



CONTRACT NO: (INSERT NUMBER)

DETAILS SCHEDULE

PARTIES

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

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

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

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

INFORMATION TABLE

Item	Information		
Item 1	Services:	[INSERT OR ANNEX DESCRIPTION OF SERVICES INCLUDING ANY DELIVERABLES. IF AN ANNEX IS USED, INCLUDE THE FOLLOWING HERE: "REFER TO ANNEX".]	
Item 2 (clause 1.1)	Term:	Effective Date:	(INSERT DATE OF EXECUTION OF CONTRACT)
		Commencement Date:	(INSERT DATE SERVICES ARE TO COMMENCE)
		Expiry Date:	(INSERT DATE IF APPLICABLE)
Item 3 (clause 4.1a)	Service Requirements:	[INSERT SERVICE REQUIREMENTS]	
Item 4 (clause 4.1a)	Location of Services:	[INSERT LOCATION OF SERVICES]	

OFFICIAL

ASDEFCON (Shortform Services)

Item 5 (clause 4.1a)	Timing for Delivery of Services:	[INSERT TIMING FOR DELIVERY OF SERVICES]	
Item 6 (clause 4.1b)	Personnel to be used in the Provision of the Services:	(INSERT PERSONNEL TO BE USED IN THE PROVISION OF THE SERVICES IF APPLICABLE)	
Item 7 (clause 8.1)	Contract Price:	(INSERT AMOUNT AND MANNER OF PAYMENT, INCLUDING INSTALMENTS OR MILESTONES)	
Item 8 (clause 12.1)	Out of Pocket Expenses:	(INSERT REIMBURSIBLE OUT OF POCKET EXPENSES IF APPLICABLE)	
Item 9 (clause 19.1)	Contractor Insurance Requirements: Note to drafters: Insert other insurance policies as applicable.	Public liability insurance	<input type="checkbox"/> Yes / <input type="checkbox"/> No [INSERT AMOUNT] each and every public liability occurrence.
		Products liability insurance	<input type="checkbox"/> Yes / <input type="checkbox"/> No [INSERT AMOUNT] each and every product liability occurrence and in the annual aggregate for all product liability occurrences.
		Professional indemnity insurance	Yes / <input type="checkbox"/> No [INSERT AMOUNT] each claim and in the annual aggregate for all claims. Such insurance shall be maintained for 7 years following the date on which the Contract expires (or any earlier termination).
Item 10 (clause 35.1)	Governing Law:	[INSERT JURISDICTION GOVERNING THE CONTRACT]	
Item 11	Special Conditions	<input type="checkbox"/> Yes / <input type="checkbox"/> No	

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1. TERM (CORE)

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

2. SERVICES (CORE)

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

3. CONTRACT DOCUMENTS (CORE)

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

4. PROVISION OF SERVICES (CORE)

- 4.1 The Contractor shall provide the Services to the Commonwealth:
- a. for the period, at the times and locations (as applicable), and in accordance with any requirements for the provision of the Services as specified in the Details Schedule;
 - b. using the personnel identified in the Details Schedule (if any) or otherwise using appropriately qualified, skilled and experienced personnel;
 - c. ensure that the Services are provided to a standard of quality not less than industry best practice for services of the same type as those Services and, without limiting clause 4.1a, in a timely manner;
 - d. to the satisfaction of the Commonwealth Representative; and
 - e. in accordance with any other requirements specified in the Contract.
- 4.2 The Contractor shall promptly notify the Commonwealth if the Contractor or any of its officers, employees, agents or subcontractors becomes aware that the Contractor will be unable to provide all or part of the Services in accordance with the requirements of this clause 4.

5. REPLACEMENT SERVICES (CORE)

- 5.1 If the Contractor fails to provide the Services in accordance with the Contract, the Contractor shall, at its cost, provide replacement Services or take any other action to rectify any aspect of the Services which do not comply with the Contract, as directed by the Commonwealth.

6. NATURE OF ENGAGEMENT (CORE)

- 6.1 The Commonwealth engages the Contractor to provide the Services as an independent contractor and not as the Commonwealth's agent or employee. The Contractor has no authority to bind the Commonwealth or act on the Commonwealth's behalf at any time. The Contractor is not entitled to any benefit from the Commonwealth usually attributable to an employee.

7. REMOVAL OF CONTRACTOR'S PERSONNEL (CORE)

- 7.1 The Commonwealth, acting reasonably, may give notice requiring the Contractor to remove any personnel from work in respect of the Services. The Contractor shall promptly arrange for their

replacement with personnel of appropriate qualifications, skills and experience acceptable to the Commonwealth at no additional cost to the Commonwealth.

8. PAYMENT (CORE)

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:

- **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**
- **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>.

The option selected below will depend on the tenderer's response to the relevant PEPPOL question in the Request for Quotation Proforma.

- 8.1 Subject to clause 10, the Details Schedule, and any Special Conditions, the Commonwealth shall pay:
- a. the Contract Price to the Contractor within **[INSERT 5 OR 20]** days after receipt of a correctly rendered invoice; or
 - b. if the Details Schedule provides for the payment of the Contract Price by way of:
 - (i) instalments, the amount of the relevant instalment to the Contractor within **[INSERT 5 OR 20]** days after receipt of a correctly rendered invoice; or
 - (ii) milestone payments, the amount of the relevant milestone payment to the Contractor within **[INSERT 5 OR 20]** days after receipt of a correctly rendered invoice; and
 - c. if the Details Schedule provides for the reimbursement of Out of Pocket Expenses, the amount of those Out of Pocket Expenses which have been incurred by the Contractor in accordance with the Contract, within **[INSERT 5 OR 20]** days after receipt of a correctly rendered invoice.
- 8.2 If the Commonwealth fails to pay a correctly rendered invoice within **[INSERT 5 OR 20]** days after the date of receipt, the Commonwealth shall pay interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day that the payment was late.
- 8.3 The Commonwealth shall pay interest whether or not the Contractor has submitted a separate invoice for the interest amount. Interest shall only be payable in accordance with this clause 8 if the interest amount exceeds A\$100.

9. INVOICE (CORE)

- 9.1 An invoice is correctly rendered under clause 8 if:
- a. the amount claimed for payment is calculated in accordance with the Contract and the Details Schedule provides that the amount is due for payment;
 - b. the Services meet the requirements of the Contract; and
 - c. the invoice:
 - (i) is set out in a manner that enables the Commonwealth to ascertain the Services to which the invoice relates and that part of the Contract Price payable in respect of those Services;

- (ii) if the Details Schedule provides for the reimbursement of Out of Pocket Expenses, the invoice separately itemises all expenses for which reimbursement is being sought. Copies of invoices substantiating the Out of Pocket Expenses shall be attached to the invoice;
- (iii) contains the Contract number, the name and phone number of the Contractor Representative and is addressed as specified in the Details Schedule; and
- (iv) is a valid tax invoice in accordance with the GST Act.

9.2 The Contractor shall promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Contractor or payment of the Contract Price by the Commonwealth.

10. DEDUCTION FROM PAYMENT (CORE)

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

11. PRICE BASIS (CORE)

11.1 The Contract Price is inclusive of:

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

12. OUT OF POCKET EXPENSES (CORE)

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

13. WARRANTY (CORE)

13.1 The Contractor warrants that:

- a. the Services will be fit for the purpose or purposes for which services of that kind could be reasonably expected to be applied by the Commonwealth; and
- b. the Services will be provided by appropriately qualified, skilled and experienced personnel.

14. USE OF COMMONWEALTH ITEMS (CORE)

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

- a. a purpose for which that Commonwealth Item was designed, manufactured or constructed; and
 - b. for the provision of the Services.
- 14.2 The Contractor shall protect all Commonwealth Items from loss or damage, maintain the Commonwealth Items in good order and promptly return the Commonwealth Items to the Commonwealth upon request by the Commonwealth, when they are no longer required to provide the Services or otherwise upon termination of the Contract.
- 14.3 The Contractor acknowledges that it may be provided with the ability to access Commonwealth-held information in connection with its performance of the Services, including through access to Commonwealth information technology systems. Without limiting the Contractor's other obligations under this Contract or otherwise at law, the Contractor shall not seek to access or use Commonwealth-held information except to the extent strictly required for the provision of the Services.

15. INTELLECTUAL PROPERTY (CORE)

- 15.1 Nothing in the Contract affects the ownership of Intellectual Property (IP) except as expressly provided for in this clause 15.
- 15.2 IP created under the Contract in respect of Contract Material vests in the Contractor (or its nominee) immediately upon its creation.
- 15.3 The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material (other than Commercial Material) to
 - a. Use the Contract Material; and
 - b. grant a sublicense to any other person to Use the Contract Material, or to grant a further sublicense to Use the Contract Material;for any Defence Purpose.
- 15.4 A Licence or sublicense granted in accordance with this clause 15 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the Contract Material, provided that the Commonwealth may grant a sublicense to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.
- 15.5 The Contractor shall ensure that the Commonwealth is granted a licence in respect of all Commercial Material on the best commercial terms.
- 15.6 The Contractor warrants the provision of the Services (and the Commonwealth's Use of any Contract Material) will not infringe the Intellectual Property or moral rights of any person.

16. TERMINATION (CORE)

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

- e. becomes bankrupt or insolvent, except to the extent the exercise of a right under this clause 16.1e is prevented by law;
- f. breaches any of its obligations under clause 18.

17. TERMINATION FOR CONVENIENCE (CORE)

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

18. SECURITY AND SAFETY (CORE)

Note to drafters: The ASDEFCON (Shortform Services) template has been developed specifically for low risk and low value service requirements and does not contemplate that there will be complex security arrangements involved in the procurement.

Drafters should consider whether Defence Industry Security Program (DISP) membership in accordance with Control 16.1 of the DSPF is required for this contract. For further assistance and guidance in relation to determining whether DISP membership is required, refer to DISP Factsheet here:

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

If it is determined that DISP membership is required, a more extensive template will be required and drafters should refer to the ASDEFCON Suite of Tendering and Contracting Templates available at:

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

- 18.1 If the Commonwealth provides the Contractor with access to any Commonwealth place, area or facility, the Contractor shall comply with any security and safety requirements notified to the Contractor by the Commonwealth or of which the Contractor is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.
- 18.2 The Contractor shall
 - a. comply with, and shall ensure that all subcontractors comply with, the applicable WHS Legislation when performing work under the Contract; and
 - b. where applicable, comply with, and shall ensure that all subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the 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 work health and safety duty under the WHS Legislation in relation to the same matter.
- 18.3 Without limiting the Contractor's obligations under the Contract or at law or in equity (and subject to any relevant foreign government restrictions), the Contractor shall, in connection with or related to the Services, provide, and shall use its reasonable endeavours to ensure that a subcontractor

provides, to the Commonwealth within 14 days (or such other period as agreed by the Commonwealth in writing) of a request by the Commonwealth any information or copies of documentation requested by the Commonwealth and held by the Contractor or subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.

- 18.4 The Contractor shall not use Asbestos Containing Material in providing the Services and shall not take any Asbestos Containing Material onto Commonwealth premises in connection with providing the Services.
- 18.5 If a Notifiable Incident occurs in connection with work carried out under the Contract:
- a. on Commonwealth premises;
 - b. which involves Commonwealth personnel; or
 - c. which involves a Commonwealth specified system of work,
- the Contractor shall:
- d. immediately report the incident to the Commonwealth;
 - e. promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
 - f. provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation (including the completion of the Department of Defence Form AE527 (as amended or replaced from time to time)); and
 - g. provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.

Note to drafters: The ASDEFCON (Shortform Services) template has been developed specifically for low risk and low value service requirements and does not contemplate that deliverables will be provided which may contain problematic substances. Drafters are advised to contact their relevant procurement and contracting support officer if deliverables to be provided under the Contract may contain problematic substances.

To find your procurement and contracting support officer, seek commercial support here:

- <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/4CF28BCF-F8DE-4210-82A3-37CCF965EE98>

- 18.6 To the extent not inconsistent with the express requirements of the Contract, the Commonwealth may direct the Contractor to take specified measures that the Commonwealth considers reasonably necessary to comply with applicable legislation relating to work health and safety, including the WHS Legislation, in relation to the provision of the Services. The Contractor shall comply with the direction unless the Contractor demonstrates to the reasonable satisfaction of the Commonwealth that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 18.7 The Contractor shall ensure that the Commonwealth and Commonwealth personnel are able to make full use of the Services for the purposes for which they are intended, and to maintain, support and develop the Services, without the Commonwealth or Commonwealth personnel contravening any applicable legislation relating to work health and safety including the WHS Legislation, any applicable standards relating to work health and safety or any Commonwealth or Defence policy relating to work health and safety.

- 18.8 From time to time the Commonwealth may advise the Contractor of hazards to health and safety that have been identified at, or in the proximity of, Commonwealth premises where Contractor and/or subcontractor personnel may be working.
- 18.9 On receipt of advice from the Commonwealth under clause 18.8, the Contractor shall undertake necessary risk assessments, identify control measures and advise Contractor and/or subcontractor personnel of the hazards and risks and relevant control measures.

19. INSURANCE (CORE)

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

20. SET OFF (CORE)

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

21. INDEMNITY (CORE)

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

22. PRIVACY (CORE)

- 22.1 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.
- 22.2 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 22, whether by the Contractor, subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of the Contract; or
 - b. in relation to Personal Information obtained in the course of performing the Contract:

- (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
- (ii) it is approached by the Privacy Commissioner.

22.3 The Contractor shall ensure that its officers, employees and agents who deal with Personal Information for the purposes of the Contract are aware of, and comply with, this clause 22.

22.4 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 22.1, 22.2a and 22.4.

23. CONFIDENTIALITY (CORE)

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

24. CONFLICT OF INTEREST (CORE)

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

24.2 The Contractor shall notify the Commonwealth in writing promptly if such a conflict of interest arises, or appears likely to arise.

24.3 Within seven days after giving notice under clause 24.2, the Contractor shall notify the Commonwealth in writing of the steps it 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. If the Contractor fails to notify the Commonwealth in accordance with clauses 24.2 or 24.3 or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate the Contract in accordance with clause 16.

25. NOTICES (CORE)

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

26. ASSIGNMENT (CORE)

26.1 The Contractor shall not assign any of its rights under the Contract without the prior written consent of the Commonwealth.

27. SUBCONTRACTING (CORE)

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

28. APPROVALS AND COMPLIANCE (CORE)

- 28.1 The Contractor shall obtain and maintain in full force any necessary export licences, licences, accreditations, permits, registrations, regulatory approvals or other documented authority (however described) required by law and necessary for the provision of the Services. The Contractor shall comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth policies relevant or applicable to the Contract.

29. COMMONWEALTH ACCESS (CORE)

- 29.1 If the value of the Contract (by itself or cumulatively with previous changes to the Contract) is equal to or greater than A\$100,000, the Contractor shall permit the Commonwealth and its nominees timely and sufficient access to its premises, records or accounts relevant to the Contract to conduct audits under the *Auditor-General Act 1997*. The Commonwealth and its nominees may copy any records or accounts relevant to the Contract and retain or use these records and accounts for this purpose.

30. INDIGENOUS PROCUREMENT POLICY (CORE)

Note to drafters: The following clause is for use if the IPP mandatory minimum requirements are NOT included in the RFQ.

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.

- 30.1 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/>).

31. CHILD SAFETY (OPTIONAL)

Option: For when the Commonwealth Child Safe Framework applies.

Note to drafters: The Department of Prime Minister and Cabinet has developed the [Commonwealth Child Safe Framework](#) (CCSF) to protect children and young people who may have contact with Commonwealth entities. The CCSF sets out the minimum standards for Commonwealth entities to protect children.

Defence and all Defence officials have an obligation under the [Child Protection legislation](#) and the Work Health Safety Act 2011 (Cth) to ensure the health and safety of youth when they engage or interact with Defence. This obligation also extends to Defence contractors. Youth special care provisions also extend to over 18 year olds participating in a Defence Youth Program.

Defence policy relating to Child Safety is contained in YOUTHPOLMAN, which can be found here:

- <https://www.defenceyouth.gov.au/defence-youth-policy/>.

Defence has developed relevant clauses, for use with ASDEFCON based approaches to market, which address the requirements of the CCSF and YOUTHPOLMAN. These clauses are adapted from model clauses included in Department of Finance's ClauseBank and must be inserted into Defence procurements using the ASDEFCON Suite of Tendering and Contracting Templates, where the Contractor will engage with or interact with youth in performing its obligations under the Contract

The clauses can be found here:

- <https://dpeintranet-casq.defence.gov.au/services/australian-standard-defence-contracting-suite-tendering-contracting-templates>

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

procurement.asdefcon@defence.gov.au.

For information in relation to CCSF and policy related questions please email:

procurement.policy@defence.gov.au.

For further assistance and guidance in relation to the application of the CCSF please refer to the Child Safety Framework Factsheet here:

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

32. 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:

- <https://dpeintranet-casg.defence.gov.au/services/australian-standard-defence-contracting-suite-tendering-contracting-templates>

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

- procurement.asdefcon@defence.gov.au.

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

- <http://ibss/PublishedWebsite/LatestFinal/836F0CF2-84F0-43C2-8A34-6D34BD246B0D/Item/700DDE0B-7EB6-4C98-BD11-CE00EAE739DA>

33. COMMONWEALTH SUPPLIER CODE OF CONDUCT (CORE)

- 33.1 Without limiting the Supplier's obligations under the Contract or at law, the Supplier must comply with, and ensure that its officers, employees, agents and subcontractors comply with the Commonwealth Supplier Code of Conduct in the performance of the Contract. The Supplier's performance of its obligations under this clause will be at no additional cost to the Commonwealth.
- 33.2 The Supplier must immediately notify the Contract Officer in writing if it becomes non-compliant with the Commonwealth Supplier Code of Conduct, including a description of the non-compliance, the date that the non-compliance occurred, and whether any Supplier personnel engaged in the performance of the Contract were or may have been involved in the non-compliance. The Commonwealth may request in writing further information from the Supplier concerning the non-compliance. The Supplier must provide the requested information to the Commonwealth within 3 days.
- 33.3 The Commonwealth may notify the Supplier in writing that a non-compliance or possible non-compliance of the Commonwealth Supplier Code of Conduct has occurred. The Supplier must respond to the Commonwealth's notification within 3 days and comply with its requirements in accordance with this clause.
- 33.4 The Supplier agrees that the Commonwealth may take into account the Supplier's compliance with the Commonwealth Supplier Code of Conduct in any future procurement process.

34. WORKPLACE GENDER EQUALITY (CORE)

- 34.1 The Contractor shall comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act), if any. If the Services constitute a procurement that is at or above the relevant procurement threshold in the Commonwealth Procurement Rules, the Contractor shall notify the Commonwealth Officer if it becomes non-compliant with the WGE Act.

35. GOVERNING LAW (CORE)

35.1 The laws of the jurisdiction specified in the Details Schedule apply to the Contract.

36. ENTIRE AGREEMENT (CORE)

36.1 The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

37. DEFINITIONS (CORE)

37.1 In the Contract, unless the contrary intention appears, words, abbreviations and acronyms have the meaning given to them in the Details Schedule or this clause 36:

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

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

'Commercial Material' means any Contract Material that is:

- a. available to the general public or in the market for defence goods and services for supply on standard commercial terms, and is 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 use the Contract Material), but does not include information that was created, manufactured or produced by the Contractor or a related body corporate of the Contractor; or
- b. free and open source software.

'Commercialise' means in respect of the Commonwealth or any of its sublicensees, to exploit the IP in Contract Material in return for payment of a royalty or a commercial return to the Commonwealth or the sublicensee.

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

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

'Commonwealth Supplier Code of Conduct' means the Commonwealth Supplier Code of Conduct, as amended from time to time.

'Contract' has the meaning given in clause 3.

'Contract Material' means information reduced to a material form (whether stored electronically or otherwise) that is delivered or required to be delivered to the Commonwealth under the Contract.

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

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

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

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

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

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

'Licence' means a non-exclusive licence of IP in respect of Contract Material, being a licence that:

- a. is fully paid-up and does not require any additional payment by the licensee, including by way of royalty or any other fee;
- b. cannot be revoked or terminated by the licensor for any reason except upon expiration of a statutory protection term;
- c. operates in perpetuity without any action required on the part of the licensee to renew or extend the licence;
- d. operates on a world-wide basis; and
- e. binds each successor in title to the owner of the IP in respect of the Contract Material.

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

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

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

'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 Contractor will continue to be obligated as a Relevant Employer for the period of the Contract until the number of its employees falls below 80.

'Use' means, in relation to a licence of any Contract Material granted to a licensee, to:

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

'WHS Legislation' means:

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

OFFICIAL

ASDEFCON (Shortform Services)

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of

THE COMMONWEALTH OF AUSTRALIA:

(signature)

(print name and position)

(date)

In the presence of:

(signature of witness)

(print name of witness)

(date)

SIGNED for and on behalf of

THE 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)