, on request, produce evidence satisfactory to the Commonwealth Representative of the currency and terms of the insurances referred to in this clause 9.1.
- 9.1.15 In respect of each insurance referred to in this clause 9.1, the Contractor shall:
- a. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by the Commonwealth; and
 - b. do everything reasonably required by the Commonwealth in order to allow the Commonwealth or any other person for whose benefit the policy is effected to claim and to collect or recover monies due under any insurance policy.

Note to drafters: When using this clause for non-CASG procurements (unless otherwise approved by the ACIP Management Team) or for CASG procurements in which no tenderer with ACIP status will participate, delete clause 9.1.16 and its associated Note to tenderers.

Note to tenderers: Clause 9.1.16 will only be included if the Contractor has an ACIP and may require amendment to only apply to those insurances to be covered by the ACIP.

9.1.16 The Contractor shall be:

a. deemed compliant with the requirements of the following clauses:

- (i) clause 9.1.1;
- (ii) clause 9.1.4 (workers compensation);
- (iii) clause 9.1.5 (public and products liability [or products liability]);
- (iv) clause 9.1.6 (professional indemnity);
- (v) clause 9.1.7 (property);
- (vi) clause 9.1.8 (transit);
- (vii) clause 9.1.9 (motor vehicle);
- (viii) clause 9.1.10 (contract works); and
- (ix) clauses 9.1.11, 9.1.12 and 9.1.13; and

b. relieved of its obligations under clauses 9.1.14 and 9.1.15,

in respect of a particular insurance listed in clause 9.1.16a for any period during which the Contractor's insurance program holds Approved Contractor Insurance Program (ACIP) status under CASG's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether the Contractor's ACIP status extends to that type of insurance). The Contractor shall advise the Commonwealth Representative within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

9.1.17 If the Contractor fails to effect and maintain the insurances in accordance with this clause 9, the Commonwealth may:

- a. effect and maintain those insurances and the Commonwealth may elect to recover the amount from the Contractor under clause 13.5; or
- b. provide a notice of termination for default in accordance with clause 13.2.

10 INDEMNITIES, DAMAGES, RISK AND LIABILITY

10.1 Indemnity (Core)

10.1.1 The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with:

- a. the death, personal injury, disease or illness of any employee or officer of the Contractor in relation to the Contract; and
- b. a Claim by a third party arising out of or as a consequence of a Contractor Default, including a Claim in respect of:
 - (i) the death, personal injury, disease or illness of any person; or
 - (ii) loss of or damage to any third party property.

10.1.2 The liability of the Contractor under clause 10.1.1 shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default.

10.1.3 The Contractor shall release the Commonwealth and Commonwealth Officers in respect of any liability for Loss referred to in clause 10.1.1, except to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default.

10.2 Intellectual Property and Confidentiality (Core)

- 10.2.1 The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party in respect of the following:
- a. an infringement or alleged infringement of the third party's IP rights (including Moral Rights) arising out of or as a consequence of:
 - (i) an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in the Contract (including in clause 5); and
 - (ii) a failure by the Contractor to grant (or ensure the grant) of a licence or assign (or ensure the assignment) of IP rights under or referred to in the Contract (including in clause 5); and
 - b. breach or alleged breach of any obligation of confidentiality owed to that third party arising out of or as a consequence of any act or omission of the Contractor or Contractor Personnel.
- 10.2.2 The liability of the Contractor under clause 10.2.1 shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default.
- 10.2.3 In this clause 10.2:
- "infringement"** of a right includes an act or omission that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), sections 96 and 96A of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), or section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement of the right.

10.3 Loss of or Damage to the Supplies (Core)

- 10.3.1 Risk in relation to any loss of, or damage to, the Supplies resides with the Contractor:
- a. until the Supplies are delivered to the Commonwealth in accordance with the Contract; and
 - b. at any time after delivery (but prior to Acceptance of the Supplies) where the Contractor retakes possession of the Supplies in accordance with the Contract.
- 10.3.2 The Contractor shall replace or reinstate any Supplies that are lost and repair any Supplies that are damaged while the risk resides with the Contractor under clause 10.3.1, except to the extent that the loss or damage to the Supplies arose out of or as a consequence of a Commonwealth Default.
- 10.3.3 The Commonwealth shall take reasonable care to prevent loss of, or damage to, Supplies that have been delivered to it in accordance with the Contract but which have not yet been Accepted.
- 10.3.4 Nothing in this clause 10.3 limits or affects the Contractor's obligations under clause 3.2, 3.3, 8.2 or 10.4.

10.4 Loss of or Damage to Commonwealth Property (Core)

- 10.4.1 The Contractor shall (and shall ensure that all Contractor Personnel) take reasonable care to prevent loss of, or damage to, Commonwealth Property in connection with the work under the Contract.
- 10.4.2 The Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to any Commonwealth Property while it is:
- a. on any Contractor Premises; or
 - b. being stored or transported by or on behalf of the Contractor, a Related Body Corporate of the Contractor or a Subcontractor,
- in connection with the Contract, whether or not the loss or damage arises out of or as a consequence of a Contractor Default.
- 10.4.3 The liability of the Contractor under clause 10.4.2 shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of:

- a. a Commonwealth Default; or
 - b. an Excepted Risk.
- 10.4.4 Without limiting clause 10.4.2, the Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to, Commonwealth Property arising out of or as a consequence of a Contractor Default.
- 10.4.5 The liability of the Contractor under clause 10.4.4 shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of:
- a. a Commonwealth Default;
 - b. an Excepted Risk; or
 - c. a breach of a general law duty or an applicable law by an Unrelated Party.
- 10.4.6 Nothing in this clause 10.4 limits or affects the Contractor's obligations under clause 3.2, 3.3, 8.1.2 or 10.3.

10.5 Exclusions of Certain Losses (Core)

- 10.5.1 Subject to clause 10.6.4, the Contractor is not liable to:
- a. pay compensation or damages under or in relation to this Contract; and
 - b. make a payment under an indemnity in this Contract,
- for Loss incurred by the Commonwealth resulting from:
- c. damage to reputation or exemplary or punitive damages incurred by the Commonwealth; or
 - d. diminished revenue, profits or business opportunity suffered by the Commonwealth.
- 10.5.2 The Commonwealth is not liable to pay compensation or damages under or in relation to this Contract for Loss resulting from damage to reputation or for exemplary or punitive damages incurred by the Contractor.

10.6 Liability Caps (Optional)

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

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

The liability risk assessment provides the basis for determining the liability caps in this clause 10.6 and the insurance requirements in clause 9.

Drafters should select either individual liability caps (Option A) or an overall liability cap (Option B). This selection will be driven by the liability risk assessment.

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

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

Option A: For use if individual caps are used.

- 10.6.1 The liability of the Contractor to the Commonwealth in connection with the Contract (including at general law, in negligence or in equity) in respect of the following is limited (in each case) in aggregate to the relevant Limitation Amount specified in the Details Schedule:
- a. loss of or damage to Defence Property (other than Supplies); and
 - b. loss of or damage to Supplies (including loss of use of Supplies) and Losses suffered by the Commonwealth other than those referred to in clause 10.6.1a.

10.6.2 Each of the liability caps referred to in clause 10.6.1 is mutually exclusive and is to be applied separately.

Option B: For use if an overall liability cap is used.

10.6.3 The maximum amount that the Contractor is liable to pay to the Commonwealth as compensation or damages under the Contract (including at general law, in negligence or in equity) in respect of Loss suffered by the Commonwealth of any kind, is limited in aggregate to the Overall Limitation Amount specified in the Details Schedule.

10.6.4 The liability caps in this clause 10.6 and exclusions of liability under clause 10.5 do not apply to a liability of the Contractor under or arising out of the Contract in relation to:

- a. **(third party claims)** a Claim by a third party in respect of:
 - (i) the death, personal injury, disease or illness of any person; or
 - (ii) loss of or damage to property of a third party;
- b. **(IP)** an infringement of an intellectual property right (including a Moral Right) of any person;
- c. **(confidentiality)** a breach of an obligation of confidence;
- d. **(death of or personal injury to Commonwealth Officers)** the death, personal injury, disease or illness of a Commonwealth Officer;
- e. **(non-Defence Commonwealth Property)** the loss of, or damage to, Commonwealth Property (other than Defence Property);
- f. **(Defence security)** a breach of the Contractor's obligations in relation to Defence security;
- g. **(privacy)** a breach of a written law with respect to privacy;
- h. **(criminal offences)** an act or omission of the Contractor or Contractor Personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
- i. **(Wilful Default)** a Wilful Default of the Contractor or Contractor Personnel;
- j. **(repudiation)** a repudiation of the Contract by the Contractor where the Contractor has intentionally abandoned the Contract; or
- k. **(restitution)** restitution of amounts paid under a mistake of fact or law in relation to the Contract.

10.6.5 Each paragraph of clause 10.6.4 is independent of, and its application is not affected by, any of the other paragraphs.

Note to drafters: Choose either "clause 10.6.1" or "clause 10.6.3" depending on whether Option A or B is selected.

10.6.6 The amount of a liability cap in [clause 10.6.1] [clause 10.6.3] shall be adjusted in accordance with the formula:

$$\text{new amount} = \left(\frac{\text{most recent CPI}}{\text{Base Date CPI}} \right) \times \text{existing amount}$$

where:

'Base Date CPI' means the CPI most recently published before the Base Date;

'CPI' means the Consumer Price Index, All Groups, Weighted Average of Eight Capital Cities published by the ABS in Catalogue number 6401.0, Table 7, Series ID A2325846C or, if that

Index is no longer published by the ABS, the index published by the ABS that most closely corresponds to that Index; and

'most recent CPI' means the CPI most recently published before the question whether a liability cap has been reached is determined.

10.7 Proportionate Liability Laws (Core)

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

11 CONTRACT MANAGEMENT

11.1 Change to the Contract (Core)

- 11.1.1 Either party may propose a change to the Contract. The Contract shall only be changed in writing and signed by both parties. A change to the Contract shall take effect on the date on which the change is signed by the parties, or if signed on separate days, the date of the last signature.
- 11.1.2 The Commonwealth Representative may issue an amendment to the Contract to incorporate any changes that have taken effect under clause 11.1.1. The amendment does not affect the legal status of the Contract change as determined under clause 11.1.1.
- 11.1.3 The parties shall not be liable to each other for any additional work undertaken or expenditure incurred unless the variation is in accordance with this clause 11.1.

11.2 Waiver (Core)

- 11.2.1 Failure by either party to enforce a provision of the Contract shall not be construed as in any way affecting the enforceability of that provision or the Contract as a whole.
- 11.2.2 The exercise of the Commonwealth's rights under the Contract does not affect any other rights of the Commonwealth under the Contract or otherwise, and does not constitute:
- an election to exercise those rights instead of other rights; or
 - a representation that the Commonwealth will not exercise other rights.

11.3 Confidential Information (Core)

Note to tenderers: Completion of Attachment E will be undertaken with the preferred tenderer(s) prior to / during negotiations for any resultant Contract. The preferred tenderer(s) will need to justify how each clause and other information that is contained or generated under any resultant Contract, which is proposed to be treated as Confidential Information, meets all four of the criteria listed in Attachment E.

- 11.3.1 Each party shall ensure that Confidential Information provided by the other party under or in connection with the Contract or identified in Attachment E is not disclosed, except to the extent that:
- the disclosure is permitted under clause 11.3.2;
 - the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 3.6.8;
 - the Confidential Information is in the Contract Material and the disclosure is to a Commonwealth Service Provider in connection with the exercise of the rights provided for in clause 5.4.1a; or
 - the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- 11.3.2 Each party shall ensure that, before disclosing Confidential Information under clause 11.3.1b or 11.3.1c, the recipient executes (or has already executed) a written undertaking in the form

of a deed of confidentiality or is subject to a contractual obligation that appropriately restricts the further disclosure of that information.

- 11.3.3 Clause 11.3.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is:
- a. required or authorised by law;
 - b. necessary for the conduct of any legal proceedings arising in connection with the Contract;
 - c. made by the Commonwealth, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
 - d. to any of the following persons:
 - (i) a legal adviser, insurer, financier, auditor or accountant of a party to the extent required to enable them to perform those roles;
 - (ii) a Related Body Corporate for internal management purposes;
 - (iii) any Commonwealth Personnel who needs to know the information in order to undertake their duties or functions; and
 - (iv) an employee, officer or agent of the Contractor who needs to know the information to enable the Contractor to perform its obligations under the Contract.
- 11.3.4 The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term "Confidential Information" or equivalent terms.
- 11.3.5 Subject to clause 11.3.6, the Contractor shall deliver to the Commonwealth as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
- a. the date specified in a notice given by the Commonwealth (acting reasonably); and
 - b. the time the documents and other material are no longer required for the purposes of the Contract.
- 11.3.6 The Contractor may retain, and will not be required to return or destroy, any documents containing or relating to Confidential Information of the Commonwealth, where such documents are:
- a. retained in order to comply with any legal, professional or insurance obligations; or
 - b. stored in electronic backups or records that are produced in the normal course where it is not reasonably practicable to destroy such backups or records.
- 11.3.7 If the Commonwealth gives a notice under clause 11.3.5a and the Contractor has placed or is aware that documents containing the Confidential Information of the Commonwealth are beyond its possession or control, the Contractor shall provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 11.3.8 Subject to clause 11.3.6, the Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control which contain or relate to any Confidential Information of the Commonwealth.
- 11.3.9 Return or destruction of the documents referred to in this clause 11.3.3b does not release the Contractor from its obligations under the Contract.

11.4 Assignment and Novation (Core)

- 11.4.1 Neither party may, without the written consent of the other, assign its rights under the Contract or novate its rights or obligations under the Contract.
- 11.4.2 If the Contractor proposes to enter into any arrangement which will require the novation of the Contract, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.

- 11.4.3 The Commonwealth may refuse to consent to an arrangement proposed by the Contractor under clause 11.4.2.

11.5 Negation of Employment and Agency (Core)

- 11.5.1 The Contractor shall not represent itself, and shall ensure that Contractor Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- 11.5.2 None of the Contractor or Contractor Personnel shall, by virtue of the Contract, be, or for any purpose be taken to be, an employee, partner or agent of the Commonwealth.

11.6 Commonwealth Access (Core)

- 11.6.1 During the performance of the Contract, the Contractor shall, subject to the Commonwealth giving five Working Days' prior notice to the Contractor, provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with access to its premises, records and accounts for any purpose related to the Contract. The Commonwealth may copy any records or accounts for such purposes.
- 11.6.2 Without limiting clauses 11.6.1 and 11.6.3, the Contractor acknowledges and agrees that:
- the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the Contractor and Subcontractors in relation to the Contract;
 - 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
 - the Commonwealth Representative may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 11.6.1.
- 11.6.3 Without limiting the generality of clause 11.6.1 or 11.6.4, the purposes for which the Commonwealth Representative or any person authorised by the Commonwealth Representative may require access include:
- inspecting CMCA, attending, conducting or checking stocktakes of CMCA, including viewing and assessing the Contractor's inventory control and stocktaking systems, and removing CMCA that is no longer required for the performance of the Contract;
 - performing Audit and Surveillance activities in relation to Quality in accordance with clause 6 of the SOW;
 - validating the Contractor's progress in complying with the AIC Schedule;
 - investigating the reasonableness of proposed prices or costs in any CCP submitted in accordance with clause 11.1;
 - validating the Contractor's compliance with clause 5 and the TDSR Schedule;
 - monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Supplies;
 - assessing the financial viability of the Contractor to perform and complete the Contract; and
 - monitoring and assessing compliance with the Commonwealth Supplier Code of Conduct in accordance with clause 12.9.1.
- 11.6.4 If the Contractor enters into a Subcontract in accordance with clause 11.7, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.
- 11.6.5 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.

11.7 Subcontracts (Core)

- 11.7.1 The Contractor shall not Subcontract the whole of the work under the Contract.
- 11.7.2 The Contractor, by subcontracting any part of the work under the Contract or by obtaining the Commonwealth Representative's approval of a Subcontractor, shall not be relieved of its liabilities or obligations under the Contract, and shall be responsible for all Subcontractors.
- 11.7.3 Without limiting the Contractor's obligations under the Contract, the Contractor shall ensure that:
- the requirements of clauses 3.4, 5.2.2, 10.4, 11.5, 12.1, 12.3, and 12.7, are included in all Subcontracts;
 - each Subcontractor that requires access to any Commonwealth Premises or to security classified information is subject to the requirements of clause 11.8;
 - the requirements of clauses 11.6, 11.9 and 11.10, are included in all Subcontracts; and
 - the Contractor obtains rights, in each Subcontract, that are equivalent to the rights of the Commonwealth under clause 13.3.
- 11.7.4 The Contractor shall not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 11.7.5 The Contractor, if requested by the Commonwealth Representative, shall provide the Commonwealth Representative with names of all Subcontractors and a copy of any Subcontract, which copy need not contain prices. The Contractor acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractors' participation in the performance of the Contract.

Note to drafters: *These clauses 11.7.6 to 11.7.10 must be included in the draft RFT in accordance with the Payment Times Procurement Connected Policy (PT PCP) if the procurement will be valued at over \$4 million (inc GST). If the value of the procurement is not known, it should be assumed for the purposes of the PT PCP, that the procurement is valued above \$4 million (inc GST), unless it is reasonable to assume otherwise.*

It is not mandatory to include this clause if any of the limitations at 2.1 of the PT PCP apply. For example, this clause is not required to be included if the procurement is exempt from Division 2 of the CPRs under paragraph 2.6 of the CPRs (i.e. a Defence Exempt Procurement).

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

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

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

The following clauses will be included in the Contract if:

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

- 11.7.6 The Contractor shall comply with the Payment Times Procurement Connected Policy (PT PCP), including the obligation to provide and comply with a PT PCP Remediation Plan (as defined in the PT PCP) when required to do so by the PT PCP Policy Team.
- 11.7.7 If the Contractor enters into a PT PCP Subcontract, the Contractor shall include in that subcontract:
- a requirement for the Contractor to pay the PT PCP Subcontractor:
 - within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice, provided that this does

not affect any other obligation to comply with applicable legislation that provides for a shorter payment period; and

- (ii) subject to clause 11.7.9, for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with the formula for late payments at clause 7.6;
 - b. a statement that the PT PCP applies to that subcontract;
 - c. a statement that the subcontractor may make a complaint to the PT PCP Policy Team in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 11.7.7;
 - d. a statement that the Contractor must respond to any complaint of non-compliance made by the subcontractor under clause 11.7.7c; and
 - e. a statement that, if requested by the PT PCP Policy Team, the Contractor must complete a questionnaire in the form of Appendix C to the PT PCP.
- 11.7.8 If the Contractor enters into a Reporting Entity Subcontract, the Contractor shall use reasonable endeavours to include in that subcontract:
- a. obligations equivalent to those in clause 11.7.7; and
 - b. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract shall include:
 - (i) obligations equivalent to those in clause 11.7.7; and
 - (ii) obligations equivalent to this clause 11.7.8b (such that the obligations in this clause 11.7.8b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 11.7.9 The Contractor is not required to pay interest in accordance with clause 11.7.7a(ii) if either:
- a. the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
 - b. the amount of the interest that would otherwise be payable is less than \$100 (inc GST).
- 11.7.10 The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clauses 11.7.6 to 11.7.9, or the associated payment provisions of a PT PCP Subcontract, the Contractor shall:
- a. not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - b. co-operate in good faith with the PT PCP Policy Team in connection with any investigation or inquiry and any attempt to resolve the complaint.

11.8 Defence Security (Core)

Note to drafters: Where the procurement involves weapons or explosive ordnance, drafters must obtain the DSVS's approval for the security-related aspects of the request documentation prior to release.

- 11.8.1 If the Contractor or Contractor Personnel require access to any Commonwealth Premises under the control or responsibility of Defence, the Contractor shall:
- a. comply with any security requirements (including those contained in the DSPF) notified to the Contractor by the Commonwealth Representative from time to time; and
 - b. ensure that Contractor Personnel are aware of and comply with the Commonwealth's security requirements.
- 11.8.2 The Contractor shall:
- a. ensure that Contractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;

- b. promptly notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide the Supplies in accordance with the Commonwealth's security requirements; and
- c. provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.

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

- <http://drnet/eig/Defence-Security/Security-Risk-Management/Pages/BIL.aspx>

or contact the relevant Regional DSVS Office.

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

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

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

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

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

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

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

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

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

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

Option A: If the Contractor will require DISP membership in accordance with Control 16.1 of the DSPF.

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

Option B: If the Contractor will not require DISP membership in accordance with Control 16.1 of the DSPF.

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

Note to drafters: Where work to be performed overseas will involve security classified information and/or assets, the following option is to be included. Otherwise the option should be deleted. If, at the time of drafting, it is not clear that this clause will be required, the option is to be included in the draft Contract. Otherwise, the option should be deleted.

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

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

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

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

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

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

- a. ensure that no security classified information furnished or generated under the 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 Contract has been lost or disclosed to unauthorised parties, including a representative of another country; and
- c. ensure that all security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Principle 71 of the DSPF.

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

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

11.8.9 Where COMSEC material is transmitted in Australia, the Contractor shall ensure that:

- a. without limiting clause 11.8.8c, all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall be subject to the special security provisions of Principle 13 of the DSPF; and
- b. all security classified information transmitted between the parties or a party and a Subcontractor located overseas whether generated in Australia or by another country shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.

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

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

11.8.10 Where COMSEC material is transmitted overseas, the Contractor shall ensure that:

- a. all COMSEC material transmitted between the parties or a party and Subcontractor located overseas shall be subject to approval in the first instance by the Director ASD in respect of Australian COMSEC material, and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries; and
- b. once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director ASD and to any bilateral security instrument between Australia and the overseas country.

11.8.11 If there has been a breach by the Contractor or Contractor Personnel of this clause 11.8, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 13.2.1.

11.8.12 The Contractor shall ensure the requirements of clause 11.8 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth Premises, or to any security classified information or assets, in order to perform the obligations of the Subcontract.

11.9 Conflict of Interest (Core)

11.9.1 The Contractor:

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

11.9.2 Within five Working Days after giving notice under clause 11.9.1b, the Contractor shall notify the Commonwealth in writing of the steps the Contractor will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Contractor to resolve the issue in a manner proposed by the Commonwealth.

11.9.3 If the Contractor fails to notify the Commonwealth in accordance with clauses 11.9.1b or 11.9.2 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate the Contract in accordance with clause 13.2.

11.10 Post Defence Separation Employment (Core)

11.10.1 Except with the prior written Approval of the Commonwealth Representative, the Contractor 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 the Contract;
- b. the assessment or selection of the Contractor; or
- c. the planning or performance of the procurement or any activity relevant or related to the Contract,

to perform, contribute to or advise on the performance of the Contract.

11.10.2 To avoid doubt, the 12 month period referred to in clause 11.10.1 applies from the date which is 12 months before the date on which the Contractor proposes that the person start performing or contributing to the performance of the Contract.

11.10.3 The Commonwealth Representative shall not unreasonably withhold Approval of a person under clause 11.10.1 and in making a decision, shall consider:

- a. the character and duration of the engagement, services or work that was performed by the person during the relevant 12 month period;
- b. any information provided by the Contractor about the character and duration of the services proposed to be performed by the person under the 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 11.10.3b, and the arrangements which the Contractor proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
- d. any information provided by the Contractor concerning any significant effect that withholding Approval will have on the person's employment or remuneration opportunities or the performance of the Contract; and
- e. the policy requirements set out in DI Administration and Governance Provision 5 – Conflicts of interest and declarations of interest AG5 and the *Integrity Policy Manual*, as applicable.

12 POLICY AND LAW

12.1 Governing Law (Core)

- 12.1.1 The laws of the State or Territory specified in the Details Schedule shall apply to the Contract. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.
- 12.1.2 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

12.2 Compliance With Laws (Core)

- 12.2.1 The Contractor shall, in the performance of the Contract, comply with and ensure that Contractor Personnel comply with, the laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of the Contract is to be carried out.
- 12.2.2 The Contractor shall provide to the Commonwealth Representative within 10 Working Days after a request by the Commonwealth written confirmation that, to the best of the Contractor's knowledge and based on reasonable enquiries undertaken by the Contractor, the Contractor and Contractor Personnel are compliant with all laws (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of the Contract and the Subcontracts.
- 12.2.3 The Contractor:
 - a. shall take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under the Contract or any Subcontract; and,
 - b. acknowledges and agrees that its obligation in clause 12.2.3a extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by Contractor Personnel.
- 12.2.4 If the Contractor knows that any fraud is occurring or has occurred, it shall, as soon as practicable, provide written details to the Commonwealth, and provide such further information and assistance as the Commonwealth, or any person authorised by the Commonwealth, reasonably requires in relation to the fraud.

12.3 Policy Requirements (Core)

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

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

12.3.1 Subject to clause 12.3.2, the Contractor shall comply with, and shall ensure that Contractor Personnel comply with, the following Commonwealth policies of general application relevant or applicable to the Contract:

- a. DI, and in particular:
 - (i) Administration and Governance Provision 4 AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
 - (ii) Administration and Governance Provision 5, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual; and
 - (iii) People Provision 7, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
- b. Financial Policy Gifts and Benefits (Including Hospitality) – Receiving;
- c. Financial Policy Gifts and Benefits (Including Hospitality) – Spending;
- d. Australian Defence Force alcohol policy as detailed in MILPERSMAN Part 4 Chapter 1;
- e. Public Interest Disclosure policy detailed at:
<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>
 and
- f. **[DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES].**

12.3.2 Notwithstanding clause 1.5, if the SOW is inconsistent with a policy referred to in clause 12.3.1, the Contractor shall comply with the SOW to the extent of the inconsistency and provided that compliance with the SOW does not result in a breach of any laws.

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

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

12.3.3 The Contractor shall use its reasonable endeavours to increase its:

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

in the performance of the Contract. For the purposes of this clause “Indigenous enterprise” means an organisation that is 50 per cent or more Indigenous owned that is operating a business. Supply Nation maintains a list of enterprises that meet the definition of “Indigenous enterprises” (<https://supplynation.org.au/>).

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

Note to drafters: If the procurement is specifically exempt from the additional rules detailed in Division 2 of the CPRs as a result of a Defence specific exemption (a list of Defence specific exemptions is found in the DPPM), the procurement will still be subject to the Workplace Gender Equality Procurement Principles and the following clauses must be used

Note to tenderers: These clauses 12.3.4 and 12.3.5 apply only to the extent that the tenderer has identified itself as a Relevant Employer for the purposes of the Workplace Gender Equality Procurement Principles. The Workplace Gender Equality Procurement Principles will only apply to overseas based contractors to the extent that they have 100 or more employees in Australia.

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

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

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

Note to drafters: A procurement will be subject to the Shadow Economy Procurement Connected Policy where the procurement is conducted by open tender, subject to the CPRs and is valued at over \$4 million (inc GST).

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

- <https://treasury.gov.au/policy-topics/economy/shadow-economy/procurement-connected-policy>.

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

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

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

		<div>(i) trustee; and</div> <div>(ii) the trust;</div>
	d. a joint venture participant;	a satisfactory and valid STR in respect of: <div>(i) each participant in the joint venture; and</div> <div>(ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;</div>
	e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: <div>(i) the relevant member of the Consolidated Group; and</div> <div>(ii) the head company in the Consolidated Group;</div>
	f. a member of a GST Group;	a satisfactory and valid STR in respect of the: <div>(i) the GST Group member; and</div> <div>(ii) the GST Group representative.</div>
12.3.8	The Contractor shall obtain and hold additional STRs in the following circumstances within 10 Working Days of the Contractor becoming aware of the circumstances arising:	
	If the Contractor or Subcontractor is:	Additional STRs required:
	(a)	(b)
	a. a partner acting for and on behalf of a partnership;	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Contract or Subcontract (as applicable);
	b. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of any new trustee appointed to the trust;
	c. a joint venture participant;	a satisfactory and valid STR in respect of: <div>(i) any new participant in the joint venture; and</div> <div>(ii) any new joint venture operator if the new operator is not already a participant in the joint venture;</div>
	d. a member of a Consolidated Group;	a satisfactory and valid STR in respect of any new head company of the Consolidated Group; and
	e. a member of a GST Group;	a satisfactory and valid STR in respect of any new representative for the GST Group.
12.3.9	The Contractor shall provide the Commonwealth with copies of the STRs referred to in clause 12.3.7 or 12.3.8 within 5 Working Days after a written request by the Commonwealth.	
12.3.10	For the purposes of the Contract, an STR is taken to be:	
	a. satisfactory if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and	

- b. **valid** if the STR has not expired as at the date on which the STR is required to be held.

12.4 Work Health and Safety (Core)

12.4.1 The Commonwealth and the Contractor:

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

12.4.2 The Contractor represents and warrants that:

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

12.4.3 The Contractor shall:

- a. provide the Supplies in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Supplies (such as in relation to testing or auditing); and
- b. ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the Supplies for the purposes referred to in clause 3.3.1, and to maintain, support and develop the Supplies,

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

12.4.4 Without limiting the application of the WHS Legislation (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Supplies or the work performed under the Contract, provide, and shall use its reasonable endeavours to ensure that a Subcontractor engaged in any Prescribed Activities provides in respect of those Prescribed Activities, to the Commonwealth Representative within 10 Working Days (or another period agreed in writing by the Commonwealth) of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Contractor or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.

12.4.5 Subject to clause 11.8 and any relevant foreign government restrictions, the Commonwealth shall provide to the Contractor in a timely manner any information or copies of documentation reasonably requested by the Contractor and held by the Commonwealth to enable the Contractor to comply with its obligations under the applicable WHS Legislation in relation to the Contract.

12.4.6 To the extent not inconsistent with the express requirements of the Contract, the Commonwealth Representative may direct the Contractor to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with applicable

legislation relating to WHS including the WHS Legislation in relation to the Supplies or the work performed under the Contract. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the Commonwealth Representative that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.

- 12.4.7 The Contractor shall comply with clause 7 of the SOW.
- 12.4.8 The Contractor shall not provide Supplies containing ACM and shall not take ACM onto Commonwealth Premises in connection with providing the Supplies.
- 12.4.9 The Contractor shall ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who:
 - a. use the Supplies for a purpose for which they were designed or manufactured;
 - b. handle or store the Supplies;
 - c. carry out any reasonably foreseeable activity in relation to the assembly or use of the Supplies for a purpose for which they were designed or manufactured, or the proper storage, decommissioning, dismantling, demolition or disposal of the Supplies; or
 - d. may be exposed to the Supplies or whose health or safety may be affected by a use or activity referred to in this clause 12.4.9a to 12.4.9c.
- 12.4.10 The Contractor shall carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary to comply with clause 12.4.9.
- 12.4.11 The Contractor shall give adequate information to the Commonwealth concerning:
 - a. each purpose for which the Supplies were designed or manufactured;
 - b. the results of any calculations, analysis, testing or examination referred to in clause 12.4.10, including any hazardous properties identified by testing; and
 - c. any conditions necessary to ensure that the Supplies are without risks to health and safety when used for a purpose for which they were designed or manufactured or when carrying out any activity referred to in clauses 12.4.9a to 12.4.9c.
- 12.4.12 The Contractor shall, on request, so far as is reasonably practicable, give current relevant information on the matters referred to in clause 12.4.11 to the Commonwealth.
- 12.4.13 Subject to clause 12.4.13b and without limiting the Contractor's obligations under the Contract:
 - a. the Contractor shall ensure that all Subcontracts contain equivalent provisions to those set out in this clause 12.4 [(other than clause 12.4.14)]; and

Note to drafters: Where the option at clause 12.4.14 below is adopted, insert the additional words in square brackets in clause 12.4.13a above.

- b. where in relation to a Subcontract:
 - (i) the WHS Legislation does not apply in respect of any work performed under that Subcontract; and
 - (ii) the Commonwealth does not have any duties or obligations under the WHS Legislation in respect of the workers engaged or caused to be engaged by the relevant Subcontractor,

the Contractor shall only be required to ensure that the Subcontract contains equivalent provisions to those set out in clauses 12.4.2, 12.4.3, and 12.4.8 to 12.4.12 in respect of that Subcontract.

Option: To the extent that any work under the Contract will involve construction work (eg, installation activities) over \$250,000, the following clause must be included, except where following receipt of advice from CASG Legal it is determined that the Commonwealth should be the principal contractor.

12.4.14 To the extent that work to be performed by the Contractor under the Contract is construction work for the purposes of the:

- a. WHS Legislation, in accordance with regulation 293 of the *Work Health and Safety Regulations 2011* (Cth) (in respect of the Commonwealth and the harmonised WHS Legislation of each of the States or Territories in which the construction work is carried out), the Contractor is engaged as the principal contractor for the construction work the subject of the Contract and is authorised to have management or control of the workplace and discharge the duties imposed on a principal contractor for the purpose of the WHS Legislation; and
- b. *Occupational Health and Safety Regulations 2007* (Vic), in accordance with regulation 5.1.14 of the *Occupational Health and Safety Regulations 2007* (Vic), the Contractor is appointed as the principal contractor for the construction work the subject of the Contract and is authorised to have management or control of the workplace and discharge the duties imposed on a principal contractor for the purpose of the *Occupational Health and Safety Regulations 2007* (Vic).

12.5 Environmental Obligations (Core)

12.5.1 The Contractor shall perform its obligations under the 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 Supplies for the purposes for which they are intended without being in breach of,

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

12.6 Severability (Core)

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

12.7 Privacy (Core)

12.7.1 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 Commonwealth, would be a breach of the Australian Privacy Principles.

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

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 12.7, whether by the Contractor, Contractor Personnel 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.

- 12.7.3 The Contractor shall ensure that Contractor Personnel who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause 12.7.
- 12.7.4 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 12.7.1, 12.7.2a, and 12.7.4.

12.8 Modern Slavery (Optional)

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

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

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

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

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

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

- procurement.asdefcon@defence.gov.au.

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

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

12.9 Commonwealth Supplier Code of Conduct (Core)

Note to drafters: A procurement must incorporate the Commonwealth Supplier Code of Conduct in accordance with paragraph 6.11 of the CPRs.

Drafters must consider the interaction and alignment of this clause with clauses 3.4, 11.3, 11.9, 11.6, 12.2, 12.3, 12.4, 13.2 prior to RFT release and prior to any resultant Contract.

- 12.9.1 The Contractor shall (and shall ensure that all Contractor Personnel) comply with the Commonwealth Supplier Code of Conduct in the performance of the Contract.
- 12.9.2 The Contractor shall notify the Commonwealth Representative immediately after becoming aware of any potential or actual non-compliance with the Commonwealth Supplier Code of Conduct, including:
- a description of the non-compliance,
 - the date that the non-compliance occurred, and
 - whether any Contractor Personnel engaged in the performance of the Contract were or may have been involved in the non-compliance.
- 12.9.3 If the Commonwealth considers that a potential or actual non-compliance with the Commonwealth Supplier Code of Conduct has occurred, the Commonwealth may by notice to the Contractor, without limiting any of its other rights under the Contract, require that the Contractor:
- provide a response to the Commonwealth Representative within 3 Working Days on whether a potential or actual non-compliance has occurred; and
 - comply with its obligations under clause 12.9.

- 12.9.4 The Commonwealth Representative may request, and the Contractor shall provide, further information on any matter relating to:
- the policies, frameworks, or systems the Contractor has established to monitor and assess compliance with the Commonwealth Supplier Code of Conduct;
 - the Contractor's compliance with the Commonwealth Supplier Code of Conduct; or
 - an actual or potential non-compliance with the Commonwealth Supplier Code of Conduct, including its obligations under clauses 12.9.1 or 12.9.3a.
- The Contractor shall provide such information within the timeframes and in the manner specified by the Commonwealth Representative at the time of request.
- 12.9.5 The Contractor acknowledges and agrees that compliance with the Commonwealth Supplier Code of Conduct and the obligations under clause 12.9 shall not relieve the Contractor from its liabilities or other obligations under the Contract or at law.
- 12.9.6 The Contractor's performance of its obligations under this clause will be at no additional cost to the Commonwealth.
- 12.9.7 If the Contractor fails to comply with the Commonwealth Supplier Code of Conduct in accordance with clause 12.9.1, the Commonwealth may give the Contractor a notice of termination for default under clause 13.2.

12.10 Environmentally Sustainable Procurement Policy (Optional)

Option: For when a procurement is subject to the Environmentally Sustainable Procurement Policy.

Note to drafters: A procurement will be subject to the Environmental Sustainable Procurement Policy (ESPP) where the procurement includes construction services (where the procurement value is over \$7.5million AUD inc GST) or furniture, fittings and equipment, ICT goods and textiles (where the procurement value is over \$1 million AUD inc GST)

If a procurement is subject to the ESPP, drafters must include the model clauses for Defence procurements subject to the requirements ESPP. These model clauses are based on the Department of Climate Change, Energy, the Environment and Water (DCCEEW)'s model clauses and have been developed for use with ASDEFCON-based contracts. They are contained in the ASDEFCON Clausebank which can be found here:

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

If you have any questions relating to the clauses please email the ASDEFCON and Contracting Initiatives team at:

- procurement.asdefcon@defence.gov.au.

For information in relation to ESPP and policy related questions please email the Commercial Policy team at:

procurement.policy@defence.gov.au.

Or the Commonwealth Sustainable Procurement Advocacy and Resource Centre at:

sustainable.procurement@dcceew.gov.au.

12.11 Australian Skills Guarantee (Optional)

Option: For inclusion when a procurement is subject to the Australian Skills Guarantee Policy.

Note to drafters: A procurement will be subject to the Australian Skills Guarantee (ASG) Procurement Connected Policy (PCP) within ICT and Construction as follows:

- Major construction projects (projects with a total contract value of \$10 million (GST Inclusive) or more;
- Direct Commonwealth procurements in the ICT sector, with a total contract value of \$10 million (GST Inclusive) or more; and

- **Flagship construction projects (projects with a total contract value of \$100 million or more in the construction sector).**

Information relating to the ASG PCP can be found at the Department of Employment and Workplace Relations (DEWR) website here:

- <https://www.dewr.gov.au/australian-skills-guarantee>.

If a procurement is subject to the ASG PCP drafters must include the model clauses for Defence procurements subject to the requirements of the ASG. These model clauses are based on the DEWR model clauses and have been developed for use with ASDEFCON-based contracts. They are contained in the ASDEFCON Clausebank which can be found here:

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

If you have any questions relating to the clauses please email the ASDEFCON and Contracting Initiatives team at:

- procurement.asdefcon@defence.gov.au.

If you have any questions relating to the ASG PCP or policy related questions, please email the Commercial Policy team at:

- procurement.policy@defence.gov.au.

Or DEWR at:

- ASG@dewr.gov.au.

13 DISPUTES AND TERMINATION

13.1 Resolution of Disputes (Core)

- 13.1.1 If a dispute arising between the Commonwealth and the Contractor cannot be settled by negotiation (including negotiation between senior management of the parties) within 30 days, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
- 13.1.2 The parties shall despite any dispute occurring, continue to perform their respective obligations under the Contract.

13.2 Termination for Contractor Default (Core)

- 13.2.1 The Commonwealth may, in addition to any other right or remedy it may have, terminate the Contract by notice to the Contractor, if any of the following occurs:
- an Insolvency Event occurs in relation to the Contractor, except to the extent the exercise of a right under this clause 13.2.1a is prevented by law;
 - the Contractor fails to obtain or maintain any Authorisation required to enable it to comply with its obligations under the Contract, except to the extent that the failure was outside of the Contractor's reasonable control;
 - the Contractor commits a Default that, in the Commonwealth's opinion, is not capable of being remedied;
 - the Contractor commits a Default for which the Contract provides a notice of termination for default may be given;
 - the Contractor fails to take action to remedy a default by the Contractor of another obligation to be performed or observed under the Contract within 10 Working Days of being given notice in writing by the Commonwealth Representative to do so or, where action is taken within 10 Working Days, the Contractor fails to remedy the default within the period specified in the notice; or
 - the Contractor breaches any of its obligations under clause 12.4; or

Option: For when a Limitation Amount is included in the Details Schedule

- g. the Contractor would have, except for the operation of the limitation of liability under clause 10.6, been liable to the Commonwealth for Loss in aggregate for an amount greater than the relevant Limitation Amount.

13.2.2 To avoid doubt, the Commonwealth is not required to provide prior notice of an exercise of its rights under clause 13.2.1.

13.3 Termination or Reduction for Convenience (Core)

13.3.1 In addition to any other rights it has in relation to the Contract, the Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor.

13.3.2 None of the other provisions of the Contract limit the Commonwealth's ability to terminate or reduce the scope of the Contract under this clause 13.3.

13.3.3 If the Contract is terminated or reduced under this clause 13.3, the Commonwealth's liability in respect of the termination or reduction is limited to:

- a. payments under the payment provisions of the Contract in respect of work performed before the date the termination or reduction takes effect; and
- b. any reasonable costs incurred by the Contractor that are directly attributable to the termination or reduction,

and then only when the Contractor substantiates these amounts to the satisfaction of the Commonwealth Representative. In particular, the Contractor shall not be entitled to profit calculated by reference to any period after the date the termination or reduction takes effect.

13.4 General Termination Provisions (Core)

13.4.1 If the Contract is terminated under clause 13.2 or otherwise or the scope of the Contract is reduced under clause 13.3:

- a. the termination or reduction takes effect on:
 - (i) the date of the notice of termination or reduction; or
 - (ii) if the notice of termination or reduction specifies a later date, the later date;
- b. the Contractor shall:
 - (i) stop work in accordance with the notice;
 - (ii) comply with any directions given to the Contractor by the Commonwealth; and
 - (iii) 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;
- c. the Contractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control or in the possession, power or control of Contractor Personnel that contain or relate to any Confidential Information or which are security classified;
- d. the Contractor shall, within 30 days after receipt of the notice of termination or reduction (as applicable), or other period agreed in writing by the parties, deliver to the Commonwealth the Technical Data (in its then current state of development) for Supplies produced prior to the date of termination;
- e. subject to clause 13.6, the parties shall be relieved from future performance, without prejudice to:
 - (i) any right, or cause of action that has accrued at the date of termination; or
 - (ii) any amount owing under or in connection with the Contract as at the date of termination;

- f. the Contractor shall deliver to the Commonwealth all Commonwealth Property that the Contractor or Contractor Personnel have in their possession in connection with the Contract; and
 - g. subject to clauses 10.5, 10.6 and 13.3, the right to recover damages, including full contractual damages, shall not be affected.
- 13.4.2 The rights of the Commonwealth to terminate or reduce the scope of the Contract under clauses 13.2 and 13.3 are in addition to any other right or remedy the Commonwealth may have in relation to the Contract.

13.5 Right of Commonwealth to Recover Money (Core)

- 13.5.1 Without limiting the Commonwealth's other rights or remedies under the Contract, if the Commonwealth elects, in accordance with the Contract, to recover an amount from the Contractor or the Contractor otherwise owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may:
 - a. deduct the amount from payment of any claim; or
 - b. give the Contractor a notice of the existence of a debt recoverable which shall be paid by the Contractor within 30 days after receipt of notice.
- 13.5.2 If any sum of money owed to the Commonwealth is not received by its due date for payment, the Contractor shall pay to the Commonwealth interest at the ATO sourced General Interest Charge rate current at the date the payment was due for each day the payment is late.

13.6 Survivorship (Core)

- 13.6.1 Any provision of the Contract which expressly or by implication from its nature is intended to survive the termination or expiration of the Contract and any rights arising on termination or expiration shall survive the termination or expiration of the Contract on its terms.
- 13.6.2 Without limiting clause 13.6.1, any provision dealing with Confidential Information, IP, Defence Security, Privacy, and any warranties, guarantees, licences, indemnities, liability caps, rights to recover money shall survive the termination or expiration of the Contract on its terms.

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)

(print name)

(date)

SIGNED for and on behalf of

THE CONTRACTOR:

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

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

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

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