



**Australian Government**

**Defence**

# **ASDEFCON (Complex Materiel) Volume 1 V4.1**

**Incorporating:**

**Conditions of Tender**

**Draft Conditions of Contract**

**Draft Statement of Work**

**Released August 2024**

## Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

## Disclaimer

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## Use of the Coat of Arms

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## Feedback

All feedback on this publication and suggestions for improvement should be sent to:

[procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au).

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<sup>1</sup> <https://www.pmc.gov.au/government/commonwealth-coat-arms>

## GENERAL INFORMATION FOR USERS

## PURPOSE OF ASDEFCON (COMPLEX MATERIEL) VOLUME 1

1. *ASDEFCON (Complex Materiel) Volume 1* is a tendering and contracting template for use in acquisitions with low technical risk that have no significant design and development activity. By using a standard template for these types of acquisitions, the Department of Defence aims to minimise the cost of tendering and the duration of negotiations.
2. For further information on selecting and tailoring *ASDEFCON (Complex Materiel) Volume 1* template users should refer to the *Contract Template Selection and Tailoring Guide* which can be accessed via the intranet and internet sites listed in paragraph 10.
3. *ASDEFCON (Complex Materiel) Volume 1* is designed for procurements that are both subject to and not subject to the additional rules as detailed in Division 2 of the *Commonwealth Procurement Rules*. For information on whether a procurement is subject to the additional rules refer to the *Exemptions from Division 2 of the Commonwealth Procurement Rules fact sheet* available here:  
<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

## STRUCTURE OF ASDEFCON (COMPLEX MATERIEL) VOLUME 1

4. *ASDEFCON (Complex Materiel) Volume 1* contains the following sections:
  - a. Preliminary pages: including covering letter with Matrix of Changes attachment;
  - b. Part 1: Conditions of Tender, including annexes;
  - c. Part 2: Draft Conditions of Contract, including attachments; and
  - d. Part 3: Draft Statement of Work, including annexes.

## AMENDMENTS TO ASDEFCON (COMPLEX MATERIEL) VOLUME 1

5. *ASDEFCON (Complex Materiel) Volume 1* is a dynamic document that will be amended on an “as required” basis to reflect changes in legislation, policy and procurement practices. Amendments to *ASDEFCON (Complex Materiel) Volume 1* will be released through updates to the current version or the issue of a new version of the template. All updated and new versions will be issued on the intranet and internet at the sites listed in paragraph 10.
6. Template users are also welcome to suggest changes to the template emailing: [procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au).

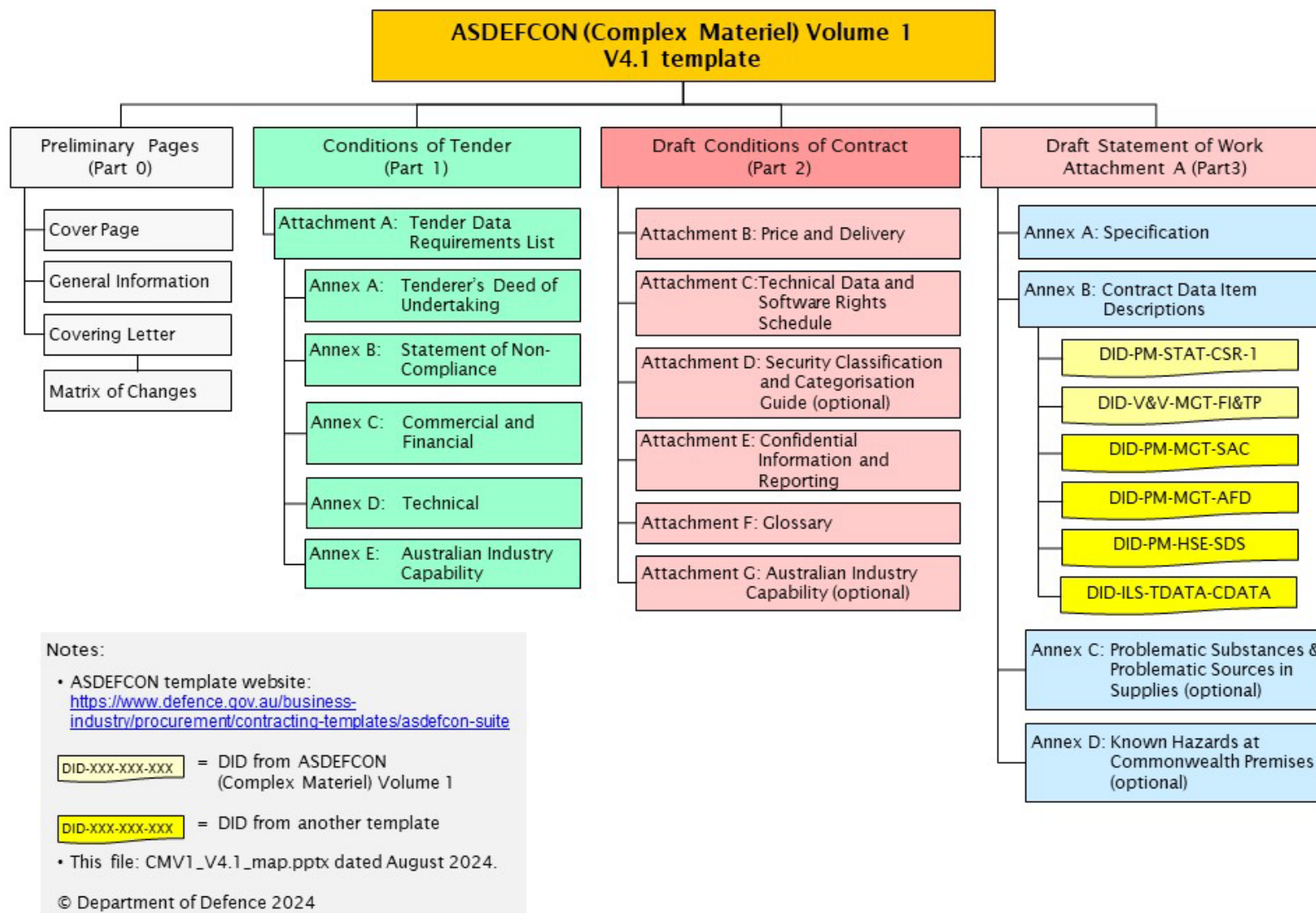
## CONTRACTING ASSISTANCE AND HELP DESK

7. Drafters requiring contracting advice or assistance should approach their Group or Divisional contracting support areas in the first instance. If the relevant support officer is not known, drafters should contact the relevant Executive Director Contracting (EDCON) in their respective Contracting Services area.
8. For ASDEFCON advice, including proposed updates to or advice regarding the templates please email: [procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au).
9. The Statement of Work is managed by ASDEFCON SOW Policy. If you have any queries relating to this area please email: [ASDEFCONSOW.Support@defence.gov.au](mailto:ASDEFCONSOW.Support@defence.gov.au).

## DISSEMINATION OF ASDEFCON (COMPLEX MATERIEL) VOLUME 1

10. *ASDEFCON (Complex Materiel) Volume 1* can be downloaded from the Defenceintranet via the ‘ASDEFCON Suite of Tendering and Contracting Templates’ webpage at the following address:  
<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Templates.aspx>  
or from the Defence internet site by following the ‘Business & Industry’ link to following address:

<https://www.defence.gov.au/business-industry/procurement/contracting-templates/asdefcon-suite>.





**Australian Government**  
**Defence**

[...INSERT DEFENCE GROUP...]

[...INSERT DIVISION...]

[...INSERT ADDRESS...]

[...INSERT CONTACT DETAILS...]

[...INSERT TENDERER'S ADDRESS...]

You are invited to submit a tender in response to RFT [...INSERT RFT NUMBER...] to provide [...INSERT DESCRIPTION OF SUPPLIES...].

[...INSERT BACKGROUND AND PROJECT PHASE INFORMATION...]

This RFT has been prepared utilising the *ASDEFCON (Complex Materiel) Volume 1* template, with material amendments to the template identified in the Matrix of Changes at Attachment A to this letter. While all care is taken by the Commonwealth in preparing Attachment A, it is a summation and therefore may not be complete and accurate. You should not exclusively rely on Attachment A to identify template changes in this RFT and should exercise independent skill and judgement in reading and understanding this RFT and in preparing your tender.

Tenders are to be submitted by the tender Closing Time specified in the Tender Details Schedule. Any questions in relation to this RFT should be directed to the Contact Officer specified in the Tender Details Schedule.

**Option: For when classified information forms part of the RFT.**

**Note to drafters: Classified information should not be included as part of a RFT except in exceptional circumstances. Where the RFT is to include classified information, drafters should consult with their Project Security Officer.**

The following documents forming part of this RFT are classified as follows:

**[...DRAFTER TO INSERT LIST OF RELEVANT DOCUMENTS AND THEIR CLASSIFICATION PRIOR TO RFT RELEASE...].**

Separate provisions for receipt of or access to classified information will be made. Application to receive or view the documents is to be made in writing to the Contact Officer specified in the Tender Details Schedule.

Subject to the conditions of tender, the proposed schedule for evaluation and negotiation is:

[...INSERT RELEVANT PROJECT DATES...].

Tenderers should note that the above schedule is subject to change at any time and is not to be relied on by tenderers as final and definitive.

Yours sincerely

[...INSERT RELEVANT SIGNATORY...]

[...INSERT DATE...]

Attachments:

A. Matrix of Changes

## ATTACHMENT A

## MATRIX OF CHANGES

**Note to drafters:** Drafters should complete the Matrix of Changes prior to submission of the RFT to the Project Director or delegate approving the RFT. The Project Director or delegate approving the RFT is responsible for ensuring that, wherever possible, the form of the template is adhered to and project specific tailoring of the RFT (particularly the non-SOW aspects) is kept to a minimum. This will help improve standardisation and reduce the cost of tendering.

The Project Director or delegate approving the RFT is also responsible for ensuring that the completed Matrix of Changes and a copy of the RFT package is provided to the ASDEFCON and Contracting Initiatives Directorate at [procurement.ASDEFCON@defence.gov.au](mailto:procurement.ASDEFCON@defence.gov.au) upon release of the RFT. This information will be used for internal analysis and ongoing improvements to the template.

When providing these documents to the ASDEFCON and Contracting Initiatives Directorate, the covering email should identify the project/procurement name, the version number of the template, and the contracting officer, Legal Service Provider and Defence Legal representative (if any) involved in developing the RFT.

Drafters only need to identify material changes to the Conditions of Tender, Conditions of Tender Annexes, Conditions of Contract, and the Glossary in Attachment G. The SOW aspects of the template may require more extensive tailoring to match the work scope of the procurement. Accordingly, SOW changes are not required to be captured in the Matrix of Changes table below.

Part and Title	Amended/New Clause No. and change type (Add/Modify/Delete)	Other clauses affected by the amendment	Details of Change

## PART 1 – CONDITIONS OF TENDER

## TENDER DETAILS SCHEDULE

<b>RFT Number:</b>	[INSERT NO.]								
<b>RFT Name:</b>	[INSERT NAME OF CAPABILITY/SYSTEM]								
<b>Division 2 of CPRs:</b>	<p><b>Note to drafters: Select 'do' or 'do not' from the clause below as appropriate to the RFT. Refer to the DPPM for guidance on the CPRs.</b></p> <p><b>An electronic version of the CPRs can be accessed at:</b></p> <ul style="list-style-type: none"> <li><a href="https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules">https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules</a></li> </ul> <p>The additional rules detailed in Division 2 of the CPRs [DO / DO NOT] apply to this procurement.</p>								
<b>Contact Officer:</b> (clause 2.3)	<table border="1"> <tr> <td>Name:</td><td>[INSERT NAME]</td></tr> <tr> <td>Address:</td><td>[INSERT ADDRESS]</td></tr> <tr> <td>Fax:</td><td>[INSERT FAX NUMBER]</td></tr> <tr> <td>Email:</td><td>[INSERT EMAIL ADDRESS]</td></tr> </table>	Name:	[INSERT NAME]	Address:	[INSERT ADDRESS]	Fax:	[INSERT FAX NUMBER]	Email:	[INSERT EMAIL ADDRESS]
Name:	[INSERT NAME]								
Address:	[INSERT ADDRESS]								
Fax:	[INSERT FAX NUMBER]								
Email:	[INSERT EMAIL ADDRESS]								
<b>Industry Briefing:</b> (Optional) (clause 2.6)	<p>An industry briefing will be conducted at [INSERT PLACE] commencing at [INSERT TIME] on [INSERT DATE].</p> <p>Representatives of prospective tenderers at the briefing will be limited to [INSERT NUMBER] personnel. Nominations to attend the briefing are to be forwarded in writing to the Contact Officer by [INSERT TIME / DATE].</p>								
	<p><b>Option: To be used when a classified industry briefing is required.</b></p> <p>Representatives of prospective tenderers are to hold a current security clearance at a minimum of [INSERT CLASSIFICATION LEVEL] level. Prospective tenderers are to provide the following additional details for their representatives:</p> <ol style="list-style-type: none"> <li>nationality;</li> <li>date and place of birth; and</li> <li>current security clearance and the Department which issued the clearance.</li> </ol>								
<b>Closing Time:</b> (clause 2.7.3)	<p>Note to drafters: Closing Time must be between 10am - 4pm ACT local time and not fall on a national or local ACT public holiday. This is to ensure that the AusTender Help Desk function is available to tenderers during the Closing Time.</p> <p>[INSERT TIME] local time in the Australian Capital Territory (ACT) on [INSERT DATE].</p>								
<b>Format:</b> (clause 2.7.4)	[INSERT FORMAT]								
<b>Tender Validity Period:</b> (clause 2.8)	[INSERT PERIOD] after the Closing Time (as extended under clause 2.8, if applicable).								
<b>Minimum Content and Format Requirements:</b> (clause 3.2)	<p>Tenders (including all attachments, annexes and supporting documentation), are to be written in English.</p> <p>All measurements in tenders are to be expressed in Australian legal units of measurement unless otherwise specified.</p> <p>Tenders are to include a PDF copy of the Tenderer's Deed of Undertaking in the form of Annex A to the TDRL duly signed by the tenderer.</p>								



<b>Conditions for Participation:</b> (Optional) (clause 3.3)	<p><b><i>Note to drafters: Clause 1.8 should be used if the procurement is undertaken as an open tender, subject to the CPRs and valued over \$4 million (GST inclusive). Clauses 2.4 and 2.5 should be used when the procurement is subject to the additional rules detailed in the CPRs.</i></b></p> <p><b><i>Conditions for participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the RFT.</i></b></p> <p>Clause 1.8 Statement of Tax Record;</p> <p>Clause 2.4 Preparation and Transmission of Classified Tenders; and</p> <p>Clause 2.5 Defence Security Requirements.</p>
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## 1 GENERAL CONDITIONS

### 1.1 Interpretation of Request for Tender (Core)

---

- 1.1.1 The Request for Tender (RFT) comprises:
- Part 1 – Conditions of Tender (COT) (including the Tender Details Schedule), the TDRL at Attachment A to the COT and the annexes to the TDRL;
  - Part 2 – draft COC and attachments; and
  - Part 3 – draft SOW and annexes.
- 1.1.2 This RFT is an invitation to treat and, to the extent permitted by law, no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and a tenderer unless and until a contract is signed by the Commonwealth and the successful tenderer. To the extent permitted by law, the Commonwealth has no liability to the tenderer for any compensation on any basis whatsoever in connection with the tenderer's participation in this RFT.
- 1.1.3 Clause 1.1.2 does not apply to:
- the Tenderer's Deed of Undertaking executed by a tenderer;
  - a confidentiality deed executed by a tenderer; or
  - any other deed or contractual arrangement entered into by the tenderer, as required by the Commonwealth from time to time.
- 1.1.4 The Commonwealth will not be responsible for any costs or expenses incurred by any tenderer in preparation or lodgement of a tender or taking part in the RFT process.
- 1.1.5 In this RFT, unless the contrary intention appears, words, abbreviations and acronyms have the same meaning given to them in the Tender Details Schedule or the draft Contract.
- 1.1.6 If there is any inconsistency between any parts of this RFT, a descending order of precedence is to be accorded to the:
- COT (including the Tender Details Schedule);
  - TDRL and the annexes to the TDRL; and
  - draft Contract in accordance with clause 1.5 of the draft COC,
- so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

### 1.2 Amendment of RFT (Core)

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***Note to tenderers: When an amendment to the RFT is issued by the Commonwealth it will be through AusTender. Refer to clause 2.7 for more information on AusTender.***

- 1.2.1 The Commonwealth may amend this RFT by giving tenderers timely written notice of an amendment. If the Commonwealth amends this RFT under this clause 1.2.1 after tenders have been submitted, it may seek amended tenders.
- 1.2.2 Tenderers will have no claim against the Commonwealth or any Commonwealth Personnel for any failure to inform a tenderer of an amendment to this RFT, or any failure to seek amended tenders, or any other matter arising in connection with an amendment to this RFT.

### 1.3 Termination, Suspension or Deferral of RFT (Core)

---

***Option A: For when the procurement is not subject to the additional rules detailed in the CPRs.***

- 1.3.1 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process at any time. The Commonwealth will notify tenderers to this effect.

**Option B: For when the procurement is subject to the additional rules detailed in the CPRs.**

- 1.3.2 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFT process where the Commonwealth determines that:
- it is in the public interest to do so;
  - the Commonwealth is required by law to do so;
  - no tenderer represents value for money;
  - no tenderer meets the Conditions for Participation specified in the Tender Details Schedule, if any;
  - no tenderer meets the essential requirements, if any, at clause 3.4; or
  - no tenderer is fully capable of undertaking the Contract,
- and the Commonwealth will notify tenderers to this effect.

**1.4 Other Commonwealth Rights (Core)**

- 1.4.1 Without limiting its rights under this RFT, at law or otherwise, the Commonwealth may at any stage of the RFT process, exclude a tenderer from further participation in the RFT process:
- if an Insolvency Event occurs in relation to the tenderer or any of its Related Bodies Corporate;
  - if the tender is incomplete or clearly non-competitive; or
  - a representation or warranty given by the tenderer in its tender is false or misleading.
- 1.4.2 Any time or date in this RFT is for the convenience of the Commonwealth. The establishment of a time or date in this RFT does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in the RFT or otherwise.

**1.5 Australian Government Requirements (Core)**

**Note to drafters: Prior to RFT release, the Glossary should be updated to reflect the version of the following documents and policies current at the time of RFT release.**

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

**Note to tenderers: Electronic copies of relevant Defence documents are available on the internet at:**

- <https://www.defence.gov.au/business-industry/procurement/contracting-templates/asdefcon-suite>.

**Any other documents required can be provided by the Contact Officer.**

- 1.5.1 The Commonwealth will not enter into any resultant Contract with a tenderer which has a judicial decision against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid.
- 1.5.2 Tenderers should familiarise themselves with the following Commonwealth policies:
- DI and in particular:
    - Administration and Governance Provision 4 AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
    - Administration and Governance Provision 5, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual; and
    - People Provision 7, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
  - Financial Policy Gifts and Benefits;
  - Financial Policy Sponsorship;

- 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/Our-responsibilities/making-a-disclosure>; and
- f. [DRAFTERS TO INSERT ANY OTHER RELEVANT COMMONWEALTH AND DEFENCE POLICIES THAT REGULATE DELIVERY OF THE SUPPLIES].

## 1.6 Workplace Gender Equality (Optional)

**Note to drafters:** This clause 1.6 must be used for procurements at or above the relevant procurement threshold and that do not meet the exemptions set out at Appendix A to the CPRs. 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 DPM) the procurement will still be subject to the Workplace Gender Equality Procurement Principles and this clause is to be used.

**Note to tenderers:** The Workplace Gender Equality Procurement Principles prevent the Commonwealth from entering into contracts with suppliers who are non-compliant under the Workplace Gender Equality Act 2012 (Cth) (WGE Act). In performing any resultant Contract, the tenderer is to comply with its obligations under the WGE Act. Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Workplace Gender Equality Agency at:

- <https://www.wgea.gov.au/about-us/workplace-gender-equality-procurement-principles>.

- 1.6.1 In accordance with the Workplace Gender Equality Procurement Principles, the Commonwealth will not enter into any resultant Contract with a tenderer who is non-compliant under the Workplace Gender Equality Act 2012 (Cth).

## 1.7 Procurement Complaints (Core)

- 1.7.1 In the event tenderers wish to lodge a formal complaint regarding this procurement, the complaint is to be directed in writing to: [procurement.complaints@defence.gov.au](mailto:procurement.complaints@defence.gov.au). On the request of the Commonwealth, tenderers are to cooperate with the Commonwealth in the resolution of any complaint regarding this procurement.

**Option: For an RFT covered by a public interest certificate.**

- 1.7.2 A public interest certificate under the Government Procurement (Judicial Review) Act 2018 (Cth) covering this procurement is in force.

## 1.8 Statement of Tax Record (Optional)

**Note to drafters:** This clause must be used when a procurement is conducted by open tender, is subject to the CPRs and has an estimated value over \$4 million (inc GST). After tailoring Annex C, drafters should amend the references in the clauses below to Table 1 of Annex C, if necessary.

**Note to tenderers:** The Shadow Economy Procurement Connected Policy imposes obligations on the Commonwealth to obtain from tenderers satisfactory and valid STRs. 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>.

- 1.8.1 In accordance with the Shadow Economy Procurement Connected Policy, and subject to clause 1.8.2, a tender is to include all of the satisfactory and valid STRs required from a tenderer under Table C-1.
- 1.8.2 If the tender includes an STR receipt issued by the Australian Taxation Office confirming that the STRs required under Table C-1 were requested prior to the Closing Time, then the tenderer may provide all of the required satisfactory and valid STRs to the Contact Officer within four Working Days after the Closing Time.

- 1.8.3 Tenderers are to obtain and hold as at the Closing Time all of the satisfactory and valid STRs required under Table C-1 (or an STR receipt confirming that the STRs required under Table C-1 were requested prior to the Closing Time) of any entity that the tenderer proposes to engage as a direct Subcontractor, if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST).
- 1.8.4 For the purposes of the RFT, an STR is taken to be:
- 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
  - valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

## 2 TENDER PREPARATION AND LODGEMENT

### 2.1 Tenderers to Inform Themselves (Core)

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- 2.1.1 The tenderer may rely on information in this RFT, or any information communicated or provided to tenderers during the RFT process, for the purposes of preparing its response to this RFT.
- 2.1.2 Subject to clause 2.1.1, the Commonwealth makes no representations or warranties that the information is, or will be, accurate, current or complete.
- 2.1.3 Tenderers are solely responsible for:
- examining this RFT, any documents referenced in or attached to the RFT and any other information made available by the Commonwealth to tenderers in connection with the RFT process;
  - obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their tenders;
  - seeking clarification where further information has been communicated or provided to tenderers, or otherwise communicated by the Commonwealth, which is or appears to be inconsistent with the information in this RFT; and
  - satisfying themselves that their tender (including tendered prices) is accurate, complete and not misleading.
- 2.1.4 Tenderers are to prepare and lodge their tenders based on the acknowledgments and agreements at the Tenderer's Deed of Undertaking.

**Note to tenderers: Requests for advice on the control status of Australian goods and/or services should be forwarded to Defence Export Controls via email at [ExportControls@defence.gov.au](mailto:ExportControls@defence.gov.au). Further information on Australian export controls may be found at:**

- <https://www.defence.gov.au/business-industry/export/controls>.

- 2.1.5 Tenderers are solely responsible for informing themselves of the export control status of the tendered Supplies and for ensuring their compliance with Australian and foreign government controls related to the export of defence and dual-use goods, including if the export is from an Australian contractor to an overseas Subcontractor or Related Body Corporate for the purposes of providing the Supplies to the Commonwealth.

### 2.2 Tender Preparation (Core)

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- 2.2.1 Tenderers are to complete and provide the information requested in the annexes to the TDRL and are to do so in the manner requested in the annexes.
- 2.2.2 Supporting documentation may be provided to enhance the tender. Supporting documentation relevant to a particular volume is to be indicated in that volume.

### 2.3 Contact Officer and RFT Inquiries (Core)

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- 2.3.1 Tenderers are to direct any questions or concerns regarding this RFT in writing to the Contact Officer specified in the Tender Details Schedule.

- 2.3.2 Tenderers may submit questions or concerns to the Contact Officer up until five Working Days prior to the Closing Time specified in the Tender Details Schedule.
- 2.3.3 Any question or concern submitted by tenderers is submitted on the basis that the Commonwealth may circulate it and the Commonwealth's response to all other tenderers without disclosing the source of the question or concern, Confidential Information or the substance of the proposed tender.

## 2.4 Preparation and Transmission of Classified Tenders (Optional)

**Note to drafters:** *Classified information should not be included as part of a RFT except in exceptional circumstances. Where the RFT is to include classified information, drafters should consult with their Project Security Officer.*

**Note to tenderers:** *For information on preparation and transmission of classified tenders and for access to the DSPF, tenderers should contact the Contact Officer.*

- 2.4.1 Classified information in tenders is to be avoided where possible. If this cannot be achieved, tenders containing classified information are to be prepared and transmitted as follows:
- for Australian tenders, in accordance with Principle 71 of the DSPF; and
  - for overseas tenders, in accordance with the applicable industry security information system regulations issued by the appropriate government security authority in their country. If transmission involves transmission by diplomatic bag, the overseas tenderer is to use the diplomatic bag of its own government.

**Option:** *For an RFT involving classified information.*

- 2.4.2 Tenderers are to classify information in their tenders in accordance with the Security Classification and Categorisation Guide at Attachment E to the draft Contract.

- 2.4.3 If only part of a tender contains classified information, that part may be segregated from the remainder of the tender for separate transmission. However, both parts of the tender are subject to the Closing Time specified in the Tender Details Schedule. Care should therefore be taken to ensure that sufficient time is allowed for tenders to be received by the Closing Time when secure means of transmission are used.

## 2.5 Defence Security Requirements (Core)

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

- 2.5.1 On request by the Commonwealth, the tenderer is to comply with the Commonwealth security clearance and accreditation process as detailed in Principles 23, 40, 72 and 73 of the DSPF, including obtaining the level of security clearance and accreditations required by the Commonwealth.

## 2.6 Industry Briefing (Optional)

- 2.6.1 An industry briefing will be conducted in accordance with the details specified in the Tender Details Schedule.
- 2.6.2 Industry briefings are conducted for the purpose of providing background information only. Tenderers should note the effect of clauses 1.2.1 and 2.1.4. Tenderers should not rely on a statement made at an industry briefing as amending or adding to this RFT unless that amendment or addition is confirmed by the Commonwealth in writing.

## 2.7 Lodgement of Tenders (Core)

**Note to tenderers:** *The Closing Time will also be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.*

- 2.7.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFT tenderers are

to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at:

<https://help.tenders.gov.au/terms-of-use/>.

- 2.7.2 All queries and requests for AusTender technical or operational support are to be directed to:  
AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: [tenders@finance.gov.au](mailto:tenders@finance.gov.au)

The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) local time, Monday to Friday (excluding ACT and national public holidays).

- 2.7.3 Tenders are to be lodged electronically via AusTender (<https://www.tenders.gov.au>) before the Closing Time specified in the Tender Details Schedule in accordance with the tender lodgement procedures set out in this RFT and on AusTender.

- 2.7.4 Tenders are to be lodged in the format specified in the Tender Details Schedule. All file names should:

- a. sufficiently identify the tenderer by including their name; and
- b. reflect the parts of the response they represent, where the response comprises multiple files.

- 2.7.5 Tender files should not exceed a combined file size of 500 megabytes per upload.

## **2.8 Tender Validity Period (Core)**

- 2.8.1 The Commonwealth requires that tenders submitted in response to this RFT remain open for acceptance during the Tender Validity Period specified in the Tender Details Schedule.

**Note to drafters: If this extension period is inappropriate, specify another period of extension.**

- 2.8.2 If this procurement is suspended under the *Government Procurement (Judicial Review) Act 2018* (Cth), the Tender Validity Period is extended by the period of suspension, up to **[twice the period of the Tender Validity Period specified in the Tender Details Schedule]**.

- 2.8.3 Without limiting clause 2.8.2, the Commonwealth may request an extension of the Tender Validity Period.

## **2.9 Alterations, Erasures and Illegibility (Core)**

- 2.9.1 Any alterations or erasures made to a tender by a tenderer are to be initialled by that tenderer. Tenders containing alterations or erasures that are not initialled or pricing or other information that is not stated clearly and legibly may be excluded from consideration.

## **2.10 Unintentional Errors of Form (Optional)**

**Note to drafters: This clause must be used when the procurement is subject to the additional rules of the CPRs.**

- 2.10.1 If the Commonwealth considers that there are unintentional errors of form in a tender, the Commonwealth may request the tenderer to correct or clarify the error but will not permit any material alteration or addition to the tender.

## **2.11 Confidentiality (Core)**

- 2.11.1 Tenderers are to treat the RFT and any information provided to tenderers by or on behalf of the Commonwealth in connection with the RFT process as confidential and not disclose or use that information except as strictly required for the purpose of developing a tender in accordance with the RFT.

- 2.11.2 In accordance with paragraph 7.23 of the CPRs, the Commonwealth will treat tenders as confidential before and after the award of any resultant Contract.

- 2.11.3 Despite clause 2.11.2 the Commonwealth may disclose information:



- a. if required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by parliament or a parliamentary committee;
- b. for the purpose of defending any claim or proceeding in relation to this RFT process or any resultant Contract;
- c. in the public domain otherwise than due to a breach of confidence; or
- d. as contemplated under clause 2.12.1.

## **2.12 Probity Assurance (Core)**

***Note to tenderers: Tenderers should note that the Tenderer's Deed of Undertaking sets out a number of acknowledgements and undertakings to be given by tenderers, including in relation to probity, conflict of interest and bribery.***

- 2.12.1 The Commonwealth may exclude a tender from further consideration if in the opinion of the Commonwealth, the tenderer fails to comply with clause 4 of the Tenderer's Deed of Undertaking. The Commonwealth may exclude a tender from further consideration if the tenderer, any of its Related Bodies Corporate or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials at any time during the last seven years.

## **2.13 Use of Tender Documents (Core)**

- 2.13.1 All tender documents submitted in response to this RFT become the property of the Commonwealth, and the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. evaluation and selection of any tender;
  - b. preparation and negotiation of any resultant Contract with respect to the RFT; and
  - c. verifying the currency, consistency and adequacy of information provided under any other RFT process conducted by the Commonwealth.
- 2.13.2 The Commonwealth may disclose all or part of the tender documents to a third party for the purposes of assisting the Commonwealth in the conduct of the RFT process and for the purposes contained in clause 2.13.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 2.13.3 Nothing in this clause 2.12.1 changes or affects the ownership of Intellectual Property in the information contained in the tender documents.

## **2.14 Part and Joint Tenders (Core)**

- 2.14.1 The Commonwealth will not consider a tender for part of the Supplies.
- 2.14.2 The Commonwealth will not consider a joint tender for the Supplies.

## **2.15 Alternative Proposals (Core)**

- 2.15.1 The Commonwealth may consider an alternative proposal submitted by a tenderer that does not comply with the requirements of the RFT. Any alternative proposal is to be submitted in accordance with this clause 2.15.
- 2.15.2 The Commonwealth will not consider an alternative proposal unless the alternative proposal:
- a. is submitted together with a tender that addresses the requirements of the RFT;
  - b. is clearly identified as an alternative proposal submitted under this clause 2.15;
  - c. complies with all essential requirements identified in the RFT;
  - d. is fully described by the tenderer, including:
    - (i) the advantages, disadvantages, limitations and capability of the alternative proposal; and
    - (ii) the extent to which the adoption of the alternative proposal would impact upon the tender that addresses the requirements of the RFT, including any financial

impact, impact on the provision of the Supplies, and any other consequences of the alternative proposal; and

- e. contains sufficient and verifiable supporting information and data to enable a comparison of the alternative proposal against other tenders.

2.15.3 For the avoidance of doubt, alternative proposals are not required to constitute a complete tender that addresses all of the requirements of the RFT.

### 3 EVALUATION OF TENDERS

#### 3.1 Evaluation and Process (Core)

**Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate.**

3.1.1 Tenders will be evaluated on the basis of best value for money consistent with Commonwealth procurement policies utilising the tender evaluation criteria at clause 3.9.

3.1.2 The Commonwealth may at any time during the RFT process:

- a. obtain additional information (whether that information is obtained through the RFT process or by any other means) relevant to a tenderer's tender;
- b. use material tendered in response to one evaluation criterion in the evaluation of other criteria;
- c. seek clarification or additional information from, and enter into discussions with, any or all of the tenderers in relation to their tender; or
- d. shortlist one or more tenderers.

**Notes to drafters: The SOW does not provide a process for the Commonwealth to review the design and development of Supplies. If the Supplies involve minor, non-critical development, the Contract will enable demonstration that the Supplies meet the requirements of the Contract, during Final Inspection and Test activities. If drafters consider that tendered solutions are likely to include greater levels of development, which would warrant Commonwealth insight into the development process (such as requirements validation, design reviews, and detailed product Verification), then the use of ASDEFCON (Complex Materiel) Volume 1 is not appropriate and drafters should use ASDEFCON (Complex Materiel) Volume 2.**

**The following optional clause enables samples of proposed Supplies to be provided for tender evaluation purposes. If the clause is included, drafters must consider how samples will be used (eg, for inspection, demonstration or user trial) and the issues related to that use. Drafters need to consider the Work Health and Safety of Defence and tenderer Personnel, Training of Defence Personnel, Intellectual Property rights, Confidential Information (including for test results), limits of liability, maintenance of sample equipment, return of the samples, potential damage to the samples or Defence equipment interfacing with the samples, and the party responsible for each aspect. Drafters should seek specialist commercial and legal advice regarding terms to be added to the COT and/or the need for separate agreements for the loan and use of samples.**

**Option: For when a sample of the tendered Supplies may be requested.**

3.1.3 The Commonwealth may request tenderers to provide a sample of the tendered Supplies. Failure to provide a sample of the tendered Supplies may result in the Commonwealth not further considering the tender.

3.1.4 In assessing tenders, the Commonwealth may take into account any supporting documentation provided under clauses 2.2.2 and 3.1.2.

### 3.2 Minimum Content and Format Requirements (Core)

**Note to drafters:** When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.

- 3.2.1 [Subject to clause 2.10], the Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with any of the Minimum Content and Format Requirements specified in the Tender Details Schedule.

### 3.3 Conditions for Participation (Optional)

**Note to drafters:** This clause should be used when the procurement is subject the additional rules detailed in the CPRs.

- 3.3.1 The Commonwealth will exclude a tender from further consideration if the Commonwealth considers that the tenderer does not comply with the Conditions for Participation specified in the Tender Details Schedule.

### 3.4 Essential Requirements (Optional)

**Note to drafters:** This clause is to be used if the draft SOW contains essential requirements. When the procurement is subject to the additional rules detailed in the CPRs, 'will' is to be selected from the following clause. When the procurement is NOT subject to the additional rules detailed in the CPRs, 'may' is to be selected.

- 3.4.1 The Commonwealth [MAY/WILL] exclude a tender from further consideration if the Commonwealth considers that the tender does not comply with a requirement identified as essential in the draft SOW.

### 3.5 Negotiation (Core)

- 3.5.1 The Commonwealth may engage one or more tenderers in negotiations, which may involve tenderers being asked to:
- clarify, improve or consolidate any of the technical, commercial, legal, financial and operational aspects of their tenders; or
  - enter into an agreement with the Commonwealth relating to the terms of the detailed engagement with that tenderer.

### 3.6 Preferred Tenderer Status (Core)

- 3.6.1 The Commonwealth may select a tenderer as a preferred tenderer, but such selection:
- does not affect or limit the Commonwealth's rights or the tenderer's obligations under the RFT; and
  - is not a representation that any resultant Contract will be entered into between the Commonwealth and that tenderer.

and the Commonwealth may recommence or commence negotiations under the RFT with any other tenderer whether or not a tenderer has been selected as preferred tenderer.

### 3.7 Cost Investigation of Tenders (Core)

**Note to tenderers:** The Commonwealth may refer to the Defence Cost Principles in considering whether the costs that a contractor would seek to claim under any resultant Contract are reasonable. The Defence Cost Principles can be accessed on the Defence internet site at:

- <https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/cost-principles>

- 3.7.1 For the purposes of evaluating a tender, Commonwealth Personnel may conduct a cost investigation of the tendered price. On request by the Commonwealth, the tenderer is to facilitate any such cost investigation.

**3.8 Debriefing of Tenderers (Core)**

- 3.8.1 Tenderers will be notified whether they have been successful or unsuccessful and may request an oral or written tender debriefing. Tenderers requiring a debriefing should contact the Contact Officer specified in the Tender Details Schedule.
- 3.8.2 Tenderers will be debriefed against the evaluation criteria contained in clause 3.9.

**3.9 Tender Evaluation Criteria (Core)**

- 3.9.1 For the purposes of clause 3.1.1, the criteria to be applied for the purposes of evaluation are as follows, not in any order of importance:
- a. past performance of contractual obligations of the tenderer, any proposed Subcontractors and any Related Bodies Corporate;
  - b. the tenderer's degree of overall compliance with the RFT;
  - c. the extent to which the tender meets the technical, functional, operational and performance requirements stated in the draft SOW, including any specifications;

***Option: For when a sample of the tendered Supplies may be requested.***

- d. the degree to which any sample tendered in accordance with clause 3.1.3 meets the requirements stated in the draft SOW;
- e. the extent to which the tenderer is compliant with the draft Contract and the assessed level of risk relating to the negotiation of any resultant Contract acceptable to the Commonwealth;
- f. the nature and extent to which the tender response proposes Technical Data, Software and Contract Materiel rights to the Commonwealth and the assessed level of risk relating to the negotiation of the relevant provisions of any resultant contract acceptable to the Commonwealth;
- g. the proposed corporate structure and the financial and corporate viability of the tenderer to fulfil Contract obligations;
- h. the tendered prices and pricing structure, including proposed payment schedule;
- i. the tenderer's demonstrated technical and managerial capability to meet the requirements of the draft SOW; and

***Option: This criterion must be included if the expected value of any resultant Contract is above \$1million (including GST).***

- j. the extent to which the tenderer's proposal will achieve economic benefit for the Australian economy.

***Option: This criterion must also be included if the expected value of any resultant Contract is at or above \$4 million (including GST) and there is a requirement to address AIC in tender responses (refer to TDR E).***

- k. the extent to which the tenderer's proposal achieves the objectives for the Australian Industry Capability (AIC) program and satisfies the AIC requirements of the draft Contract.

## ATTACHMENT A

## TENDER DATA REQUIREMENTS LIST

**Note to drafters: The following format is provided for guidance only and may be amended as required. Delete 'Core' and 'Optional' designations before release of the RFT. Optional requirements that are not included should be annotated as 'Not used'.**

Tender Data Requirement Number	Tender Response Volume
	<b>Volume 1: Overview</b>
<b>A-1</b>	Tenderer's Deed of Undertaking (CORE)
<b>B-1</b>	Statement of Non-Compliance (CORE)
	<b>Volume 2: Commercial and Financial</b>
<b>C-1</b>	Tendered Pricing Information – General Requirements (CORE)
<b>C-2</b>	Tendered Pricing Information – Specific Requirements (CORE)
<b>C-3</b>	Adjustments (OPTIONAL)
<b>C-4</b>	Australian Contract Expenditure (OPTIONAL)
<b>C-5</b>	Tenderer's Ability to Supply (CORE)
<b>C-6</b>	Defect Rectification (CORE)
<b>C-7</b>	Technical Data and Software Rights (CORE)
<b>C-8</b>	Insurance (CORE)
<b>C-9</b>	Subcontractors (CORE)
<b>C-10</b>	Defence Industry Security Program Physical and Information / Cyber Security requirement (OPTIONAL)
<b>C-11</b>	Liability (OPTIONAL)
<b>C-12</b>	Economic Benefit to the Australian Economy (OPTIONAL)
	<b>Volume 3: Technical</b>
<b>D-1</b>	Description of Proposed Solution (CORE)
<b>D-2</b>	Problematic Substances in Supplies (CORE)
<b>D-3</b>	Disposal Requirements (OPTIONAL)
<b>D-4</b>	Final Inspection and Test Plan (OPTIONAL)
	<b>Volume 4: Australian Industry Capability</b>
<b>E-1</b>	Australian Industry Capability Schedule Requirements (OPTIONAL)

## ANNEX A TO ATTACHMENT A

## RESPONSE VOLUME: OVERVIEW (CORE)

## TENDERER'S DEED OF UNDERTAKING (CORE)

**Note to tenderers:** *Tenderers must provide a deed in the following format.*

This deed poll is made on the **(INSERT DATE)**

BY:

**(INSERT NAME, ACN/ABN and ARBN if APPLICABLE) (Tenderer)**

**1. DECLARATIONS (CORE)**

- 1.1 This deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('**Commonwealth**').
- 1.2 This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER]** (**RFT**) issued by the Commonwealth and the tender submitted by the Tenderer in response to the RFT (**Tender**). Terms defined in the RFT will have the same meaning when used in this deed poll.
- 1.3 The Tenderer submits its Tender to provide the Supplies solicited by the RFT at the prices tendered and, subject to the Statement of Non-Compliance included as part of its Tender, in accordance with the draft Contract.

**2. ACKNOWLEDGEMENTS (CORE)**

- 2.1 The Tenderer acknowledges and agrees:
  - a. to the Commonwealth's rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
  - b. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
  - c. that the Commonwealth can utilise all relevant information about the Tenderer's performance on Commonwealth procurement activities;
  - d. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with the requirements set out in the 'Promoting Confidence in Defence Procurement Processes' section of the Defence publication *Defence and the Private Sector – Working with Integrity* which is available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/defence-and-private-sector-working-integrity>;
  - e. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
  - f. that the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFT, except for any addendum issued by the Commonwealth that expressly add to or amend the RFT;
  - g. that the Tenderer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
  - h. that Defence may provide any information collected or provided during the course of the RFT process (including regarding breaches of workplace relations law, work health and safety law or worker's compensation law) to other Commonwealth entities or regulatory bodies;
  - i. that Defence, as a Commonwealth agency, is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including

**ANNEX A TO ATTACHMENT A**

disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFT process on the successful Tenderer and information on any resultant Contract in the AusTender website.

2.2 The Tenderer acknowledges and agrees that:

- a. the RFT and any communication or dealings of any kind in relation to the RFT (other than this deed poll) between the Commonwealth and the Tenderer, or between the Commonwealth and any other person with an interest in the RFT, do not constitute a contract between the Commonwealth and the Tenderer;
- b. to the extent permitted by law, no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
- c. to the extent permitted by law, the Commonwealth has no liability to the Tenderer, or any other person, for any compensation on any basis whatsoever in connection with the Tenderer's participation in the RFT.

**3. ACCEPTANCE (CORE)**

3.1 The Tender submitted by the Tenderer in response to the RFT shall remain open for the Tender Validity Period specified in the Tender Details Schedule (as extended under clause 2.8 of the Conditions of Tender, if applicable).

3.2 The Tenderer acknowledges and agrees that the Tender is an unconditional offer and, to the extent reasonably possible, the Tenderer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.

**4. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES (CORE)**

4.1 The Tenderer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct (including the exchange of information with other tenderers) by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:

- a. the preparation or lodgement of tenders;
  - b. the evaluation and clarification of tenders; and
  - c. the conduct and content of negotiations, including final Contract negotiations,
- in respect of the RFT process.

4.2 The Tenderer represents and warrants:

- a. that the Tender has not been compiled:
  - (i) with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
  - (ii) with the utilisation of information improperly obtained from the Commonwealth; or
  - (iii) in breach of an obligation of confidentiality to the Commonwealth;
- b. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFT process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender; and
- c. without limiting clause 4.2a, that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Tender or the RFT process, if:

**ANNEX A TO ATTACHMENT A**

- (i) the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
    - (ii) the person was at any time during the 12 months immediately preceding the date of issue of the RFT involved in a Defence procurement process or activity relevant or related to the RFT; and
  - d. it is aware of the provisions of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and Division 137 of the *Criminal Code Act 1995* (Cth) and that its Tender does not contain any false, misleading or deceptive, claims or representations.
- 4.3 The Tenderer represents and warrants that the following is a complete list of any offences relating to bribery, misuse of public information, false accounting or corruption or attempted corruption of a public official or similar offences that would tend to undermine public trust of which the Tenderer or its Related Bodies Corporate have been convicted during the last 7 years, or of which the Tenderer or its Related Bodies Corporate are currently charged:
- [INSERT DETAILS OF ALL SUCH OFFENCES OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- 4.4 The Tenderer represents and warrants that if in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed, the Tenderer must notify the Commonwealth promptly in writing. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFT process. The following is a complete list of all current actual, potential or perceived conflicts of interest:
- [INSERT DETAILS OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- 4.5 The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:
- a. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
  - b. the Tenderer fails to comply in any other respect with this clause 4; or
  - c. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.
- 4.6 The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:
- a. have been found in the past 3 years to have committed a material breach; or
  - b. are currently in material breach,
- of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:
- [INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']**
- and the following actions have been taken to remedy any such material breach:
- [INSERT DETAILS OF ACTIONS TAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT 'NOT APPLICABLE']**.
- 4.7 The Tenderer represents and warrants that, in accordance with clause 1.8.3 of the Conditions of Tender, it has obtained and holds as at the Closing Time all of the satisfactory and valid STRs required under Table C-1 (or an STR receipt confirming that the STRs required under Table C-1 were requested prior to the Closing Time) of any entity that the Tenderer proposes to engage as a direct Subcontractor, where the total value of the work under the Subcontract is expected to exceed \$4 million (inc GST).



## ANNEX A TO ATTACHMENT A

**Option: Include clause 4.8 if clauses 11.7.6 to 11.7.10 (PT PCP clauses) are included in the COC.**

**Note to tenderers: Tenderers are to include the following clause if the tenderer is a Reporting Entity and clauses 11.7.6 to 11.7.10 have been included in the COC.**

- 4.8 The Tenderer undertakes that if, in anticipation of entering into a resultant Contract with the Commonwealth, it enters into a Reporting Entity Subcontract, the tenderer shall include in that subcontract:
- a. an obligation to comply with the Payment Times Procurement Connected Policy (PT PCP); and
  - b. using its reasonable endeavours, 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 4.8a; and
    - (ii) obligations equivalent to this clause 4.8b (such that the obligations in this clause 4.8b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

## 5. SURVIVAL (CORE)

- 5.1 This deed poll survives the termination or expiry of the RFT.

## 6. APPLICABLE LAW (CORE)

**Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected at Item 9 of the Details Schedule of the draft COC.**

- 6.1 The Tenderer agrees that the laws of [INSERT JURISDICTION] apply to this deed poll and the Tenderer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the RFT.

## 7. TERMINATION AND AMENDMENT (CORE)

- 7.1 This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.

## 8. CONTACT DETAILS (CORE)

- 8.1 The Tenderer's contact details for the purpose of the RFT and this deed poll are set out below.

NAME (Block Letters):

TELEPHONE NUMBER:

EMAIL ADDRESS:

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

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

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

Executed as a Deed Poll

(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)

**ANNEX B TO ATTACHMENT A****RESPONSE VOLUME: OVERVIEW (CORE)****STATEMENT OF NON-COMPLIANCE (CORE)****1. STATEMENT OF NON-COMPLIANCE (CORE)**

- 1.1 If a tenderer does not fully comply with any clause of the annexes to the TDRL (excluding Annex A), the draft COC and attachments, and the draft SOW and annexes, it is to state its non-compliances in a Statement of Non-Compliance in the format at Table B-1. Tenderers are to include details of:
- the extent, justification and impact of non-compliance;
  - any proposed drafting amendments; and
  - the location in the tender where further non-compliance details and comments (if any) can be found.
- 1.2 Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex or attachment.
- 1.3 A tenderer will be deemed to be fully compliant with any clause not listed in the Statement of Non-Compliance.

**Note to tenderers: Failure to indicate all non-compliances in Table B-1 may constitute false, misleading or deceptive conduct for the purposes of Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or Division 137 of the Criminal Code Act 1995 (Cth).**

**Table B-1: Statement of Non-Compliance Format**

	Clause No.	Non-Compliance	Comments	Location in Tender
Annexes to the TDRL (excluding Annex A)				
Draft COC				
Attachments to the draft COC				
Draft SOW				
Annexes to the draft SOW				
Draft Data Item Descriptions				

## ANNEX C TO ATTACHMENT A

## RESPONSE VOLUME: COMMERCIAL AND FINANCIAL (CORE)

## 1. TENDERED PRICING INFORMATION – GENERAL REQUIREMENTS (CORE)

*Draft COC reference: clause 7, Attachment B*

**Note to drafters:** In the note below, delete references to ACE if not applicable (refer [Annex E](#)).

**Note to tenderers:** The 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW) collects financial information for tenders. Specific worksheets will form the basis of Attachment B of any resultant Contract. The CMV1PW also enables calculation of Australian Contract Expenditure (ACE). Refer to the CMV1PW Guide and the [ACE Guide for ASDEFCON](#) (if applicable).

**Note to drafters:** Update the CMV1PW to support this annex. Amend the list of worksheets for the draft Contract; for example, select the 'Price and Delivery (simple)' worksheet if the expected value is less than \$4m and an AIC program will not apply. Remove reference to the 'Schedules of Rates' worksheets if not required. If applicable, an 'Adjustments' worksheet may be added.

- 1.1 Tenderers are to complete and submit tender pricing information within the Microsoft Excel® Workbook titled 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW), including the following worksheets:
  - a. [...INSERT: 'Price and Delivery' OR 'Price and Delivery (simple)'.];
  - b. Schedules of Rates (including the Schedule of Margins, Labour Rates, Material and Other Direct Cost worksheets);
  - c. Specific Prices;
  - d. Further Quantities; and
  - e. if additional currencies are required, the Constants worksheet.
- 1.2 Prices for tendered Supplies are to be stated in Australian dollars except for any portion of the Supplies to be imported from overseas, which are to be stated in foreign currency. All prices tendered are to be in Base Date dollars.
- 1.3 Tendered prices are to be inclusive of all costs (and fees, including profit) of complying with the draft Contract and associated with providing the Supplies and carrying out all matters and doing all things necessary for the due and proper performance and completion of the proposed Contract. Tenderers are not to include any contingency for exchange rate fluctuations in their tendered price.
- 1.4 Tenderers are required to submit tender prices inclusive of all overseas taxes and charges, and all Australian (Federal, State and Local Government) taxes including GST, duties and charges that are applicable at the Base Date. For each item of the Supplies on which GST will be payable, the tenderer is to indicate the amount of GST to be applied.

**Note to tenderers:** The Defence Cost Principles can be found here:

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

The Australian Contract Expenditure (ACE) Measurement Rules can be found here:

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

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**Note to drafters:** In accordance with Chapter 2 of the Defence Cost Principles V3.0, there are some cases where exceptions to the Defence Cost Principles may apply.

**For guidance in relation to application of the Defence Cost Principles, refer to Commercial and Financial Analysis Directorate at:**

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/3BB9D30D-0C40-4E83-9AF5-78D4731A0130>

**or by email at:**

- [casg.cfa@dpe.protected.mil.au](mailto:casg.cfa@dpe.protected.mil.au)

**Where the Defence Cost Principles are not applicable, drafters should ensure that the pricing response requirements of the RFT ensure sufficient transparency of pricing in order to evaluate and establish value for money.**

**Delete reference to ACE Measurement Rules if an AIC program is not applicable.**

1.5 Tenderers are to apply:

**Option: Include this clause if the Defence Cost Principals are being used to develop the tendered pricing for this procurement and any exception under Chapter 2 of the Defence Cost Principles does not apply.**

- the Defence Cost Principles when preparing tendered prices; and
- the Australian Contract Expenditure (ACE) Measurement Rules, when defining the ACE and Imported Contract Expenditure (ICE) within tendered prices.

## 2. TENDERED PRICING INFORMATION – SPECIFIC REQUIREMENTS (CORE)

**Note to drafters:** Drafters are to select the appropriate Price and Delivery worksheet as follows:

- 'Price and Delivery', if any resultant Contract will include an AIC program; or
- 'Price and Delivery (simple)', for use when an AIC program is not required.

**Include applicable worksheet in the clauses below. Refer to the CMV1PW Guide for guidance.**

2.1 **Price and Delivery Schedule.** Tenderers are to indicate their compliance with the Commonwealth's delivery requirements (if any) set out in the [... INSERT 'Price and Delivery' OR 'Price and Delivery (simple)' ...] worksheet of the CMV1PW, and indicate the best delivery that can be effected having regard to other commitments.

**Note to drafters:** Delete the following requirement if not applicable.

**Note to tenderers:** Where an 'Economic Order Quantity' is identified (if any), the Commonwealth may amend the quantity to be procured prior to the Effective Date of any resultant Contract.

2.2 **Economic Order Quantity.** Tenderers are to provide details in the 'Economic Order Quantity' columns of the [... INSERT 'Price and Delivery' OR 'Price and Delivery (simple)' ...] worksheet of the CMV1PW, if an order for a quantity of items different to that requested by the Commonwealth would offer better value for money to the Commonwealth.

**Note to drafters:** Delete the following requirement if not applicable.

2.3 **Further Quantities and Optional Extras.** Tenderers are to indicate if they are prepared to supply further quantities of the Supplies and/or optional extras, including any that are identified in the 'Further Quantities' worksheet of the CMV1PW. If so, tenderers are to provide details within the 'Further Quantities' worksheet, including the time period to exercise the option, and any other aspect that differs from the initial tender. Do not include further quantities and/or optional extras within the Price and Delivery Schedule worksheet.

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## 3. ADJUSTMENTS (OPTIONAL)

*Draft COC reference clause 7.4*

**Note to drafters:** Adjustments for exchange rates may apply if payments will be in Australian dollars only. Adjustments for labour and materials costs may apply if the Contract will not be completed within a year of the Base Date. If adjustments are applicable, refer to the CMV1PW Adjustments worksheet, and the ASDEFCON Clausebank for clauses:

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

**If adjustments are not applicable, the heading should be annotated as '(Not used)'.**

## 4. AUSTRALIAN CONTRACT EXPENDITURE (OPTIONAL)

**Note to drafters:** If AIC program will apply to any resultant Contract (refer to clause 4 of the COC), ACE is to be identified using the 'Price and Delivery' worksheet in the CMV1PW (ie, hide the 'Price and Delivery (simple)' worksheet). If an AIC program is not required, delete the clauses below and annotate the heading as 'Not used' and amend TDRs C-1.1 and C-2 accordingly.

**Note to tenderers:** For guidance, refer to the [ACE Guide for ASDEFCON](#).

- 4.1 When preparing the CMV1PW, tenderers are to apply the ACE Measurement Rules to determine the planned ACE and the planned ICE for each line in the Price and Delivery Schedule, and the total planned ACE value for any resultant Contract.

**Option: Include this clause if alternate / additional deeming rates are added to Attachment B.**

- 4.2 In determining the ACE and ICE within the Price and Delivery Schedule, tenderers are to use the deeming rates listed in section 3 of the ACE Measurement Rules and the alternate and additional deeming rates specified by the Commonwealth under clause 4 of Attachment B to the draft COC.

**Note to tenderers:** The Total ACE Value (refer COC clause 4.2 ) may be different to but should be consistent with the ACE values in the Price and Delivery Schedule in the CMV1PW.

- 4.3 Tenderers are to propose a Total ACE Value to be achieved in accordance with clause 4.2.3 of the draft Contract.

## 5. TENDERER'S ABILITY TO SUPPLY (CORE)

- 5.1 Tenderers are to provide the following information:

- a. the following details of the tenderer, as applicable:
  - (i) the full name of the tenderer;
  - (ii) any trading or business name;
  - (iii) if a company, the registered office, principal place of business and an outline of the company structure;
  - (iv) the date and place of incorporation;
  - (v) for a foreign entity, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ABN (if any); and
  - (vi) if an Australian company, its ACN/ARBN and ABN as applicable;
- b. details of how the tenderer would complete the requirements outlined in the draft SOW;
- c. details of the tenderer's background, experience and resources relevant to its ability to perform any resultant Contract;
- d. details of any other matters relating to commercial, technical or financial capacity that may materially affect the tenderer's ability to perform any resultant Contract;

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- e. details of the personnel the tenderer proposes to use (ie, names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience);
- f. information on other assignments or any other matter which the tenderer considers to be relevant to its competence; and

**Note to drafters: If a tenderer states that it is participating in the ACVP, refer to the ACVP register for confirmation. Information on eligibility criteria and participating suppliers is available at:**

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/683f4f8b-b6af-4a7d-8388-ca7b493a114c>

**Note to Tenderers: The Approved Contractor Viability Program (ACVP) prequalifies, as financially viable, a small number of key suppliers. Information on the ACVP, including eligibility criteria and the register of participating suppliers, is available at:**

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

- g. whether the company is a participant in the Approved Contractor Viability Program (ACVP) (ie, listed in the ACVP register at the time of tender lodgement).

- 5.2 Tenderers are to provide a written statement as to whether or not they, and their officers, employees, agents or any proposed subcontractors, have had any non-compliances with the Commonwealth Supplier Code of Conduct. The statement is to include a description of the circumstances of any such non-compliance.

**Option: Include this clause if the procurement is at or above the relevant procurement threshold, and does not meet the exemptions set out at Appendix A to the CPRs.**

**Note that if a Defence specific exemption from Division 2 of the CPRs applies, this option is still to be used.**

**Note to tenderers: In performing any resultant Contract, the tenderer is to comply with its obligations under the Workplace Gender Equality Act 2012 (Cth). Information about the coverage of the Workplace Gender Equality Procurement Principles is available from the Workplace Gender Equality Agency at:**

- <https://www.wgea.gov.au/what-we-do/compliance-reporting/wgea-procurement-principles>

- 5.3 If the tenderer is a Relevant Employer, the tenderer is to:

- a. provide a current letter of compliance issued by the Workplace Gender Equality Agency (WGEA) as part of its tender; or
- b. advise that it is a Relevant Employer as part of its tender and provide a current letter of compliance issued by WGEA prior to executing any resultant Contract with the Commonwealth.

- 5.4 For the purposes of clause 5.3, Relevant Employer means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Supplier will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.

**Option: This clause must be used when a procurement is conducted by open tender, is subject to the CPRs, and has an estimated value over \$4 million (inc GST).**

**Note to tenderers: The Shadow Economy Procurement Connected Policy obligates the Commonwealth to obtain satisfactory and valid Satisfactory Tax Records (STRs) from tenderers. For further information about this policy, refer to:**

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

- 5.5 Tenderers are to:

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- a. provide as part of their tender any of the following STRs that are applicable to the tenderer; and
- b. in accordance with clause 1.8.3 of the Conditions of Tender, obtain and hold any of the following STRs that are applicable to a relevant Subcontractor:

**Table C-1: Tenderer: Subcontractor STR Requirements**

<b>If the tenderer / subcontractor (as the case may be) is:</b>	<b>STRs required:</b>
<b>(a)</b>	<b>(b)</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"> <li>(i) on behalf of the partnership; and</li> <li>(ii) in respect of each partner in the partnership that will be directly involved in the delivery of any resultant Contract or Subcontract (as applicable);</li> </ul>
c. a trustee acting in its capacity as trustee of a trust;	a satisfactory and valid STR in respect of the: <ul style="list-style-type: none"> <li>(i) trustee; and</li> <li>(ii) the trust;</li> </ul>
d. a joint venture participant;	a satisfactory and valid STR in respect of: <ul style="list-style-type: none"> <li>(i) each participant in the joint venture; and</li> <li>(ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;</li> </ul>
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: <ul style="list-style-type: none"> <li>(i) the relevant member of the Consolidated Group; and</li> <li>(ii) the head company in the Consolidated Group;</li> </ul>
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: <ul style="list-style-type: none"> <li>(i) the GST Group member; and</li> <li>(ii) the GST Group representative.</li> </ul>

- 5.6 If a tenderer has requested any of the STRs required under clause 5.5 but the STR has not been issued by the Australian Taxation Office prior to the Closing Time, the tenderer is to provide as part of their tender the STR receipt issued by the Australian Taxation Office confirming that the STR was requested prior to the Closing Time.



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**Option: This clause must be used when a procurement has an estimated value above \$4 million (inc GST) and is not subject to a Defence exemption under paragraph 2.6 of the CPRs.**

**Note to tenderers: The Payment Times Procurement Connected Policy imposes obligations on Commonwealth contractors with an annual income of over \$100 million to pay invoices under their subcontracts (up to \$1 million (inc GST)) within 20 days. For further information, refer to:**

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

5.7 Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer is a 'Reporting Entity' for the purposes of the Payment Times Procurement Connected Policy (PT PCP) by ticking the appropriate box.

- ☐ The tenderer **is** a Reporting Entity.
- ☐ The tenderer **is not** a Reporting Entity.

**Note: A Reporting Entity means a 'Reporting Entity' within the meaning of Payment Times Reporting Act 2020 (Cth) (PTR Act).**

**Note to drafters: This clause 5.8 must only be used if the Commonwealth intends to use the PEPPOL framework for any resultant Contract, and the parties agree to use that framework. However, if the Commonwealth Pay On-Time Policy does not apply (refer to the link in the note to tenderers), the PEPPOL framework and this clause should be removed prior to RFT release.**

**Note to tenderers: Commonwealth Pay On-Time Policy requires the Commonwealth to make payments within maximum payment terms, depending on the applicability of the Pan-European Public Procurement On-Line (PEPPOL) framework. The maximum payment term will be:**

- 5 days, where both parties have the capability to deliver and receive electronic invoices (e-invoices) through the PEPPOL framework and have agreed to use e-invoicing; or
- 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>.

5.8 Tenderers are to include the boxes below in their tender, and identify whether or not the Tenderer has the capability to use electronic invoicing through the Pan-European Public Procurement On-Line (PEPPOL) framework.

- ☐ The tenderer **does** have the capability for the PEPPOL framework to apply.
- ☐ The tenderer **does not** have the capability for the PEPPOL framework to apply.

**Option: Include these clauses if the procurement is valued at over \$200,000 (GST Inclusive).**

**Note to tenderers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurements, tenderers for contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. For further information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:**

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaaustralianplan>; and
- <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/working-out-your-residency>.

**This information will not be used to exclude a tenderer from participating in the RFT process. Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at [MNETaxTransparency@treasury.gov.au](mailto:MNETaxTransparency@treasury.gov.au).**

5.9 Tenderers are to provide:



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	a.	the tenderer's country of tax residency; and
	b.	the tenderer's ultimate parent entity's country of tax residency.
5.10		In responding to clause 5.9, if the tenderer or the tenderer's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.
5.11		Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining how to respond to clauses 5.9 and 5.10.

## 6. DEFECT RECTIFICATION (CORE)

*Draft COC reference: clause 8.2*

- 6.1 Tenderers are to provide details of any warranties, for significant items of Supplies, available from relevant manufacturers or suppliers that will extend beyond the relevant Defect Rectification Period.

## 7. TECHNICAL DATA AND SOFTWARE RIGHTS (CORE)

*Draft COC reference: clause 5*

**Note to tenderers:** Tenderers are to ensure that any restrictions in the tendered TDSR Schedule would not materially limit the achievement of Commonwealth objectives in respect of the Supplies or the tenderer's compliance with warranties under clause 5 of the draft COC. The ASDEFCON Technical Data and Intellectual Property Commercial Handbook can be accessed at:

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

- 7.1 Tenderers are to provide a draft TDSR Schedule in the form of Attachment C to the draft COC by specifying any proposed restrictions that will apply to the Commonwealth's rights to sublicense specified TD and Software under clause 5.2.2b(ii) of the draft COC.

## 8. INSURANCE (CORE)

*Draft COC reference: clause 9*

**Note to tenderers:** Refer to clause 9.1 of the draft Contract information on the Approved Contractor Insurance Program (ACIP) and the current ACIP status of participating companies. For insurance policies other than ACIP approved insurance policies, the Commonwealth will seek comprehensive details from the preferred tenderer(s) during negotiations for any resultant Contract. The Commonwealth reserves the right to request additional insurance policies based on any circumstances assessed as being relevant to the Commonwealth's risk assessments.

- 8.1 Tenderers are to indicate in their Statement of Non-Compliance the extent to which they do not comply with the insurances required by the draft COC (provided that tenderers with ACIP status are deemed compliant in relation to the insurances that are within their ACIP approval).
- 8.2 Tenderers are to identify in the 'Specific Prices' worksheet of the CMV1PW, details of all costs associated with the insurance policies covered in the tenderer's insurance response.

## 9. SUBCONTRACTORS (CORE)

*Draft COC reference: clause 11.7*

**Note to drafters:** In the clause below, consider the expected value of the procurement in determining an appropriate value threshold for subcontracts of interest to the Commonwealth.

- 9.1 Tenderers are to provide details of any Subcontractors that the tenderer proposes to use under the Contract where the value of the work to be subcontracted exceeds \$[...DRAFTER TO INSERT PRIOR TO RELEASE OF RFT...] in the 'Subcontractors' worksheet of the CMV1PW.

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## 10. DEFENCE INDUSTRY SECURITY PROGRAM PHYSICAL AND INFORMATION / CYBER SECURITY REQUIREMENT (OPTIONAL)

*Draft COC reference: clause 11.8*

**Note to drafters:** Include this clause if DISP membership at Level 1 or above applies. If the RFT is to include classified information, drafters should consult their Project Security Officer.

**Note to tenderers:** Refer to the Details Schedule in the draft COC regarding the DISP membership level for Physical Security and Information / Cyber Security elements, and Communications Security (COMSEC) material transmission requirements, for any resultant Contract.

**For further information and access to the Defence Security Principles Framework (DSPF), refer to the Security Classification and Categorisation Guide attached to the draft Contract, or contact the Contact Officer specified in Tender Details Schedule.**

- 10.1 Tenderers are to provide the following details for all premises proposed in their tender to be used for the storage of classified documents, classified assets, or the housing of ICT systems for the processing of data, up to and including the Physical Security and Information / Cyber Security DISP membership levels identified in the Details Schedule of the draft COC:
- physical address of facility;
  - facility accreditation(s) held (type and level), when granted and by whom; and
  - ICT system accreditations(s) held (type and level), when granted and by whom.
- 10.2 If appropriate DISP membership levels are not held, then tenderers are to indicate their willingness to undergo the process to obtain the requisite DISP membership.
- 10.3 Tenderers are to provide the above information in relation to all proposed Subcontractors who will require access to security classified information.

## 11. LIABILITY (OPTIONAL)

*Draft COC reference: clause 10.6 and 9*

**Note to drafters:** Refer to clause 10.6 of the draft COC for notes on liability risk assessments.

**Note to tenderers:** Liability caps and insurance requirements in clauses 10.6 and 9 of the draft COC are based on a Commonwealth liability risk assessment conducted in accordance with the Defence Liability Principles and Liability Risk Assessment template, which can be accessed at:

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

- 11.1 If a tenderer proposes to limit its liability on an alternative basis to that set out in clause 9.6 of the draft COC (eg, by proposing a liability limitation or exclusion additional to those set out in clause 10.6 of the draft COC), the tenderer is to provide the following details:
- the terms of the tenderer's proposed limitation of liability, including their proposed Limitation Amount set out in clause 10.6.1 **[or 'cap for clause 10.6.3' if Option B in clause 10.6 of the draft COC is selected]** of the draft COC;
  - an explanation of why the tenderer requires a limitation of its liability regime different to that proposed in clause 10.6 of the draft COC; and
  - the impact (if any) of these changes on the insurance requirements of the draft COC.

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## 12. ECONOMIC BENEFIT TO THE AUSTRALIAN ECONOMY (OPTIONAL)

***Note to drafters: This clause must be included if the expected value of any resultant Contract is above \$1 million (including GST).***

***Note to tenderers: For an explanation of economic benefit considerations, refer to:***

- [https://www.finance.gov.au/sites/default/files/2024-07/consideration-of-broader-economic-benefits-in-procurement\\_july-2024.pdf](https://www.finance.gov.au/sites/default/files/2024-07/consideration-of-broader-economic-benefits-in-procurement_july-2024.pdf)

- 12.1 Tenderers are to provide details of the direct economic benefits that any resultant Contract would achieve for the Australian economy.

## ANNEX D TO ATTACHMENT A

## RESPONSE VOLUME: TECHNICAL (CORE)

## 1. DESCRIPTION OF PROPOSED SOLUTION (CORE)

*Draft Statement of Work reference: Annex A*

**Note to tenderers: Where a standard (approved by a recognised body) is specified in the Specifications at Annex A to the draft SOW, tenderers are to show in their tender responses, their capability to meet that standard.**

**Note to drafters: Amend the following clause to the needs of the procurement.**

- 1.1 Tenderers are to provide a description of their proposed solution for satisfying the requirements defined in the Specification at Annex A to the draft SOW, including:
- a. the identification of each product / component including hardware and Software that, as a discrete portion, perform a function of the end item, and/or are discrete items identified for maintenance purposes, or to control the product's design (ie, configuration items);
  - b. a description of the products / components in sufficient detail so that it is clear to the Commonwealth how the required functionality will be met, including a description of:
    - (i) each product and component within the proposed Supplies;
    - (ii) internal interactions or interfaces between the products and components; and
    - (iii) any interfaces between the products / components and the external environment;
  - c. if any external elements are required to enable the functionality to be met (eg, utilities, other facilities elements, consumables), a description of these external elements;
  - d. if installation is required, a brief description of the installation requirements;

**Note to tenderers: In the following clause 'obsolete' refers to, for hardware, that the item is no longer in production, and for Software, that the item is no longer supported.**

- e. the expected remaining life of the products and components before they are classified as obsolete, and the expected support to be available once classified as obsolete; and

**Note to tenderers: The following subclause seeks to identify any significant development that is required. This should not be interpreted as an invitation to tender developmental solutions.**

- f. if any development is required, details of:
    - (i) the level of development for each product or component; and
    - (ii) the perceived technical risks and the tenderer's approach to mitigating each risk.
- 1.2 Tenderers may provide product brochures in responding to clause 1.1; however, these brochures are to be accompanied by any additional information that is needed to address the requirements of clause 1.1 and to demonstrate that the required functionality will be met.

**Option: If existing support is not relevant to tender selection, this option can be deleted.**

**Note to tenderers: Responses to clause 1.3 should be no more than five pages of text (not including printed material eg, certificates, brochures, etc).**

- 1.3 Tenderers are to describe the existing support available for the Supplies, as applicable to:
- a. engineering support, including local capabilities for modifying the Supplies and any additional capabilities that would need to be sought from overseas;
  - b. maintenance support, including local maintenance venues and capabilities and any additional capabilities that would need to be sought from overseas;
  - c. supply support, including the availability of spares, local distribution points, lead times, etc; and
  - d. training support, including the availability of local training, location of training venues, required qualifications of instructors, etc.

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**Note to drafters: Develop clause 1.4 for each procurement. A simple support concept may be included below; otherwise, refer to a separate document provided with the tender request. Recommended Support Resources and Training should be based on the support concept and, subject to negotiations, included in the Price and Delivery Schedule of any resultant Contract.**

**(Example) The Commonwealth is seeking tenderer recommendations for Support Resources (see clause 1.5) and Training to enable the following support concepts and needs to be satisfied:**

- a. equipment may be deployed on operations anywhere in Australia for periods up to 30 days with any resupply requiring up to eight days;**
- b. equipment may be operated at three different locations simultaneously and sharing of spares between the locations is not feasible;**
- c. Defence personnel will undertake user / unit-level Maintenance on equipment, while deeper levels of Maintenance will be undertaken by a support contractor;**
- d. all equipment that will be owned by the Commonwealth will require Codification;**
- e. Defence Personnel operating equipment Supplies will have the following minimum qualifications: [...DRAFTER TO INSERT...];**
- f. Defence Personnel maintaining equipment Supplies will have the following minimum qualifications: [...DRAFTER TO INSERT...];**
- g. other than a basic toolkit, no additional equipment or materials will be available to the Defence maintainers, other than the equipment and materials provided as Supplies; and**
- h. equipment and Support Resources may be transported by [...DRAFTER TO INSERT...].**

**1.4 [...INSERT DESCRIPTION OF THE SUPPORT CONCEPTS AND NEEDS...].**

**Note to drafters: Amend the following clause to the specific needs of the procurement.**

- 1.5 Tenderers are to provide recommendations for the following categories of Support Resources, which they consider should be acquired by the Commonwealth to satisfy the support concepts and needs described in clause 1.4:
  - a. spare parts;
  - b. packaging (ie, special-to-type packaging or other high-value packaging);
  - c. Support and Test Equipment (S&TE);
  - d. Technical Data, including operating and maintenance publications, storage and transportation procedures, drawings and Training Materials, as applicable;
  - e. installation drawings, if installation is required in Commonwealth facilities / vehicles; and
  - f. Training Equipment.
- 1.6 Tenderers are to provide the following information for each of the Support Resources recommended in response to clause 1.5:
  - a. the item name and manufacturer's part number;
  - b. the name and address of the item manufacturer or distributor;
  - c. if codified in the NATO codification system, the NATO Stock Number (NSN);
  - d. if a spare part, the nature of the spare (ie, repairable or non-repairable);
  - e. the recommended quantity of each item;
  - f. the unit price and delivery details for each item / group of items (to be included within the Price and Delivery Schedule required under TDR C-2).
- 1.7 Tenderers are to provide a brief justification (ie, no more than one page) for the recommended range and quantity of Support Resources.
- 1.8 Tenderers are to describe their proposal for Training, as applicable to the requirements of the draft Contract and which enable the support concepts defined in clause 1.4, including:
  - a. course descriptions (eg, course name, duration and an outline of the syllabus);
  - b. if applicable, required participant competencies and any other prerequisites;

**ANNEX D TO ATTACHMENT A**

- c. any constraints on course delivery (eg, location, class size and/or delivery dates); and
- d. the price and delivery details for each course (to be included within the Price and Delivery Schedule required under TDR C-2).

**2. PROBLEMATIC SUBSTANCES IN SUPPLIES (CORE)**

*Draft Statement of Work reference: clause 7.1*

**Note to drafters: Policies in the note below may need to be provided to tenderers if not available on Defence's internet site. Include known 'Approved Substances' in Annex C to the draft SOW.**

**Note to tenderers: See the Defence Safety Manual for Hazardous Chemicals and DEFLOGMAN Part 2 Volume 3 Chapter 3 for Ozone Depleting Substances and Synthetic Greenhouse Gases. Refer to the Defence Radiation Safety Manual for Problematic Sources. Problematic Substances and Problematic Sources will not be Approved if their use infringes on any legislation of the Commonwealth, State or Territory of Australia (eg, asbestos containing materials).**

**Refer to Annex C to the draft SOW for Problematic Substances and Problematic Sources that are pre-Approved. Any other Problematic Substances are to be identified by the preferred tenderer.**

- 2.1 Tenderers are to identify the existence and location of any of the following in the Supplies:
- a. Hazardous Chemicals comprising:
    - (i) prohibited carcinogens or restricted carcinogens, each as defined in subregulation 5(1) of the *Work Health and Safety Regulations 2011* (Cth);
    - (ii) hazardous chemicals where use is restricted by regulation 382 of the *Work Health and Safety Regulations 2011* (Cth), including polychlorinated biphenyls; and
    - (iii) lead that, in relation to supporting the Supplies, requires a lead process as described by regulation 392 of *Work Health and Safety Regulations 2011* (Cth);
  - b. Dangerous Goods;
  - c. Ozone Depleting Substances and/or Synthetic Greenhouse Gases; and
  - d. Problematic Sources.

**3. DISPOSAL REQUIREMENTS (OPTIONAL)**

*Draft Statement of Work reference: clause 4.4*

**Note to drafters: If disposal requirements are known, delete this clause and amend the TDRL.**

- 3.1 Tenderers are to summarise all aspects of the requested Supplies that have special disposal requirements due to legislative, regulatory, security, environmental, or any other restrictions.

**4. FINAL INSPECTION AND TEST PLAN (OPTIONAL)**

*Draft Statement of Work reference: clause 5.1*

**Notes to drafters: Only request a draft FI&TP if it is relevant to tender evaluations. Only include additional clauses from DID-V&V-MGT-FI&TP in Table D-1 if relevant to the tender evaluation.**

**Notes to tenderers: FI&T activities described in the draft FI&TP should address the full scope of the Supplies (indicating an ability to meet specified requirements), even if only briefly.**

- 4.1 Tenderers are to provide a draft FI&TP in accordance with at least the sections of DID-V&V-MGT-FI&TP identified in Table D-1.

**Table D-1: Minimum requirements for the draft FI&TP**

Section	Name
6.2.1	General (6.2.1.1 to 6.2.1.4)
6.2.2	FI&T Procedures (6.2.2.1 and 6.2.2.4e only)
	[... INSERT ANY ADDITIONAL REQUIREMENTS FOR TENDER ...]

## ANNEX E TO ATTACHMENT A

## RESPONSE VOLUME: AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

*Draft COC reference: clause 4*

**Note to drafters: Include this annex if an AIC program will apply to any resultant Contract (refer to COC clause 4). If the Contract Price could exceed \$20m, seek advice from AIC Division. If an AIC program is not required, the clauses can be deleted and the heading annotated as 'Not used'.**

**Note to tenderers: Tenderers should familiarise themselves with Australian Industry Capability (AIC) policy and guidance available at:**

- <https://www.defence.gov.au/business-industry>;
- <https://www.defence.gov.au/about/strategic-planning/defence-industry-development-strategy>; and
- <https://www.defence.gov.au/business-industry/export/strategy>.

**1. AUSTRALIAN INDUSTRY CAPABILITY SCHEDULE REQUIREMENTS (OPTIONAL)****1.1 Tenderers are to:**

- a. provide a draft Australian Industry Capability (AIC) Schedule in the format of Table E-1 below; and
- b. describe their approach to maximising participation of competitive Australian Industry in their supply chain for the provision of the Supplies.

## ANNEX E TO ATTACHMENT A

Table E-1: Australian Industry Capability Schedule

**Note to tenderers:** The AIC Schedule should include all items of Supplies and related work performed by Australian Industry. If necessary, break the scope of work into separate line items to better describe each activity performed by Australian Industry.

Number	AIC Activity Description	Company Name and ACN/ABN/NZBN	Price and Delivery Schedule Cross-Reference	ACE Value (AUD)	Location (including Postcode)	SME (Y/N)	Veterans (Y/N)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
01							
02							
03							

**Notes on Table E-1:**

- (a) **Number:** Identification number for each entry.
- (b) **AIC Activity Description:** A description of the Supplies to be provided by, and/or related work to be undertaken by, Australian Industry. A separate AIC activity description (and line in the table) is required for each work package and company.
- (c) **Company Name and ACN/ABN/NZBN:** Name of the Australian Entity (ie, Contractor or Subcontractor in Australia and New Zealand) undertaking the activity ('various' is not an acceptable response). Include the ACN (or ARBN or ABN) or the NZCN (or NZBN), as applicable.
- (d) **Price and Delivery Schedule Cross-Reference:** Each line item in the table (above) should be traceable to one or more line items in Attachment B to the COC, or the Price and Delivery Schedule in the tenderer's response to Annex C of the tender data requirements.
- (e) **ACE Value:** Value of work performed by Australian Industry (as at the Base Date), determined in accordance with the ACE Measurement Rules. It is the GST exclusive dollar value (to the nearest \$1000) of work committed in the Contract that will be performed by Australian Industry.
- (f) **Location:** Set out the location (including the postcode) where the majority of the work for the activity will be performed.
- (g) **SME:** Set out whether the entity is a Small to Medium Enterprise (SME).
- (h) **Veterans:** Has the organisation signed the Veterans Employment Commitment (yes/no)? (refer: [veteransemployment.gov.au](http://veteransemployment.gov.au)).





# 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)

<b>Commonwealth Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

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

<b>Contractor Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

#### INFORMATION TABLE

Item	Information	
<b>Item 1</b> (clause 1.3)	<b>Effective Date:</b> (Core)	(INSERT DATE)
<b>Item 2</b> (clause 3.5)	<b>Base Date:</b> (Core)	[INSERT DATE] <b>Note to drafters: Base Date should be the date one month prior to the date on which tenders close.</b>
<b>Item 3</b> (clause 7.4)	<b>Exchange Rate:</b> (Optional)	The spot selling rate of [INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES] relative to the Australian Dollar used by [INSERT THE RELEVANT FINANCIAL INSTITUTION].
<b>Item 4</b> (clause 8.1.1)	<b>Defect Notification Period:</b> (Core)	From the Effective Date until [INSERT PERIOD] after expiry or earlier termination of the Contract.
<b>Item 5</b> (clause 8.2.1)	<b>Defect Rectification Period:</b> (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.
<b>Item 6</b>	<b>Approved Contractor</b>	<input type="checkbox"/> Yes / <input type="checkbox"/> No

Item	Information		
(clause 9.1)	<b>Insurance Program Status:</b> (Core)		
<b>Note to drafters: Delete insurance policies if they do not apply</b>	<b>Limits of indemnity required insurances:</b> (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
<b>Item 7</b> (clause 10.6)	<b>[Option A] Limitation Amount:</b> (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
	<b>[Option B] Overall Limitation Amount:</b> (Optional)	Loss of any kind: (clause 10.6.3)	[\$[INSERT AMOUNT]] million
<b>Item 8</b> (clause 11.8)	<b>Defence Security:</b> (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
		<b>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.</b>	

Item	Information
	<div> <div>DISP Governance Level:</div> <div><b>[INSERT LEVEL]</b></div> <div> <b>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.</b> </div> <div><b>[INSERT SPECIFIC DETAILS IF REQUIRED]</b></div> </div>
	<div> <div>DISP Personnel Security Level:</div> <div><b>[INSERT LEVEL]</b></div> <div><b>[INSERT SPECIFIC DETAILS IF REQUIRED]</b></div> </div>
	<div> <div>DISP Physical Security Level:</div> <div><b>[INSERT LEVEL]</b></div> <div><b>[INSERT SPECIFIC DETAILS IF REQUIRED]</b></div> </div>
	<div> <div>DISP Information / Cyber Security Level:</div> <div><b>[INSERT LEVEL]</b></div> <div><b>[INSERT SPECIFIC DETAILS IF REQUIRED]</b></div> </div>
	<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>
	<div> <div>COMSEC material:</div> <div>(clause 11.8.9 and 11.8.10)</div> <div> <input type="checkbox"/> transmitted in Australia <input type="checkbox"/> transmitted overseas </div> </div>
<b>Item 9</b> (clause 12.1)	<div> <div>Governing Law:</div> <div>(Core)</div> <div><b>[INSERT RELEVANT STATE OR TERRITORY]</b></div> </div>

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## **1 CONTRACT FRAMEWORK (CORE)**

### **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 by 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 expressly incorporated as part of the Contract,  
so that the term 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 providing notice to the Contractor identifying the optional extras or quantity and type of additional quantities of the Supplies (as appropriate) to be purchased. The Contractor shall, within 30 days of receipt of the notice, submit a contract change proposal to the Contract in accordance with clause 11.1 to give effect to the exercise of the option.

## **2 ROLES AND RESPONSIBILITIES (CORE)**

### **2.1 Representative (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 clause 2.2.1 shall be deemed to have been delivered:
- a. if hand delivered, when received at the address, or by the recipient if sooner;
  - 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 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 (CORE)**

#### **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 Imports 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 as otherwise required by the Contract.
- 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); or
  - 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](mailto:aic.delivery@defence.gov.au); and**

**Strategy, Policy and Industry (SP&I) Group's AIC Directorate at [aic.info@defence.gov.au](mailto: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 (CORE)**

### **5.1 Ownership of Intellectual Property (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 Intellectual Property (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 it to perform its obligations, functions or duties to the Commonwealth;
- b. any person to Use the TD or Software, and 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)**

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- 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)**

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- 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 enable it 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)**

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- 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)**

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- 5.6.1 The Contractor shall take all reasonable steps (including by submitting a contract change proposal 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)**

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- 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)**

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- 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)**

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- 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 to the Commonwealth under the Contract 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)**

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- 5.10.1 The Contractor warrants and shall ensure that, in respect of all 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 it 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)**

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- 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 and support the Supplies for the purposes contemplated under the Contract.

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

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- 6.1.1 The Contractor shall deliver the 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)**

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- 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 the Supplies for Acceptance:

- a. complete and present 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 in writing of the reasons for the rejection and the extent of the non-conformance.
- 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 and is advised by the Contractor of:
    - (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 (CORE)

### 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 either be:**

- 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 of receipt of the claim, notify the Contractor in writing 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 when such action is complete. 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 (CORE)**

### **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 any of the following, then the Contractor shall notify the Commonwealth Representative within the time period indicated:
- a. the safety of any Supplies or the safety of any persons - one Working Day; or
  - b. the operation or capability of the Supplies - 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 Representative, 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, rectifying defects as required by the Contract, 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 in 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).

## 9 INSURANCE (CORE)

### 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](mailto: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](mailto: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 (or be insured under) the insurances for the times and in the manner specified in this clause 9.1, except 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. **[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.

**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 [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 ***[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 ***[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, acting reasonably, 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 to enable the Commonwealth 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 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 (CORE)**

### **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)**

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- 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), section 96 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)**

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- 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)**

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- 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 pay compensation or damages under or in relation to this Contract, or liable to make a payment under an indemnity in this Contract, for Loss incurred by the Commonwealth resulting from:
- a. damage to reputation or exemplary or punitive damages incurred by the Commonwealth; or
  - b. 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:

'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;

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

- a. are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
- b. exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

## **11 CONTRACT MANAGEMENT (CORE)**

### **11.1 Change to the Contract (Core)**

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- 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)**

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- 11.2.1 Failure by either party to enforce a term of the Contract shall not be construed as in any way affecting the enforceability of that term 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 and does not constitute an election, or a representation, regarding the Commonwealth's exercise of particular rights.

### **11.3 Confidential Information (Core)**

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***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 by that party, except to the extent that:
  - a. the disclosure is permitted under clause 11.3.2;
  - b. 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;
  - c. 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
  - d. 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 The restriction in clause 0 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 the Parliament, in accordance with statutory or portfolio duties or functions or for public accountability reasons, including following a request by the 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 the recipient to perform that role;
    - (ii) a Related Body Corporate for internal management purposes;
    - (iii) any Commonwealth Personnel who need 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 return to the Commonwealth or destroy, all documents in its possession, power or control which contain any Confidential Information of the Commonwealth, if the Confidential Information is no longer required for the purposes of the Contract.
- 11.3.6 The Contractor may retain Confidential Information of the Commonwealth in its records, if retention is required to comply with any legal, professional or insurance obligations or where it is not reasonably practicable to destroy the records included in routine electronic backups.
- 11.3.7 If the Contractor is aware that documents containing the Confidential Information of the Commonwealth are beyond its possession or control, then 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 Retention, return or destruction of the documents referred to in this clause 11.2.2 does not release the Contractor from its obligations under the Contract.

#### **11.4 Assignment and Novation (Core)**

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- 11.4.1 Neither party may, without the written consent of the other, assign in whole or in part, its rights under the Contract or novate its rights and 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)**

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- 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)**

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- 11.6.1 During the performance of the Contract, the Contractor shall, at the Commonwealth's request (acting reasonably), provide the Commonwealth Representative, and any person authorised by the Commonwealth Representative, with timely and sufficient access to its premises, records or accounts relevant to the Contract. The Commonwealth and its nominees may copy any records or accounts relevant to the Contract and retain or use these records or accounts for the purposes of this clause.
- 11.6.2 Without limiting clauses 11.6.1 and 11.6.3, the Contractor acknowledges and agrees that:

- a. the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the Contractor and Subcontractors in relation to the Contract;
  - b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
  - c. the Commonwealth 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:
- a. 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;
  - b. performing Audit and Surveillance activities in relation to Quality in accordance with clause 6 of the SOW;
  - c. validating the Contractor's progress in complying with the AIC Schedule;
  - d. investigating the reasonableness of proposed prices or costs in any contract change proposal submitted in accordance with clause 11.1;
  - e. validating the Contractor's compliance with clause 5 and the TDSR Schedule;
  - f. monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Supplies;
  - g. assessing the financial viability of the Contractor to perform and complete the Contract;
  - h. 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)**

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- 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:
- a. 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;
  - b. each Subcontractor that requires access to any Commonwealth Premises or to security classified information is subject to the requirements of clause 11.8;
  - c. the requirements of clauses 11.6, 11.9 and 11.10, are included in all Subcontracts; and
  - d. 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 under the Contract 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. a requirement for the Contractor to pay the PT PCP Subcontractor:
    - (i) 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;
  - 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. cooperate 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 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:

- comply with the classification and protection of official information requirements of Principle 10 of the DSPF; and
- 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 clause 11.8, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 13.2.1.

**11.9 Conflict of Interest (Core)**

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**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)**

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**11.10.1** Except with the prior written Approval of the Commonwealth Representative, the Contractor shall not permit any Defence Personnel or Defence Service Providers 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 or contribute to 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 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 ADMINPOL Annex C AG5 and the *Integrity Policy*, as applicable.

**12 POLICY AND LAW (CORE)****12.1 Governing Law (Core)**

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**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 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:
- 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,
  - 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:
- DI, and in particular:
    - Administration and Governance Provision 4 AG4 – Incident reporting and management and the Incident Reporting and Management Manual;
    - Administration and Governance Provision 5, AG5 – Conflicts of interest and declarations of interest and the Integrity Policy Manual; and
    - People Provision 7, PPL 7 – Required behaviours in Defence and Chapter 3 of the Complaints and Alternative Resolutions Manual;
  - Financial Policy Gifts and Benefits (Including Hospitality) – Receiving;
  - Financial Policy Gifts and Benefits (Including Hospitality) – Spending;
  - Australian Defence Force alcohol policy as detailed in MILPERSMAN Part 4 Chapter 1;
  - Public Interest Disclosure policy detailed at:  
<https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>  
 and
  - [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 mentioned 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:

- purchasing from Indigenous enterprises; and
- 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 12.3.4 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:

<b>If the proposed Subcontractor to enter into the Subcontract is:</b>	<b>STRs required:</b>
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	<table><tr><th>(a)</th><th>(b)</th></tr><tr><td>a. a body corporate or natural person;</td><td>a satisfactory and valid STR in respect of that body corporate or person;</td></tr><tr><td>b. a partner acting for and on behalf of a partnership;</td><td>a satisfactory and valid STR: (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;</td></tr><tr><td>c. a trustee acting in its capacity as trustee of a trust;</td><td>a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust;</td></tr><tr><td>d. a joint venture participant;</td><td>a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;</td></tr><tr><td>e. a member of a Consolidated Group;</td><td>a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group;</td></tr><tr><td>f. a member of a GST Group;</td><td>a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.</td></tr></table>	(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: (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: (i) trustee; and (ii) the trust;	d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;	e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group;	f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.
(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: (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: (i) trustee; and (ii) the trust;														
d. a joint venture participant;	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator;														
e. a member of a Consolidated Group;	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group; and (ii) the head company in the Consolidated Group;														
f. a member of a GST Group;	a satisfactory and valid STR in respect of the: (i) the GST Group member; and (ii) the GST Group representative.														
12.3.8	<p>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:</p> <table><tr><th>If the Contractor or Subcontractor is:</th><th>Additional STRs required:</th></tr><tr><th>(a)</th><th>(b)</th></tr><tr><td>a. a partner acting for and on behalf of a partnership;</td><td>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);</td></tr><tr><td>b. a trustee acting in its capacity as trustee of a trust;</td><td>a satisfactory and valid STR in respect of any new trustee appointed to the trust;</td></tr><tr><td>c. a joint venture participant;</td><td>a satisfactory and valid STR in respect of: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture;</td></tr></table>	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: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture;				
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: (i) any new participant in the joint venture; and (ii) any new joint venture operator if the new operator is not already a participant in the joint venture;														

	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.	<b>satisfactory</b> 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.	<b>valid</b> 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 applicable 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 provides, 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 a 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. The Contractor shall not be entitled to claim postponement as a result of compliance with the direction.
- 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:
- use the Supplies for a purpose for which they were designed or manufactured;
  - handle or store the Supplies;
  - 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
  - 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 at the time the Contractor provides the Supplies to the Commonwealth concerning:
- each purpose for which the Supplies were designed or manufactured;
  - the results of any calculations, analysis, testing or examination referred to in clause 12.4.10, including any hazardous properties identified by testing; and
  - 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:
- 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;
  - 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); and
  - c. *Occupational Health and Safety Regulations 1996* (WA), in accordance with regulation 1.3 of the *Occupational Health and Safety Regulations 1996* (WA), the Contractor is the main contractor for the construction work the subject of the Contract and is taken to have control of the site and the workplace and is required to discharge the duties imposed on a main contractor for the purpose of the *Occupational Health and Safety Regulations 1996* (WA).

## **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.

## 12.8 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](mailto: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](mailto: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](mailto:procurement.policy@defence.gov.au).

**Or the Commonwealth Sustainable Procurement Advocacy and Resource Centre at:**

[sustainable.procurement@dcceew.gov.au](mailto: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](mailto: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](mailto:procurement.policy@defence.gov.au).

**Or DEWR at:**

- [ASG@dewr.gov.au](mailto:ASG@dewr.gov.au).

## 13 DISPUTES AND TERMINATION (CORE)

### 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 continue to perform under the Contract when there is a dispute.

### 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:

- a. 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;
- b. 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;
- c. the Contractor commits a Default that, in the Commonwealth's opinion, is not capable of being remedied;
- d. the Contractor commits a Default for which the Contract provides a notice of termination for default may be given;
- e. 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
- f. 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 under the Contract, the Commonwealth may at any time to 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 for 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 otherwise:

- 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)**

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- 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)**

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- 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)**



ATTACHMENT A

STATEMENT OF WORK (CORE)

***Note to tenderers: Attachment A will consist of an amalgamation of the draft SOW, the successful tenderer's response, and any negotiated changes.***

## ATTACHMENT B

## PRICE AND DELIVERY (CORE)

**Note to tenderers:** Attachment B will consist of an amalgamation of information submitted in the successful tenderer's response to TDR C including details within the 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW), this draft Attachment, and any negotiated adjustments. Further guidance on completing the CMV1PW can be found in the CMV1PW Guide.

**It is essential that the Price and Delivery Schedule captures all deliverables and events which are significant for both the Commonwealth and the Contractor to manage and implement the Contract. The Price and Delivery Schedule must include all events that attract a payment by the Commonwealth, including any progress payments.**

**Note to drafters:** Some Annexes will include a file with the appropriate pricing table, such as a PDF copy of a spreadsheet from the 'Complex Materiel Volume 1 Pricing Workbook' (CMV1PW). Update the following table for the Annexes to be included in the Contract.

## 1. GENERAL

1.1 Attachment B consists of the clauses and associated annexes listed in Table B-1:

Table B-1

Clause	Associated Annex	Annex File Name
2, Price and Delivery Schedule (CORE)	Annex A, Price and Delivery Schedule	(...INSERT the file name for the 'Price and Delivery Schedule' annex...)
3, Schedule of Prices for Further Quantities and Optional Extras (OPTIONAL)	Annex B, Schedule of Prices for Further Quantities and Optional Extras	(...INSERT the file name for the 'Further Quantities and Optional Extras' annex...)
4, Australian Contract Expenditure (OPTIONAL)	Not applicable (included in Annex A)	Not applicable

1.2 The obligations of the Commonwealth under this Attachment B are subject to:

- a. the Contractor making a claim for payment in accordance with clause 7.2 of the COC; and
- b. the other provisions of the Contract.

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

## 2. PRICE AND DELIVERY SCHEDULE (CORE)

**Note to tenderers:** The CMV1PW worksheet to be used as the basis for Annex A will be the 'Price and Delivery' or the 'Price and Delivery (simple)' worksheet, depending on whether any resulting Contract will require an AIC program. Refer to TDR C-2 regarding the selected worksheet.

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

## ATTACHMENT B

## 3. SCHEDULE OF PRICES FOR FURTHER QUANTITIES AND OPTIONAL EXTRAS (OPTIONAL)

**Note to drafters:** Prior to release of the RFT, drafters are to identify any potential further quantities and optional extras that the Commonwealth would want to include in any resultant Contract (noting that other options may be proposed by tenders). Drafters should refer to the 'Further Quantities' worksheet of the CMV1PW and insert:

- a. a brief description of the additional quantities of Supplies and/or optional extras that the Commonwealth may require;
- b. if known, the quantity that would be required; and
- c. the proposed delivery point (in the comments column).

**Drafters should ensure that an appropriate scope for any addition or option is suitably defined; for example, by requesting additional equipment and the associated Support Resources for that additional equipment.**

**Note to tenderers:** Annex B will consist of an amalgamation of the CMV1PW 'Further Quantities' worksheet for the successful tenderer's response to TDR C-4, and any negotiated adjustments.

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

## 4. AUSTRALIAN CONTRACT EXPENDITURE (OPTIONAL)

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

**If an AIC program is not required, the clauses below can be deleted and the heading annotated as 'Not used'.**

- 4.1 Amounts for planned Australian Contract Expenditure (ACE) and planned Imported Contract Expenditure (ICE) are to be determined in accordance with clause 4.1.4 of the COC for the prices in the Price and Delivery Schedule.

**Option:** For inclusion if the Commonwealth wishes to specify alternate and/or additional deeming rates to those included in the ACE Measurement Rules. If this option is not included then delete the option within TDR C-6). The deeming rates within the ACE Measurement Rules will still apply

- 4.2 Table B-2 below specifies Subcontract categories, thresholds and ACE and ICE percentages for deeming rates, applicable to the Contract, which are alternate or additional to those listed under paragraph 3 of the ACE Measurement Rules.

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

Nature of cost category / Subcontractor work	Applicable Threshold (GST exclusive)	Deemed ACE and ICE	
		ACE%	ICE%
(...INSERT description...)	(...INSERT threshold value...)	(...INSERT %...)	(...INSERT %...)
(...INSERT description...)	(...INSERT threshold value...)	(...INSERT %...)	(...INSERT %...)

**Note to tenderers:** The Total ACE Value will be based on the successful tenderer's response to TDR C-6 and any negotiated changes.

- 4.3 The Total ACE Value for the Contract shall be equal to or greater than (...INSERT \$ amount...).

## ATTACHMENT C

## TECHNICAL DATA AND SOFTWARE RIGHTS SCHEDULE (CORE)

**Note to tenderers:** Attachment C defines any restrictions on the TD and Software rights granted under any resultant Contract. Attachment C will consist of an amalgamation of information contained in this draft Attachment C, the successful tenderer's response to TDR C-9 and any negotiated adjustments.

Unique Line Item Description	Owner or Licensor	System/ Subsystem/ Component/CI Name	Description of TD or Software	Restrictions on Commonwealth's rights to sublicense the TD or Software (COC, clause 5.2.2b(ii))	Justification for Restriction(s)
(a)	(b)	(c)	(d)	(e)	(f)
Example: C-1-1	Contractor	Helicopter Landing System	Aircraft structural loads and certification data	Licences do not include right to grant sublicences for the purpose of a third party upgrading the Helicopter Landing System.	This data requires access to competitively sensitive data.
Example: C-1-2	Contractor	Combat Management System	Mission Planning Software	Licences do not include right to grant sublicences for the purpose of developing or upgrading the Software without the prior written consent of XYZ Pty Ltd.	This data requires access to competitively sensitive data.
Example: C-1-3	Contractor	Communications System	Business Process Manual	Licences do not include a right to grant sublicences to use the manual to upgrade the Communications System.	Contains competitively sensitive data that are trade secrets which will be disclosed if used to upgrade the Communications System.
Example: C-1-4	EW Pty Ltd	Combat Management System	Electronic Warfare Source Code	Licences do not include a right to grant sublicences to develop the Source Code.	Contains competitively sensitive data that are trade secrets which will be disclosed if the Source Code is made available for development.

## ATTACHMENT D

## SECURITY CLASSIFICATION AND CATEGORISATION GUIDE (OPTIONAL)

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

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

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

***and contact the Defence Security and Vetting Services Project Security Team at [DSA.ProjectSecurity@defence.gov.au](mailto:DSA.ProjectSecurity@defence.gov.au).***

***Drafters should insert the Security Classification and Categorisation Guide prior to release of RFT.***

## ATTACHMENT E

## CONFIDENTIAL INFORMATION AND REPORTING (CORE)

**Note to drafters:** Drafters must review their draft Contract to determine if it contains commercial information that meets the Confidentiality Test. Drafters should then review the examples provided below, prior to release of the RFT, and complete the tables as appropriate.

**Commercial information claimed to be confidential must be assessed against the Confidentiality Test and only information that meets this test can be included in this Attachment. Only the information in this Attachment can be considered for reporting confidentiality provisions on AusTender and for Senate Order 192.**

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

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

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

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

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

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

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

Confidential Information

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
<b>Confidentiality (Contract)</b>				
<b>Conditions of Contract, for example</b>				
Clause 10.6 (eg if an amended liability regime)	Liability Caps	Contains details about liability regime that meets the DoF Confidentiality Test	Commonwealth / Contractor	
Any tailored clauses or any confidential clauses inserted in the contract additional to the template clauses	(Insert any clauses which are not standard template clauses and meet the DoF Confidentiality Test)	Insert relevant reason.	Insert name of party	

## ATTACHMENT E

Item	Clause Title	Reason for classification	Party for whom the information is confidential	Period of confidentiality
<b>Confidentiality (Contract)</b>				
<b>Attachments to the COC, for example</b>				
Attachment A-Annex A	Specification (Identify Specific clause/s)	Contains information about how the capability/supplies are to be provided that may compromise the supplier's commercial interests elsewhere, including competing in future tender processes.	Commonwealth / Contractor	
Attachment B - Annex A	Price and Delivery Schedule (Identify Specific clause, table or section)	Contains details about commercially sensitive pricing information that is not in the public domain, including information about hourly rates, internal costing, profit margins, or pricing structures.	Contractor	
Attachment C	TDSR Schedule <b><i>Note that clauses describing how Intellectual Property rights are to be dealt with would not generally be considered to be confidential.</i></b>	Contains details about intellectual property regimes including trade secrets and other intellectual property matters where they relate to a potential supplier's competitive position.	Insert name of party	

## ATTACHMENT F

## GLOSSARY (CORE)

**Note to drafters: All conditions of tender definitions in section two should be removed from the version used for any resultant Contract, as they are no longer applicable.**

**Definitions, acronyms and abbreviations that are not used in a draft Contract may be deleted. If drafters propose a new definition, acronym or abbreviation, careful consideration must be given to the legal effect of that addition in the context of the existing document.**

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

## 1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
ABN	Australian Business Number
ACE	Australian Contract Expenditure
ACN	Australian Company Number
ACM	Asbestos Containing Material
ADF	Australian Defence Force
ADO	Australian Defence Organisation
AFD	Application for a Deviation
AIC	Australian Industry Capability
ANZ	Australia and New Zealand
ARBN	Australian Registered Body Number
ASD	Australian Signals Directorate
ATO	Australian Taxation Office
CASG	Capability Acquisition and Sustainment Group
CCP	Contract Change Proposal
CMCA	Contractor Managed Commonwealth Assets
CMV1PW	Complex Materiel Volume 1 Pricing Workbook
COC	Conditions of Contract
COMSEC	Communications Security
COTS	Commercial-Off-The-Shelf
CPRs	Commonwealth Procurement Rules July 2022
CSR	Contract Status Report
DI ADMINPOL	Defence Instruction Administrative Policy
DISP	Defence Industry Security Program
DSPF	Defence Security Principles Framework
FACPR	Facilities Preparedness Review
FI&T	Final Inspection and Test
FI&TProcs	Final Inspection and Test Procedures
FI&TPs	Final Inspection and Test Plans
FI&TR	Final Inspection and Test Reports
GST	Australian Goods and Services Tax
ICE	Imported Contract Expenditure

Abbreviation	Description
ILS	Integrated Logistics Support
IP	Intellectual Property
IPP	Indigenous Procurement Policy
JAS-ANZ	Joint Accreditation System for Australia and New Zealand
MEC	Multiple Entry Consolidated
NATO	North Atlantic Treaty Organisation
NDI	Non-Development Item
NSN	NATO Stock Number
NZBN	New Zealand Business Number
OEM	Original Equipment Manufacturer
QA	Quality Assurance
QMS	Quality Management System
PEPPOL	Pan-European Public Procurement On-Line
PT PCP	<b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b> Payment Times Procurement Connected Policy
S&TE	Support and Test Equipment
SAC	Supplies Acceptance Certificate
SCCG	Security Classification and Categorisation Guide
SDS	Safety Data Sheet
SME	Small to Medium Enterprise
SOW	Statement of Work
STR	Statement of Tax Record
TD	Technical Data
TDRL	Tender Data Requirements List
TDSR	Technical Data and Software Rights
TNGRR	Training Readiness Review
TRR	Test Readiness Review
V&V	Verification and Validation
WHS	Work Health and Safety



## ATTACHMENT F

## 2. DEFINITIONS

Term	Status	Definition
Acceptance	(Core)	means signature by the Commonwealth Representative of a Supplies Acceptance Certificate in accordance with clause 5.2 of the COC; and "Accept" has a corresponding meaning.
ACE Measurement Rules	(Optional)	means the referenced document titled ' <i>Australian Contract Expenditure Measurement Rules</i> ', which defines the methods to be applied to determine the values for ACE and ICE for the Contract.
ACE Value	(Optional)	means the Australian dollar value of ACE.
Application for a Deviation	(Core)	means the certificate in the form of the annex to DID-PM-MGT-AFD.
Approval	(Core)	for a data item, has the meaning given by clause 2.3 of the SOW; and a. in every other context, means the act of the Commonwealth Representative approving a particular claim, proposal or course of action as a basis for further work under the Contract. b. Approval in either case does not constitute Acceptance; and 'Approve' and 'Approved' have a corresponding meaning.
Asbestos Containing Material	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth).
Associated Parties	(Core)	means other entities (including other contractors and Commonwealth organisations) performing activities related to the Supplies, the Capability, or otherwise having a connection with the work performed under the Contract.
Audit	(Core)	means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
Australian Contract Expenditure or ACE	(Optional)	has the meaning given in paragraph 2.2 of the ACE Measurement Rules.
Australian Entity	(Optional)	means: a. a company registered under the <i>Corporations Act 2001</i> (Cth) or a company registered under the <i>Companies Act 1993</i> (New Zealand); b. a body corporate, partnership, joint venture or association formed or incorporated in Australia or New Zealand; or c. a foreign-owned company in Australia or New Zealand, and which has a registered body number (ie, ARBN or NZRBN), carrying on business through a permanent establishment in Australia or New Zealand, including as evidenced through employment and the conduct of business operations in Australia or New Zealand.
Australian Industry	(Optional)	means Australian Entities that perform work in Australia or New Zealand.
Australian Industry Capability or AIC	(Optional)	means the program of activities set out in the Contract to achieve the Government and Defence policies for Australian Industry.

## ATTACHMENT F

Term	Status	Definition
Australian Industry Capability Schedule	(Optional)	means the schedule set out at Attachment G.
Australian Privacy Principles	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth)
Attachment	(Core)	means an Attachment to the Contract.
Authorisation	(Core)	means a licence, accreditation, permit, registration, regulatory approval, Export Approval or other documented authority (however described), required by law and necessary for the delivery of the Supplies or the performance of the Contract.
Certification	(Core)	means: <ul style="list-style-type: none"> <li>a. for the purposes of clause 6 of the SOW, certification by an organisation accredited by the JAS-ANZ, or an equivalent certification body acceptable to the Commonwealth, and 'Certified' has a corresponding meaning; and</li> <li>b. in relation to the certification of Supplies, the end result of a process which formally examines and documents compliance of Supplies against predefined standards, to the satisfaction of the certifying authority.</li> </ul>
Circuit Layout	(Core)	means a circuit layout that is protected under the <i>Circuit Layouts Act 1989</i> (Cth) or the corresponding laws of any other jurisdiction.
Claim	(Core)	means a claim, demand, suit or proceeding of any kind, including by way of court proceedings, proceedings in the nature of arbitration, mediation or other methods of dispute resolution and administrative claims and proceedings (whether or not before a tribunal).
Codification	(Optional)	means the act of establishing and maintaining item identification and related data under the Defence cataloguing system and/or the national system of another country participating in the NATO codification system.
Codification Data	(Optional)	means: <ul style="list-style-type: none"> <li>a. for items of Supplies (other than data, services, and IP) not already codified in the NATO Codification System, the engineering drawings, standards, specifications and/or technical documentation required to fully identify the items designated by the Commonwealth to support the equipment covered by the Contract; or</li> <li>b. for items of Supplies already codified in the NATO Codification System, the details of that codification.</li> </ul>
Commercial Item	(Core)	means any item or service that is: <ul style="list-style-type: none"> <li>a. available to the general public or in the market for defence goods and services for supply on standard commercial terms; and</li> <li>b. able to be used for its intended purpose under the Contract without development or modification (except for any minor modification or reconfiguration that is necessary and commonly required to install the item or use the service),</li> <li>c. but does not include an item created, manufactured or produced by the Contractor or a Related Body Corporate of the Contractor.</li> </ul>

## ATTACHMENT F

Term	Status	Definition
Commercial Software	(Core)	means Software that is: a. a Commercial Item; b. supplied without further development or modification in conjunction with a Commercial Item, under the standard commercial terms applicable to that item; or c. Free and Open Source Software.
Commercial TD	(Core)	means TD that is: a. a Commercial Item; or b. supplied, without further development or modification in conjunction with a Commercial Item or Commercial Software under the standard commercial terms applicable to that item or software.
Commercialise	(Core)	means, in respect of the Commonwealth or any of its sublicensees, to exploit the IP in TD, Contract Material or Software in return for payment of a Royalty or a commercial return to the Commonwealth or the sublicensee.
Commonwealth Contractor	(Core)	means a person (other than the Contractor or a Subcontractor) engaged by the Commonwealth to provide goods or services to the Commonwealth.
Commonwealth Default	(Core)	means a Default by the Commonwealth, a Commonwealth Officer or a Commonwealth Contractor.
Commonwealth Officer	(Core)	means any of the following: a. a Minister of State for the Commonwealth; b. a person employed or engaged under the Public Service Act 1999 (Cth) or the Members of Parliament (Staff) Act 1984 (Cth); c. a person who is included in Defence Personnel; and d. a member of the Australian Federal Police.
Commonwealth Personnel	(Core)	means Commonwealth Officers, Defence Personnel and any other agents of the Commonwealth.
Commonwealth Premises	(Core)	means any of the following that is owned, leased, occupied or operated by the Commonwealth: a. an area of land or any other place (whether or not it is enclosed or built on); b. a building or other structure; and c. a vehicle, vessel (including a submarine) or an aircraft.
Commonwealth Property	(Core)	means property of any kind owned or leased by, or in the possession of, the Commonwealth.
Commonwealth Service Provider	(Core)	means a person (including an officer or employee of the person) engaged to perform a function, or discharge a duty, of the Commonwealth, including a person engaged to provide: a. professional, administrative, contract management or project management services to Defence; or b. technical management or assurance services, including verification and validation, safety, certification, security or capability development.

## ATTACHMENT F

Term	Status	Definition
Commonwealth Supplier Code of Conduct	(Core)	means the Commonwealth Supplier Code of Conduct, as amended from time to time.
Confidential Information	(Core)	<p>means:</p> <ul style="list-style-type: none"> <li>a. any information in the Contract that is identified in Attachment E to the COC; and</li> <li>b. any other information: <ul style="list-style-type: none"> <li>(i) that is commercially sensitive (not generally be known or ascertainable); and</li> <li>(ii) the disclosure of which would cause unreasonable detriment to the owner of the information or another party; and</li> <li>(iii) that was provided with an express or implied understanding that it would remain confidential,</li> </ul> </li> </ul> <p>but does not include information that:</p> <ul style="list-style-type: none"> <li>c. is or becomes public knowledge other than by breach of the Contract;</li> <li>d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or</li> <li>e. has been independently developed or acquired by the receiving party.</li> </ul>
Consolidated Group	(Optional)	means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Contract	(Core)	means the COC (including the Details Schedule), the Attachments including the SOW, and any document expressly incorporated as part of the Contract.
Contract Material	(Core)	means information, other than TD or Software, reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to the Commonwealth under the Contract.
Contract Price	(Core)	means the amount specified in Annex A to Attachment B to the COC as the Contract Price.
Contractor Default	(Core)	means a Default in relation to the Contract by the Contractor or Contractor Personnel.
Contractor Managed Commonwealth Assets or CMCA	(Core)	means any item of Commonwealth Property subject to inventory and stock control that is in the care, custody or control of the Contractor or Contractor Personnel for the purposes of the Contract.
Contractor Personnel	(Core)	<p>means each of the following:</p> <ul style="list-style-type: none"> <li>a. an employee, officer or agent of the Contractor;</li> <li>b. a Subcontractor; and</li> <li>c. an employee, officer or agent of a Subcontractor.</li> </ul>

## ATTACHMENT F

Term	Status	Definition
Contractor Premises	(Core)	means any of the following: a. premises owned by the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; and b. premises: (i) that is leased by, or licensed to, the Contractor, a Related Body Corporate of the Contractor, or a Subcontractor; and (ii) where the Contractor, Related Body Corporate or the Subcontractor is responsible for controlling physical access to the premises.
Controller	(Core)	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Copyright	(Core)	means any existing or future copyright as defined under the <i>Copyright Act 1968</i> (Cth) or the corresponding laws of any other jurisdiction in any original literary and artistic works, computer programs and Software, sound recordings and any other works or subject matter whether stored electronically or otherwise in which copyright subsists and may subsist in the future.
Correctly Rendered Invoice	(Optional)	<b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b>  for the purposes of clause 11.7.7 of the COC, means an invoice which is: a. rendered in accordance with all of the requirements of the relevant PT PCP Subcontract; and  for amounts that are correctly calculated and due for payment and payable under the terms of the relevant PT PCP Subcontract.
Dangerous Goods	(Core)	has the meaning given in the <i>Australian Code for the Transport of Dangerous Goods by Road and Rail</i> (extant edition and as amended from time to time).
day	(Core)	means a calendar day.
Default	(Core)	means any of the following: a. a breach of an express or implied provision of the Contract by a party to the Contract; and b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following: (i) the Commonwealth or Commonwealth Personnel; (ii) a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor; and (iii) the Contractor or Contractor Personnel.  A breach of a general law duty or an applicable law by Commonwealth Personnel, a Commonwealth Contractor or an employee, officer or agent of a Commonwealth Contractor is taken to be a Default by the Commonwealth.  A breach of a general law duty or an applicable law by Contractor Personnel is taken to be a Default of the Contractor.
Defence	(Core)	means the Department of Defence and/or the Australian Defence Force.

## ATTACHMENT F

Term	Status	Definition
Defence Personnel	(Core)	means an employee of the Department of Defence or a member of the Australian Defence Force (whether of the Permanent Forces or Reserves as defined in the <i>Defence Act 1903</i> (Cth)) and the equivalents from other organisations on exchange to Defence.
Defence Property	(Core)	means Commonwealth Property administered by Defence.
Defence Purposes	(Core)	means a purpose related to any of the following: <ul style="list-style-type: none"> <li>a. the defence and defence interests of Australia;</li> <li>b. the national security of Australia;</li> <li>c. the provision of aid or assistance in respect of an emergency or disaster (whether natural or otherwise); and</li> <li>d. peacekeeping or peace enforcement activities.</li> </ul>
Defence Service Provider	(Core)	means a person, other than Defence Personnel, involved in Defence work or engaged by Defence.
Deviation	(Core)	means written authorisation to depart from the originally specified requirements for a product before its production, granted following an Application for a Deviation is submitted before the event, when a condition is identified as not being able to be achieved, such as any of the following: <ul style="list-style-type: none"> <li>a. test requirement,</li> <li>b. process requirement,</li> <li>c. material requirement, and</li> <li>d. quality system requirement.</li> </ul>
document	(Core)	includes each of the following: <ul style="list-style-type: none"> <li>a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and</li> <li>b. any article or material from which sound, images, or writings are capable of being reproduced with or without the aid of any other article or device.</li> </ul>
Excepted Risk	(Core)	means an event or circumstance that is any of the following: <ul style="list-style-type: none"> <li>a. an act of God, including a natural disaster (such as a bushfire, an earthquake, a flood, a landslide or a cyclone);</li> <li>b. war, invasion, acts of foreign enemies, hostilities between nations, a terrorist act as defined in section 100.1 of the Criminal Code, civil insurrection or militarily usurped power;</li> <li>c. confiscation by governments or public authorities; and</li> <li>d. ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels,</li> </ul> except to the extent that the event or circumstance (or any resulting delay, loss or damage): <ul style="list-style-type: none"> <li>e. arose out of or as a consequence of a Contractor Default; or</li> <li>f. could have been prevented or mitigated, by reasonable care on the part of the Contractor or Contractor Personnel.</li> </ul>

## ATTACHMENT F

Term	Status	Definition
Export Approval	(Core)	means an export licence, agreement, approval or other documented authority (however described) relating to export, required from the relevant authority in the country of origin and necessary for the performance of the Contract, including provision and use of the Supplies.
Final Inspection and Test or FI&T	(Core)	means Final Inspection & Test activities conducted in accordance with clause 5.1 of the SOW.
Free and Open Source Software	(Core)	means Software that: a. is distributed on a free to use basis without a requirement to pay a Royalty or other fee; and b. may be used, modified, developed or adapted by any person subject to specified conditions, and includes open source software, public domain software, shareware, community source software and freeware.
General Interest Charge Rate	(Core)	means the ATO sourced general interest charge rate determined under section 8AAD of the <i>Tax Administration Act 1953</i> (Cth).
Glossary	(Core)	means this glossary.
GST Act	(Core)	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and associated taxation legislation. The expressions "taxable supply" and "tax invoice" also have the meanings given to those expressions in the GST Act.
GST Group	(Optional)	means a GST group formed in accordance with Division 48 of the GST Act.
Hazardous Chemical	(Core)	has the meaning given in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth)
Imported Contract Expenditure or ICE	(Optional)	has the meaning given in paragraph 2.3 of the ACE Measurement Rules.
Insolvency Event	(Core)	means, in respect of a person, any of the following: a. the person: (i) becoming insolvent; (ii) ceasing to carry on all or a material part of its business; or (iii) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; b. the appointment of a Controller, a liquidator or provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; c. the person becoming subject to external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth); d. the person suffering execution against, or the holder of a Security Interest or any agent on its behalf taking possession of, any of the person's property (including seizing the person's property within the meaning of section 123 of the <i>Personal Properties Securities Act 2009</i> (Cth)); e. the person being taken under section 459F(1) of the <i>Corporations Act 2001</i> (Cth) to have failed to comply with a statutory demand;

## ATTACHMENT F

Term	Status	Definition
		<ul style="list-style-type: none"> <li>f. an order or resolution for the winding up or deregistration of the person;</li> <li>g. a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; and</li> <li>h. any analogous event under the law of any applicable jurisdiction.</li> </ul>
Intellectual Property or IP	(Core)	<p>means all present and future rights conferred by law in or in relation to any of the following:</p> <ul style="list-style-type: none"> <li>a. Copyright;</li> <li>b. rights in relation to a Circuit Layout, Patent, Registerable Design or Trade Mark (including service marks); and</li> <li>c. any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world whether registered or unregistered.</li> </ul>
Licence	(Core)	<p>means a non-exclusive licence of IP in respect of TD, Software or Contract Material, being a licence that:</p> <ul style="list-style-type: none"> <li>a. is fully paid-up and does not require any additional payment by the licensee, including by way of Royalty or any other fee;</li> <li>b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;</li> <li>c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;</li> <li>d. operates on a world-wide basis; and</li> <li>e. binds each successor in title to the owner of the IP in respect of the TD, Software or Contract Material.</li> </ul>
Loss	(Core)	means any liability, loss (including economic loss), damage, compensation, costs and expenses.
Malware	(Core)	means Software or Source Code the intent or effect of which is malicious, ie, software that may appear to be dormant or perform a useful or desirable function, but that actually gains unauthorised access to system resources or induces the user to execute other malicious logic. Malware is a generic term for a number of different types of malicious code including adware, spyware, bots, ransomware, rootkits, trojans, viruses and worms.
month	(Core)	means a calendar month.
Moral Rights	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a. a right of attribution of authorship;</li> <li>b. a right not to have authorship falsely attributed; or</li> <li>c. a right of integrity of authorship.</li> </ul>
Non-Developmental Item or NDI	(Core)	means material available from a wide variety of sources (including COTS items) that does not require any development effort to meet specific Commonwealth requirements.
Notifiable Incident	(Core)	has the meaning given in sections 35 to 37 of the <i>Work Health and Safety Act 2011</i> (Cth).



## ATTACHMENT F

Term	Status	Definition
Ozone Depleting Substance	(Core)	means any substance identified as having ozone depleting potential in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or any regulations made under that Act.
Patent	(Core)	means the rights and interests in any registered, pending, or restored standard or innovation patent under the <i>Patents Act 1990</i> (Cth) or the corresponding laws of any other jurisdiction, including all provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisions, additions and renewals, all letters patent granted, and all reissues, re-examinations and extensions, term restorations, confirmations, registrations, revalidations, revisions and supplemental protection certificates.
Personal Information	(Core)	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	(Core)	has the same meaning as in the <i>Australian Information Commissioner Act 2010</i> (Cth).
Problematic Source	(Core)	means a source of ionising or non-ionising radiation, from a material or apparatus, that is required to be licenced with the Australian Radiation Protection and Nuclear Safety Agency.
Problematic Substance	(Core)	means an Ozone Depleting Substance, Synthetic Greenhouse Gas, Dangerous Good or Hazardous Chemical.
Process Audit	(Core)	means a systematic, independent and documented review of a process (a process being a set of interrelated or interacting activities which transforms inputs into outcomes) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the process complies with stated requirements. The review may include any documentation and records associated with the process.
Product Audit	(Core)	means a systematic, independent and documented review of a product (a product being the result of a process) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the product complies with stated requirements. The review may include the inspection of the product and analysis of its processes, documentation and records.

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Term	Status	Definition
Proportionate Liability Law	(Core)	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a. <i>Civil Liability Act 2002</i> (NSW) – Part 4;</li> <li>b. <i>Wrongs Act 1958</i> (Vic) – Part IVAA;</li> <li>c. <i>Civil Liability Act 2002</i> (WA) – Part 1F;</li> <li>d. <i>Civil Liability Act 2003</i> (Qld) – Chapter 2, Part 2;</li> <li>e. <i>Civil Law (Wrongs) Act 2002</i> (ACT) – Chapter 7A;</li> <li>f. <i>Proportionate Liability Act 2005</i> (NT);</li> <li>g. <i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i> (SA) – Part 3;</li> <li>h. <i>Civil Liability Act 2002</i> (Tas) – Part 9A;</li> <li>i. <i>Competition and Consumer Act 2010</i> (Cth) – Part VIA;</li> <li>j. <i>Corporations Act 2001</i> (Cth) – Part 7.10, Div 2A; and</li> <li>k. <i>Australian Securities &amp; Investments Commission Act 2001</i> (Cth) – Part 2, Division 2, Subdivision GA.</li> </ul>
PT PCP	(Optional)	<p><b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b></p> <p>means the Commonwealth's 'Payment Times Procurement Connected Policy'.</p>
PT PCP Policy Team	(Optional)	<p><b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b></p> <p>means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day.</p>

## ATTACHMENT F

Term	Status	Definition
PT PCP Subcontract	(Optional)	<p><b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b></p> <p>means a Subcontract between a Reporting Entity and another party (<b>Other Party</b>) where:</p> <ul style="list-style-type: none"> <li>a. the Subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract;</li> <li>b. both parties are carrying on business in Australia; and</li> <li>c. the component of the Subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (inc GST) during the period of the Subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the Subcontract;</li> </ul> <p>but does not include the following Subcontracts:</p> <ul style="list-style-type: none"> <li>d. Subcontracts entered into prior to the Reporting Entities' tender response for the Contract;</li> <li>e. Subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or</li> <li>f. Subcontracts for the purposes of: <ul style="list-style-type: none"> <li>(i) procuring and consuming goods or services overseas; or</li> <li>(ii) procuring real property, including leases and licences.</li> </ul> </li> </ul>
PT PCP Subcontractor	(Optional)	<p><b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b></p> <p>means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.</p>
PTR Act	(Optional)	<p><b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b></p> <p>means the <i>Payment Times Reporting Act 2020</i> (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.</p>
Quality	(Core)	means the degree to which a set of inherent characteristics fulfils requirements.
Quality Assurance	(Core)	means that part of Quality Management focused on providing confidence that Quality requirements will be fulfilled.
Quality Management	(Core)	means coordinated activities to direct and control an organisation with regard to Quality.
Quality Management System	(Optional)	means the management system implemented by the Contractor in accordance with clause 6.1 of the SOW for the purposes of Quality Management.
Registrable Design	(Core)	means a design able to be protected under the <i>Designs Act 2003</i> (Cth) or the corresponding laws of any other jurisdiction.
Related Body Corporate	(Core)	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Cth).

## ATTACHMENT F

Term	Status	Definition
Relevant Employer	(Optional)	means an employer who has been a Relevant Employer under the Workplace Gender Equality Procurement Principles for a period of not less than 6 months. The Contractor will continue to be obligated as a Relevant Employer until the number of its employees falls below 80.
Reporting Entity	(Optional)	<b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b> has the meaning given to this term in the <i>PTR Act</i> .
Reporting Entity Subcontractor	(Optional)	<b>Note to drafters: Include if clauses 11.7.6 to 11.7.10 (regarding PT PCP) are included in the COC.</b> means any person that: a. is a Reporting Entity; and b. provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (inc GST). 'Reporting Entity Subcontract' has a corresponding meaning.
Royalty	(Core)	means a payment or credit made by a licensee in consideration for the exercise of a particular right or privilege by the licensor in favour of the licensee for the use of, or the right to use, any IP, however calculated.
Security Interest	(Core)	means any of the following: a. a security for the payment of money or performance of an obligation, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; b. a 'security interest' as defined in section 12(1) or (2) of the <i>Personal Property Securities Act 2009</i> (Cth); and c. an agreement to create any of these or allow any of these to exist.
Small to Medium Enterprise	(Optional)	means an Australian Entity which has up to 200 full-time equivalent employees.
Software	(Core)	means a collection of computer code comprising a set of instructions or statements used directly or indirectly by a computer to bring about a certain result, (including using a computer programming language to control a computer or its peripheral devices) and includes computer programs, firmware and applications, but excludes Source Code.
Source Code	(Core)	means the expression of Software in human readable form which is necessary to understand, maintain, modify, correct and enhance that Software.
Specification	(Core)	for the purposes of Annex A of the SOW, specifies the technical requirements for the Supplies to be provided under the Contract.
Statement of Tax Record or STR	(Optional)	has the same meaning as in the <i>Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement</i> – March 2019.
Statement of Work	(Core)	means the statement of the work at Attachment A to the COC including the annexes to the SOW and any specifications referred to in the SOW.

## ATTACHMENT F

Term	Status	Definition
Subcontractor	(Core)	means any person (not the Commonwealth), that, for the purposes of the Contract, provides items or services directly or indirectly to the Contractor; and 'Subcontract' has a corresponding meaning.
Supplies	(Core)	means goods and services required to be supplied under the Contract and includes items acquired in order to be incorporated into the Supplies.  A reference to Supplies is also a reference to: a. each item of Supplies; b. a component of a system or subsystem comprised of Supplies; and c. such a system or subsystem itself.
Supplies Acceptance Certificate	(Core)	means the certificate in the form of the annex to DID-PM-MGT-SAC or other form agreed between the parties.
Support Resources	(Core)	means the physical products, including spares, equipment, materials, facilities, Technical Data, personnel and any other physical resources required to operate and support all or a particular part of the principle items of the Supplies, or the Support System, as the case requires.
Support System	(Core)	means the sum of the existing support infrastructure (including that of the Commonwealth, the Contractor and its subcontractors) and the additional support elements being generated under the Contract to enable the principle items of the Supplies to be effectively operated and supported so that it can meet its operational requirements.
Surveillance	(Core)	means continual monitoring and verification of the status of an entity and analysis of records to ensure that specified requirements are being fulfilled (the entity could be a system, process, product, project, contract etc).
Synthetic Greenhouse Gas	(Core)	means any gas identified as a Synthetic Greenhouse Gas in the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) or in any regulations made under that Act.
System Audit	(Core)	means a systematic, independent and documented review of a system (a system being a set of interrelated or interacting elements) resulting in the obtaining of audit evidence and evaluating such evidence to objectively determine the extent to which the system and its associated processes, documentation and records comply with stated requirements. The review may include any elements of the system.
Technical Data	(Core)	means technical or scientific data, know-how or information, reduced to a material form (whether stored electronically or otherwise) in relation to Supplies described in the Specification and includes calculations, data, databases, designs, design documentation, drawings, guides, handbooks, instructions, manuals, models, notes, plans, reports, simulations, sketches, specifications, standards, Training Materials (excluding Software), test results and writings and includes Source Code.

## ATTACHMENT F

Term	Status	Definition
Technical Data and Software Rights Schedule or TDSR Schedule	(Core)	means Attachment C to the COC.
Total ACE Value	(Optional)	means the Australian dollar value of ACE as set out at clause 4.3 of Attachment B to the COC.
Trade Mark	(Core)	means a trade mark protected under the <i>Trade Marks Act 1995</i> (Cth) or corresponding laws of any other jurisdiction.
Training	(Core)	means the processes, systems, materials, resources, and services for bringing personnel to the required standard of competency by instruction, practice or other prescribed methodology.
Training Equipment	(Core)	means any item of equipment required to perform training.
Training Materials	(Core)	means material, not contained in a publication, necessary for a suitably qualified instructor to effectively and efficiently conduct a sequence of Training given to a body of students who meet the defined entry requirements. This material includes lesson scripts, assessment instruments (including recording/tracking tools), Training aids, student précis, exams, mass briefs, sorties, and, if applicable, computer-based training hardware, Software and manuals.
Unrelated Party	(Core)	means any person other than any of the following: <ul style="list-style-type: none"> <li>a. the Commonwealth and Commonwealth Personnel;</li> <li>b. the Contractor and Contractor Personnel;</li> <li>c. a Related Body Corporate of the Contractor; and</li> <li>d. an employee, officer or agent of a Related Body Corporate of the Contractor.</li> </ul>
Use	(Core)	means, in relation to a licence of any TD, Software or Contract Material granted to a licensee, to: <ul style="list-style-type: none"> <li>a. use, reproduce, adapt and modify the TD, Software or Contract Material in accordance with the licence; and</li> <li>b. disclose, transmit and communicate the TD, Software or Contract Material: <ul style="list-style-type: none"> <li>(i) to the licensee's employees, officers and agents; and</li> <li>(ii) to a sublicensee under a sublicense granted in accordance with the licence.</li> </ul> </li> </ul>
Validation	(Core)	means confirmation by examination and provision of objective evidence that the specific intended use or application of a product or service, or aggregation of products and services, is accomplished in an intended usage environment.
Verification	(Core)	means confirmation by examination and provision of objective evidence that specified requirements to which a product or service, or aggregation of products and services, is built, coded, assembled and provided have been fulfilled.

## ATTACHMENT F

Term	Status	Definition
WHS Legislation	(Core)	means: a. the <i>Work Health and Safety Act 2011</i> (Cth) and the Work Health and Safety Regulations 2011 (Cth); and b. any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011</i> (Cth).
Wilful Default	(Core)	means a Default where the breach relates to an act or omission that is intended to cause harm, or otherwise involves recklessness in relation to an obligation not to cause harm.
Working Day	(Core)	in relation to the doing of an act in a place, means any day in that place other than: a. a Saturday, Sunday or public holiday; and b. any day within the two-week period that starts on: (i) the Saturday before Christmas Day; or (ii) if Christmas Day falls on a Saturday, Christmas Day.

## 3. REFERENCED DOCUMENTS

Reference	Description
ADFP 6.0.4	Electromagnetic Spectrum Management
ANP3411-0101	Naval Materiel Assurance Publication
AS/NZS ISO 10005:1995	Quality Management – Guidelines for Quality Plans
AS/NZS ISO 9001:2016	Quality Management Systems - Requirements
AS/NZS ISO 9000:2006	Quality Management Systems - Fundamentals and Vocabulary
ASD S1000D	International Specification for Technical Publications Utilizing a Common Source Database
	<i>Auditor-General Act 1997</i> (Cth)
	Australian Code for the Transport of Dangerous Goods by Road and Rail, extant edition and as amended from time to time
	Australian Consumer Law (Schedule 2 to the <i>Competition and Consumer Act 2010</i> )
	Australian Contract Expenditure (ACE) Measurement Rules, as amended from time to time
Shadow Economy Procurement Connected Policy	Shadow Economy Procurement Connected Policy – Increasing the integrity of government procurement – March 2019.
	Building Defence Capability: A Policy for a Smarter and More Agile Defence Industry Base
	Defence Cost Principles, as amended from time to time
	Code of Practice, <i>Preparation of Safety Data Sheets for Hazardous Chemicals</i> (an approved code of practice under section 274 of the WHS Act)
CPRs	Commonwealth Procurement Rules – July 2022
	Commonwealth Supplier Code of Conduct, as amended from time to time

## ATTACHMENT F

Reference	Description
	Complaints and Alternative Resolutions Manual
	<i>Copyright Act 1968</i> (Cth)
	<i>Corporations Act 2001</i> (Cth)
DASR	Defence Aviation Safety Regulation
	2016 Defence Industry Policy Statement, also known as 'DIPS 2016'
	2019 Defence Policy for Industry Participation
DEF(AUST) 1000C	Australian Defence Force Packaging, Standard
DEF(AUST)CMTD-5085C	Engineering Design Data for Defence Materiel
DEF(AUST)5629C	Production of Military Technical Manuals
	Electromagnetic Spectrum Manual
	Defence Work Health and Safety (WHS) Manual
DEFLOGMAN Part 2 Volume 5 Section 5	Item Identification and Recording of Defence Logistics Assets in Support of MILIS
DEFLOGMAN Part 2 Volume 5 Section 17	Stocktaking of Defence Assets and Inventory
DI ADMINPOL Annex C, AG4	Incident Reporting and Management
DI ADMINPOL Annex C, AG5	Conflicts of interest and declarations of interest
DI ADMINPOL Annex J, PPL 7	Required behaviours in Defence
DSPF	Defence Security Principles Framework, as amended from time to time
	<i>Designs Act 2003</i> (Cth)
	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
	<i>Government Procurement (Judicial Review) Act 2018</i> (Cth)
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
IEEE Std 1471-2000	Recommended Practice for Architectural Description of Software-Intensive Systems
	Incident Reporting and Management Manual
IPP	<i>Commonwealth Indigenous Procurement Policy</i> – December 2020. A copy of the IPP is available from: <a href="https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp">https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp</a>
	Integrity Policy
ISO 216	Writing Paper and Certain Classes of Printed Matter – Trimmer Sizes – A and B series
LMSM	Land Materiel Safety Manual
MIL-STD-961E	Defense and Program-unique Specifications Format and Content
MILPERSMAN Part 4 Chapter 1	ADF alcohol policy
	NATO Standardisation Agreement (STANAG) 4177



## ATTACHMENT F

Reference	Description
	<i>Ozone Protection Act 1989 (Cth)</i>
	<i>Privacy Act 1988 (Cth)</i>
STANAG 4177	Codification of Items of Supply - Uniform System of Data Acquisition
	The United Nations Convention on Contracts for the International Sale of Goods
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>
WHS Regulations	Work Health and Safety Regulations 2011 (Cth)
	<i>Workplace Gender Equality Act 2012 (Cth)</i>
	<i>Workplace Gender Equality Procurement Principles</i>

## ATTACHMENT G

## AUSTRALIAN INDUSTRY CAPABILITY (OPTIONAL)

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

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

**1. AUSTRALIAN INDUSTRY CAPABILITY SCHEDULE**

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

**1.1 Australian Industry Capability Schedule**

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

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

[...INSERT PROJECT NUMBER AND NAME...]

[...INSERT NAME OF SYSTEM / PRODUCT...] ACQUISITION

## STATEMENT OF WORK

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## ANNEXES

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***Note to drafters: Within this template, bold italics are used to provide guidance as 'notes to drafters'. These are to be removed from the SOW and annexes before RFT release. 'Notes to tenderers' are to be removed prior to the Effective Date.***

***Terms with specific meanings, as defined in the Glossary at Attachment G or the Details Schedule, are to be first letter capitalised.***

***Note to tenderers: This SOW is used for the acquisition of off-the-shelf products or production-ready non-developmental-items, where there is minimal or no design, development or integration (eg, a custom configuration using standard product options).***

***The Supplies to be delivered, including all Support Resources such as spare parts, support and test equipment, Training Equipment, publications and drawings, and the installation and test of Supplies, must be determined and agreed before or during contract negotiations. Accordingly, all proposed Supplies are to be included in the Price and Delivery Schedule on the Effective Date.***

## **1. SCOPE (CORE)**

***Note to drafters: This clause should include a brief statement of the SOW purpose and may describe the background to the procurement (clause 2.1, Scope of Work, refers to the breadth of work to be done). This clause is not intended to define contractual scope; hence, the items listed below should NOT be included in this clause:***

- a. directions to the Contractor to perform work tasks;***
- b. specifications of data requirements; and***
- c. descriptions of deliverable products.***

### **1.1 Purpose (Core)**

- 1.1.1** The purpose of this Statement of Work (SOW) is to communicate, to the Contractor, Commonwealth requirements and standards for work to be carried out under the Contract and to allocate work responsibilities between the Commonwealth and the Contractor.

### **1.2 Background – For Information Only (Optional)**

***Note to drafters: Insert background information for the draft Contract that may be useful to the tenderers and the Contractor under any resultant Contract. The background should be limited to that information needed to acquaint the tenderer with the basic acquisition requirement. As this clause is not intended to place obligations on the Contractor, 'shall' statements are not to be used. Care should also be taken to ensure that statements made in this clause do not conflict with other elements of the Contract. If not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.***

- 1.2.1** Not used.

## 2. GENERAL REQUIREMENTS (CORE)

### 2.1 Scope of Work (Core)

**Note to drafters: This clause should define the Contractor's overall scope of work under the Contract. Amend to include applicable activities such as construct, test, install, etc.**

- 2.1.1** The Contractor shall perform all activities necessary to [...DRAFTERS TO INSERT: 'manage, construct, test, deliver, install, commission...'] the Supplies to the Commonwealth in accordance with the Contract.
- 2.1.2** The Contractor shall ensure that the Supplies meet the requirements of the Specification at Annex A to the SOW.

### 2.2 Delivery of Supplies (Core)

**Note to drafters: This clause is not intended to include exhaustive marking and consignment documentation requirements but should be tailored to specify any additional requirements needed to comply with legislation or an applicable regulatory framework. If expecting to import into Australia using a freight forwarder, consider adding a new Annex to summarise relevant requirements, such as, the freight forwarder's details, declarations of origin and of Dangerous Goods, Export License numbers, and ISPM 15 regarding unprocessed vegetable packaging (eg, raw wood, for quarantine purposes), then refer to this Annex from a new subclause under clause 2.2.1. The following clauses may also be tailored to allow adoption of the Contractor's normal packaging and marking standards, if these are acceptable to the Commonwealth Representative.**

- 2.2.1** The Contractor shall ensure that all Supplies to be delivered to the Commonwealth are packaged and marked for delivery such that the delivered items comply with appropriate packaging, package marking, consignment documentation and documentation language standards as may be necessary to:
- comply with applicable legislative and regulatory requirements, including the applicable Work Health and Safety (WHS) Legislation; and
  - meet the requirements of the Contract.
- 2.2.2** Without limiting clause 2.2.1, the Contractor acknowledges that DEF(AUST)1000C provides guidance on packaging and labelling standards that are acceptable to the Commonwealth.
- 2.2.3** The Contractor shall ensure that secure and legible documentation is affixed to the outside of each package for delivery to the Commonwealth, with duplicate copies inside at the top of each package, which includes the following information:
- the relevant project identifier (project name and number), if applicable;
  - the relevant Commonwealth contract or purchase order number;
  - the item name;
  - the item quantity;
  - the name of the supply source;
  - the consignment delivery point; and
  - the date of dispatch.
- 2.2.4** Without limiting clause 2.2.1, the Contractor shall ensure that all items delivered to the Commonwealth are accompanied by such certification of conformance from the original equipment manufacturer, including any certificates that may be necessary for regulatory requirements.

### 2.3 Deliverable Data Items (Core)

- 2.3.1** The Contractor shall deliver all data items to the Commonwealth Representative:
- in accordance with the Data Item Descriptions (DIDs) listed at Annex B; and

- b. unless otherwise specified in the applicable DID, in the Contractor's format, as a softcopy in a data format that is readable and acceptable to the Commonwealth (eg, Microsoft Office® products).

**2.3.2** Except where otherwise specified for a particular data item, the Commonwealth Representative shall, within 20 Working Days of receipt of a data item, advise the Contractor in writing that the item is either Approved or not Approved.

**2.3.3** If a data item is not Approved:

- a. then the Commonwealth Representative shall advise the Contractor in writing of the reason(s) and may provide details of any corrective action to be taken by the Contractor before the item will be reconsidered; and
- b. the Contractor shall (at no additional cost to the Commonwealth) within 10 Working Days of the notice of non-Approval (or such other period agreed by the Commonwealth in writing), deliver the rectified data item for Approval (and this clause 2.3 shall apply to the data item as if it had been submitted for the first time).

**2.3.4** The Commonwealth Representative's reasons for non-Approval of a data item shall be limited to those situations where, in the judgement of the Commonwealth Representative, the data item submitted:

- a. is not clearly understandable;
- b. does not provide adequate detail;
- c. is inconsistent with the Contract; or
- d. does not meet the objective of the required data item.

**2.3.5** The Commonwealth Representative may not withhold Approval of a data item for minor omissions or defects in the data item, which are identified to the Contractor. In addition to the criteria for non-Approval detailed in clause 2.3.4, any subsequent Approval of an update to a data item that was previously Approved with minor omissions or defects shall be subject to the Contractor addressing those identified omissions or defects in the proposed update to the satisfaction of the Commonwealth Representative.

**2.3.6** If the Commonwealth Representative fails to furnish to the Contractor a notice of Approval, or non-Approval, under clause 2.3.2 within the period specified, then the Contractor may be entitled to claim a postponement of the date for delivery of Supplies. To claim such a postponement, the Contractor shall:

- a. notify the Commonwealth of its intent to claim a postponement of the date for delivery of Supplies no later than five Working Days after the specified period under clause 2.3.2 expires; and
- b. submit a proposal to change the Contract, in accordance with clause 11.1 of the COC, no later than five Working Days after the Commonwealth does notify the Contractor of its Approval or non-Approval.

**2.3.7** If the Contractor notifies the Commonwealth and submits a proposed change to the Contract in accordance with clause 2.3.6, and can demonstrate, to the Commonwealth's satisfaction, that:

- a. the delay in providing notice of Approval or non-Approval delayed the Contractor in the performance of its obligations under the Contract; and
- b. the period being claimed for postponement of the date of delivery of Supplies is reasonable and directly related to the Commonwealth's failure to provide the required notice,

then, on the Commonwealth notifying the Contractor that it has been satisfied that the requirements of this clause have been met, the date for delivery of the affected Supplies shall be varied by the period specified in the Commonwealth's notice and the Contract shall be amended in accordance with clause 11.1 of the COC.

**2.3.8** Approval of a data item by the Commonwealth shall not be construed as:

- a. any more than an indication that the data item appears to the Commonwealth Representative to be capable of being used as a basis for further work;
- b. limiting the Contractor's responsibility to provide Supplies in accordance with the requirements of the Contract; and
- c. an election to not enforce any right under this Contract or any cause of action arising out of or as a consequence of any act or omission of the Contractor or any Contractor Personnel.

**2.3.9** Until a proposed amendment or update to an Approved data item is Approved, the extant data item shall remain in effect.

**2.3.10** The Contractor shall bear all costs associated with data item maintenance, except to the extent that the Commonwealth otherwise agrees, in writing.

**2.3.11** The Contractor acknowledges that the Commonwealth's obligations to action the data items within the timeframes described in this SOW are subject to the Contractor delivering the data items in accordance with the SOW, and that any delay by the Contractor may result in the Commonwealth not being able to action the data items within the timeframes specified.

### 3. PROJECT MANAGEMENT (CORE)

#### 3.1 Contractor's Project Management Arrangements (Core)

- 3.1.1 The Contractor shall nominate within its company structure a project manager (referred to as the 'Contractor's Project Manager') with suitable capability and authority to manage the Contract.

#### 3.2 Contract Status Reports (Optional)

**Note to drafters: If the expected duration of the Contract is short (eg, a few months), it may not be long enough to need CSRs. In this case, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.**

- 3.2.1 The Contractor shall develop the Contract Status Reports (CSRs), which comply with the requirements of DID-PM-STAT-CSR-1 and clause 2.3.1.

**Note to drafters: Select an option as applicable. Options A or B may be used when the Contract will or will not include an AIC program; however, contracts with an AIC program will more likely include progress meetings (ie, Option B). For both Options A and B, the AIC report will be included as part of each CSR. If the AIC Report (Part B) will be required less frequently (eg, six-monthly) than Part A of the CSR (eg, three-monthly), then select Option C.**

**Option A: Include this option if CSRs will be required under the Contract, but progress meetings (under clause 3.3) will not be required.**

- 3.2.2 The Contractor shall deliver the CSRs to the Commonwealth Representative, for Approval, at intervals of no greater than [...INSERT PERIOD...] months from the Effective Date (ED).

**Option B: Include this option if CSRs will be required, and progress meetings (under clause 3.3) will also be required under the Contract.**

- 3.2.3 The Contractor shall deliver the CSRs to the Commonwealth Representative, for Approval, [...INSERT NUMBER, EG 10 ...] Working Days prior to each progress meeting held in accordance with clause 3.3.

**Option C: Include this option if the draft Contract will include an AIC program and AIC Reports will be delivered less frequently than the Part A of the CSR.**

- 3.2.4 The Contractor shall deliver to the Commonwealth Representative, for Approval, parts of the CSR as follows:
- Part A, 'Contract Status', [...INSERT NUMBER, EG 10 ...] Working Days prior to each progress meeting held in accordance with clause 3.3; and
  - Part B, 'Australian Industry Capability (AIC) Report', with [...INSERT EG. 'every', 'every second', 'every fourth'...] delivery of Part A, to report on the AIC program in accordance with clause 3.8.

- 3.2.5 If the Commonwealth notifies the Contractor on the basis of any CSR that the Contractor has failed to maintain satisfactory progress under the Contract, the Contractor shall advise the Commonwealth, within 10 Working Days, of the remedial measures proposed to re-establish Contract progress, and shall reflect the results of such measures in subsequent CSRs.

#### 3.3 Progress Meetings (Optional)

**Note to drafters: For many ASDEFCON (Complex Materiel) Volume 1 contracts, the CSR, informal communications, and extraordinary meetings if required, will be sufficient to manage the contract and progress meetings will not be required. If progress meetings are not required,**



***then the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.***

***If progress meetings are required, they are usually informed by a CSR, and the CSRs are scheduled for delivery before meetings (see clause 3.2 above). Refer to the SOW Tailoring Guide for an alternative clause.***

- 3.3.1** The Contractor shall conduct progress meetings at intervals of no greater than [...INSERT NUMBER OF MONTHS...] months from the Effective Date (ED), unless otherwise agreed by the Commonwealth Representative.
- 3.3.2** Progress meetings shall be co-chaired by the Commonwealth Representative or nominated representative and the Contractor's Project Manager or nominated representative.
- 3.3.3** At least 10 Working Days prior to each progress meeting, the Contractor shall develop and deliver to the Commonwealth Representative a meeting agenda for Approval, which:
  - a. complies with clause 2.3.1; and
  - b. addresses all topics included in CSRs, as per clause 3.2, and any other matters as required by the Commonwealth Representative or Contractor.
- 3.3.4** The progress meetings shall not be conducted until the Commonwealth Representative has agreed the time and place of the progress meeting.
- 3.3.5** Unless otherwise agreed by the Commonwealth Representative, the Contractor shall provide the facilities (including, when applicable, the venue), materials and services reasonably required for the conduct of the progress meetings. Review meetings may be held virtually when agreed by the Commonwealth Representative.
- 3.3.6** Within five Working Days following each progress meeting, the Contractor shall deliver minutes of the meeting to the Commonwealth Representative for Approval, which summarises the major points of discussion, decisions taken, and all actions arising from the meeting.

#### **3.4 Extraordinary Meetings (Core)**

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- 3.4.1** Either party may call extraordinary meetings to discuss Contract matters where submission of CSRs and other forms of communication are inadequate to resolve the issues at hand.
- 3.4.2** When scheduling extraordinary meetings, the party calling the meeting shall:
  - a. provide the other party with reasonable advance notice of such meetings;
  - b. advise the other party of the specific requirements for the meeting, including the nature of the issues to be discussed and the anticipated information requirements;
  - c. deliver an agenda to the other party, as soon as practical, considering the date of the meeting and the urgency of the issues to be discussed; and
  - d. chair the meeting, unless otherwise mandated by the Commonwealth Representative.
- 3.4.3** Extraordinary meetings shall not be conducted until the Commonwealth Representative has Approved the agenda.
- 3.4.4** Unless otherwise agreed by the Commonwealth Representative, the Contractor shall provide the facilities (including, when applicable, the venue), materials and services reasonably required for the conduct of extraordinary meetings. If the meeting is held at a third party's premises, such facilities, materials and services shall be provided as agreed by the parties. Extraordinary meetings may be held virtually when agreed by the Commonwealth Representative.
- 3.4.5** Within five Working Days following the conclusion of the extraordinary meeting, the party that chaired the meeting shall deliver minutes to the other party, which summarise the major points of discussion, decisions taken, and all action items arising from the meeting. Contractor-developed minutes shall be subject to Approval by the Commonwealth Representative.

### 3.5 Maintenance of Contractual Documents (Core)

- 3.5.1** The Contractor shall incorporate all changes to the Contract and maintain a configured copy of the Contract.
- 3.5.2** The Contractor shall archive all superseded versions of the Contract to ensure that the exact status of the Contract at any previous time is able to be determined from the archived versions.

### 3.6 Defence Security Compliance (Optional)

**Note to drafters: This clause is only required if Contract work involves classified information or classified equipment, as addressed by COC clause 11.8. If not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.**

- 3.6.1** The Contractor shall ensure that all security procedures, training, facilities, fittings and clearance requests are established and maintained to meet the requirements of clause 11.8 of the COC.

### 3.7 Stocktaking of Contractor Managed Commonwealth Assets (Core)

- 3.7.1** The Contractor shall:
- a. institute, maintain and apply a system for, the accounting for and control, handling, preservation, protection and maintenance of Contractor Managed Commonwealth Assets (CMCA);
  - b. undertake stocktakes of CMCA when requested by the Commonwealth (typically conducted quarterly but may be adjusted for the progress of the Contract); and
  - c. develop and deliver to the Commonwealth Representative, for Approval, CMCA stocktaking reports that include the following information:
    - (i) the stocktake number;
    - (ii) the storage location of all goods included in the stocktake;
    - (iii) all stocktake codes;
    - (iv) stocktake start and end dates; and
    - (v) statistical data including the quantity and value of all discrepancies, shelf stock held, shelf stock stocktaken, surpluses and deficiencies.
- 3.7.2** The Contractor shall promptly conduct investigations into every discrepancy arising from stocktakes of CMCA.
- 3.7.3** The Contractor shall notify the Commonwealth Representative within one Working Day of becoming aware of any deficiencies that are discovered through a stocktake of CMCA.

### 3.8 Australian Industry Capability (Optional)

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

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

- 3.8.1** The Contractor shall manage and conduct the Australian Industry Capability (AIC) program in accordance with clause 4 of the COC, Attachment G, and this clause 3.8.
- 3.8.2** The Contractor shall develop and deliver the AIC Reports, as part of the CSR, in accordance with clause 3.2.

#### 4. INTEGRATED LOGISTICS SUPPORT (CORE)

##### 4.1 Training Readiness Review (Optional)

**Note to drafters:** *If the Contractor will not provide Training as a deliverable, or the preparation for Training will be relatively simple, then a TNGRR may not be required and the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.*

- 4.1.1** After delivery (and installation if applicable) of Training Equipment and Training Materials, and prior to the conduct of any Training required to be provided by the Contractor, the Contractor shall conduct a TNGRR with the Commonwealth Representative.
- 4.1.2** The Contractor shall conduct the TNGRR, as an extraordinary meeting in accordance with clause 3.4, to review the readiness of Training course design, Training Materials, Training Equipment, classrooms or other facilities, instructors and students, and to confirm that all necessary elements are ready to enable Training to commence.

##### 4.2 Facilities Preparedness Review (Optional)

**Note to drafters:** *The FACPR is intended as a review to confirm that Commonwealth facilities are ready for the installation of the Supplies (eg, 'Mission System' equipment, S&TE or Training Equipment) by the Contractor. This clause is only required if the Contractor will install the Supplies into Commonwealth facilities. The ASDEFCON (Complex Materiel) Volume 2 template should be considered if a more complex installation program is required.*

*This template does not include facilities / building work. Such work needs to be coordinated by the Project Manager and Security and Estate Group (SEG), prior to the FACPR. If the Contractor is expected to perform significant installation work, drafters should refer to COC clause 12.4 in regards to a principal contractor. Drafters should discuss with SEG the need to co-ordinate work between the Contractor and SEG (and SEG contractors) and any related work co-ordination requirements that may need to be included in this clause.*

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

**Note to tenderers:** *The purpose of the FACPR is to confirm the preparedness of Commonwealth facilities, and the conduct of any associated Commonwealth activities, to enable the Contractor to install items of equipment, that are Supplies, into Commonwealth facilities.*

- 4.2.1** Before commencing the installation of, and/or the connection of services to, those items of equipment that are Supplies to be installed into Commonwealth facilities, the Contractor shall conduct a FACPR with the Commonwealth Representative.
- 4.2.2** The Contractor shall conduct the FACPR as an extraordinary meeting in accordance with clause 3.4, to review the availability, accessibility, condition, safety and suitability of the designated facilities and services for the installation of, and/or connection of services to, the Supplies in those facilities.
- 4.2.3** When requested by the Commonwealth Representative, the Contractor shall provide, in preparation for the FACPR, any other information reasonably required by the Security and Estate Group, and other stakeholders, to enable the coordination of installation activities.

**Option:** *This clause should be included if installation drawings will be required (eg, for SEG). Requirements (eg, standards) for these drawings must be included in the Specifications, and the delivery requirements included in the Price and Delivery Schedule.*

- 4.2.4** The Contractor shall provide installation drawings, meeting the requirements defined in the [... INSERT NAME OF SPECIFICATION ...], for review prior to and at the FACPR.

##### 4.3 Codification Data (Optional)

**Note to drafters:** *These clauses apply DEFLOGMAN Part 2 Volume 5 Chapter 5, 'Item Identification and Recording of Defence Logistics Assets in Support of MILIS' and Appendix 1 to NATO Standardisation Agreement (STANAG) 4177. The clause should not be changed without the agreement of a National Codification Bureau representative. While this clause is optional*

***(eg, not required if procuring items that are already codified), Codification is mandatory if any 'items of supply' meet the criteria defined in the DEFLOGMAN.***

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

- 4.3.1** The Contractor shall develop or update, as applicable, Codification Data that complies with the requirements of DID-ILS-TDATA-CDATA for all Supplies:
- that are not codified, other than Supplies that are Software, services or data (unless any manuals are to be codified); and
  - that are codified but which differ from the configuration described by existing Codification Data.
- 4.3.2** At least 10 Working Days prior to the delivery of the related item(s) of Supplies, and unless otherwise agreed by the Commonwealth Representative in writing, the Contractor shall deliver (or arrange to have delivered) to the Commonwealth Representative for Approval, the Codification Data required by clause 4.3.1.
- 4.3.3** The Contractor acknowledges that Codification Data will be retained by the Australian National Codification Bureau (NCB) and may be retained by other NCBs for Codification and associated NCB functions.
- 4.3.4** If elements of Codification Data are provided to the Commonwealth:
- only for the purpose of Codification, those elements of Codification Data will only be used in accordance with this clause 4.3; and
  - for a purpose that is in addition to Codification, those elements of Codification Data will be subject to the requirements of clause 5 of the COC and this clause 4.3.
- 4.3.5** The Contractor shall include the relevant terms of this clause 4.3 in all Subcontracts, as necessary to ensure the provision of Codification Data to the Commonwealth and other NCBs.

#### **4.4 Disposal Requirements (Optional)**

***Note to drafters: Although the information to be provided in tender responses includes disposal information, this clause allows for clarification and additional detail.***

***If the procurement is for additional items already held by the Commonwealth, and disposal information is known, the clause below can be deleted and the heading annotated as '(Not used)'.***

- 4.4.1** Within 10 Working Days following the Effective Date, the Contractor shall deliver to the Commonwealth Representative for Approval, a Disposal Requirements Report advising of any aspects of the Supplies that have special disposal requirements due to legislative, regulatory, security, environmental, health and safety, or any other restrictions.

## 5. VERIFICATION AND VALIDATION (OPTIONAL)

### 5.1 Final Inspection and Test (Optional)

**Note to drafters:** *FI&T requires Verification that the Supplies meet the requirements of the SOW, including Specifications, and provides an assurance of their quality. FI&T may be used on its own or in conjunction with a Certified Quality Management System (refer clause 6.1).*

*This clause should be included if the Supplies are sufficiently complex to require a formal test process, to assure their quality and to verify that specified requirements have been satisfied, or to confirm a successful installation. Drafters should note that FI&T will apply to all items of Supplies, not only the major items of equipment (but this could be as simple as inspection on delivery). If this clause is included, clause 5.1.1 and the note to tenderers may be updated when a draft FI&TP is not required with the tender responses.*

*If this option is not selected, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.*

**Note to tenderers:** *Tenderers should note the requirement for FI&T to address all items of the Supplies detailed in the Price and Delivery Schedule. A draft FI&TP may be required in accordance with the response to tender data requirement D-4.*

- 5.1.1** The Contractor shall further develop the Final Inspection and Test (FI&T) Plan (FI&TP) that complies with the requirements of DID-V&V-MGT-FI&TP and clause 2.3.
- 5.1.2** Within [...INSERT PERIOD, EG, '10'...] Working Days following the Effective Date, the Contractor shall deliver the FI&TP to the Commonwealth Representative for Approval.
- 5.1.3** The Contractor shall demonstrate that Supplies offered for Acceptance comply with the requirements of the Contract by the conduct of FI&T of the Supplies, in accordance with the Approved FI&TP.
- 5.1.4** At least [...INSERT PERIOD, EG, "30"...] Working Days before the conduct of any related FI&T activity, the Contractor shall review the FI&T Procedures, within the Approved FI&TP, for currency and, if applicable, deliver an update of the FI&TP to the Commonwealth Representative for Approval.

**Note to tenderers:** *Ideally, test and inspection procedures should be modular, to permit a failed test activity to be repeated, where possible, without repeating other parts of the test program.*

- 5.1.5** The Contractor shall invite the Commonwealth Representative or representatives appointed by the Commonwealth Representative to witness all FI&T activities for the Supplies.
- 5.1.6** Unless otherwise advised in writing by the Commonwealth Representative, the Commonwealth Representative or appointed representatives shall witness all FI&T activities for the Supplies that are conducted for the purposes of Acceptance.
- 5.1.7** Unless the Commonwealth Representative has advised that it will not witness an FI&T activity in accordance with clause 5.1.6, the Contractor shall not conduct that FI&T activity in the absence of Commonwealth witnesses.
- 5.1.8** Unless otherwise agreed in writing by the Commonwealth Representative, the Contractor shall provide the Commonwealth with at least [...INSERT PERIOD, EG, '20'...] Working Days advance notice of the start date and time of all FI&T activities for the Supplies.
- 5.1.9** Following each FI&T activity the Contractor shall prepare, in accordance with the Approved FI&TP, a FI&T Report (FI&TR) to report on the outcomes of the FI&T activity, and deliver the FI&TR to the Commonwealth Representative for Approval before offering the relevant Supplies for Acceptance.
- 5.1.10** The Contractor shall make reference to the applicable Approved FI&TR when Supplies are offered for Acceptance.

**Option: This clause should be included when sampling items, out of a large set of identical Supplies, is required for FI&T.**

- 5.1.11** The Contractor shall apply to the Supplies the sampling procedures of AS 1199:1988, 'Sampling procedures and tables for inspection by attributes' or AS 2490:1981, 'Sampling procedures and charts for inspection by variables for percent defective', as appropriate, or other recognised international sampling standard agreed by the Commonwealth Representative.

**Option: This clause should be included when test equipment is to be used.**

- 5.1.12** The Contractor shall ensure that inspection, measuring and test equipment used in the performance of work under the Contract is calibrated and associated documentation maintained, in accordance with AS/NZS ISO 10012:2004, or other recognised international calibration standard agreed by the Commonwealth Representative.

## **5.2 Test Readiness Reviews (Optional)**

**Note to drafters: If the Supplies or the complexity of the FI&T process warrants it, a TRR may be conducted prior to FI&T activities. If TRRs are not required, then the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.**

- 5.2.1** Unless otherwise agreed by the Commonwealth Representative, prior to the commencement of each FI&T activity the Contractor shall complete a Test Readiness Review (TRR) in conjunction with the Commonwealth, as an extraordinary meeting held in accordance with clause 3.4, which:
- a. confirms the completeness of FI&T Procedures;
  - b. assures that the relevant element of the Supplies is ready for the FI&T activity;
  - c. confirms that any Commonwealth resources required are available and prepared for the FI&T activity; and
  - d. confirms that the Contractor is prepared for the FI&T activity.
- 5.2.2** The Contractor shall not conduct any FI&T activity unless the Commonwealth has agreed, in writing, that the relevant TRR has been satisfactorily completed.

## **5.3 Materiel Safety Verification (Optional)**

**Note to drafters: This clause may not be required if acquiring further quantities of equipment already held by Defence. If not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.**

- 5.3.1** The Contractor shall, with each item of the Supplies offered for Acceptance, provide the safety information (eg, an applicable safety case report, copies of design certifications, equipment operator manuals, analysis results, calibration records and test reports) necessary to address the requirements of clause 12.4.11 of the COC.

**Note to drafters: If registration of design is applicable to the Supplies, ensure that the Specification (Annex A) includes the optional clause for the registration of the design of plant.**

- 5.3.2** If the Supplies include plant that requires registration of design under the WHS Legislation, the Contractor shall:
- a. if the design is not already registered, obtain the registration of design from a relevant regulator and provide this information to the Commonwealth in sufficient time for review prior to the Supplies being offered for Acceptance;
  - b. attach a data plate to the relevant item(s) of plant (or in a circumstance where it is not practicable to attach the data plate to an installed item of plant, the data plate is to be affixed in a prominent place in the vicinity of the plant), which includes:
    - (i) the Design Registration Number (DRN);
    - (ii) the date of issue of the DRN;
    - (iii) the name of the Commonwealth, State or Territory regulator that issued the DRN; and

- (iv) if applicable, a unique plant registration number, and
- c. provide to the Commonwealth, on or prior to the delivery of the relevant item(s), all applicable documentation that details mandatory maintenance activities and inspections required to ensure the plant is, so far as is reasonably practicable, without risks to health and safety, including those assurance activities required by the WHS Legislation or a relevant code of practice.

## 6. QUALITY MANAGEMENT (CORE)

**Notes to drafters:** *Quality of the Supplies may be assured by:*

- a. *controlling the production process and relying on the work being conducted under a Certified QMS, without the conduct of FI&T;*
- b. *controlling the production process by relying on a Certified QMS, supported by the conduct of FI&T (under clause 5.1); or*
- c. *the FI&T of the Supplies (under clause 5.1) without relying on a QMS.*

*A Certified QMS alone may be assessed as adequate to assure Quality during production of the Supplies (or to provide assurance when the Supplies were manufactured before ED).*

*Benefits of selecting clause 6.1, for a Certified QMS, are that:*

- a. *the Supplies will (or should) be produced under quality-controlled conditions; and*
- b. *the Commonwealth gains the right to conduct audits and surveillance of production processes, which includes production process records and product test records.*

*The disadvantage of a Certified QMS is the potential exclusion of tenderers that do not have, and do not wish to bear the cost of establishing, a Certified QMS. Drafters may need to consider the potential implications (eg, industry responses) should the cost of a Certified QMS not be justified. Note that requiring a new QMS to be Certified, when Supplies have already been produced, has little value.*

*Selecting the method of assuring Quality will depend on:*

- a. *the value of ensuring that a Certified QMS is applied to the production of the Supplies, and whether the Commonwealth requires visibility of any such QMS; and*
- b. *the potential benefit of reducing the amount of FI&T effort needed.*

*The three options, and the clauses to select for each option, are as follows:*

**Option 1:** *Quality is assured through a Certified QMS.*

**1.** *The Contractor is required to have a Certified QMS but not a Contract-specific Quality Plan; the Commonwealth can audit the Contractor's QMS and undertake process and product audits, but the Commonwealth does not require FI&T of the Supplies before Acceptance. This option is appropriate for non-critical Supplies with a mature production environment. This option is selected using clause 6.1, and deleting clauses 5.1 and 0 (FI&T not being required in this case). It avoids the cost of FI&T when this is not warranted in the circumstances of production controlled by a Certified QMS.*

**Option 2:** *Quality is assured through a Certified QMS and FI&T.*

**2.** *The Contractor is required to have a Certified QMS but not a Contract-specific Quality Plan; the Commonwealth can audit the Contractor's QMS and undertake process and product audits, and the Commonwealth also requires FI&T of the Supplies before Acceptance. This option is appropriate for complex Supplies where Quality management during production is critical, and where demonstration by FI&T is also necessary to confirm that Contract requirements have been met. This option is selected using clauses 5.1, 0 if applicable, and 6.1.*

**Option 3:** *Quality is assured through FI&T only.*

**3.** *There is no requirement for the Contractor to have a Certified QMS; the Commonwealth's rights for Quality audit and surveillance (under the COC clause for Commonwealth Access) are removed, and the Quality of the Supplies will be assured through the Verification activities of FI&T. This option is appropriate when a Certified QMS is not assessed as necessary due to the nature of the Supplies, their production environment (eg, already produced) or their application, and when FI&T is assessed as sufficient to provide Quality Assurance. This option is selected by deleting clause 6.1 and using clauses 5.1 and 0 if applicable.*

*If the Supplies have potential to have be manufactured before the Effective Date, clause 6.1.5 requires proof that the Certified QMS was applied to the manufacture of the Supplies.*



## 6.1 Contractor Quality Management Responsibilities (Optional)

**Note to drafters:** These clauses are for use when Quality is to be assured (ie, alone or in conjunction with FI&T) through the control of production processes by a QMS, as described by Options 1 and 2 above.

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

- 6.1.1 The Contractor shall have a Quality Management System (QMS) Certified to AS/NZS ISO 9001:2016, *Quality Management Systems – Requirements* at the Effective Date, or other internationally accepted equivalent standard as agreed by the Commonwealth Representative.
- 6.1.2 The QMS shall have a Certification scope appropriate for the nature of the Supplies. The Certification scope need not include design and development activities if these are not required in the execution of the Contract.
- 6.1.3 The Contractor shall maintain and apply the QMS specified in clause 6.1.1 to the production of the Supplies and shall notify the Commonwealth Representative of any changes to the Certification status of the Contractor.
- 6.1.4 The Contractor shall ensure that all work performed under a Subcontract meets the requirements of the QMS to be applied by the Contractor under clause 6.1.
- 6.1.5 If all or part of the Supplies have been manufactured or partly manufactured prior to the Effective Date, the Contractor shall demonstrate to the Commonwealth Representative's satisfaction, before offering these Supplies for Acceptance, that a QMS meeting the requirements of this clause 6.1 was established prior to this manufacture, and maintained and applied throughout this manufacture.
- 6.1.6 During progress of work under the Contract, the Commonwealth may at its discretion perform Audit and Surveillance activities in relation to the work performed, including any of the following:
  - a. System Audit;
  - b. Process Audit; or
  - c. Product Audit.
- 6.1.7 If at any time the Commonwealth Representative determines by Audit and Surveillance in accordance with this clause 6.1 or otherwise that, in relation to the production of the Supplies:
  - a. the QMS applied no longer conforms to the Certified QMS; or
  - b. the products produced do not conform to the Specification,
 then the Commonwealth Representative may notify the Contractor in writing of the details of the non-conformance and require the Contractor to correct the non-conformance within the period specified in the notice.
- 6.1.8 The Contractor shall take whatever action is necessary to correct a Quality System / process / product non-conformance within the period specified in the notice issued pursuant to clause 6.1.7 or within any period agreed in writing by the Commonwealth Representative, and shall notify the Commonwealth Representative immediately upon taking corrective action. The Commonwealth may perform an Audit to verify that the non-conformance has been corrected.

## 6.2 Non-Conforming Supplies (Core)

- 6.2.1 If the Contractor seeks to use non-conforming materials or work in the Supplies, it shall develop and deliver to the Commonwealth Representative, for Approval, an Application for a Deviation that complies with the requirements of DID-PM-MGT-AFD and clause 2.3, together with all supporting documentation.

- 6.2.2** The Contractor shall deliver each Application for a Deviation to the Commonwealth Representative in sufficient time to enable the Contract requirements to be met should Approval be denied.
- 6.2.3** The Contractor shall comply with any conditions specified in the Approved Application for a Deviation, including any time limits on the use of non-conforming materials or work, limits to the scope of application, and any monitoring and remediation requirements.
- 6.2.4** Any Approval given by the Commonwealth Representative for the use of non-conforming materials or work shall not release the Contractor from due performance of any of its obligations under the Contract, except to the extent specifically set out in the Approved Application for a Deviation.

## 7. HEALTH SAFETY AND ENVIRONMENT (CORE)

### 7.1 Problematic Substances and Problematic Sources (Core)

#### 7.1.1 Problematic Substances (Core)

- 7.1.1.1** The Contractor shall not deliver Supplies containing or emitting a Problematic Substance, which may affect the health or safety of persons who may be exposed to the Problematic Substance, unless the Problematic Substance is Approved and identified in, and is only used for the purposes specified in, Annex C.

**Option: Include the following clauses when the Contract involves work on Commonwealth Premises (eg, for installations) that could involve Problematic Substances.**

- 7.1.1.2** The Contractor shall not use, handle or store a Problematic Substance on Commonwealth Premises, unless the Problematic Substance and the purpose for which it is to be used, handled or stored, is Approved.

- 7.1.1.3** When Approved Substances are to be brought onto Commonwealth Premises by the Contractor, the Contractor shall notify the Commonwealth Representative of the proposed maximum quantities or volumes (as applicable), and location(s), at least 10 Working Days before the Approved Substances are to be brought onto Commonwealth Premises.

- 7.1.1.4** The Contractor shall deliver to the Commonwealth Representative, with any request for Approval of an additional Problematic Substance, a Safety Data Sheet (SDS) that complies with the requirements of DID-PM-HSE-SDS, except when the applicable SDS exists within the Australian *ChemAlert* database and the Contractor identifies that SDS to the Commonwealth Representative in writing, by reference to its unique record within that database.

#### 7.1.2 Problematic Sources (Optional)

**Note to drafters: This clause is to be included if work on Commonwealth Premises requires the use of a Problematic Source. If not required, replace the following clauses with 'Not used'. If the need for the clause is unclear, the clause may be included in the RFT with the following note to tenderers. Refer to the SOW Tailoring Guide for more information.**

**Note to tenderers: The following clause shall be included in the resultant Contract if the Contract involves work on Commonwealth Premises that will require the use of a Problematic Source.**

- 7.1.2.1** Where work performed under the Contract on Commonwealth Premises requires the use of a Problematic Source, the Contractor shall only use the Problematic Source where the Problematic Source and the purpose for which it is to be used are Approved by the Commonwealth Representative.

**Option: Include this option when the Commonwealth may supply an item containing a Problematic Source to the Contractor.**

- 7.1.2.2** Where work performed under the Contract involves the use of a Problematic Source supplied by the Commonwealth (or a person on behalf of the Commonwealth), the Commonwealth shall provide the Contractor with details of the Problematic Source sufficient to enable compliance with the applicable WHS Legislation.

### 7.2 Environmental Management (Optional)

**Note to drafters: If environmental issues / risks may be relevant to the Contract (eg, during installation work or FI&T), then the clauses below facilitate compliance with the COC if the Contractor is to perform Services on Commonwealth Premises with potential environmental issues. If not required, the heading should be retained and '(Not used)' added at the end of the heading. Delete all clauses below the heading.**

- 7.2.1** The Contractor acknowledges that the environmental management requirements of this clause 7.2 apply to the performance of work on Commonwealth Premises.

- 7.2.2** Without limiting the Contractor's obligations at law and under clause 12.5 of the COC, the Contractor shall ensure that all work to be performed on Commonwealth Premises is performed in accordance with any environmental requirements:
- set out in the [...INSERT EG, the Environmental Management Plan for the Commonwealth Premises...]; and
  - advised by the Commonwealth or an Associated Party at the Commonwealth Premises.

### **7.3 Work Health and Safety (Core)**

- 7.3.1** The Contractor shall perform all work under the Contract in accordance with clause 12.4 of the COC.

**Note to drafters: The following option is to be included when work will be performed on Commonwealth Premises (eg, for installation and/or the FI&T of Supplies).**

**Option: For when work will be performed on Commonwealth Premises.**

- 7.3.2** The Contractor shall, upon the request of the Commonwealth Representative, provide evidence of:
- any safety-related permits, regulatory approvals or other Authorisations that the Contractor or Subcontractors are required by law to obtain and maintain; and
  - any safety risk assessments, work procedures and associated control measures, applicable to the work carried out, or proposed to be carried out, on Commonwealth Premises.
- 7.3.3** The Contractor shall ensure that Contractor Personnel who will perform work on Commonwealth Premises participate in any safety-related site briefings that are made available by Defence. The Contractor shall ensure that Contractor Personnel attending the safety-related site briefings sign an attendance or safety briefing form, as applicable.

**Note to drafters: For work carried on Commonwealth Premises, the Contractor is to be informed of the hazards to WHS in the work area (eg, asbestos in facilities where Supplies will be installed) and drafters need to include and tailor Annex D to the SOW to identify those hazards.**

- 7.3.4** The Contractor acknowledges that Annex D to the SOW provides a list of known hazards present on Commonwealth Premises where work may be performed under the Contract ('the applicable Commonwealth Premises').
- 7.3.5** If the Contractor is in doubt as to the location of a hazard at the applicable Commonwealth Premises, the Contractor shall perform its obligations under the Contract on the basis that the hazard is present, unless and until it is verified that the hazard is not present.
- 7.3.6** If the Contractor discovers a hazard to WHS, additional to those identified in Annex D, the Contractor shall promptly notify the Commonwealth Representative of the hazard, take all reasonable steps to eliminate or minimise the associated risks, and then notify the Commonwealth Representative of the steps taken.

### **7.4 Incident Reporting and Remediation (Core)**

- 7.4.1** The Contractor shall report, in accordance with the *Defence Safety Manual, Work Health and Safety Event (Incident) Reporting Policy and Guidance*, any Notifiable Incident that involves:
- Contractor Personnel on Commonwealth Premises;
  - Commonwealth Personnel at Contractor Premises; or
  - Contractor Personnel on Contractor Premises where the incident arises out of the conduct of the Commonwealth's business or undertaking (including in connection with a Commonwealth specified system of work).

- 7.4.2** The report provided under clause 7.4.1 shall include the provision of a completed Department of Defence Form AE527 (as amended or replaced from time to time), or be provided using the Sentinel Event Kiosk on the Defence Protected Network (if applicable).
- 7.4.3** The Contractor shall, in respect of any Notifiable Incident arising out of, or in connection with the Contract:
- a. if a Notifiable Incident occurs on Commonwealth Premises, preserve the incident site until the Commonwealth regulator has confirmed that the site may be released (as advised either directly or through the Commonwealth);
  - b. immediately provide the Commonwealth Representative with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
  - c. promptly provide the Commonwealth Representative with a copy of any investigation report relating to the Notifiable Incident;
  - d. promptly provide the Commonwealth Representative with copies of any notice or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
  - e. within 10 Working Days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Commonwealth Representative with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the Notifiable Incident.
- 7.4.4** The Commonwealth shall immediately inform the Contractor of any Notifiable Incident involving Contractor Personnel on Commonwealth Premises, of which it is aware, and provide the Contractor with a copy of the notice that is provided by the Commonwealth to the Commonwealth regulator about the Notifiable Incident.

## ANNEX A

## SPECIFICATION (CORE)

## GENERAL GUIDANCE FOR ANNEX A

<u>Status:</u>	Core
<u>Purpose:</u>	To specify the technical requirements for the Supplies.
<u>Guidance:</u>	It is essential that the Commonwealth Representative, tenderers and the Contractor have as precise and common understanding as possible of the full scope of work under the Contract. This depends in largely on the Specification of the Supplies.

The Specification is included as Annex A to the draft SOW in the RFT and, after any updates to capture the preferred tendered solution, becomes Annex A to the SOW under the Contract. The Specification sets out the agreed technical requirements for the Supplies, including Support Resources and Training programs.

The *ASDEFCON (Complex Materiel) Volume 1* template is used for off-the-shelf acquisitions, allowing for 'standard options' to customise the Supplies, or modified items where the design and development risk is so low that the Commonwealth does not require visibility of the modification activities. As such, the nature of the Specification tends towards an item-level product specification, as opposed to the function and performance specification used in more complex acquisition programs. This approach simplifies the tendering process; however, it still requires the Commonwealth, prior to developing the Specification, to:

- a. determine the purpose underpinning the requirement;
- b. investigate the marketplace to ensure that off-the-shelf solutions exist or could be easily adapted; and
- c. specify the requirements, taking into account the available solutions that may satisfy the Commonwealth's purpose.

Under *ASDEFCON (Complex Materiel) Volume 1*, the Commonwealth determines the 'form' of the required solution, and the tenderers propose specific solutions that accord with the identified solution form. This approach (rather than specifying functions and performance) is a significant aspect that differentiates *ASDEFCON (Complex Materiel) Volume 1* from larger ASDEFCON acquisition templates.

The Specification may be realised using one or more of the following:

- a. a plain English description of the required Supplies, comprising a statement of the functions and performance of the item(s);
- b. a list of hardware and Software required;
- c. specifications defining mandatory and desirable requirements for the Supplies;
- d. specifying one or more recognised Standards (eg, industry standards), with which the Supplies are to comply; and
- e. reference to relevant drawings, existing specifications (eg, for interfaces) and samples (including nominating a known product / a product being replaced).

The Specification needs to include specific 'materiel' requirements (as opposed to work requirements, which belong in the SOW) for the Support Resources and support processes, including:

- a. facilities constraints applicable to the equipment elements of the Supplies;
- b. the specification of storage and transportation requirements (eg, methods);
- c. requirements for specific types of Support Resources, including for:
  - (i) Packaging;
  - (ii) Training Equipment and Training Materials;

## ANNEX A

- (iii) publications;
- (iv) engineering drawings;
- (v) other Technical Data;
- (vi) S&TE; and
- (vii) facilities required, including works / services (eg, electrical power); and
- d. requirements for initial Training (which is a service provided under the Contract, not a product / Supply), including:
  - (i) types of Training (eg, operator, maintainer, train-the-trainer);
  - (ii) types (trade groups) of Personnel to be trained; and
  - (iii) other technical requirements pertaining to the Training.

Note that support services other than initial Training (eg, maintenance services) should not be included in the Specification because *ASDEFCON (Complex Materiel) Volume 1* does not include the commercial or work provisions needed for such services to be provided under the Contract.

Specifications for some items of equipment may already exist (ie, DEF(AUST)s, Defence Purchase Descriptions (DPDs), manufacturer's specifications, industry standard interfaces, etc), which may address some of the requirements for this annex, particularly with respect to the Support Resources. In these circumstances, drafters should reference the standard and include any additional requirements in this annex. Examples of standards / references include:

- a. for packaging, DEF(AUST)1000C, *ADF Packaging*;
- b. for Training Materials, refer to the Defence Learning Manual Part 1 Chapter 4, *Systems Approach to Defence Learning*, and single Service training manuals;
- c. for Interactive Electronic Technical Publications, refer to S1000D™ and DEF(AUST)IPS-5630 (note that business rules may need to be defined);
- d. for other publications such as user and maintenance manuals, DEF(AUST)5647B, *Technical Manuals Acquisition Guidelines Handbook*; and
- e. for engineering drawings (including both technical drawings and 3-D models), DEF(AUST)CMTD-5085C, *Engineering Design Data for Defence Materiel*.

Extant specifications may also contain mandatory process or product requirements that are not appropriate. When referencing these extant specifications, drafters should review their full implications and if they include inappropriate, excessive or irrelevant requirements, exclude those requirements with qualifying statements within the Specification.

A Specification will often need amendment during Contract negotiations, to include tendered information (eg, the tenderer's product specifications) when this will enhance the quality of the Specification and support Contract execution.

Guidance on the development of specifications can be found in the Capability Acquisition and Sustainment Group 'Engineering and Technical' web pages:

- <http://drnet/casg/engineeringtechnical/Pages/Engineering-and-Technical-home.aspx>; or
- <http://modelpedia.dpe.protected.mil.au/PublishedWebsite/LatestFinal/%7B5E812EBC-90FE-4E4C-9064-3810D9E9C084%7D/Item/25F53AFA-B56A-4AED-9A2A-571580B6607D>,

including the:

- a. CASG Policy (E&T) 12-3-001, *Requirements Engineering*; and
- b. CASG Handbook (E&T) 12-3-002, *Requirements Analysis Guide*.

**ANNEX A**

**RFT:** Drafters are to prepare the Specification to be included as Annex A to the draft SOW, to define the requirements for the Supplies and, if applicable, initial Training, as outlined above.

**Contract:** Drafters are to refine the Specification before or during contract negotiations and, in liaison with the preferred tenderer, ensure that the Specification included on the Contract is as precise as practicable, and that it is adequate to support Contract execution.

Related Clauses/Documents:

The **Description of Proposed Solution** clause of the **Technical Information to be Provided by Tenderers**, at Annex D to the COT, requires tenderers to describe their proposed solution, including recommendations for the ranges and quantities of Support Resources and initial Training.

The **Price and Delivery Schedule**, at Attachment B to the draft COC, is to include the quantities and delivery details for all items. Tenderers are to provide the additional information, including the prices and the details for individual Support Resources and Training courses to be delivered under any resultant Contract.

Optional Clauses:

**Note to drafters: When applicable to the Supplies, the following generic requirements, or equivalent requirements developed by the drafter, should be included in the Specification.**

The Supplies shall not contain ACM.

To the extent consistent with their function, the Supplies shall not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation that could be detrimental to the health and safety of persons, the environment, or the operation of other equipment.

**Note to drafters: The Joint Special Plant Licence (JSPL) allowing Defence to register high-risk plant will not be extended beyond June 2024. Defence's intent is to have registration by a State / Territory WHS regulator, or Comcare, before delivery (ie, not by Defence making a subsequent application to Comcare). Refer to WHS Regulations Part 5.3 regarding what is registerable plant. Refer to the Directorate of Health Safety and Environment for advice.**

If the Supplies include plant that requires registration of design under the WHS Legislation, the relevant item(s) of plant shall:

- a. have a registration of design from a State or Territory WHS regulator, or where this is not possible by the Commonwealth WHS regulator, in accordance with Part 5.3 of the *Work Health and Safety Regulations 2011* (Cth));
- b. have a data plate attached to them with the design registration details (or, in circumstances where it is not practicable to attach the data plate to an installed item of plant, the data plate is to be affixed in a prominent place in the vicinity of the plant), which includes:
  - (i) the Design Registration Number (DRN);
  - (ii) the date of issue of the DRN;
  - (iii) the name of the Commonwealth, State or Territory regulator that issued the DRN; and
  - (iv) if applicable, a unique plant registration number; and
- c. be accompanied by associated documentation that details all mandatory maintenance activities and inspections required to ensure that the plant is, so far as is reasonably practicable, without risks to health and safety, including those required by the WHS Legislation.



**ANNEX B TO ATTACHMENT A****CONTRACT DATA ITEMS****1. DATA ITEMS AND DATA ITEM DESCRIPTIONS**

**1.1** The following data items and data item descriptions are applicable to the Contract:

**Table B-1: Deliverable Data Items**

<b>Data Item</b>	<b>Data Item Description</b>	<b>Related Clause(s)</b>
Supplies Acceptance Certificate (SAC)	DID-PM-MGT-SAC	COC clause 5.2
Contract Status Report (CSR)	DID-PM-STAT-CSR-1	SOW clause 3.2
Quarterly CMCA stocktaking report	Not applicable	SOW clause 3.7
Australian Industry Capability Report	DID-PM-STAT-CSR-1	SOW clause 3.8
Codification Data	DID-ILS-TDATA-CDATA	SOW clause 4.3
Disposal Requirements Report	Not applicable	SOW clause 4.4
Final Inspection and Test (FI&T) Plan (FI&TP)	DID-V&V-MGT-FI&TP	SOW clause 5.1
FI&T Procedures	defined in the Approved FI&TP	SOW clause 5.1
FI&T Report	defined in the Approved FI&TP	SOW clause 5.1
Application for a Deviation (AFD)	DID-PM-MGT-AFD	SOW clause 6.2
Safety Data Sheet (SDS)	DID-PM-HSE-SDS	SOW clause 7.1

**Note to drafters: Before releasing an RFT, drafters:**

- a.** need to determine which DIDs meet their requirements for specifying data items;
- b.** need to download the latest version of the required DIDs from the ASDEFCON website (<http://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/ASDEFCON-Complex-Materiel-Vol1.aspx>);
- c.** may tailor the DIDs, but standard DIDs are to be used wherever possible (to the avoid costs to industry of non-standard data items); and
- d.** need to amend Table B-1 to reflect the data items and DIDs chosen for the draft Contract.

**DIDs should be included in this annex as 'Schedule 1 to Annex B', as either hard copies or in soft copy. If providing DIDs in soft copy, the DIDs provided should include a version of the files in a non-editable form on appropriate media and 'attached' to the Contract by labelling the media with:**

- a.** 'Schedule 1 to Annex B to the SOW';
- b.** the Contract number; and
- c.** a version control identifier.

## ANNEX C

## PROBLEMATIC SUBSTANCES AND PROBLEMATIC SOURCES IN SUPPLIES (CORE)

***Note to tenderers: Annex C will list any Approved Problematic Substances and Approved Problematic Sources detailed in the successful tenderer's response to clause 2 of Annex D to Attachment A to the conditions of tender. Additional Problematic Substances in the Supplies, not included in any high-risk Problematic Substances identified in the tender response, will be discussed with the successful tenderer for inclusion in this Annex C prior to the Effective Date.***

***Note to drafters: When developing the list of Approved Substances in this Annex C, it is useful to include a table and identify each Supply, or component within the Supplies, and sufficient information to locate the applicable SDS within the Australian ChemAlert database (eg, by including product name, product code or number, manufacturer, and supplier).***

***Prior to tender, include known Problematic Substances, which would be Approved Substances by definition, (eg, if procuring diesel power generators, 'diesel' would be Approved in advance of the RFT).***

**ANNEX D****KNOWN HAZARDS AT COMMONWEALTH PREMISES****GENERAL GUIDANCE FOR ANNEX D**

<u>Status:</u>	Optional
<u>Purpose:</u>	To advise the Contractor, when required, of hazards to health and safety that are or may be present at the Commonwealth Premises where the Contractor and/or Subcontractors may perform work in connection with the Contract.
<u>Policy:</u>	WHS Legislation Defence Safety Manual
<u>Guidance:</u>	<p>This annex is used to list hazards to health and safety which are known to be present at, or in the proximity of, Commonwealth Premises where work may be conducted under the Contract (eg, during installation and test). Hazards include Problematic Substances, Problematic Sources, ACM, and other hazards and substances, such as high voltage electricity and high noise areas.</p> <p>This annex begins with common introductory clauses (clauses 1 and 2) that outline the purpose of the annex and the Contractor's acknowledgement that hazards exist. This is followed by specific details of hazards in clause 3, which may be copied for each of the applicable Commonwealth Premises (eg, each Defence base). Where there are multiple sites and a large amount of detail for each site, drafters may find that creating an enclosure for each site is a more usable structure.</p> <p>Problematic Substances are substances that pose a hazard to health and/or are Environmental Contaminants, including Hazardous Chemicals, Dangerous Goods, Ozone Depleting Substances (ODSs) and Synthetic Greenhouse Gases (SGGs). Hazardous Chemicals and Dangerous Goods are present at many Commonwealth Premises and common examples include fuels, cleaning agents, solvents and compressed gases. ODSs and SGGs, which may also be Hazardous Chemicals, may be found within some refrigerants and fire suppressants. Drafters should refer to the Defence <i>ChemAlert</i> database on the Defence Protected Network and transfer identifying details for the applicable Problematic Substances into Table D-1.</p> <p>ACM may be located in Commonwealth-owned buildings where the Contractor and/or Subcontractors may perform work, such as installing equipment or conducting test activities. If applicable, details of ACM can be obtained from Defence Estate and Infrastructure Group and summarised in Table D-1.</p> <p>Problematic Sources may also be present at or near locations where the Contractor and/or Subcontractors will perform work. Examples include microwave radars, X-ray machines, and gaseous tritium light sources. Drafters need to identify and include applicable Problematic Sources in Table D-2.</p> <p>Other health and safety hazards, if applicable, should be added to Table D-3. These may include noise, high voltage electrical installations and any other hazard. Drafters should consult WHS representatives for the applicable Commonwealth Premises in order to identify these hazards.</p> <p>Drafters need to enter details into the applicable tables when preparing the RFT. Sufficient detail is required to enable tenderers to perform safety risk assessments, to ensure the health and safety of workers, and identify any cost implications for any resultant Contract. If necessary, details may need to be updated prior to Effective Date (once installation requirements for the preferred tender are known).</p>
<u>Related Clauses:</u>	Paragraph 2 of Annex D to Attachment A to the COT (TDR D-2) SOW clause 7, Health Safety and Environment

## ANNEX D

## KNOWN HAZARDS AT COMMONWEALTH PREMISES (OPTIONAL)

## 1. PURPOSE

- 1.1 This Annex D summarises the hazards that are known to be present at Commonwealth Premises where work may be performed under the Contract.

## 2. WHS HAZARDS

**Note to drafters: Each of the applicable Commonwealth Premises should be listed under clause 2.1. Details must then be added for each of the applicable Commonwealth Premises under clauses 3, 4, and so on (or as enclosures for each of the Commonwealth Premises).**

- 2.1 The Contractor acknowledges that this Annex D provides a list of known Problematic Substances, ACM, Problematic Sources and other hazards that are present at ('the applicable Commonwealth Premises'):

- a. [...INSERT THE NAME OF THE COMMONWEALTH PREMISES AT WHICH WORK WILL BE UNDERTAKEN...]; and
- b. [...INSERT THE NAME OF THE COMMONWEALTH PREMISES AT WHICH WORK WILL BE UNDERTAKEN...]

that are:

- c. prohibited from use;
- d. regulated as Hazardous Chemicals;
- e. regulated as Dangerous Goods;
- f. substances that could cause Environmental contamination;
- g. the subject of specific standards, working practices or procedures; or
- h. subject to special handling instructions.

- 2.2 The Contractor further acknowledges that:

- a. details in this Annex D are not intended to be comprehensive or exhaustive but provide an overview of the general location of known Problematic Substances, ACM, Problematic Sources and other hazards, where applicable;
- b. the referenced survey reports identified in the 'Comments/Survey Report' column of each table, for each of the Commonwealth Premises, should be consulted for specific details of the known hazards; and
- c. the referenced survey reports may be amended or superseded during the term of the Contract and the latest documents should be sought from the Commonwealth Representative prior to undertaking work at each location.

**Note to drafters: Drafters are to copy clause 3 and create new clauses (ie, clauses 4, 5, etc) for each additional Commonwealth Premises (eg, each base / building) where the Contractor may work (or create enclosures for each location if preferred). Drafters should insert the name of the Commonwealth Premises into the level 1 headings, as indicated below. Where sites are near-identical, such as ships, each heading and set of clauses may address multiple sites (eg, insert the name of the class of ship as the heading).**

3. KNOWN WHS HAZARDS AT [...INSERT THE NAME OF THE COMMONWEALTH PREMISES AT WHICH WORK WILL BE UNDERTAKEN...]

**Note to drafters: Table D-1 should be populated with information relevant to the Commonwealth Premises where the Contractor's staff may work in relation to Contract (eg, for installations or V&V). The entries in the draft table below are examples only and must be replaced with details**

## ANNEX D

**specific to the Contract. If there are no Problematic Substances or other hazards, the references to Table D-1, Table D-2 or Table D-3, respectively, should be deleted from the Note to tenderers.**

**Note to tenderers: Copies of the Survey Reports in Table D-1, Table D-2 and Table D-3 are available in the Technical Library for perusal by tenderers.**

- 3.1** The Contractor acknowledges that Table D-1 lists and references the survey details for known Problematic Substances and ACM, where applicable, for the Contractor's work areas at the applicable Commonwealth Premises.

**Table D-1: List of Known Problematic Substances and ACM at Commonwealth Premises**

Problematic Substance / ACM	Substance Location		Comments / Survey Report
	Facility/Area	Location	
ACM	Building number [...TBD Drafter...]	Standby generator facility – roof cladding, lining and wall cladding.	[...TBD Drafter...] Asbestos Hazard Register.
Lead	All buildings	Lead-based paint used extensively throughout buildings.	Lead Management Report, dated [...TBD Drafter...].
[...TBD Drafter...]	[...TBD Drafter...]	[...TBD Drafter...]	[...TBD Drafter...]

**Note to drafters: Include and amend the following clause and table when RADHAZ are present in the proximity of areas where Contractor and Subcontractor staff may be engaged on Commonwealth Premises. All entries in the draft table below are given as suggestions only and must be replaced with details specific to the Contract.**

- 3.2** The Contractor acknowledges that Table D-2 lists and references the survey details for known Problematic Sources for the Contractor's work areas at the applicable Commonwealth Premises.

**Table D-2: List of Problematic Sources at Commonwealth Premises**

Problematic Source	Location	Comments / Survey Report
Defence ATC Radar	As identified in RADHAZ Survey Report	[...DRAFTER TO INSERT REFERENCE...] RADHAZ Survey Report dated [...DRAFTER TO INSERT...]
Gaseous Tritium Light Sources	Electrical and Instrument Repair Workshop	Standing Orders [...DRAFTER TO INSERT REFERENCE...]
[...TBD Drafter...]	[...TBD Drafter...]	[...DRAFTER TO INSERT REFERENCE...] RADHAZ Survey Report dated [...DRAFTER TO INSERT...]

**Note to drafters: Amend the following clause for the known hazards present in the proximity of areas where Contractor staff may work on Commonwealth Premises. These may include high voltage electrical substations, high noise areas and any other hazard. If there are no other relevant safety hazards, the clause and table may be deleted.**

- 3.3** The Contractor acknowledges that Table D-3 lists other known safety hazards in the proximity of the Contractor's work areas at the applicable Commonwealth Premises.

**Table D-3: List of other Safety Hazards at Commonwealth Premises**

Hazard	Location	Comments / Survey Report
[...DRAFTER TO INSERT NAME...]	[...DRAFTER TO INSERT LOCATION...]	[...DRAFTER TO INSERT REFERENCE...] dated [...DRAFTER TO INSERT...]

**DATA ITEM DESCRIPTION**

- 1. DID NUMBER: DID-PM-STAT-CSR-1-V4.1**
- 2. TITLE: CONTRACT STATUS REPORT**
- 3. DESCRIPTION AND INTENDED USE**
  - 3.1** The Contract Status Report (CSR) is the Contractor's principal statement and explanation of the status of the Contract at the end of each reporting period, and will be one of the documents that form the historical record of contractual performance.
  - 3.2** The Contractor uses the CSR to inform the Commonwealth in regard to:
    - a. progress of the Contract and the delivery of Supplies and deliverable services;
    - b. planned activities; and
    - c. risks and issues requiring management.
  - 3.3** The Commonwealth uses the CSR:
    - a. to assist with monitoring the performance of the Contractor; and
    - b. as a record of contractual performance.
- 4. INTER-RELATIONSHIPS**
  - 4.1** The CSR inter-relates with the following data items, where these data items are required under the Contract:
    - a. Final Inspection and Test Plan, and
    - b. agenda and minutes of review meetings.
- 5. APPLICABLE DOCUMENTS**
  - 5.1** The following documents form part of the DID to the extent specified herein:  
Nil
- 6. CONTENT**
  - 6.1 Generic Format and Content**


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    - 6.1.1** The data item shall be provided in the Contractor's format and meet the requirements of clause 2.3 of the SOW.
  - 6.2 Specific Content – Part A: Current Status**


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    - 6.2.1 Progress**
      - 6.2.1.1** The CSR shall include:
        - a. a summary of significant work activities undertaken in the period from the date of the last report (or, for the first CSR, from the Effective Date) to the current report;
        - b. a summary of significant work activities expected to be undertaken in the period between the current report and the next report;
        - c. a summary of progress against meeting all Contract delivery requirements;
        - d. a projection of claims for payment envisaged during the next three months;
        - e. a report on progress of any export approvals (if required);
        - f. a list of all Contract meeting action items and their status;
        - g. a list of correspondence for which Commonwealth response is outstanding; and

- h. a list of Commonwealth correspondence to the Contractor for which a response is outstanding, and an estimate of the response date.

## **6.2.2 Risk**

**6.2.2.1** The CSR shall include descriptions of identified risks to the Contract, and the Contractor's proposed strategy for mitigation of those risks.

**6.2.2.2** The CSR shall highlight progress of risk mitigation activities for the identified risks, and any changes in risk status over the reporting period for the identified risks and for the risks identified in the previous CSR.

## **6.2.3 Issues**

**6.2.3.1** The CSR shall describe any significant issues experienced during the reporting period and any potential issues. For each issue, the description is to include:

- a. an account of the issue;
- b. the effect of the issue on the Contract to date;
- c. the action taken or proposed to resolve the issue;
- d. any requested Commonwealth Representative actions to overcome or mitigate the issue;
- e. the effect on the Contract if the proposed actions are put into effect; and
- f. the effect on the Contract if the proposed actions are not taken or fail.

## **6.2.4 Quality Assurance**

**6.2.4.1** If a Contractor Quality Management System (QMS) that is Certified by a third party is a requirement of the Contract, then the CSR shall include a report on Contractor Quality Assurance, which shall address:

- a. any change to the Certification status of the QMS, and any external audit results;
- b. any internal audit non-conformances;
- c. changes to quality management staff;
- d. any significant changes to quality management procedures that may affect the Supplies; and
- e. any other quality-related subject on an exception basis nominated by the Commonwealth Representative.

## **6.2.5 Technical Data and Software Rights**

**6.2.5.1** The CSR shall include a report on the progress made to ensure that the Technical Data and Software rights required by the Commonwealth under the Contract are provided, including a summary of the progress made towards meeting the Intellectual Property (IP) requirements (eg, obtaining IP licences), and on proposed remedies to any difficulties in meeting these requirements.

## **6.3 Specific Content – Part B: Australian Industry Capability Report**

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**Note:** *The SOW may specify that the AIC Report portion of the CSR be delivered less frequently than the other requirements in the CSR.*

**6.3.1** If the Contract requires an AIC Schedule, the CSR shall include an AIC Report including the following information regarding work performed under the Contract:

- a. a summary of the deliveries and activities for the reporting period that confirm the on-going implementation of, and identifies any exceptions to, the AIC Schedule;
- b. a summary of the achievement of Australian Contract Expenditure (ACE), including (in dollar amounts for values of ACE):
  - (i) the value of ACE achieved against each AIC activity specified in the AIC Schedule, and the total value of ACE achieved, during the reporting period;

- (ii) a breakdown, by postcode, of the ACE achieved during the reporting period;
  - (iii) the cumulative value of ACE achieved during all reporting periods to date;
  - (iv) the forecast value of ACE until the completion of the Contract; and
  - (v) how the cumulative value of ACE represents progress in achieving the Total ACE Value;
- c. an explanation of any over- or under-performance in achieving the AIC Schedule;
- d. if applicable, a description of what actions will be or are being taken to address any under-performance; and
- e. a summary of any expected changes (including contract change proposals) that are expected to materially affect the AIC program.



**DATA ITEM DESCRIPTION**

- 1. DID NUMBER: DID-V&V-MGT-FI&TP-V4.1**
- 2. TITLE: FINAL INSPECTION & TEST PLAN**
- 3. DESCRIPTION AND INTENDED USE**
  - 3.1** The Final Inspection and Test (FI&T) Plan (FI&TP) describes the Contractor's plans and procedures for FI&T activities, for the Supplies offered for Acceptance.
  - 3.2** The Contractor uses the FI&TP to document and gain Approval for the arrangements to be used to Verify that the Supplies satisfy the requirements of the Contract, including the Specifications at Annex A to the SOW.
  - 3.3** The Commonwealth uses the FI&TP to:
    - a. gain assurance that the FI&T activities will be sufficient to confirm the quality of the Supplies offered for Acceptance; and
    - b. plan and prepare for Commonwealth involvement in FI&T activities.
- 4. INTER-RELATIONSHIPS**
  - 4.1** The FI&TP inter-relates with the following data items, where these data items are required under the Contract:
    - a. Supplies Acceptance Certificates;
    - b. Application for a Deviation;
    - c. Final Inspection and Test Reports (FI&TRs);
    - d. Contract Status Reports; and
    - e. agenda and minutes of review meetings.
- 5. APPLICABLE DOCUMENTS**
  - 5.1** The following documents form part of the DID to the extent specified herein:  
Nil
- 6. CONTENT**
  - 6.1 Generic Format and Content**
  - 6.1.1** The data item shall be provided in the Contractor's format and meet the requirements of clause 2.3 of the SOW.
  - 6.2 Specific Content**
    - 6.2.1 General**
      - 6.2.1.1** The FI&TP shall describe the FI&T activities to be conducted on all Supplies to be offered for Acceptance, in order to demonstrate the quality of the Supplies and that all specified requirements have been met.
      - 6.2.1.2** The FI&TP should draw comprehensively on the Specification, and shall outline all inspections and test activities to be included in the FI&T of the Supplies.
      - 6.2.1.3** Where the Contractor proposes to claim previous Verification activities (eg, including certification by third parties) as precluding the requirement for further specific FI&T activities, the FI&TP shall describe the scope and context of such Verification activities, including the rationale to justify why they preclude the need for further FI&T activities.
      - 6.2.1.4** The FI&TP shall detail requirements for the provision of resources by the Commonwealth, if any, to enable the FI&T activities.

**6.2.1.5** The FI&TP shall detail arrangements for Commonwealth involvement in, or witnessing of, FI&T activities.

**6.2.2 FI&T Procedures**

**6.2.2.1** The FI&TP shall summarise (eg, in a table) the FI&T Procedures (FI&TProcs) to be applied to each item of Supplies during FI&T activities, including:

- a. information to uniquely identify the item to be inspected and / or tested;
- b. a description (eg, type) of the test procedures to be applied, and the success / failure criteria to be used; and
- c. a description of inspections to be conducted, and the success/failure criteria to be used.

**6.2.2.2** The FI&TP shall include the Contractor's rationale, explaining why the FI&T activities proposed are adequate for the Commonwealth to determine the quality of the Supplies and their satisfaction of Contract requirements.

**Note:** *In accordance with the SOW, FI&TProcs may be finalised prior to the conduct of FI&T activities in an update to the FI&TP.*

**6.2.2.3** The FI&TP shall include (eg, in one or more annexes) the FI&TProcs.

**6.2.2.4** The FI&TProcs shall include, as applicable to each item of the Supplies:

- a. the scope of tests and inspections to be conducted, identifying the method to be applied, a general description of the test and inspection activity, and the success / failure criteria to be used;
- b. the system / item configuration and initial conditions for test including any preparatory requirements or other pre-test activities;
- c. the test equipment, documentation, venue and personnel required to conduct the test / inspection;
- d. the step-by-step procedures for the performance of the test or inspection in sufficient detail to identify every action necessary for the conduct of the test or inspection; and
- e. where items are to be installed in designated Commonwealth facilities, procedures for reviewing the installation and the connection of any services to the Supplies, to confirm that:
  - (i) the work has been completed in accordance with the Contract;
  - (ii) all safety-related requirements of the Contract and the WHS Legislation, including the conduct of risk assessments and the provision of safety-related information, have been met; and
  - (iii) the Supplies and facilities are ready for hand-over to the Commonwealth.

**6.2.3 FI&T Reports**

**6.2.3.1** The FI&TP shall describe the format and content requirements for the FI&T Reports (FI&TRs) to be provided to the Commonwealth in accordance with the SOW.

**DATA ITEM DESCRIPTION**

**1. DID NUMBER: DID-ILS-TDATA-CDATA-V5.3**

**2. TITLE: CODIFICATION DATA**

**3. DESCRIPTION AND INTENDED USE**

**3.1** As a sponsored nation in the NATO Codification System (NCS), Australia is required to adhere to the policies and principles as published in the NATO Manual of Codification (ACodP-1). Codification of a Stock Item (refer clause 3.4) involves assessing the essential characteristics of an item in order to discern its unique character and to differentiate it from any other item. NATO Standardisation Agreement (STANAG) 4177 details a standard process for the acquisition of data in support of Codification. This DID details the format, content and preparation instructions for the supply of Codification Data (CDATA), which will be used by the Commonwealth for Codification purposes.

**3.2** The Contractor uses this data item to provide CDATA to the Commonwealth.

**3.3** The Commonwealth uses this data item to enable it to undertake Codification in order to meet its statutory requirements for asset management and financial reporting obligations pursuant to the *Public Governance, Performance and Accountability Act 2014* (PGPA).

**3.4** In this DID, the term Stock Item:

- a. if this DID is being used under an acquisition contract, means an item of Supplies (that is not data or Software, unless specifically required to be codified, or services); and
- b. if this DID is being used under a support contract, has the same meaning as provided in the Glossary.

**4. INTER-RELATIONSHIPS**

**4.1** The CDATA is subordinate to the following data items, where these data items are required under the Contract:

- a. Integrated Support Plan (ISP);
- b. Support Services Management Plan (SSMP);
- c. Supply Support Development Plan (SSDP);
- d. Supply Support Plan (SSP);
- e. Technical Data Plan (TDP) or Technical Data Management Plan (TDMP) (as applicable); and
- f. Support System Technical Data List (SSTD L) or Technical Data List (TDL) (as applicable).

**5. APPLICABLE DOCUMENTS**

**5.1** The following document forms a part of this DID to the extent specified herein:

STANAG 4177 *Codification of Items of Supply – Uniform System of Data Acquisition*

**6. PREPARATION INSTRUCTIONS**

**6.1 Generic Format and Content**

---

**Note:** *The reference to the SOW clause for 'Deliverable Data Items' in the following clause is applicable for those Contracts that do not include a Contract Data Requirements List (CDRL).*

**6.1.1** The data item shall comply with the general format, content and preparation instructions contained in the SOW clause for 'Deliverable Data Items' and the CDRL clause entitled 'General Requirements for Data Items'.

## 6.2 Specific Content

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### 6.2.1 Data for Each Item Not Codified in the NATO Codification System

**6.2.1.1** For each proposed Stock Item, which is not codified in the NATO Codification System, the CDATA shall detail the following information:

- a. name and full address of the true manufacturer of the item – a manufacturer is deemed to be that organisation that controls the design specification of the item;
- b. the NATO Commercial and Government Entity Code (NCAGE Code<sup>1</sup>) of the true manufacturer (where this is known);
- c. the reference / part Number assigned to the item by the true manufacturer to uniquely identify the item;
- d. name and full address of the supplier of the item;
- e. the NCAGE Code of the supplier (where this is known);
- f. the supplier's reference / part number for the item;
- g. the name of the item as it appears in the manufacturer's or supplier's documentation;
- h. a proposed NATO group class (if appropriate or known);
- i. a proposed item name (using NCS approved nomenclature if appropriate);
- j. the reference / part number, manufacturer and name of the next higher assembly;
- k. manufacturer's documents that provide a comprehensive description of the item (ie, the design / procurement specification, product or technical data sheet) and that define the characteristics or features required for form, fit and function (noting that, as appropriate, this information includes performance, dimensional, physical, electrical, mechanical, material, finishing and construction characteristics; and, as applicable, this sub-clause might require the provision of design drawings, manuals, tender specifications, design specifications, Safety Data Sheets, and other information);
- l. volumetric information, complementary to the dimensional data required by clause 6.2.1.1k, for:
  - (i) unpackaged Stock Items (including length, width, depth, net weight and units of measure);
  - (ii) packaged Stock Items (including the quantity of units per pack, the gross length, width, depth, cube and weight per unit pack, units of measure, and unit packs per intermediate container); and
  - (iii) if applicable, palletisation (including quantity of intermediate containers per pallet layer, number of layers per pallet, pallet width, depth, height and gross weight); and
- m. a statement as to whether the particular part identified at clause 6.2.1.1c and 6.2.1.1d above is fully item identifying (noting that a part number is fully item identifying where, without any further definition, any item of production bearing that part number has the characteristics defined at clause 6.2.1.1k above).

### 6.2.2 Data for Each Item Already Codified in the NATO Codification System

**6.2.2.1** For each Stock Item, which is already codified in the NATO Codification System, the CDATA shall list the following information:

- a. NATO Stock Number (NSN);
- b. item name;
- c. true manufacturer's name, NCAGE Code and item reference / part number; and
- d. supplier's name, NCAGE Code and item reference / part number.

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<sup>1</sup> Note that the abbreviation NCAGE may appear CAGE in other parts of the Contract that directly refer to related US standards.

**6.2.3 Changes to Provided Information**

- 6.2.3.1** On occasions, it might become necessary to advise changes to previously provided information. For example, it might be subsequently found that the information supplied originally is incorrect or incomplete, the manufacturer/supplier has advised changes or that additional manufacturer's references are found to be applicable. In these cases, an amendment to the CDATA shall be provided to the Commonwealth (as required by the CDRL), which details the changed information, appropriately cross-referenced to the NSN (if known), the true manufacturer's name, NCAGE Code and reference / part number originally advised.

## DATA ITEM DESCRIPTION

1. **DID NUMBER:** DID-PM-HSE-SDS-V5.3

2. **TITLE:** SAFETY DATA SHEET

3. **DESCRIPTION AND INTENDED USE**

3.1 A Safety Data Sheet (SDS) provides information on the properties of Hazardous Chemicals, how they affect health and safety, and how to manage the Hazardous Chemical in the workplace. For Hazardous Chemicals, SDSs shall follow the code of practice approved under section 274 of the *Work Health and Safety Act 2011* (Cth) titled *Preparation of Safety Data Sheets for Hazardous Chemicals* (hereafter referred to as 'approved SDS code of practice'). In addition, SDSs are used by Defence to document the properties of Ozone Depleting Substances (ODSs), Synthetic Greenhouse Gases (SGGs) and Dangerous Goods that are not also classified as Hazardous Chemicals.

4. **INTER-RELATIONSHIPS**

4.1 The SDS inter-relates with the following data items, or annex to the Statement of Work (SOW), where these data items or annexes are required under the Contract:

- a. the Health and Safety Management Plan, Project Management Plan or Support Services Management Plan, as applicable to the Contract for the purposes of recording Approved Substances; and
- b. problematic substances and problematic sources in supplies (SOW annex);
- c. Hazard Analysis Reports and Hazard Log; and
- d. Safety Case Report or Materiel Safety Assessment, as applicable.

5. **APPLICABLE DOCUMENTS**

5.1 The following document forms a part of this DID to the extent specified herein:

approved SDS code of practice	code of practice approved under section 274 of the Work Health and Safety Act 2011 (Cth) titled Preparation of Safety Data Sheets for Hazardous Chemicals.
GHS as defined in subregulation 5(1) of the <i>Work Health and Safety Regulations 2011</i> (Cth)	<i>Globally Harmonised System of Classification and Labelling of Chemicals</i> , Seventh revised edition, published by the United Nations as modified under Schedule 6 of the Work Health and Safety Regulations 2011 (Cth).

6. **PREPARATION INSTRUCTIONS**

6.1 **Generic Format and Content**

6.1.1 The data item shall comply with the general format, content and preparation instructions provided in the approved SDS code of practice.

**Note:** *The approved SDS code of practice acknowledges that certain international SDS formats provide an equivalent standard of information to that required by the approved SDS code of practice. The intention is to permit some flexibility in the format of a SDS, while ensuring that the information contained in the SDS meets the requirements of the approved SDS code of practice.*

6.1.2 Non-generic information may be submitted in the Contractor's preferred format.

6.2 **Specific Content**

6.2.1 The content of the SDS for Hazardous Chemicals shall follow the requirements of the approved SDS code of practice, which is available from the following internet address:

<http://safeworkaustralia.gov.au/>

- 6.2.2** Where the Contract requires an SDS for an ODS, SGG or Dangerous Good, which is not also a Hazardous Chemical, and therefore not required under the *code of practice*, the SDS shall include information that relates to the applicable regulatory requirements for those SDS sections that remain valid.

***Note: If an SDS exists within the Australian ChemAlert database, then the requirements of this DID may be met if the applicable SDS is identified to the Commonwealth Representative by its unique record within that database.***

**DATA ITEM DESCRIPTION**

1. **DID NUMBER: DID-PM-MGT-AFD-V5.3**
2. **TITLE: APPLICATION FOR A DEVIATION**
3. **DESCRIPTION AND INTENDED USE**
  - 3.1 The Application for a Deviation (AFD) is required to document the request and evaluation of a deviation from, or the non-conformance with, an approved design or controlled process.
  - 3.2 The Contractor uses the AFD to inform the Commonwealth of a proposed deviation or non-conformance.
  - 3.3 The Commonwealth uses the AFD as the basis for review and evaluation of the application for a deviation or non-conformance made by the Contractor.
4. **INTER-RELATIONSHIPS**
  - 4.1 The AFD is subordinate to the following data items, where these data items are required under the Contract:  
Nil.
5. **APPLICABLE DOCUMENTS**
  - 5.1 The following documents form a part of this DID to the extent specified herein:  
Departmental Quality Assurance Instruction 014, *Applying for a Deviation*
6. **PREPARATION INSTRUCTIONS**
  - 6.1 **Generic Format and Content**


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    - 6.1.1 The data item shall comply with the general format, content and preparation instructions required by the form at Annex A to this DID (or equivalent electronic form) and, as applicable, the SOW clause for 'Deliverable Data Items' or the CDRL clause entitled 'General Requirements for Data Items'.
  - 6.2 **Specific Content**


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    - 6.2.1 **General Requirements**
      - 6.2.1.1 An AFD is required to be submitted for all applications for a deviation or waiver from, or non-conformance with, an approved configuration management baseline or variation from an approved process.
    - 6.2.2 **Specific Requirements**
      - 6.2.2.1 All AFDs shall be prepared and requested through the submission of a Department of Defence form, as per the example included at Annex A.
      - 6.2.2.2 The AFD form submitted by the Contractor shall, as a minimum, include applicable header information and the completion of all mandatory fields in Part 1 of the form.

**Note: If the Contractor has access to the Defence Protected Network, the Contractor should use the electronic form SG002 available from the 'e-Forms' application (as updated from time to time). Alternatively, the embedded PDF version may be used instead of the form at Annex A.**

**Note: For Configuration Management purposes, one AFD may result in one or more 'requests for variance'.**



SG002.pdf



Annex:

A. Application for a Deviation

# OFFICIAL

SG  
Revised Nov 2020

002

## Department of Defence

### Application for a Deviation

#### Distribution

Original – Applicant's copy  
Copy 2 – QAR  
Copy 3 – Contracting Authority  
Copy 4 – Ordering Authority  
Copy 5 – DAA  
Copy 6 – User authority

Applicant's reference no.

#### Applicant requests decision by

QAR authority reference no.

Date

(Negotiated with the contract authority)

**Note:** Policy and procedure for this process are issued as a Department Quality Assurance Instruction

1. Under no circumstances shall the applicant incorporate the deviation until approval from the appropriate contract authority has been received.
2. Approval of this deviation does not represent an authority to change the design nor to extend the non-conformance, of any other item in the contract.
3. The applicant must be a responsible officer of the supplier's, contractor's or subcontractor's organisation acceptable to the contract authority.

### Part 1 – To be completed by applicant (Applicant includes, but is not limited to supplier, contractor and in-service provider)

\*Denotes mandatory fields

*a. Name and address of applicant		*b. Contract or order no.
*c. Main item or assembly	d. Component	
*e. Relevant documentation (include issue no. and date)	f. Specification no.	g. Part identification no.
h. Batch lot or reference	*i. Period or quantity involved	
*j. Description of deviation (including supporting data – attach additional sheets if necessary). Refer to note 1.		

\*k. Effect of deviation

Enter 'S' = Satisfactory, 'A' = Adversely affected, 'N' = Not known  
If 'A' or 'N' is used, supporting documentation is to be attached.

<input type="checkbox"/> Interchangeability	<input type="checkbox"/> Function	Price variation <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> If 'Yes', Increase <input type="checkbox"/> Decrease If 'Yes', supporting information is to be attached.	Delivery variation <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> If 'Yes', Longer <input type="checkbox"/> Shorter If 'Yes', supporting information is to be attached.
<input type="checkbox"/> Strength	<input type="checkbox"/> Safety		
<input type="checkbox"/> Quality control	<input type="checkbox"/> Life		
<input type="checkbox"/> Maintainability	<input type="checkbox"/> Weight		
<input type="checkbox"/> Reliability	<input type="checkbox"/> Performance		
<input type="checkbox"/> Environmental compliance	Are there other critical factors affected which are not listed? <input type="checkbox"/> Yes <input type="checkbox"/> No Is 'Yes', attach details		

\*l. Is permanent design change proposed?

☐ Yes ☐ No If 'No', box n. is to be completed and box o. is to be completed where applicable.

\*m. Applicant's design department (if applicable, attach agreed conditions)

Signature – (Design department)	Printed name	Appointment	Phone number	Date
n. Proposed corrective action for deviation application ( <i>Attach additional sheets where necessary</i> )				
o. Proposed action to prevent recurrence ( <i>Attach additional sheets where necessary</i> )				

\*p. Agreed by applicant (All details are correct, and design department signatory is authorised)

Signature – Application	Printed name	Appointment	Phone number	Date
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- When Part 1 is complete, forward both pages of the form and all attachments to Defence Quality Assurance Representative.

OFFICIAL

Applicant's reference no.

QAR authority reference no.

**Part 2 – To be completed by the Defence Quality Assurance Representative**

a. General comments (including, based on objective evidence, that effects identified in Part 1 k. are verified)

b. Application referred to

c. 'For information' copy provided to CA

User authority (in-service applications) ☐ and/or ☐ Design acceptance authority

☐ Contract authority

d. QAR (Sections a. and b. above have been completed where applicable and details supplied in Part 1 are assessed as being complete and accurate)

Signature

Printed name

Appointment

Phone number

Date

**Part 3 – To be completed by the User Authority (Where applicable to in-service requirements)**

a. Application is

☐ Endorsed

Is restriction attached?

☐ Yes

(Attach response)

☐ No

☐ Not endorsed  
(Attach reasons)

b. User representative

Signature

Printed name

Appointment

Phone number

Date

**Part 4 – To be completed by the Design Acceptance Authority or delegate**

a. Category

Category guidelines

**Critical**

Mission critical and/or threat to life

**Major**

Significant issues that do not affect the mission or pose no threat to life.

**Minor**

Lesser issues affecting configuration.

b. Need for permanent design change is agreed

c. If 'No', return to agreed specification by

☐ Yes

☐ No

Date

d. Engineering Change Number (ECN) and Comments

e. Technical endorsement

☐ Endorsed

☐ Not endorsed

Signature

Printed name

Appointment

Phone number

Date

**Part 5 – Approval — To be completed by the Contract Authority or representative**

Contract authority or representative

(Cost and schedule implications have been accessed)

(CCP and/or ECP action has been initiated)

Application is: ☐ Approved ☐ Not Approved (Attach reasons)

☐ CCP

☐ ECP

☐ N/A

Signature

Printed name

Appointment

Phone number

Date

**Part 6 – To be completed by the Defence Quality Assurance Representative**

Application close out (The details on this form have been recorded and copies dispatched as per distribution list)

Signature

Printed name

Appointment

Phone number

Date

**DATA ITEM DESCRIPTION**

**1. DID NUMBER: DID-PM-MGT-SAC-V5.3**

**2. TITLE: SUPPLIES ACCEPTANCE CERTIFICATE**

**3. DESCRIPTION AND INTENDED USE**

**3.1** The Supplies Acceptance Certificate (SAC) provides for formal Acceptance of deliverables without prejudice to any remedies that the Commonwealth may have under the Contract when the deliverables do not conform to the requirements, or do not comply with the terms of the Contract.

**3.2** The Contractor uses the SAC to detail the type and quantities of products being delivered to the Commonwealth for Acceptance.

**3.3** The Commonwealth uses the SAC for formally acknowledging and recording the Acceptance of products from the Contractor.

**4. INTER-RELATIONSHIPS**

**4.1** The SAC is subordinate to the following data items, where these data items are required under the Contract:

Nil

**5. APPLICABLE DOCUMENTS**

**5.1** The following documents form a part of this DID to the extent specified herein:

Nil

**6. PREPARATION INSTRUCTIONS**

**6.1 Generic Format and Content**

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**6.1.1** The data item shall comply with the general format, content and preparation instructions required by the form at Annex A to this DID (or equivalent electronic form) and, as applicable, the SOW clause for 'Deliverable Data Items' or the CDRL clause entitled 'General Requirements for Data Items'.

**6.2 Specific Content**

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**6.2.1 General Requirements**

**6.2.1.1** A SAC is required to be submitted with all products submitted to the Commonwealth for Acceptance in accordance with the Contract.

**6.2.2 Specific Requirements**

**6.2.2.1** Except as otherwise specified in the Contract, all SACs shall be prepared using a Department of Defence form, as per the example included at Annex A.

**6.2.2.2** The SAC form submitted by the Contractor shall include sections 'a' to 'k' completed as applicable, and section 'l', 'Contractor's Certification', signed by an authorised signatory of the Contractor, prior to offering the supplies to the Commonwealth.

**Note: If the Contractor has access to the Defence Protected Network, the Contractor should use the electronic form SG 001 available from the 'e-Forms' application (as updated from time to time). Alternatively, the embedded PDF version may be used instead of the form at Annex A.**



SG001 SAC May  
2020

Annex:

A. Supplies Acceptance Certificate

[illegible]

## Supplies Acceptance Certificate

## Explanation

The boxes and columns on the Supplies Acceptance Certificate form are to be completed as follows:

Box a	<b>Contractor's Reference Number.</b> Supplier's number to record an internal file / job number.	Box e	<b>Receipt voucher number.</b> For use by the receiving officer at the point of receipt.
Box b	<b>CAPO or purchase order number.</b> Relevant Contract / purchase order number.	Box f	<b>From.</b> The full name, address, and Australian Company Number (ACN) of the supplier, as shown in the Contract.
Box c	<b>Project or ordering authority.</b> The Defence authority that placed the order, also referred to as the procurement authority.	Boxes g to j	<b>Packaging details.</b> Enter relevant information.
Box d	<b>Invoice number.</b> The invoice number as supplied by the supplier, when applicable.	Box k	<b>To.</b> The address to which the supplies are to be delivered, as shown in the Contract.
Column 1	<b>CAPO/Order Item No.</b> The item number as listed in the contract.	<p>Classes of Supply based on the NATO conventions (from Land Warfare Doctrine 4-1, Supply Support):</p> <p>Class 1 <b>Subsistence Items.</b> Foodstuffs, combat rations and packaged water.</p> <p>Class 2 <b>General Stores.</b> Clothing, tents, tarpaulins, minor equipment, stationery, administrative and housekeeping items.</p> <p>Class 3 <b>Petrol, Oils and Lubricants.</b></p> <p>Class 4 <b>Construction Items.</b> Construction materials, engineer stores and defence stores.</p> <p>Class 5 <b>Ammunition.</b> All types of ammunition and explosive ordnance.</p> <p>Class 6 <b>Personal Demand Items.</b> Personal items and canteen stores.</p> <p>Class 7 <b>Principal Items.</b> Major items of equipment such as vehicles and weapons, major assemblies and included accessories. Items usually have a serial number.</p> <p>Class 8 <b>Medical and Dental Stores.</b> Pharmaceutical items, medical and dental equipment, and repair parts.</p> <p>Class 9 <b>Repair Parts.</b> Repair parts for maintenance support.</p> <p>Class 10 <b>Material Support to Non-military Programs.</b> Item to support non-government program such as a UN mission or for economic development. Items should be segregated where possible.</p>	
Column 2	<b>Class.</b> The first four numbers of the NSN, or the Class number from the 'Classes of Supply' group for the item (see box at right).		
Column 3	<b>Identity, part, catalogue or other reference number.</b> The remaining nine numbers of the NSN, and/or relevant manufacturer code and item information to identify the item ordered.		
Column 4	<b>Description of Supplies.</b> A description of the item(s) as shown in the Contract. Reference is to be made to relevant details (ie, batch or lot numbers, serial numbers, and approved Application(s) for a Deviation (including variances, if applicable)).		
Column 5	<b>Qty ordered.</b> The total number of items ordered under this contract item number.		
Column 6	<b>Previously accepted.</b> The total number of items ordered under this contract item number, and identified in column 3, which have been Accepted prior to the raising of this SAC.		
Column 7	<b>Offered today.</b> The number of items ordered under this contract item number, and identified in column 3, which are being submitted by the Contractor for Acceptance vide this SAC.		
Column 8	<b>Accepted Today.</b> The number of items ordered under this contract item number, and identified in column 3, for which the accepting authority is satisfied, meet the requirements of the Contract and has agreed to Accept on this SAC.		
Column 9	<b>Total to date.</b> The number of items ordered under this contract item number, and identified in column 3, which have previously been Accepted including the number Accepted vide this SAC.		
Column 10	<b>Balance due.</b> The number of Items ordered under this contract item number, and identified in column 3, which are still outstanding.		
Box l	<b>Contractor's certification.</b> The supplier's authorised representative is required to complete this box, signifying that the Supplies meet the requirements of the Contract in all respects, with the exception of any listed approved production permits and/or concessions.	Box n	<b>Commonwealth's Reference or file number.</b> Reference to an official file or other document that can at a later date provide traceability of events.
Box m	<b>Commonwealth's Acceptance.</b> By signing this box the Accepting Authority provides legal Acceptance of the Supplies on behalf of the Commonwealth.	Box o	<b>Is this CAPO/Order complete?</b> Enter whether the contract is complete when the deliveries of Supplies listed on this SAC have been made.
		Box p	<b>Recommended Distribution.</b> Distribution of the completed SAC by the accepting authority, as required by the procurement authority.

Boxes and columns are not to be left blank on any line of entry on the form. Where it is not necessary to enter information N/A (Not Applicable) is to be inserted.



# 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)

<b>Commonwealth Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

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

<b>Contractor Representative:</b>	(INSERT DETAILS)	
<b>Notice Details:</b>	Address:	(INSERT ADDRESS)
	Email:	(INSERT EMAIL ADDRESS)

#### INFORMATION TABLE

Item	Information	
<b>Item 1</b> (clause 1.3)	<b>Effective Date:</b> (Core)	(INSERT DATE)
<b>Item 2</b> (clause 3.5)	<b>Base Date:</b> (Core)	[INSERT DATE] <b>Note to drafters: Base Date should be the date one month prior to the date on which tenders close.</b>
<b>Item 3</b> (clause 7.4)	<b>Exchange Rate:</b> (Optional)	The spot selling rate of [INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES] relative to the Australian Dollar used by [INSERT THE RELEVANT FINANCIAL INSTITUTION].
<b>Item 4</b> (clause 8.1.1)	<b>Defect Notification Period:</b> (Core)	From the Effective Date until [INSERT PERIOD] after expiry or earlier termination of the Contract.
<b>Item 5</b> (clause 8.2.1)	<b>Defect Rectification Period:</b> (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.
<b>Item 6</b>	<b>Approved Contractor</b>	<input type="checkbox"/> Yes / <input type="checkbox"/> No



Item	Information		
(clause 9.1)	<b>Insurance Program Status:</b> (Core)		
<b>Note to drafters: Delete insurance policies if they do not apply</b>	<b>Limits of indemnity required insurances:</b> (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
<b>Item 7</b> (clause 10.6)	<b>[Option A] Limitation Amount:</b> (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
	<b>[Option B] Overall Limitation Amount:</b> (Optional)	Loss of any kind: (clause 10.6.3)	[\$[INSERT AMOUNT]] million
<b>Item 8</b> (clause 11.8)	<b>Defence Security:</b> (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
		<b>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.</b>	

Item	Information
	<div> <div>DISP Governance Level:</div> <div><b>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.</b></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>
<b>Item 9</b> (clause 12.1)	<div><b>Governing Law:</b></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](mailto:aic.delivery@defence.gov.au); and**

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

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- 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)**

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- 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)**

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- 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:
- a. the Contractor has full power and authority to transfer full legal and beneficial ownership in those Supplies to the Commonwealth; and
  - b. 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:
- a. Approve the claim if it is submitted in accordance with clause 7.2.1; or
  - b. 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](mailto: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](mailto: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)**

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- 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)**

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- 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)**

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- 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:
- a. are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
  - b. exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

## **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:
- a. an election to exercise those rights instead of other rights; or
  - b. 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:
- a. the disclosure is permitted under clause 11.3.2;
  - b. 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;
  - c. 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
  - d. 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)**

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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)**

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- 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)**

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- 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:
- a. 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;
  - b. the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to the Contract to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and
  - c. the Commonwealth 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:
- a. 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;
  - b. performing Audit and Surveillance activities in relation to Quality in accordance with clause 6 of the SOW;
  - c. validating the Contractor's progress in complying with the AIC Schedule;
  - d. investigating the reasonableness of proposed prices or costs in any CCP submitted in accordance with clause 11.1;
  - e. validating the Contractor's compliance with clause 5 and the TDSR Schedule;
  - f. monitoring the Contractor's WHS and environmental compliance in connection with the provision of the Supplies;
  - g. assessing the financial viability of the Contractor to perform and complete the Contract; and
  - h. 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)**

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- 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)**

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- 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"> <li>(i) on behalf of the partnership; and</li> <li>(ii) in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract;</li> </ul>
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](mailto: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](mailto: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](mailto:procurement.policy@defence.gov.au).

**Or the Commonwealth Sustainable Procurement Advocacy and Resource Centre at:**

[sustainable.procurement@dcceew.gov.au](mailto: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](mailto: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](mailto:procurement.policy@defence.gov.au).

**Or DEWR at:**

- [ASG@dewr.gov.au](mailto: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)**

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- 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)**

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- 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)**