

CONTRACT

BETWEEN

**Commonwealth of Australia represented by the Department of
Defence (the "Commonwealth")**

AND

Aurecon Australasia Pty Ltd (the "Contractor")

FOR

the provision of Project Delivery Services

CONTRACT FOR THE PROVISION OF SERVICES

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CONTRACT INFORMATION

DATE 10 July 2014

PARTIES

Name Commonwealth of Australia represented by the Department of Defence
ABN 68 706 814 312

Short form name **Commonwealth**

Name Aurecon Australasia Pty Ltd ABN 54 005 139 873

Short form name **Contractor**

OVERVIEW

- A. The Commonwealth has bases in metropolitan, regional and remote locations in Australia which require various support Services to maintain and sustain capability.
- B. The Services to be provided by the Contractor are described in the Statement of Work including any Survey and Quote Services.
- C. The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.
- D. The Commonwealth has agreed to engage the Contractor to provide the Services on the terms and conditions contained in the Contract.
- E. The Parties intend to administer the Contract in a spirit of collaboration, cooperation and goodwill based on high levels of trust.

CONDITIONS OF CONTRACT

PART 1 – SPECIFIC REQUIREMENTS

SECTION A – INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In the Contract, except where the contrary intention is expressed, the definitions set out in the Glossary are used.

1.2 Interpretation

- 1.2.1 In the Contract, except where the contrary intention is expressed:
- a. headings are for the purpose of convenient reference only and do not form part of the Contract or affect the interpretation of the Contract;
 - b. the singular includes the plural and vice versa, and a gender includes other genders;
 - c. another grammatical form of a defined word or expression has a corresponding meaning;
 - d. a reference to a person includes a natural person, body politic, body corporate, partnership, trust, joint venture unincorporated body, association, Government Agency or other entity;
 - e. a reference to a clause, paragraph, schedule attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to, the Contract, and a reference to the Contract includes any schedule or annexure;
 - f. a reference to AUD, \$, \$A, dollar or \$ is to Australian currency;
 - g. a reference to time is a reference to time at the location where the Services are being performed;
 - h. a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assignees, including any person to whom that Party is permitted to novate any part of the Contract;
 - i. examples and use of the word 'includes' in any form is not a word of limitation;
 - j. if the Contractor is a trustee, the Contractor enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under the Contract;
 - k. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - l. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
 - m. a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
 - n. unless there is a provision in the Contract which specifies a period of time in which something must be done by a Party, such things must be done without undue delay;
 - o. a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Contract or any part of it;
 - p. any property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;

- q. where an obligation or liability is imposed on the Contractor under the Contract, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of the Contract, unless expressly stated;
- r. the term 'may' when used in the context of a right or remedy exercisable by the Commonwealth or a delegate of the Commonwealth means that the Commonwealth or its delegate can exercise that right or remedy in its sole and absolute discretion and the Commonwealth or its delegate has no obligation to the Contractor to do so unless expressly stated; and
- s. references to any agreement or document (including the Contract) are to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by the Contract or that other agreement or document.

1.2.2 The objectives of the Commonwealth in entering into the Contract are to:

- a. ensure that, for the payments provided for under the Contract, the Contractor provides the Services to the required level of performance, safety, quality and capability, including as set out in the Performance Management Framework and otherwise in accordance with the Contract;
- b. procure an effective capability for Defence that:
 - (i) supports the ADF's mission to 'fight and win';
 - (ii) supports the Commonwealth's policy of Defence self-reliance; and
 - (iii) minimises the Total Cost of Ownership (**TCO**);
- c. develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the Contractor;
- d. obtain value for money for the Commonwealth on an ongoing basis in relation to the provision of the Services;
- e. achieve, over the Contract Period, cost savings in relation to the provision of the Services, through the identification and implementation of efficiencies and otherwise;
- f. allow the Contractor as a commercial entity to earn a reasonable return on its investment when it performs the Contract efficiently and successfully, and a return that appropriately reflects the properly managed risks assumed by the Contractor in the performance of the Contract;
- g. ensure that the Commonwealth obtains appropriate Intellectual Property rights arising out of or in connection with the provision of the Services;
- h. facilitate the retention and enhancement of industry capabilities within Australia and New Zealand (**ANZ**);
- i. encourage the most efficient possible use of resources for the provision of the Services;
- j. work within a framework that ensures safety of persons, material safety and complies with all Laws;
- k. achieve a seamless transition from any previous service providers to the Contractor; and
- l. achieve the objectives in this clause through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.

1.2.3 The Parties agree to achieve the objectives in clause 1.2.2:

- a. through a culture of integrity, trust, open and timely communication, mutual respect, collaboration and co-operation;
- b. by fostering innovation, continuous improvement and cost efficiencies;
- c. by minimising Disputes between them and, if they do arise, by managing such Disputes in accordance with the Contract; and
- d. by developing levels of transparency and accountability in the provision of the Services consistent with the objectives.

2 RELATIONSHIP OF PARTIES

- 2.1.1 The Contract is a contract for the Services and the Contractor is an independent contractor. Nothing in the Contract will create a relationship of partnership, principal and agent, joint venturers or employer/employee between the Commonwealth on the one hand and the Contractor and/or the Contractor Personnel (or any other party) on the other hand.
- 2.1.2 The Contractor must not act and does not have any authority to act as agent of, or in any way bind or commit, the Commonwealth to any obligation, except as expressly stated in the Contract. The Contractor must not represent itself, and must ensure that Contractor Personnel do not represent themselves, as being employees, officers, partners, joint venturers or agents of the Commonwealth or as otherwise able to bind or represent the Commonwealth, except as stated specifically in the Contract.
- 2.1.3 The Contractor must ensure that the Contractor Personnel clearly identify themselves as a contractor to the Commonwealth when communicating through telephone, facsimile, email or any other communication tool in the course of performing the Services.

3 SCOPE AND EXCLUSIVITY

- 3.1.1 The Contractor acknowledges that it is not the exclusive provider of services of the type provided under the Contract and that the Commonwealth may, from time to time and at its absolute discretion, procure such services from other third parties or provide the services itself.
- 3.1.2 The Commonwealth is not liable for any additional work undertaken, or expenditure incurred, by the Contractor that is not in accordance with the Contract, and the Contractor waives any right to make any claim for such additional work.

4 PRIORITY OF CONTRACT DOCUMENTS

- 4.1.1 If there is an ambiguity, inconsistency or discrepancy between any of the documents forming part of the Contract, those documents will be interpreted in the following order of priority to the extent of any ambiguity, inconsistency or discrepancy:
- a. conditions of Contract;
 - b. Schedules (other than the Statement of Work);
 - c. any attachments or annexures to the Schedules;
 - d. documents incorporated by reference in the Contract; and
 - e. the Statement of Work,
- so that the terms of the higher ranked document, to the extent of the ambiguity, inconsistency or discrepancy, prevail.
- 4.1.2 If the Contractor discovers any ambiguity, inconsistency or discrepancy within or between any one or more of the documents forming part of the Contract, the Contractor must give the Commonwealth Representative notice of such ambiguity, inconsistency or discrepancy within a reasonable time of discovering it.
- 4.1.3 If there is an ambiguity, inconsistency or discrepancy within a document forming part of the Contract or two or more documents of the same level of the order of precedence, that ambiguity, inconsistency and discrepancy will be resolved by the Commonwealth in its sole and absolute discretion. The resolution of the ambiguity, inconsistency or discrepancy does not entitle the Contractor to make any claim against the Commonwealth and the Contractor waives any such rights.

5 DURATION OF CONTRACT

5.1 Initial Contract Period

- 5.1.1 The Contract begins on the Effective Date and continues for the duration of the Initial Contract Period, unless terminated earlier or extended in accordance with clause 5.2.

5.2 **Extension of Contract Period**

- 5.2.1 Before the third anniversary of the Effective Date, the Commonwealth may, by notice to the Contractor:
- a. extend the Contract Period by up to 2 years from the end of the Initial Contract Period; or
 - b. advise the Contractor that no extension of the period of the Contract beyond the Initial Contract Period is given.
- 5.2.2 If a notice of:
- a. extension of the Contract Period is given in accordance with clause 5.2.1a, the Commonwealth may, before the fifth anniversary of the Effective Date, by notice to the Contractor, extend the then Contract Period by up to 2 years; or
 - b. no extension of the Contract Period is given in accordance with clause 5.2.1b, the Commonwealth may, before the fourth anniversary of the Effective Date, by notice to the Contractor, extend the then Contract Period by up to 2 years,
- such that, subject to clause 5.2.3, the Contract Period must not exceed 10 years.
- 5.2.3 Notwithstanding clauses 5.2.1 and 5.2.2, the Commonwealth may, by notice to the Contractor of no less than 3 months before the end of the then Contract Period, extend the then Contract Period by up to a further 12 months.
- 5.2.4 Any extension pursuant to clause 5.2 may be subject to terms and conditions notified by the Commonwealth, including the extension of some or all of the Service Packages.

SECTION B – PROVISION OF SERVICES

6 TRANSITION-IN

6.1 Operative Date

- 6.1.1 The Commonwealth has no obligations under the Contract before the Operative Date other than:
- a. to the extent provided in this clause 6.1;
 - b. the obligations under clause 30.1 in relation to the protection of Commercial-in-Confidence Information; and
 - c. pursuant to clauses 7.5.3, 19.3 and 48.1.
- 6.1.2 This clause 6.1 does not limit or affect the Commonwealth's rights under the Contract, including rights in relation to the Contractor's obligations under this clause 6.1.
- 6.1.3 Before the Planned Operative Date, the Contractor shall:
- a. within 14 days of the Effective Date, develop and deliver a Transition-In Plan to the Commonwealth in accordance with Annex F to Schedule 7;
 - b. complete all Transition-In activities in accordance with the Approved Transition-In Plan;
 - c. deliver to the Commonwealth the:
 - (i) executed Financial Security Deed, in accordance with clause 29.1;
 - (ii) executed Guarantee, in accordance with clause 29.2; and
 - (iii) executed Cooperation Deed;
 - d. obtain and provide to the Commonwealth copies of all necessary Authorisations in accordance with clauses 7.5 and 7.6, including all Authorisations necessary for the nature of the work to be performed at each of the Bases to be used by the Contractor for the purposes of the Contract;
 - e. obtain all personnel security clearances for Contractor Personnel that are necessary for the performance of the Services from the Planned Operative Date in accordance with clause 41;
 - f. Not Used; and
 - g. provide to the Commonwealth Representative copies of evidence of the insurance required to be obtained and maintained by the Contractor under clause 27.3.
- 6.1.4 Subject to clause 6.1.5, if the Commonwealth is satisfied that all the obligations under clause 6.1.3 have been fully performed in accordance with the Contract, the Commonwealth Representative shall issue a notice in writing to the Contractor specifying the date on which the last of those obligations was fully performed. The specified date is the Operative Date for the purposes of the Contract.
- 6.1.5 If, for any reason, an obligation under clause 6.1.3 has not been fully performed in accordance with the Contract by the Planned Operative Date, the Commonwealth may, by notice in writing to the Contractor, do any one or more of the following:
- a. waive the requirement to perform the obligation by the Planned Operative Date (subject to conditions, if any, specified in the notice, which may include conditions as to when the obligation is to be performed) and specify a date as the Operative Date, but the waiver does not affect any rights the Commonwealth may have under the Contract in respect of the failure by the Contractor to perform the obligation (such as a right to recover Liquidated Damages);
 - b. recover Liquidated Damages (if any) that may be payable in accordance with clause 6.1.8b due to a failure of the Contractor to fulfil an obligation under clause 6.1.3;
 - c. specify a date, no less than 30 Business Days from the date of the notice, on which the Contract will terminate if the obligation has not been fully performed in accordance with the Contract by that date; and

- d. terminate the Contract from the date of the notice or a later date specified in the notice and recover Liquidated Damages (if any) that are payable in accordance with clause 6.1.8a due to failure of the Contractor to fulfil an obligation under clause 6.1.3.
- 6.1.6 The Contractor shall comply with any condition of a waiver under clause 6.1.5a.
- 6.1.7 The Parties agree that the Glossary shall be amended to specify the date that is the Operative Date. The amendment shall be incorporated into the first CCP to be agreed between the Parties.
- 6.1.8 If the Commonwealth:
 - a. terminates the Contract in accordance with clause 6.1.5d because the Contractor failed to comply with an obligation under clause 6.1.3, subject to clause 6.1.9, the Commonwealth may recover from the Contractor the amount specified at item 8 of the Contract Details as Liquidated Damages and not as a penalty for termination under clause 6.1.5d; or
 - b. notifies the Contractor that it will recover liquidated damages in accordance with clause 6.1.5b because the Contractor failed to comply with an obligation under clause 6.1.3, the Commonwealth may recover the amount specified for that failure at item 8 of the Contract Details for each day from and excluding the Planned Operative Date to and including the date on which the failure ends, as Liquidated Damages and not as a penalty.
- 6.1.9 If the Commonwealth terminates the Contract pursuant to clause 6.1.5 because the Contractor failed to comply with its obligations under clause 6.1.3 and, in the Commonwealth's view, that failure was due to circumstances beyond the reasonable control of the Contractor, then the Commonwealth will not be entitled to make any claim or pursue any remedy against the Contractor, whether at common law, in equity or under statute.
- 6.1.10 The Parties agree that:
 - a. the amount specified at item 8 of the Contract Details is a genuine pre-estimate of the damage which would be suffered by the Commonwealth in the circumstances to which that clause applies; and
 - b. the amounts (as relevant) specified at item 8 of the Contract Details shall be the Commonwealth's sole right to be compensated for loss or damage suffered:
 - (i) if the Contract terminates before the Operative Date has arisen; and
 - (ii) due to a delay in achieving the Planned Operative Date.
- 6.1.11 The Parties acknowledge and agree that:
 - a. the fact that the Commonwealth has elected (or may have elected) to do any of the things referred to in clause 6.1.5 in respect of any breach shall not, to the extent permitted by law:
 - (i) constitute a waiver or election of any of the Commonwealth's rights under the Contract or otherwise at law or in equity in respect of that breach or in respect of any other breach; or
 - (ii) limit or affect the ability of the Commonwealth to terminate the Contract in respect of any breach, notwithstanding that the Commonwealth may have exercised its rights under clause 6.1.5 in respect of any prior breach; and
 - b. the Contractor releases the Commonwealth from any claim that it otherwise may have been able to make or bring against the Commonwealth arising out of or in connection with any exercise by the Commonwealth of any of its rights under clause 6.1.5 (including as the exercise of those rights is contemplated in this clause 6.1.11).
- 6.1.12 Where the Contractor is obliged to pay the Commonwealth at least 12 months of Liquidated Damages pursuant to clause 6.1.8b, without prejudice to any of its other rights, the Commonwealth may terminate the Contract by providing a notice in writing to the Contractor and the Contract will terminate on the date set out in that notice.

6.2 **Due Diligence – Not Used**

7 PROVISION OF SERVICES

7.1 Service Package obligation

- 7.1.1 Without limiting any of its other obligations under the Contract, the Contractor must:
- a. subject to clauses 6.1 and 7.2, provide the Services in the Service Package commencing on the Operative Date;
 - b. perform all work and services necessary and incidental to ensuring that the Services are provided;
 - c. perform all work and Services required of it under the Contract:
 - (i) in a professional manner exercising appropriate skill, care and diligence and in accordance with industry leading practice;
 - (ii) in a manner that is fit for purpose;
 - (iii) in a timely manner including by meeting all timeframes specified under the Contract or imposed by the Commonwealth in accordance with the Contract and if no time is specified or imposed, promptly;
 - (iv) to a standard at least consistent with levels of performance achieved by well managed operations performing services similar to the Services; and
 - (v) in accordance with the Performance Management Framework;
 - d. ensure that the Services are conducted in accordance with all relevant standards, or as otherwise directed by the Commonwealth;
 - e. be responsive to external developments concerning the Services and plan for and respond to those developments to the reasonable satisfaction of the Commonwealth;
 - f. be receptive to comments and other feedback in relation to the Services, and plan for and respond to such comments and feedback to the reasonable satisfaction of the Commonwealth;
 - g. regularly seek feedback on progress of the Services from the Commonwealth and address any issues arising from that feedback to the reasonable satisfaction of the Commonwealth;
 - h. ensure that all reports, plans and other documents required under the Contract are accurate and not misleading in any material respect; and
 - i. ensure that at all times it uses appropriately qualified personnel to provide the Services, considering the nature of the obligations imposed on those personnel.
- 7.1.2 The Contractor has complete responsibility and liability for the provision of the Services notwithstanding:
- a. provision by the Commonwealth to the Contractor of any information, Material or advice including, without limitation, Commonwealth property;
 - b. any review or comment or any other form of Approval or consent in relation to any information provided by the Commonwealth to the Contractor;
 - c. any review of the Services by the Commonwealth; and
 - d. the involvement of the Commonwealth or Other Contractors in the management and/or delivery of the Services.
- 7.1.3 The Contractor acknowledges and agrees that the Commonwealth provides no warranty, assurance or representation in relation to:
- a. the estimated or anticipated volume of Services during any period during the Contract Period; or
 - b. the fitness for purpose of the Commonwealth property, including any GFM and GFF.

7.2 Change to Service Package requirement

- 7.2.1 Without limiting any of its other rights under the Contract, the Commonwealth may, from time to time, by notice to the Contractor, do one or more of the following:
- a. direct the Contractor to cease providing the Services in any Service Package notified by the Commonwealth in accordance with the notice, including if the Commonwealth is not satisfied with the Contractor's performance of the Services and for the purpose of directing an Other Contractor to provide similar or identical services; and
 - b. direct the Contractor to prepare and submit a CCP to the Commonwealth Representative, in accordance with clause 18.1.3, to change the service provision obligations, including following a direction to an Other Contractor to cease providing similar or identical services.
- 7.2.2 If, following a notice pursuant to clause 7.2.1a, the Contractor has no obligation to provide any Services pursuant to a Service Package, the Commonwealth may terminate the Contract in accordance with clause 50.2.1g.

7.3 Contractor general warranties

- 7.3.1 The Contractor represents and warrants that:
- a. it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened arising during the Contract Period which could have an adverse effect on the Contractor's ability to perform any of its obligations under the Contract;
 - b. it has full power and authority to enter into, perform and observe its obligations under the Contract;
 - c. it has all Authorisations, interests and property necessary to lawfully perform the Services;
 - d. the execution, delivery and performance of the Contract has been duly and validly authorised by the Contractor;
 - e. no litigation, arbitration, mediation, conciliation or proceedings including any investigations are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under the Contract or the Contractor's reputation;
 - f. unless otherwise disclosed in the Contract, it is not entering into the Contract as trustee of any trust or settlement; and
 - g. all insurance policies required to be held by the Contractor under the Contract:
 - (i) will remain in effect as provided for in the Contract; and
 - (ii) without limiting clause 27.3, are sufficient to cover any loss or damage, including any consequential loss, that the Commonwealth may suffer as a result of non-performance or partial performance of any obligation of the Contractor under the Contract.

7.4 Contractor performance related warranties

- 7.4.1 The Contractor represents and warrants that the Contractor and Contractor Personnel:
- a. have, and will continue to have and use, the necessary experience, skill, knowledge, qualifications and competence to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness that would be expected of a professional provider of any such service;
 - b. are fit and proper persons to perform their designated roles;
 - c. are not "prohibited persons" under child protection legislation in a State or Territory; and
 - d. have and will continue to have the necessary resources, including financial resources, to perform the Services.
- 7.4.2 The Contractor must hold and maintain, and must ensure that the Contractor Personnel hold and maintain each Authorisation necessary to perform the Services.

- 7.4.3 The Contractor acknowledges that the Commonwealth, in entering into the Contract, is relying on the warranties and representations contained in the Contract.

7.5 Authorisations

- 7.5.1 Prior to the Operative Date, the Contractor must obtain and thereafter maintain, at its own cost, all necessary Authorisations. The Contractor must provide to the Commonwealth, upon receipt of a request from the Commonwealth Representative to do so, a copy of any necessary Authorisation or proof that such Authorisation has been obtained. The Contractor must comply with a request within seven days.
- 7.5.2 The Contractor must notify the Commonwealth Representative in writing of the occurrence of any of the following events within ten days of it occurring:
- a. the application for an Authorisation; and
 - b. the Contractor becoming aware of the grant, refusal, suspension, revocation or qualification of or new requirement for an Authorisation.
- 7.5.3 The Commonwealth Representative must, on request by the Contractor, give the Contractor all assistance reasonably required by the Contractor to facilitate it obtaining or maintaining any Authorisation, including the provision of a certificate by the Commonwealth as to the end use of the Services.
- 7.5.4 Where an application for an Authorisation is refused, an Authorisation is suspended or revoked, a qualification is imposed on such an Authorisation or there is a new requirement for an Authorisation, the Contractor must immediately propose to the Commonwealth appropriate measures, and must do all other things requested by the Commonwealth, to obtain, reinstate or meet the qualification imposed on that Authorisation.
- 7.5.5 If the actions undertaken under clauses 7.5.3 and 7.5.4 are not successful in obtaining, reinstating or satisfying the qualification imposed on that Authorisation for the relevant Service or performance of the Contractor's obligations arising from or in connection with the Contract, the Contractor must prepare, for the consideration of the Commonwealth, an alternative item or service which must, as far as possible, be functionally equivalent and have the same performance as the original item or service. The Commonwealth is under no obligation to consider or accept such an alternative service and if it does so the use of that item or service is at the Contractor's sole cost and risk.
- 7.5.6 Nothing in clause 7.5.3 entitles the Contractor to make any claim, nor releases or modifies any obligation of the Contractor including the responsibility to take all reasonable steps to obtain or maintain any Authorisation required by the Contractor to perform its obligations arising from or in connection with the Contract (including for the Services).

7.6 Imports and Customs Entry

- 7.6.1 The Contractor must arrange customs entry and the payment of any customs duty applicable to the provision of the Services.
- 7.6.2 The Contractor must give the Commonwealth Representative a notice in writing, including supporting evidence, of any variation to the rate of customs duty applicable to the Services between the Base Date and the date of entry of the item and:
- a. in the case of an increase, the Contractor may, in accordance with clause 21.7 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, an amount equivalent to the reduction in the customs duty payable as a consequence of the decrease becomes a debt which the Commonwealth may recover under clause 51.
- 7.6.3 The Commonwealth is not liable to reimburse the Contractor for any fine or penalty incurred by the Contractor under any customs law and the Contractor waives any right to make such a claim.

7.7 Defence environment

- 7.7.1 The Contractor acknowledges that the Services may be provided to Commonwealth Personnel, Other Contractors and third parties in a Defence environment. The Contractor must:

- a. comply with any security requirements advised by the Commonwealth Representative from time to time;
- b. ensure that it and the Contractor Personnel are aware of the Commonwealth's security requirements and comply with those requirements;
- c. accept reasonable changes to the nature, location or timing of the Services at short notice due to Commonwealth requirements;
- d. ensure that it and the Contractor Personnel are at all times, while on Commonwealth premises or engaged in the performance of the Services, neatly and appropriately attired and behave in a courteous and polite manner;
- e. ensure that the Contractor and the Contractor Personnel do not purport to be employees, officers, partners, joint ventures or agents of the Commonwealth; and
- f. provide the Services in accordance with applicable Defence Policies and Procedures and other Australian Government policies.

7.8 Subcontracting

- 7.8.1 The Contractor must not subcontract the whole of the work under the Contract.
- 7.8.2 The Contractor may, but is not required to, enter into a Subcontract with one or more of the Approved Subcontractors.
- 7.8.3 The Contractor must not subcontract work under the Contract to a Subcontractor who is not an Approved Subcontractor if:
- a. the total value of all work or services performed by the Subcontractor is expected to exceed 25% of the Fixed Fee claimable over a Financial Year;
 - b. the Subcontractor will in any way be involved in:
 - (i) design and development activities;
 - (ii) modification of systems;
 - (iii) systems installation or integration; or
 - (iv) any Prescribed Activities; or
 - c. the Subcontractor will bring IP to the proposed Subcontract or create IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Services,
- unless otherwise agreed between the Parties and the extent of that exception is expressly set out in Annex C to Schedule 7.
- 7.8.4 The Contractor may request the inclusion of additional Approved Subcontractors in Annex C to Schedule 7 by submitting a CCP in accordance with clause 18. The CCP must include full particulars of the work to be Subcontracted, the name and address of each proposed Subcontractor and any other information about the Subcontractor required by the Commonwealth Representative.
- 7.8.5 The Commonwealth must Approve or reject the CCP in accordance with clause 18. The Commonwealth's Approval will not be unreasonably withheld.
- 7.8.6 The Contractor, by Subcontracting any part of the work under the Contract or by obtaining the Commonwealth's Approval of a Subcontractor, is not relieved of its liabilities or obligations under the Contract, and is responsible for all Subcontractors.
- 7.8.7 If a Subcontract is terminated, repudiated or rescinded, whether in relation to its terms or as a result of any legislation relating to any Insolvency Event, the Contractor must promptly notify the Commonwealth Representative and must complete the work under the Contract either itself or by engaging another Subcontractor.
- 7.8.8 The Contractor, if requested by the Commonwealth Representative, must, within 5 Business Days of the request provide the Commonwealth Representative with names of all Subcontractors and a copy of each Subcontract requested, which copy need not contain prices. The Contractor acknowledges and agrees (and must ensure that its Subcontractors also

acknowledge and agree) that the Commonwealth may be required to publicly disclose the Subcontractor's participation in the performance of the Contract.

7.8.9 The Contractor must:

- a. not, in any event, enter into a subcontract regarding the Contract or allow any person to be associated with the provision of the Services if that person or subcontractor is:
 - (i) currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
 - (ii) named by the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth); or
 - (iii) named on the list of persons and entities listed under clause 20(i) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*;
- b. ensure that each Approved Subcontractor complies with all applicable Laws and:
 - (i) clause 20 (Intellectual Property rights);
 - (ii) clause 25 (Disclosure);
 - (iii) clause 27.3 (Insurance);
 - (iv) clause 30 (Confidentiality);
 - (v) clause 31 (Protection of Personal Information);
 - (vi) clause 33 (Fair Work);
 - (vii) clause 35 (Freedom of information);
 - (viii) clause 36 (Illegal Workers);
 - (ix) clause 37 (Health and Safety);
 - (x) clause 38 (Environmental Obligations);
 - (xi) clause 39 (Hazardous Substances and Ozone depleting substances);
 - (xii) clause 40 (Conflict of interest);
 - (xiii) clause 41 (Defence Security);
 - (xiv) clause 45 (Books and records);
 - (xv) clause 46 (Audit and access); and
 - (xvi) clause 52 (Transition-Out).

7.8.10 The Commonwealth may publicly disclose the names of any Subcontractors:

7.8.11 The Contractor must ensure that each Subcontractor agrees that the Commonwealth may disclose the Subcontractor's name publicly.

7.9 **Co-operation with Personnel**

7.9.1 The Contractor must, in the performance of the Services, fully co-operate with the Commonwealth Personnel.

7.10 **Co-operation with Other Contractors**

7.10.1 The Contractor acknowledges that the performance of its obligations under the Contract may require:

- a. interoperation and integration with capabilities and Services that are provided and maintained by the Commonwealth and/or by third parties under separate contractual arrangements with the Commonwealth (**Other Capabilities**); and
- b. coordination and cooperation with other entities (including Other Contractors and Commonwealth organisations) performing activities related to the Services or otherwise having a connection with the activities being performed by the Contractor under the Contract (**Associated Parties**).

7.10.2 The Contractor must:

- a. cooperate with all Associated Parties, as may be necessary or required by the Commonwealth, to ensure the interoperation of the Services with Other Capabilities;
- b. cooperate, as may be required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Services are provided in accordance with the requirements of the Contract;
- c. cooperate as may be necessary or required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Services do not impact on or interfere with the performance of Other Capabilities or the completion of activities by Associated Parties; and
- d. notify the Commonwealth Representative where it becomes aware of any act, fact, matter, thing or event which may cause, or is likely to cause, interruption to the performance of the Services, as soon as practicable after becoming aware of that act, fact, matter, thing or event.

7.11 Suspension of Services

- 7.11.1 The Contractor acknowledges that the operational or security context for provision of the Services and other circumstances are such that the Commonwealth may require the Contractor to suspend and/or recommence provision of any Services, or part thereof, at short notice.
- 7.11.2 Should an operational or security issue arise, or any other issue considered relevant by the Commonwealth arise, the Commonwealth may, in its sole and absolute discretion, direct the Contractor to suspend provision of any Services, or part thereof, for such time as the Commonwealth reasonably determines, on written notice to the Contractor.
- 7.11.3 Subject to the prevailing circumstances at the time, the Commonwealth must use reasonable endeavours:
 - a. to advise the Contractor before it directs a suspension under clause 7.11.2; and
 - b. after it has directed a suspension under clause 7.11.2, to keep the Contractor updated with information on the anticipated duration of the suspension.
- 7.11.4 If the Commonwealth directs a suspension under clause 7.11.2, the Contractor must:
 - a. suspend provision of the Services in accordance with the notice;
 - b. comply with any directions given to the Contractor by the Commonwealth;
 - c. develop and submit to the Commonwealth Representative a plan for the management of the Services during the suspension and their recommencement which aims to keep the Contractor's costs to a minimum and which will, if followed, ensure the efficient resumption of Services (if resumed); and
 - d. use reasonable endeavours to mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the suspension, including those arising from affected Subcontracts.
- 7.11.5 The Contractor may, in accordance with clause 21.7, claim reimbursement of the reasonable and unavoidable expenses actually incurred by the Contractor which are directly attributable to the suspension under clause 7.11.2, including the costs of the Contractor maintaining the capability for providing the Services and the costs associated with recommencement of the Services. Without limiting clause 21.7, the Contractor must substantiate the amounts claimed (including by providing documentary evidence to the Commonwealth Representative) to the reasonable satisfaction of the Commonwealth Representative.
- 7.11.6 The Contractor must ensure that in each Approved Subcontract, it includes the right for it to suspend the work or services under that Subcontract on terms functionally equivalent to that of the Commonwealth under clauses 7.11.1 to 7.11.4. If the Contractor fails to include such a right in an Approved Subcontract, the amount that the Contractor may claim and for which the Commonwealth is liable under clause 7.11.5 will be calculated on the basis that such a right was included.
- 7.11.7 The Contractor acknowledges that any costs paid to the Contractor pursuant to this clause 7.11 and 21.7 are the Contractor's sole remedy under the Contract and otherwise at law in respect of the suspension under clause 7.11.2 and the Contractor waives any right to make any claim for further costs due to such suspension, other than in accordance with this clause 7.11.

- 7.11.8 Nothing in this clause affects the Commonwealth's obligation to pay for any Services provided by the Contractor in accordance with the Contract prior to the suspension of any Services.
- 7.11.9 If the Contractor fails to comply with any direction by the Commonwealth pursuant to clause 7.11.2, such a failure is a breach of the Contract and the Commonwealth may terminate the Contract immediately in accordance with clause 50.2.2f.

7.12 Recommencement of Suspended Services

- 7.12.1 The Commonwealth may, in its sole and absolute discretion, direct the Contractor to recommence provision of any of the Services, or a part thereof, that have been suspended under clause 7.11, on written notice to the Contractor.
- 7.12.2 If the Commonwealth provides written notice under clause 7.12.1:
- a. the Contractor must recommence provision of the suspended Services in accordance with the notice (including the timeframes for recommencement identified by the Commonwealth in that notice (which must be reasonable));
 - b. the Contractor may, in accordance with clause 21, submit an invoice for a claim for payment for the provision of the Services specified in the Commonwealth's notice from the date of recommencement; and
 - c. the Contractor must not make any claim for, and the Commonwealth is not liable for, any Liability incurred by the Contractor as a result of the recommencement other than for those claimed under clause 7.11.5 and the Contractor waives its rights to make such a claim.

7.13 Pollution and Cleaning Up

- 7.13.1 Without limiting any other provisions of this Contract including clauses 37 and 38, in performing the Services, the Contractor must:
- a. ensure that it does not pollute, contaminate or damage the environment;
 - b. keep the Base clean and tidy and free of refuse; and
 - c. prior to the end of the latter of the Initial Contract Period and the Contract Period:
 - (i) subject to any greater rubbish removal obligation in a Service Package, remove from the relevant part of the Base all rubbish and, materials, to the extent that the rubbish and materials were left by the Contractor or the Contractor Personnel; and
 - (ii) remove all plant and equipment, to the extent that such plant and equipment is not the property of Commonwealth or any Other Contractor and is under the control of the Contractor.
- 7.13.2 The Commonwealth acknowledges and agrees that the Contractor's obligations and liability arising under this clause 7.13 that is applicable to each Base do not extend to any obligation or liability for any loss or damage to the extent arising out of pollution, contamination or environmental damage pre-existing at each Base at the Effective Date.

7.14 Direction and Control

- 7.14.1 The Contractor must, and must ensure that the Contractor Personnel, comply with all requirements that the Senior Australian Defence Force Officer (**SADFO**) advises by way of operational, routine, or similar orders or instructions with respect to operational security.
- 7.14.2 Without limiting the generality of clause 7.14.1, in times of emergency or a deteriorating security environment, as determined by the SADFO, the Contractor shall, and shall ensure that the Contractor Personnel, comply with the direction of the SADFO while performing Services. The Contractor must, in such circumstances, and must ensure that the Contractor Personnel, carry out each direction and request made by the SADFO for the purpose of meeting the emergency or deteriorating security environment.
- 7.14.3 The Contractor may, in accordance with clause 21.7, claim its reasonable direct costs associated with the Contractor's compliance with a direction by the SADFO in accordance with clause 7.14.2.

- 7.14.4 If, as a direct result of a direction by the SADFO, the Contractor is unable to perform the Services, the Contractor may notify the Commonwealth of a claim for postponement or waiver in accordance with clause 7.15.
- 7.14.5 The Contractor must ensure that all Approved Subcontracts include a clause that is functionally equivalent to the direction and control obligation in this clause 7.14. If the Contractor fails to include such a right in an Approved Subcontract, the amount that the Contractor may claim and for which the Commonwealth is liable under clauses 7.14.3 and 21.7 will be calculated on the basis that such a right was included.
- 7.14.6 If the Contractor fails to comply with any directions made by the SADFO pursuant to clause 7.14.2, such a failure is a breach of the Contract and the Commonwealth may terminate the Contract immediately in accordance with clause 50.2.2f.
- 7.14.7 Any direction given by the SADFO under this clause 7.14 remains in effect and is binding upon the Contractor and the Contractor Personnel until the SADFO withdraws it in writing.
- 7.15 Postponement and waiver**
-
- 7.15.1 The Contractor must take all reasonable steps to prevent and minimise delay in the provision of the Services and to mitigate the Parties' Losses and the operational impact due to those delays. For the purposes of this clause delay includes temporary non-delivery of Services.
- 7.15.2 The Contractor must immediately upon becoming aware that delivery of the Services will or may be delayed, by any cause, advise the Commonwealth of the cause and nature of the delay and confirm such advice by notice in writing to the Commonwealth Representative as soon as is reasonably possible.
- 7.15.3 The Contractor must notify the Commonwealth Representative in writing:
- of the steps it will take to minimise the delay; and
 - the anticipated duration of the delay.
- 7.15.4 Subject to clauses 7.15.1 and 7.15.5, the Contractor may claim one or more of the following:
- a waiver of the obligation to provide a Service, including a waiver of an obligation to provide a Deliverable; and
 - a postponement of the date for provision of a Service, including a postponement of the date for delivery of a Deliverable,
- only to the extent that the event giving rise to the claim:
- directly delays the Contractor in the performance of its obligations under the Contract;
 - subject to clause 7.15.9, is beyond the reasonable control of the Contractor and is not caused by a default (including breach of Contract), or an unlawful or negligent act or omission of the Contractor or the Contractor Personnel;
 - could not have been reasonably contemplated and allowed for by the Contractor or Contractor Personnel; and
 - is not provided for elsewhere in the Contract.
- 7.15.5 The Contractor may submit a notice of claim to the Commonwealth for such waiver and/or postponement, within twenty one (21) days after such factors as described in clause 7.15.4 have come to the notice of the Contractor. The notice must provide, in as much detail as possible the nature of the cause of the delay and the anticipated extent of the delay and supplying any supporting information as may be reasonably necessary to support the validity of the claim.
- 7.15.6 Within twenty one (21) days after the circumstances causing the delay referred to in clause 7.15.4 have ceased, the Contractor must notify the Commonwealth in writing of the actual period of the delay and may seek any waiver and/or postponement to the date by which the relevant Services were originally required.
- 7.15.7 The Commonwealth may Approve or reject the waiver and/or postponement sought by the Contractor in clause 7.15.6 within 21 days of receipt of the notice referred to in that clause.
- 7.15.8 The Contractor is not entitled to any such waiver or postponement unless as a condition precedent, the Contractor has complied with the notice provisions under clauses 7.15.2, 7.15.5

and 7.15.6. Unless and until a claim for waiver and/or postponement is Approved by the Commonwealth under clause 7.15.7, the Contractor is fully responsible for any potential or actual delay in the delivery of the Services and any loss, damage, cost or expenses arising from such a delay.

- 7.15.9 Any delay attributable to a Subcontractor will be considered for the purposes of this clause only to the extent that the reasons for the delay satisfy this clause and are beyond the reasonable control of the Subcontractor and the Contractor.
- 7.15.10 Any claim for such waiver or postponement will not give rise to an entitlement for an increase in the amounts payable under Schedule 3 or any amount payable under the Contract.
- 7.15.11 The Contractor must not submit a waiver and/or postponement claim pursuant to this clause 7.15 for events that occur prior to the Effective Date.
- 7.15.12 Whether or not the Contractor has made, or is entitled to make, a claim under this clause 7.15 the Commonwealth may, in its discretion, at any time and by written notice to the Contractor, do one or more of the following:
- immediately decrease the required level of performance for a particular reporting period;
 - postpone the date for provision of a Service or Deliverable; or
 - waive the obligation to provide a Service or Deliverable.
- 7.15.13 The parties acknowledge that:
- the Commonwealth is not required to exercise its discretion under clause 7.15.12 for the benefit of the Contractor; and
 - the exercise or failure to exercise the discretion under clause 7.15.12 is not capable of being the subject of a dispute arising from or in connection with the Contract (including for the purposes of clause 7.15) or otherwise subject to review.
- 7.15.14 If the Commonwealth exercises its discretion under clause 7.15.12, the Contractor must submit a CCP in accordance with clause 18.1 that is consistent with the notice issued under clause 7.15.12 to incorporate the change into the Contract.

7.16 Quality Management System

- 7.16.1 The Contractor shall:
- from the Operative Date, maintain a Quality Management System in accordance with AS/NZS ISO 9001:2008 for all QMS requirements; and
 - gain full ISO 9001 certification within 18 months of the Operative Date.

7.17 Reduced Activity Period

- 7.17.1 Notwithstanding any other provision of the Contract, the Commonwealth may advise the Contractor of a period of reduced activity (**Reduced Activity Period**).
- 7.17.2 An advice given by the Commonwealth pursuant to clause 7.17.1 may include:
- the Services that must not be provided and/or the reduced volume of Services to be provided;
 - the Reduced Activity Period start and end dates, including any phasing in or out; and
 - the reduced amount that the Contractor may claim in accordance with clause 21.1 and Schedule 3 for the Reduced Activity Period.
- 7.17.3 The Contractor shall:
- reduce the provision of Services in accordance with advice given pursuant to clause 7.17.1; and
 - ensure that any claim for payment for a Reduced Activity Period, is in accordance with clauses 7.17.2c and 21.

8 DELIVERABLES

8.1 Provision of Deliverables

- 8.1.1 The Contractor must provide and maintain the Deliverables as required under the Contract.
- 8.1.2 To enable the Commonwealth to thoroughly review each Deliverable for Approval and with sufficient time for the Contractor to make such further amendments as may be required to ensure its Approval by the date required by the Commonwealth, the Contractor must submit Deliverables to the Commonwealth in accordance with the timeframes for review and Approval set out in the Statement of Work.

8.2 Standard of Deliverables

- 8.2.1 The Contractor shall ensure that each Deliverable:
- a. is accurate and fit for its intended purpose in accordance with the Contract;
 - b. is acceptable to the Commonwealth in terms of presentation and scope;
 - c. is in the English language; and
 - d. meets or exceeds the Contract requirements.
- 8.2.2 The Contractor warrants that the preparation, review, maintenance and update of each of the plans and reports which form part of the Deliverables will be carried out with the due care, skill and diligence appropriate to the undertaking and will comply with the requirements of the Contract.

8.3 Approval of Deliverables

- 8.3.1 The Contractor shall produce, update and deliver Deliverables to the Commonwealth in accordance with the Contract..
- 8.3.2 If the Contract provides that a Deliverable must be submitted by the Contractor to the Commonwealth for Approval, the Commonwealth may:
- a. Approve; or
 - b. reject,
- the Deliverable.
- 8.3.3 If the Commonwealth gives the Contractor advice that the Deliverable is rejected, the Contractor must, in accordance with the timeframes in the Contract, or as otherwise specified by the Commonwealth and at no additional cost to the Commonwealth, correct the Deliverable so that it meets or exceeds the requirement of the Contract and resubmit a revised version to the Commonwealth for Approval in which case clause 8.3.2 applies.
- 8.3.4 If, within the time determined under clause 8.3.3, the Contractor submits the rectified Deliverable as conforming to the requirements of the Contract, the Commonwealth may exercise the rights provided by this clause 8.3 as if the Deliverable had been submitted by the Contractor for the first time.
- 8.3.5 If, under clause 8.3.2, the Commonwealth provides the Contractor with advice of Approval, then the Deliverable shall have effect in accordance with that Approval.
- 8.3.6 Approval of any Deliverable by the Commonwealth shall:
- a. be construed as no more than an indication that the Deliverable appears to the Commonwealth Representative to be capable of being used as a basis for further work;
 - b. not be construed as limiting the Contractor's responsibility to provide Services in accordance with the requirements of the Contract; and
 - c. not be construed as a waiver of:
 - (i) any right under this Contract; or
 - (ii) any cause of action,arising out of any act or omission of the Contractor or Contractor Personnel.

9 OTHER SERVICES

9.1 Survey & Quote Services

- 9.1.1 The Commonwealth Representative may, in the form of the Request for Quotation for Survey and Quote Services at Annex A to Schedule 6, request the Contractor to provide a quote for the provision of an S&Q Service described in the request.
- 9.1.2 The Contractor must, before the due date specified by the Commonwealth in the request, conduct a survey of the S&Q Service and submit for Approval a Quote for Survey and Quote Services (**S&Q Quote**) in the form of Annex B to Schedule 6. The Contractor shall ensure that each S&Q Quote:
- a. includes a price for the provision of the requested S&Q Service:
 - (i) prepared on the price basis specified by the Commonwealth in the request;
 - (ii) calculated in accordance with:
 - 1) the methodology in the Quote for Survey and Quote Services form at Annex B to Schedule 6; and
 - 2) the 'labour rates' and the 'task rates' for Survey and Quote Services specified at Annex A to Schedule 3.
- 9.1.3 Subject to clause 9.1.4, the Commonwealth Representative must, within 30 days of receiving a quote under clause 9.1.2 (or within the longer period (if any) specified by the Contractor in the quote):
- a. Approve the quote using the Approval of Quote for Survey and Quote Services form and notify the Contractor of the Approval of the S&Q Quote; or
 - b. reject the quote and notify the Contractor of the reasons for rejection.
- 9.1.4 If the Commonwealth Representative gives no notice under clause 9.1.3 within the period determined in accordance with that clause, the Commonwealth is taken to have rejected the quote.
- 9.1.5 The Commonwealth may, in its discretion, at any time before the Approval of an S&Q Quote, cancel a request under clause 9.1.1 by notice in writing to the Contractor. Upon receipt of such a notice, the Contractor must cease its activities in relation to the request.
- 9.1.6 An S&Q Quote that is Approved in accordance with clause 9.1.3a takes effect when a Purchase Order is executed by the Commonwealth in respect of the S&Q Service.
- 9.1.7 If the Commonwealth executes a Purchase Order in respect of an S&Q Service:
- a. the Contractor must provide the S&Q Service in accordance with the Contract, the Purchase Order and the Approved S&Q Quote; and
 - b. upon completion of the S&Q Service the Contractor may make a claim in accordance with clause 21 and the Purchase Order for an amount not exceeding the S&Q Quote.
- 9.1.8 The S&Q Service must be performed by the Contractor in accordance with:
- a. the conditions of Contract (being a Service to be provided under the Contract), except to the extent that the Purchase Order for the S&Q Service expressly states that a provision of the SOW or another Schedule does not apply to the S&Q Service; and
 - b. any other terms and conditions specified by the Commonwealth.
- 9.1.9 The Purchase Order for an S&Q Service must not change any provisions of the Contract. If the Parties agree that performance of an S&Q Service requires a change to the Contract, the Contractor must submit a CCP to give effect to the change.
- 9.1.10 If the Contractor becomes aware that:
- a. circumstances have arisen in which, in the Contractor's reasonable opinion, the capability of the Base may not be maintained unless an S&Q Service is performed; and
 - b. the Commonwealth Representative may not be aware of those circumstances,
- the Contractor must notify the Commonwealth Representative of the circumstances as soon as is practicable.

9.1.11 The Contractor acknowledges that:

- a. the Commonwealth Representative will decide whether, and if so when, to make a request for an S&Q Service;
- b. the Commonwealth has no obligation to reimburse the Contractor in accordance with clause 21.7 for its costs in surveying and quoting for S&Q Services, except to the extent (if any) that the Commonwealth Representative Approves the reimbursement in advance in writing; and
- c. without limiting clause 3, the Commonwealth may obtain services the same as or similar to one or more of the S&Q Services from a person other than the Contractor.

10 LOCATION OF SERVICES

10.1.1 Unless otherwise, agreed by the Commonwealth, the Services must be provided by the Contractor at the Base.

SECTION C – SERVICE PERFORMANCE

11 PERFORMANCE REQUIREMENTS

11.1 Design and Development work

- 11.1.1 If the provision of the Services requires the Contractor to undertake design and development work, the Contractor must undertake that design and development work with a high degree of professional skill and care and in accordance with the Contract. If the Contract does not specify a design or development standard, the Contractor must apply industry best practice relevant to the design and development work.
- 11.1.2 The Contractor must undertake the required design and development work so that Services are compatible with and do not restrict the performance of, or adversely affect, existing equipment. For the purposes of this clause, “existing equipment” means equipment specified or referred to in the Contract or any other equipment used by the Commonwealth that the Contractor knows, or reasonably ought to know, will be used with the Services.

11.2 Non-Provision of Services

- 11.2.1 The Contractor must provide all Services in accordance with the Contract.
- 11.2.2 Without limiting any other right of the Commonwealth under the Contract, if the Contractor fails to provide a Service when required by the Contract:
- a. the Contractor shall:
 - (i) immediately advise the Commonwealth of each failure to provide any Service which impacts on security; health and safety; the environment or Commonwealth property (**Significant Service**); and
 - (ii) promptly advise the Commonwealth of each failure to provide a Service that is not a Significant Service; and
 - b. if:
 - (i) the Service is of a type specified at item 19 of Schedule 1, the Contractor shall provide the Service in accordance with clause 11.2.3; or
 - (ii) the Service is not of a type specified at 19 of Schedule 1, the Contractor shall not provide the Service, unless the Commonwealth advises the Contractor in writing to provide that Service in accordance with the advice, including when the Service must be provided.
- 11.2.3 If an advice is given by the Commonwealth under clause 11.2.2b(ii) or a Service is to be provided in accordance with clause 11.2.2b(i), the Contractor must provide the Service:
- a. at no additional cost to the Commonwealth;
 - b. taking all such steps as are reasonably necessary to mitigate the effect on the Commonwealth;
 - c. within the time specified in the advice given pursuant to clause 11.2.2a or as soon as possible if the Service is of a type specified at item 19 of Schedule 1; and
 - d. at times and in a manner which cause as little inconvenience as possible to the Commonwealth and the Contractor's performance of the other Services.
- 11.2.4 If:
- a. the Contractor fails to provide a Service in accordance with clause 11.2.2a; or
 - b. the Commonwealth does not does advise the Contractor to provide a Service in accordance with clause 11.2.2a,
- then:
- c. Commonwealth may, in its absolute discretion, do one or more of the following:
 - (i) perform the Service itself; and

- (ii) engage a third party to perform the Service; and
 - d. the Contractor shall reduce the next claim for payment pursuant to clause 21 by the amount advised by the Commonwealth in accordance with clause 11.2.5 (**Non-Provision Amount**).
- 11.2.5 The Non-Provision Amount for a Service that the Contractor failed to provide may be determined by the Commonwealth based on:
- a. the amount otherwise claimable for the Service not provided, as specified in Schedule 3;
 - b. if Schedule 3 does not specify an amount claimable for the Service, the relevant schedule of rates for Survey and Quote Services or "labour rate and task rate schedules" in Schedule 3; or
 - c. if there is neither an amount claimable for the Service specified in Schedule 3 nor an applicable schedule of rates for the Service, the Commonwealth's reasonable estimate of the third party cost to perform the Service.
- 11.2.6 The exercise or non-exercise by the Commonwealth of all or any of its rights under clause 11.2 will not affect the Commonwealth's other rights at Law or arising from or in connection with the Contract, including the right to terminate or reduce the scope of the Contract for default pursuant to clause 50 or otherwise.
- 11.2.7 The Contractor may, in accordance with clause and subject to clause 7.15, claim postponement or waiver of a Non-Conformance.
- 11.3 **Acceptance of Deliverables – Not Used**
- 11.4 **Ownership and Risk**
-
- 11.4.1 Subject to clauses 9.1.8 and 20, ownership of any Deliverables, or partially completed Deliverables, provided as part of the Services shall pass to the Commonwealth:
- a. for those Deliverables being provided through Survey and Quote Services, on payment of the claim for the applicable Services;
 - b. for Deliverables:
 - (i) if subject to Approval, upon Approval; and
 - (ii) if not subject to Approval, upon delivery; and
 - c. for any other Deliverables, on provision of the Service to which the Deliverable forms a part.
- 11.4.2 The Contractor shall ensure that at the time ownership of any item of Deliverables passes to the Commonwealth, those items are free of any Encumbrance.
- 11.4.3 The Contractor acknowledges that any Deliverables which become owned by the Commonwealth under the Contract are not GFM unless specifically listed as GFM in Schedule 5.
- 11.4.4 Subject to clause 9.1.8:
- a. risk of loss of, or damage to, any Deliverables resides with the Contractor and passes to the Commonwealth on delivery; and
 - b. if:
 - (i) the Commonwealth Representative gives the Contractor an advice rejecting Deliverables in accordance with clause 8.3.2b; or
 - (ii) the Contractor retakes possession of the Deliverables in accordance with the Contract,
- risk of loss of, or damage to, those Deliverables reverts to the Contractor on repossession or on the date of the advice given in accordance with clause 8.3.2b (or as otherwise specified in the advice).

SECTION D – PERSONNEL

12 PERSONNEL

12.1 Personnel and resources

12.1.1 The Contractor must ensure that:

- a. all Contractor Personnel have a sufficient standard of knowledge, training and expertise, including as set out in the Statement of Work, to perform the Services as appropriate to their respective role;
- b. all Contractor Personnel who provide the Services receive formal training and ongoing professional development to ensure they have, and maintain, appropriate skills to deliver the Services, as appropriate to their respective role;
- c. the skills and competencies of Contractor Personnel recruited to provide Services are of a standard that enable the Contractor to provide those Services; and
- d. it has appropriately qualified resources available for reasonable coverage for Surge Services.

12.2 Leave of absence

- 12.2.1 The Contractor must use its best endeavours to ensure that all positions are filled at all times in the event that Contractor Personnel take planned or unplanned leave or are otherwise unable to perform the Services.

12.3 Commonwealth may require removal of Contractor Personnel

- 12.3.1 The Commonwealth may require the Contractor to remove and replace any of the Contractor Personnel from performing the Services, including:

- a. if Contractor Personnel fail to observe and conform to Defence Policies and Procedures and, if applicable, the Defence environment;
- b. if Contractor Personnel fail to comply with any Law;
- c. if Contractor Personnel fail to comply with any workplace health and safety requirements of the Contract;
- d. if the Commonwealth, in its sole and absolute discretion, is of the opinion that standards, competence or performance of any of the Contractor Personnel falls below the standards, competence or performance required of the Contractor Personnel or under the Contract; and
- e. to protect people or property.

- 12.3.2 Where the Contractor is required to replace Contractor Personnel, the Contractor must immediately do so with another appropriately qualified, competent and experienced person.

- 12.3.3 Any requirement to replace any of the Contractor Personnel during the course of the Contract (whether at the request of the Commonwealth or not) shall not entitle the Contractor to claim postponement under clause 7.15 and the Contractor waives any right to make such a claim for postponement.

12.4 Personnel related expenses

- 12.4.1 The Contractor is responsible for all payments to Contractor Personnel providing Services under the Contract, including payment by way of salary, remuneration or commissions, bonuses, annual leave, long service leave, personal leave, termination, redundancy, taxes, superannuation or worker's compensation premiums or liabilities.

13 POST DEFENCE SEPARATION EMPLOYMENT

- 13.1.1 The Contractor must ensure that any employee of the Contractor who is a former Defence Employee complies with the requirements of the Defence Workplace Relations Manual and DI(G) PERS 25-4 as applicable.
- 13.1.2 Except with the written Approval of the Commonwealth Representative, the Contractor must not permit a person who:
- a. in a Relevant Period (defined below) was a Employee of, or a Service Provider to, Defence engaged in the preparation or management of the Contract, the selection of the Contractor or the performance of the project or activity to which the Contract relates; or
 - b. in the 12 months immediately preceding the request for Approval was a Defence Employee,
- to perform or contribute to the Contractor's obligations under the Contract.
- 13.1.3 The Commonwealth Representative will not unreasonably withhold or delay Approval under clause 13.1.2 and will consider:
- a. the character and duration of the engagement, services or work performed by the Employee or Service Provider in the period specified in clause 13.1.2a or b (as applicable);
 - b. any information provided by the Contractor about the character and duration of the Services to be performed by the Employee or Service Provider under the Contract;
 - c. the potential for real or perceived Conflicts or probity objections if the Employee or Service Provider performs or contributes to the performance of the Contract;
 - d. any information provided by the Contractor concerning any significant effect which withholding Approval will have on the Employee or Service Provider's employment opportunities or the performance of the Contract; and
 - e. the Commonwealth's policy requirements set out in the Defence Workplace Relations Manual and DI(G)PERS 25-4, as applicable.
- 13.1.4 In this clause 13:
- a. **Relevant Period** means each of:
 - (i) 24 months;
 - (ii) 12 months; and
 - (iii) 6 months,before the request for the Approval contemplated by clause 13.1.2a was made; and
 - b. each restriction created by clause 13.1.2a, by the operation of clause 13.1.4 (due to the three Relevant Periods applying), is separate and independent of the other (although they are concurrent in effect).

14 RESTRICTION ON ENGAGING PERSONNEL OF OTHER PARTY

- 14.1.1 The Contractor must not, without the written prior agreement of the Commonwealth, engage, employ or induce or cause a third party to induce the Commonwealth Personnel engaged in the performance of the Contract to enter into a contract for service or a contract for employment with it.
- 14.1.2 The restriction referred to in clause 14.1.1 applies during the Contract Period and for a period of:
- a. six months after expiry or termination of the Contract;
 - b. three months after expiry or termination of the Contract; or
 - c. one month after expiry or termination of the Contract,
- each of which periods will be regarded as separate, distinct and several so that the enforceability of a restraint in respect of one period will not affect the enforceability of the others.

- 14.1.3 A general solicitation for employment such as a newspaper advertisement is not a breach of this clause 14.

SECTION E – CONTRACT MANAGEMENT

15 ROLES AND RESPONSIBILITIES

15.1 Commonwealth Representative

- 15.1.1 The Commonwealth Representative is responsible for administering the Contract on behalf of the Commonwealth.
- 15.1.2 The Commonwealth may notify the Contractor of any change in the name, title or contact details of the Commonwealth Representative by giving notice to the Contractor and that change will take effect from the date the Contractor is deemed to have received that notice under clause 54.
- 15.1.3 The Commonwealth Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Commonwealth Representative, and the scope of their delegation or authorisation (**Commonwealth Contract Authority**) are set out at clauses 15.2.1 to 15.3.2 or as advised in writing by the Commonwealth from time to time.
- 15.1.4 The Contractor must comply with any directions of:
- a. the Commonwealth Representative, made within the scope of the administration of the Contract; and
 - b. any Commonwealth Contract Authority, made within the scope of its delegation or authorisation.
- 15.1.5 The Commonwealth may confirm in writing any direction given orally within fourteen days of giving that direction. Neither the Commonwealth Representatives nor any Commonwealth Contract Authority have any authority to waive any provision of, or release the Contractor from, its obligations under the Contract, except in accordance with clause 18.
- 15.1.6 Any work performed, cost incurred or delay suffered by the Contractor in response to a communication from the Commonwealth Representative or any Commonwealth Contract Authority which is not:
- a. authorised by the Contract; or
 - b. a direction for the Contractor to comply with its obligations arising from or in connection with the Contract,
- is at the Contractor's sole cost and risk.

15.2 Commonwealth Contract Authority

- 15.2.1 The Commonwealth Contract Authority:
- a. is authorised by the Commonwealth to:
 - (i) Approve or effect changes to the Contract in accordance with clause 18 on behalf of the Commonwealth; and
 - (ii) issue any notices in accordance with clause 49; and
 - b. is appointed by the Commonwealth to administer the Contract on behalf of the Commonwealth.
- 15.2.2 The Commonwealth may notify the Contractor of any change in the name, title or contact details of the Commonwealth Contract Authority or any of its Authorised Persons (as defined below) by giving notice to the Contractor and that change will take effect from the date the Contractor is deemed to have received that notice under clause 54.
- 15.2.3 The Commonwealth Contract Authority may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Commonwealth Contract Authority, and the scope of their delegation or authorisation (**Authorised Persons**) are as set out at clause 15.3 or as advised in writing by the Commonwealth from time to time.
- 15.2.4 The Contractor must comply with any directions of:

- a. the Commonwealth Contract Authority, made within the scope of the administration of the Contract; and
 - b. any Authorised Person made within the scope of its delegation or authorisation.
- 15.2.5 The Commonwealth may confirm in writing any direction given orally within fourteen days of giving that direction. Neither the Commonwealth Contract Authority nor an Authorised Person have any authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 18.
- 15.2.6 Any work performed, cost incurred or delay suffered by the Contractor in response to a communication from the Commonwealth Contract Authority or an Authorised Person which is not:
- a. authorised by the Contract; or
 - b. a direction for the Contractor to comply with its obligations arising from or in connection with the Contract,
- is at the Contractor's sole cost and risk.

15.3 **Commonwealth Contract Administrator**

- 15.3.1 The Commonwealth delegates to the Commonwealth Contract Administrator the role of:
- a. day to day management of the Contract, including receipt of notices and communications under the Contract; and
 - b. overseeing the Contractor's performance under the Contract.
- 15.3.2 A reference to the Commonwealth Contract Authority includes a reference to the Authorised Person where the Authorised Person has been delegated the functions or authorised to perform the functions of the Commonwealth Contract Authority under clauses 15.2.1 to 15.2.4 or under any other notice in writing from the Commonwealth.

15.4 **Contractor Representative**

- 15.4.1 The Contractor Representative is responsible for administering the Contract on behalf of the Contractor.
- 15.4.2 The Contractor must notify the Commonwealth of any change in the name, title or contact details of the Contractor Representative by giving notice to the Commonwealth and that change will take effect from the date the Commonwealth is deemed to have received that notice under clause 54.
- 15.4.3 The Contractor Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Contractor Representative, and the scope of their delegation or authorisation (**Contractor Contract Authority**) are set out at clauses 15.5.1 to 15.6.2 or as advised in writing by the Contractor from time to time.

15.5 **Contractor Contract Authority**

- 15.5.1 The Contractor must notify the Commonwealth of any change in the name, title or contact details of the Contractor Contract Authority or any other person to whom it has delegated its functions or who it has authorised to carry out its functions pursuant to clauses 15.5.1 to 15.6.2 by giving notice to the Commonwealth and that change will take effect from the date the Commonwealth is deemed to have received that notice under clause 54.
- 15.5.2 The Contractor Contract Authority is appointed by the Contractor to administer the Contract on behalf of the Contractor.
- 15.5.3 The Contractor Contract Authority may delegate its functions or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out the functions on behalf of the Contractor Contract Authority, and the scope of their delegation or authorisation, are set out at clauses 15.6 or as otherwise Approved by the Commonwealth.

15.6 **Contractor Contract Administrator**

- 15.6.1 The Contractor delegates to the Contractor Contract Administrator the role of:

- a. the day to day management of the Contract; and
- b. interfacing with the Commonwealth Contract Administrator.

15.6.2 A reference to the Contractor Contract Authority includes a reference to those people to whom the Contractor Contract Authority has delegated its functions or authorised to perform its functions under clauses 15.6.1 or under any other notice in writing.

16 MEETINGS

16.1.1 The Parties will meet at the times set out in the Performance Management Framework at Schedule 4 (or as otherwise determined by the Commonwealth) to discuss any issues in relation to the provision of the Services.

16.1.2 The Parties must ensure that the relevant Personnel are reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either Party.

17 REPORTING

17.1.1 Reports must be provided by the Contractor to the Commonwealth electronically or in such other form as directed by the Commonwealth.

17.1.2 The Contractor must:

- a. keep the Commonwealth informed of its operations relating to the Services; and
- b. give the Commonwealth such other reports, documents and information in relation to those operations as the Commonwealth reasonably requires,

within the timeframes reasonably required by the Commonwealth.

17.1.3 The Contractor must keep comprehensive written records of the management of the Services.

17.1.4 The Contractor must provide the Commonwealth with the reports specified in the Statement of Work and any CCP in accordance with the timeframe for reporting set out in the SOW and CCP.

17.1.5 The Contractor must ensure that each report contains the information specified in Statement of Work and applicable CCP.

17.1.6 To avoid doubt, and without limiting the Commonwealth's rights, if the Contractor fails to provide a report required in the Statement of Work or a CCP to the Commonwealth within the timeframe specified, then the Commonwealth may withhold or suspend payment of the Service Charges under clause 21.1.2.

17.1.7 The Commonwealth may, by notice in writing to the Contractor, issue any reasonable direction in respect of a report the Contractor is to provide under the Contract specifying one or more of the following:

- a. a format for the report;
- b. information the Contractor is to include in the report; and
- c. the person or persons who is to certify that information contained in the report is accurate.

17.1.8 Where the Commonwealth issues a direction under clause 17.1.7 in respect of a report, the Contractor must comply with the direction in preparing the report to which the direction relates.

18 CONTRACT MANAGEMENT

18.1 Change to the Contract

18.1.1 Except as expressly permitted in the Contract, the Contract may be changed only in accordance with clause 18.1. The Parties are not liable to each other for any additional work undertaken, additional materials or services provided or additional expenditure incurred unless the change has been Approved under clause 18.1.6a and taken effect in accordance with clause 18.1.9.

18.1.2 Either Party may propose a change to the Contract. CCPs must be in the format set out at Annex F to Schedule 6.

18.1.3 If the Commonwealth Representative proposes a change to the Contract it may:

- a. notify the Contractor and the Contractor must submit a CCP to the Commonwealth Representative within a period of 30 days after receipt of such notice or such other period as agreed; or
 - b. provide a CCP to the Contractor and the Contractor must notify the Commonwealth Representative of any changes it requires (if any) to the CCP within 30 days of receipt.
- 18.1.4 The Contractor must calculate the effect of a CCP on the Contractor's payment entitlements (if any) under the Contract in accordance with the worksheet attached to Annex A to Schedule 3, including any rates it contains, unless the Contract otherwise provides or the Commonwealth Representative notifies the Contractor that it may be calculated on a different basis..
- 18.1.5 The Commonwealth Representative may at its discretion require the Contractor to provide a not to exceed (**NTE**) quote for the preparation of a CCP, prior to the Contractor preparing the CCP in accordance with clause 18.1.3. If the Commonwealth Representative exercises its discretion under this clause the Commonwealth's payment of the reasonable costs of preparation of a CCP under clause 18.1.3 or through a change to the Contract Approved under clause 18.1.6 must not exceed the NTE quote provided.
- 18.1.6 The Commonwealth Representative may evaluate a CCP submitted under clause 18.1, and must:
 - a. Approve the CCP; or
 - b. reject the CCP, giving reasons for such rejection.
- 18.1.7 The Commonwealth Representative must Approve or reject a CCP under clause 18.1.6 within:
 - a. 30 days after receipt; or
 - b. such other period as may be agreed.
- 18.1.8 Subject to clause 18.1.5, the cost of preparing the CCPs (other than pursuant to clause 18.1.3b) will be borne by the Contractor.
- 18.1.9 A CCP Approved by the Commonwealth Representative takes effect:
 - a. if no date for taking effect is specified in the CCP, on the date it is executed by both Parties and if executed on different days, the date of the last execution; or
 - b. on the date specified in the CCP, following its execution by both Parties.
- 18.1.10 The Commonwealth may prepare and issue a conformed copy of the Contract to incorporate CCPs that have taken effect under clause 18.1.9. The conformed copy of the Contract does not have any legal status.

19 GOVERNMENT FURNISHED MATERIAL

19.1 Provision and Management of GFM

- 19.1.1 The Commonwealth will use its reasonable endeavours to deliver or provide access to, and the Contractor must manage, GFM in accordance with the Contract.
- 19.1.2 The Contractor acknowledges and agrees that:
 - a. the Commonwealth's obligations to provide GFM on the dates or at the times described in Schedule 5, are subject to the Contractor performing the Services in accordance with clause 7; and
 - b. any delay of the Contractor in meeting its obligations under the Contract may result in the Commonwealth not being able to provide GFM at the time the Contractor requires delivery or access to that GFM.
- 19.1.3 If at any time the Contractor's requirement for the timing of delivery or access to GFM changes because of a delay by the Contractor in meeting its obligations under the Contract, but subject to the Commonwealth's rights under clause 7.14, the Commonwealth:
 - a. will use reasonable endeavours to accommodate changes to the Contractor's requirements for delivery or access to GFM and to deal with them in accordance with clause 18; and

- b. is only required to deliver or provide access to the GFM at the time it becomes available for use for the purposes of the Contract.
- 19.1.4 To avoid doubt, clause 19.1.3 does not require the Commonwealth to remove GFM from operational requirements, or to provide GFM allocated to or available for other contracts.
- 19.1.5 If the Commonwealth fails to deliver or provide access to GFM on the dates set out in Schedule 5, the Contractor may give notice of a claim for postponement in relation to the affected Services, except to the extent that the failure to deliver or provide access to the GFM was caused by a default or an unlawful or negligent act or omission of the Contractor or the Contractor Personnel. The process for submission and consideration of the claim must be undertaken, and any rights of the Contractor determined, in accordance with clause 7.15.
- 19.1.6 Subject to this clause 19, the Commonwealth's inability to deliver or provide access to GFM in the circumstance described in clause 19.1.3 shall not entitle the Contractor to claim postponement in accordance with clause 7.15 and the Contractor waives any such right to claim postponement.
- 19.1.7 Clause 19.1.6 does not operate to limit the operation of clause 7.15 in circumstances where:
 - a. the relevant GFM is Commonwealth Mandated GFM; or
 - b. the delay or failure giving rise to the Contractor's changed requirement for delivery of or access to GFM is an event in respect of which the Commonwealth has suspended or reduced the scope of Services in accordance with clause 7.11.
- 19.1.8 The Contractor must ensure that the GFM does not adversely impact on the provision of the Services.
- 19.1.9 The Parties acknowledge that the GFM is not furnished to the Contractor for the purpose of either directing or guiding the Contractor's task under the Contract. The Commonwealth does not warrant the suitability of such GFM for any particular use or application, nor does the Commonwealth warrant the accuracy or precision of the GFM.
- 19.1.10 Except as otherwise provided in this clause 19, the Contractor is responsible for the application or use of the GFM and any conclusions, assumptions or interpretations made by the Contractor on the basis of the GFM, or its application or use of them.

19.2 GFM Ownership and Restrictions

- 19.2.1 Subject to the IP rights notified to the Contractor by the Commonwealth in accordance with clause 19.2.5, GFM remains the property of the Commonwealth. The Commonwealth may reasonably identify GFM as its property and the Contractor must preserve any means of identification.
- 19.2.2 The Commonwealth will provide GFM to the Contractor for use solely for the purposes of the Contract.
- 19.2.3 The Contractor must ensure that all GFM is used strictly in accordance with any conditions or restrictions set out in Schedule 5, and any direction by the Commonwealth.
- 19.2.4 The Contractor must not:
 - a. without the prior written Approval of the Commonwealth Representative, except as specifically set out in the Contract:
 - (i) use GFM other than for the purposes of the Contract;
 - (ii) modify the GFM;
 - (iii) transfer possession or control of GFM to any other person; or
 - (iv) communicate or divulge GFM to any other person; or
 - b. create or allow to be created any Encumbrance over any GFM.
- 19.2.5 The Commonwealth Representative may notify the Contractor of any IP rights applicable to the GFM and the Contractor must ensure that it uses the GFM strictly in accordance with those rights.
- 19.2.6 The Contractor must return all items of GFM that are required to be returned to the Commonwealth in accordance with Schedule 5, or as otherwise specified in the Contract.

19.3 Governmental Furnished Facilities - Not Used

19.4 Use of Commonwealth Property

- 19.4.1 The Contractor must not, without the prior written Approval of the Commonwealth:
- a. use Commonwealth property other than for the purpose of the Contract;
 - b. modify Commonwealth property;
 - c. transfer possession or control of Commonwealth property to any other person; or
 - d. create or allow to be created any Encumbrance over any Commonwealth property.

19.5 Contractor Managed Commonwealth Assets

- 19.5.1 The Contractor must take all reasonable care of CMCA and must provide facilities to store and handle all CMCA as they are received.
- 19.5.2 The Contractor must, within seven days of becoming aware that any CMCA are lost, destroyed, damaged, defective or deficient, notify the Commonwealth Representative of the event in writing.
- 19.5.3 Without limiting clause 26, the Contractor will be liable to the Commonwealth for loss or destruction of, damage to or defects or deficiencies in, the CMCA, except to the extent that the loss, destruction, damage or defects or deficiencies results from any unlawful or negligent act or omission on the part of the Commonwealth, its officers, employees or agents. Subject to clause 19.5.4, or any agreement by the Parties to replace the CMCA, the Contractor must compensate the Commonwealth for the loss or destruction of, damage to or defects or deficiencies in, the CMCA and the Commonwealth may recover an amount equivalent to the value of the compensation under clause 51.
- 19.5.4 If in the opinion of the Commonwealth Representative the Contractor has the necessary capacity, the Commonwealth Representative may require the Contractor, by notice in writing, to transport, dispose of or repair damaged, defective or deficient CMCA. If the Contractor is liable under clause 19.5.3 for the damage, defect or deficiency, the work performed by the Contractor under this clause 19.5.4 will discharge or partially discharge the Contractor's liability. If the Contractor is not liable under clause 19.5.3 for the damage, defect or deficiency, the Contractor must, if the Parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.

19.6 Shared Resources

- 19.6.1 Certain resources may be made available for use by the Contractor, while still being utilised by the Commonwealth, and they may be designated by the Commonwealth Contract Authority as shared resources. The Contractor must, in the Commonwealth's opinion, act reasonably in its use of shared resources.

19.7 Not Used

19.8 Commonwealth Infrastructure

- 19.8.1 The Contractor:
- a. may use water, electricity and metered gas supplies connected to the Base;
 - b. must exercise reasonable economy in usage of all utilities at the Base;
 - c. may have access to internal mail, telephone, facsimile and Defence networked computer systems at the Base;
 - d. must use these systems in accordance with Defence Policy and Procedures (including all relevant energy management plans applicable to the Base) and only for the purpose of performing the Services;
 - e. may be provided with access to means of communicating externally from the Base; and
 - f. may use the utilities in clause 19.8.1a, the systems and the means of communication in clause 19.8.1e at no charge at the Base.

19.9 **Members Required in Uniform – Not Used**

19.10 **Vehicles – Not Used**

19.11 **Information Systems Support for Base Services**

19.11.1 The Commonwealth may, including in accordance with Annex G to Schedule 7, provide the Contractor with access to relevant Commonwealth information systems to assist in the contract management and accounting.

19.11.2 The Contractor represents and warrants that:

- a. it will not, nor will it suffer or permit any third party under its direction or control, including any Subcontractor, to, negligently introduce into the Commonwealth's systems or any Deliverables any Harmful Code; and
- b. if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Commonwealth and, where that Harmful Code is introduced as a result of a breach of clause 19.11.2a, it will:
 - (i) take all necessary action to eliminate the Harmful Code; and
 - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

SECTION F – INTELLECTUAL PROPERTY

20 INTELLECTUAL PROPERTY

20.1 Ownership of Intellectual Property

- 20.1.1 Ownership of all Foreground IP vests on its creation in the Commonwealth.
- 20.1.2 The Contractor:
- a. grants to the Commonwealth a Licence in respect of all Background IP that is owned by the Contractor to exercise the Background IP for Defence Purposes; and
 - b. must ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.
- 20.1.3 Before an Approved Subcontractor commences work in relation to the provision of the Services (or within 28 days after the Effective Date, if that is later), the Contractor must:
- a. ensure that ownership of all Foreground IP produced by the Approved Subcontractor vests on its creation in the Commonwealth;
 - b. ensure that the Commonwealth is granted a Licence from the Approved Subcontractor in respect of Background IP owned by the Approved Subcontractor on the same terms as clause 20.1.2; and
 - c. arrange for the Approved Subcontractor to execute a deed substantially in the form set out in Annex H to Schedule 6 and provide the deed to the Commonwealth.
- 20.1.4 The Contractor acknowledges that the rights granted under clauses 20.1.2 and 20.1.3 include the right of the Commonwealth, or a person on behalf of the Commonwealth, to exercise the Background IP with the Foreground IP to:
- a. properly use and support the Services, including any Deliverables;
 - b. continue to provide or complete the provision of the Services if the Contract is terminated (except under clause 50.1); and
 - c. remedy errors, omissions, non-conforming materials or work or other Non-Conformances in the Services, including Deliverables, in accordance with the Contract.
- 20.1.5 The Licences granted under clauses 20.1.2 and 20.1.3 do not permit the Commonwealth, or a person on behalf of the Commonwealth, to commercialise the licensed IP. However, the Licence permits the Commonwealth to sub-license the IP to a third party for the purpose of providing goods and services to the Commonwealth for Defence Purposes.
- 20.1.6 The Contractor warrants that the only IP embodied in the Services, including any Deliverables that has not been vested in the Commonwealth, or in respect of which the Commonwealth has not been granted a Licence under clause 20.1.2 and 20.1.3, is Third Party IP.
- 20.1.7 The Commonwealth may, on request, grant the Contractor or an Approved Subcontractor a licence to exercise Foreground IP owned by the Commonwealth on terms acceptable to the Commonwealth, including an appropriate licence fee.

20.2 Contractor IP – Release to Third Parties by the Commonwealth

- 20.2.1 If the Commonwealth makes available to another person any IP that is owned by the Contractor or an Approved Subcontractor and which is Background IP, the Commonwealth shall use its reasonable endeavours to obtain from that person a Deed of Confidentiality in the form set out in Annex I to Schedule 6.

20.3 Moral Rights

- 20.3.1 The Contractor represents and warrants that the provision of the Services and use of the Deliverables for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees or agents of the Contractor or its Subcontractors.
- 20.3.2 The Contractor shall ensure that none of its:
- a. officers, employees or agents;

- b. Subcontractors; or
- c. Subcontractors' officers, employees or agents,
institute, maintain or support any claim or proceeding against the Commonwealth or its officers,
employees or agents for infringement of any of their Moral Rights.

PART 2 – GENERAL REQUIREMENTS

SECTION A – PAYMENT AND CHARGES

21 PAYMENT

21.1 Claims for payment

21.1.1 Subject to clauses 19.9 and 21.2, the Contractor may submit claims for payment for:

- a. the Service Charges set out in Schedule 3, including:
 - (i) Fixed Fees;
 - (ii) Survey and Quote Services Fees;
 - (iii) Cost Reimbursement Payments; and
 - (iv) Project Management (Earned Value) Services Fees; and
- b. any other amounts payable pursuant to the Contract.

21.1.2 Without limiting clause 34.4.1, the Commonwealth may defer, reduce or not make a payment under clause 21 until the Contractor has performed all of its obligations that are required to be performed up to the due date of that payment under the Contract.

21.2 Payment subject to the PMF and Non-Provision

21.2.1 Within 30 days of the end of each Assessment Period, the Contractor shall reduce the amount of the next claim for payment for Service Charges pursuant to clause 21.1.1 by:

- a. the amount of the Abatement advised by the Commonwealth in accordance with clause 6.3.5 of Schedule 4; and
- b. the Non-Provision Amount, as determined in accordance with clause 11.2.5,

or if there is no next claim for payment for Services Charges, or the Contractor fails to reduce the amount claimed in accordance with this clause 21.2.1 and clause 21.1.1, the Abatement and Non-Provision Amount may be recovered by the Commonwealth as a debt under clause 51

21.3 Contractor to provide invoice

21.3.1 If the Contractor submits a claim for payment, it must:

- a. submit an invoice for a claim for payment in writing to the Commonwealth in accordance with Schedule 3 and this clause 21;
- b. ensure that the invoice has been reduced by the amount of any Abatement and Non-Provision Amount (if any) calculated in accordance with clause 21.2.1;
- c. submit the invoice within thirty (30) days of the claim arising; and
- d. if any of the Services are carried out in the State of New South Wales, submit a supporting statement that includes a declaration to the effect that all subcontractors have been paid all amounts that have become due and payable in relation to any construction work (as that term is defined in the *Building and Construction Industry Security of Payment Act 1999* (NSW)) which is in the form prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW).

21.4 Due date for payment

21.4.1 On receipt of an invoice for a claim for payment, the Commonwealth must, within 7 business days of that receipt:

- a. Approve the entire claim if the Contractor has:
 - (i) performed the Services in accordance with the Contract, or if no standard is specified in the Contract, to the satisfaction of the Commonwealth;
 - (ii) complied with the provisions of the Contract applicable to a payment, including clause 21.2.1; and

- (iii) made a claim for the payment and the claim satisfies the requirements of Schedule 3 and Schedule 4; or
 - b. Approve only part of the claim if:
 - (i) without limiting clause 11.2 the Contractor has performed part of the Services in accordance with the Contract or, if no standard is specified in the Contract, to the satisfaction of the Commonwealth;
 - (ii) the Contractor has complied with the provisions of the Contract applicable to a payment; and
 - (iii) the Contractor has made a claim for the payment and the claim satisfies the requirements of clause 21 and Schedule 3,

in which case, the Commonwealth will indicate the amount of payment it proposes to make and the reasons why the amount of the payment it proposes to make is less than the amount claimed by the Contractor and the Contractor may submit a rectified new claim for payment (and in which case the rectified new claim for payment will be subject to the same conditions as if it were the original claim for payment); or
 - c. reject the claim if it fails to comply with one or more of the terms and conditions of the Contract or the Contractor is not otherwise entitled to the amount claimed.
- 21.4.2 The Commonwealth must pay an invoice for a claim Approved under clause 21.4.1a within 8 business days from the date of receipt of a correctly rendered invoice.
- 21.4.3 The application of an Abatement or Non-Provision Amount does not in any way limit any other right, remedy or recourse of the Commonwealth pursuant to the Contract, at Law or otherwise.
- 21.4.4 For the purposes of this clause 21.4, to the extent that the Services are to be carried out:
- a. in any jurisdiction other than the State of Victoria, the State of South Australia, the State of Tasmania, the Northern Territory or the Australian Capital Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public holiday in the State or Territory in which the Site is situated;
 - b. in the State of Victoria, references to "business days" are to days other than:
 - (i) a Saturday or Sunday; or
 - (ii) a day that is partly or wholly observed as a public holiday throughout Victoria;
 - c. in the Northern Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday in the Northern Territory;
 - d. in the State of South Australia, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December;
 - (ii) a public holiday in the State of South Australia; or
 - (iii) any other day on which there is a Statewide shutdown of the operations of the building and construction industry;
 - e. in the State of Tasmania, references to "business days" are to days other than:
 - (i) a Saturday or Sunday;
 - (ii) a statutory holiday as defined in the *Statutory Holidays Act 2000* (Tas); or
 - f. in the Australian Capital Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT).

21.5 Incorrect invoices, under/over payment

- 21.5.1 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently owed by the Commonwealth to the Contractor.
- 21.5.2 Except to the extent expressly provided for in the Contract, the Service Charges include all amounts claimable by the Contractor for all labour, supervision, goods, materials, plant, equipment, spare parts, consumables, facilities, on and off site overheads and all other work and services (**Work**) necessary for the Services:
- whether or not expressly mentioned in the Statement of Work or otherwise in the Contract; and
 - regardless of the volume of any Services required to be performed by the Contractor.
- 21.5.3 The Commonwealth shall use its reasonable endeavours to advise the Contractor of:
- an incorrectly rendered invoice; and
 - the application of an offset by the Commonwealth.

21.6 Early and Late Payment

- 21.6.1 If payment of an amount due under the Contract is made early, interest shall be payable to the Commonwealth in accordance with the formula at clause 21.6.3.
- 21.6.2 If the payment of an amount under the Contract is made late, interest shall be payable by the Commonwealth in accordance with the formula at clause 21.6.3. Any payment not made within 60 days after the date it is to be made under the Contract shall be in breach of the Contract.
- 21.6.3 For the purposes of this clause, an interest payment shall be calculated in accordance with the formula:

$$\frac{I\% \times P \times n}{365}$$

where:

- 'I%' for early payments, means the Reserve Bank of Australia cash rate target current at the date of payment expressed as a percentage per annum;
 - 'I%' for late payment, means the Australian Taxation Office sourced general interest charge rate current at the due date of payment expressed as a percentage per annum;
 - 'P' means the amount of the early or late payment; and
 - 'n' means the number of days before or after the due date for payment that the payment is made.
- 21.6.4 If the interest payment is not offset or paid as part of the subject claim, the Commonwealth Representative shall adjust the next Approved payment under the Contract. If there are no further payments, the relevant Party shall pay the interest payment within 30 days of being provided with written notice in the form of a tax invoice.

21.7 Reimbursement of costs

- 21.7.1 The Contractor may claim reimbursement of the costs set out in Schedule 3. The Contractor must not seek reimbursement of costs other than those set out in Schedule 3.
- 21.7.2 Subject to this clause 21.7, Approved Cost Reimbursement Payments for the actual direct costs incurred by the Contractor may be claimed by the Contractor in accordance with this clause 21.7.2, clause 21.1 and Schedule 3. The Commonwealth will only Approve Cost Reimbursement Payments when the Contractor has provided evidence of the actual costs incurred by the Contractor to the satisfaction of the Commonwealth.
- 21.7.3 The Contractor must not claim Costs Reimbursement Payments relating to taxes and duties already provided for under the Contract, including GST.

- 21.7.4 The Contractor must maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to justify all costs claimed to have been incurred by it in respect of the Cost Reimbursement Payments. In addition to the Commonwealth's rights in clause 48, the Contractor must make these records available to the Commonwealth on request and the Commonwealth and Commonwealth officers authorised by the Commonwealth may cost investigate the records.
- 21.7.5 When a Cost Reimbursement Payment claim is received by the Commonwealth, the Commonwealth may do one or more of the following:
- Approve the claim;
 - reject the claim; or
 - conduct a further cost investigation of the claim.
- 21.7.6 If the Commonwealth rejects the claim, the Commonwealth must, within 14 days of receipt, advise the Contractor in writing of the need to resubmit the claim and the reasons for the rejection.
- 21.7.7 If the Commonwealth requires further cost investigation of a claim, the Commonwealth may advise the Contractor within 14 days of receipt of the claim. The Commonwealth may conduct the cost investigation process and Approve or reject the claim.
- 21.7.8 If a claim is Approved under clause 21.7.5, the Contractor may submit a claim for payment of the Cost Reimbursement Payment in accordance with clause 21.1 within 30 days of the Approval. If a claim is rejected and resubmitted, processing of the resubmitted claim is subject to the same conditions as if it were the original claim.

21.8 Variation of Service Charges

- 21.8.1 The Contractor may vary the Service Charges in accordance with the process set out in Annex C to Schedule 3.

21.9 Stamp duty

- 21.9.1 The Contractor must pay all stamp duty (including penalties and interest) assessed or payable in respect of the Contract and the undertaking of the Services.

22 TAXES AND DUTIES

22.1 Applicability of GST clause

- 22.1.1 The GST obligations of the Parties (and any associated obligations) under this Contract apply as follows:
- up until the Commonwealth notifies the Contractor – clause 22.2 applies, and Annex E to Schedule 7 does not apply; and
 - from the date of commencement notified pursuant to clause 22.1.1a onwards - Annex E to Schedule 7 applies and clause 22.2 does not apply.

22.2 GST

- 22.2.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract other than GST shall be met by the Contractor at no additional cost to the Commonwealth.
- 22.2.2 Subject to clause 22.2.4, the Commonwealth shall, in addition to the other payments to be made to the Contractor under this Contract, pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under the Contract.
- 22.2.3 For the purposes of clause 22.2.2 the additional amount is the amount of GST payable on that part of the Contractor's entitlements to payment to which the taxable supply relates as if that part of those entitlements were the value of the taxable supply for the purpose of the GST Act.
- 22.2.4 The Contractor shall submit each claim for payment under clause 21 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.

- 22.2.5 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.
- 22.2.6 If the Commonwealth makes, or is assessed by the Australian Taxation Office (**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.
- 22.2.7 Any amount of GST to be paid by the Contractor under clause 22.2.6 shall be a debt due to the Commonwealth and may be recovered under clause 51.
- 22.2.8 If the Contractor has a claim for an amount under the Contract, the claim is for the amount less any input tax credit to which the Contractor is entitled in respect of the claim. The Commonwealth may treat the Contractor as entitled to full input tax credits for GST included in an amount unless the Contractor satisfies the Commonwealth otherwise.
- 22.2.9 For the purposes of this clause 22.2, "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "GST", "adjustment note", "input tax credit", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

23 INVOICES, AUDITING AND PAYMENT

23.1 Collection of Public and Third Party Monies – Not used

23.2 Cost Auditing

- 23.2.1 The Contractor must operate on open book approach, providing the Commonwealth with visibility of supply chain costs, income and expenses and profit.
- 23.2.2 A cost audit may be conducted periodically by the Commonwealth or Commonwealth Personnel. This process may be used to ensure that the costing information provided by the Contractor to the Commonwealth is accurate and valid.

23.3 Electronic Transfer of Payments under the Contract

- 23.3.1 Payments by the Commonwealth under the Contract:
- a. may be made by electronic transfer directly to the bank accounts nominated in Item 20 of Annex of the Contract Details; and
 - b. are deemed to be made on the date of the request by the Commonwealth for the electronic transfer.

24 SECURITY OF PAYMENT AND GAIN SHARE

24.1 Security of Payment

- 24.1.1 The Contractor must:
- a. promptly give the Commonwealth a copy of any notice the Contractor:
 - (i) receives from a subcontractor under the Security of Payment Act; or
 - (ii) has been required to supply to a subcontractor under section 15(1) of the Contractors Debts Act 1997 (NSW) setting out the Commonwealth's name; and
 - b. procure that each subcontractor promptly gives the Commonwealth a copy of any notice that the subcontractor receives from another person under the Security of Payment Act.
- 24.1.2 If the Commonwealth becomes aware that a subcontractor is entitled to suspend work under the Security of Payment Act, the Commonwealth may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Services and the Commonwealth may recover from the Contractor any amount paid as a debt due and payable.
- 24.1.3 The Contractor indemnifies the Commonwealth and Commonwealth Personnel against all claims suffered or incurred by the Commonwealth arising out of or in connection with:
- a. a suspension by a subcontractor of work, which forms part of the Services, under the Security of Payment Act; and

- b. a failure by the Contractor to comply with this clause 24.
- 24.1.4 The Contractor's liability to indemnify the Commonwealth under this clause 24, will be reduced proportionately to the extent that the Liability was suffered or incurred by, or made against, the Commonwealth as a result of any breach, negligent or wilful act, omission or conduct by the Commonwealth, its officers, agents or employees.
- 24.1.5 For the purposes of this clause 24:
 - a. a 'subcontractor' is a person engaged by the Contractor, its subcontractor or any other person to carry out work which forms part of the Services; and
 - b. 'work' is work, including all Services, which the Contractor is, or may be, required to do under the Contract.
- 24.2 **Gain Share**

- 24.2.1 The Contractor may:
 - a. in accordance with clause 21 and Annex D to Schedule 3, submit a claim for the payment of an Approved Gain Share; or
 - b. in accordance with clause 18.1 and Annex D to Schedule 3, submit a CCP to implement an Approved Gain Share.

SECTION B – RISK MANAGEMENT

25 DISCLOSURE

25.1 Change of Control

- 25.1.1 The Contractor shall ensure that there is no Change of Control of the Contractor without the prior written consent of the Commonwealth Representative.
- 25.1.2 The Commonwealth Representative's consent under clause 25.1.1 may be given subject to any conditions that the Commonwealth Representative considers appropriate and the Contractor shall comply with such conditions.
- 25.1.3 If there is a Change of Control of the Contractor without the prior written consent of the Commonwealth Representative under clause 25.1.1, then the Commonwealth may give the Contractor a notice of termination for default in accordance with clause 50.2.1g.

26 INDEMNITY

26.1 Contractor's Employees

- 26.1.1 The Contractor shall indemnify the Commonwealth against liability, cost (including the cost of any settlement and legal costs on a full indemnity basis), compensation or expense incurred or sustained by the Commonwealth for death of, or personal injury to, any person employed by the Contractor on work or performance of Services under the Contract, except to the extent that such death or injury results from any unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting (but not including the Contractor or Contractor Personnel).

26.2 Property Damage and Public Risk

- 26.2.1 The Contractor shall indemnify the Commonwealth and Commonwealth Personnel against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a full indemnity basis), compensation or expense sustained or incurred by any of them:
 - a. in respect of personal injury to, or death of, any person, except to the extent that the Contractor's indemnity under clause 26.1 (**Contractor's Employees**) applies;
 - b. in respect of loss of, or damage to, any property of any person (other than property of the Contractor or any Contractor Personnel, CMCA, GFM and GFF); and
 - c. that comprises costs and expenses of defending or settling any claim referred to in clauses 26.2.1a or 26.2.1b,

arising out of or as a consequence of any breach of the Contract, or any unlawful or negligent act or omission on the part of the Contractor or the Contractor's Personnel, except to the extent that such death, injury, or property loss or damage results from any unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting in relation to the Contract (but excluding the Contractor or the Contractor's Personnel).

26.3 Care of the Deliverables

26.3.1 Subject to clauses 9.1.8b and 19.5, the Contractor shall make good any loss of or damage caused to the Deliverables while risk resides with the Contractor except to the extent that the loss or damage was a direct consequence of an excepted risk.

26.3.2 For the purposes of clause 26.3.1, 'excepted risk' means:

- a. any negligent act or omission of the Commonwealth or officers, employees or agents of the Commonwealth in relation to the Contract;
- b. war, invasion, acts of foreign enemies, hostilities between nations, civil insurrection or militarily usurped power;
- c. nuclear explosion, ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels;
- d. acts of terrorism; or
- e. chemical and biological contamination,

which in each case is not caused by the Contractor or any Contractor Personnel.

26.3.3 In the event of loss or damage being caused by any of the excepted risks as set out in clause 26.3.2 (whether or not in combination with other risks), the Contractor shall, to the extent directed by the Commonwealth, rectify the loss or damage and such rectification shall be a deemed variation to the Contract and the Contractor may, in accordance with the Contract, claim its reasonable direct costs actually incurred and may claim postponement or waiver (as relevant) for the direct delay caused for the rectification.

26.4 Intellectual Property Indemnity

26.4.1 The Contractor shall indemnify the Commonwealth and Commonwealth Personnel, including its licensees and sub-licensees (**Those Indemnified**) against the liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses, on a full indemnity basis), compensation or expense sustained or incurred by Those Indemnified which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:

- a. infringement of that third party's IP (including Moral Rights) if the infringement arises out of any activity permitted under any licence, sub-licence or assignment referred to in clause 20 or otherwise arising from or in connection with the Contract; or
- b. breach or alleged breach of any duty of confidentiality owed to that third party, where the breach is caused by any act or omission on the part of the Contractor or any of the Contractor's Personnel, whether or not such act or omission constitutes a breach of the Contract.

26.4.2 For the purposes of this clause 26.4, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act* 1990 (Cth), section 100 of the *Designs Act* 2003 (Cth), section 183 of the *Copyright Act* 1968 (Cth), and section 25 of the *Circuits Layout Act* 1989 (Cth), constitute an infringement.

26.4.3 The Commonwealth shall hold on trust for its Personnel the benefit of each indemnity granted under this Contract and that indemnity may be exercised by the Commonwealth as trustee or by its Personnel as beneficiaries under that trust.

26.5 Privacy Indemnity

26.5.1 The Contractor shall indemnify the Commonwealth against any loss, liability or expense suffered or incurred by the Commonwealth which arises directly from a breach of any of the Contractor's or Subcontractor's obligations referred to in clause 31.

26.6 Indemnity as to Provisions of Subcontracts

- 26.6.1 The Contractor shall indemnify Those Indemnified against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a full indemnity basis), compensation or expense sustained or incurred by any of the Those Indemnified arising out of or as a consequence of a failure by the Contractor to ensure that Subcontracts include provisions as required by the Contract.

27 LIABILITY

27.1 Limitation

- 27.1.1 Subject to clause 27.1.2, the liability of each Party arising out of or in connection with the Contract (including under any indemnity) is limited to the amount specified in item 11 of the Contract Details.

- 27.1.2 The limitations in clause 27.1.1 do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:

- a. personal injury and death;
- b. loss of, or damage to, third party property or Commonwealth property;
- c. liability in respect of claims in connection with the Contract by third parties against Those Indemnified;
- d. the cost of the Commonwealth procuring an alternative service provider arising from a breach of the Contract;
- e. any amounts payable for Liquidated Damages;
- f. any liability, amount or debt owed by the Contractor to the Commonwealth that is recoverable by the Commonwealth under clause 51;
- g. breach of IP rights, confidentiality, privacy or security obligations;
- h. any additional liability incurred by the Commonwealth in having the Services performed if the Contract is terminated for default by the Contractor;
- i. fraud, wilful default or dishonesty;
- j. unlawful or illegal acts;
- k. the IP indemnity provided by the Contractor under clause 26.4; and
- l. the privacy indemnity provided by the Contractor under clause 26.5.

27.2 Review of limitation

- 27.2.1 The Parties acknowledge that the limitation of liability specified in item 11 of the Contract Details will be subject to review, and may be amended in accordance with clause 18.1, in the event that S&Q Services and/or Surge Services are procured or the Contract is varied or extended.

27.3 Refresh of limitation of liability

- 27.3.1 If the liability of the Contractor reaches or exceeds the amount specified in item 11 of the Contract Details (**Liability Limit**):

- a. the Contractor may, by CCP agree, to increase the Liability Limit by the amount specified in item 11; or
- b. if the Contractor fails to agree to increase the Liability Limit in accordance with clause 27.3.1a, within 30 Business Day of reaching or exceeding that limit, the Commonwealth may terminate the Contract by providing notice in writing to the Contractor and the Contract will terminate on the date set out in that notice.

- 27.3.2 The Parties agreed that this clause 27.3.1 applies each time the Liability Limit or increased Liability Limit is reached or exceeded.

28 INSURANCE

28.1 Insurance Generally

28.1.1 The Contractor must:

- a. subject to clause 28.1.1b obtain and maintain (or cause to be obtained and maintained) the insurances or registrations required under this clause 27.3 from the date which is on or before the Operative Date until the Contractor completes its obligations under the Contract;
- b. for the obligations that survive expiry or termination of the Contract, ensure that the cover is maintained for the period that those obligations survive expiry or termination, or as otherwise specified by the Commonwealth; and
- c. obtain and maintain (or cause to be obtained and maintained) the insurance identified in the Contract upon the minimum terms specified in the Contract for that insurance and, to the extent not so specified, upon commercially reasonable terms and conditions reasonably acceptable to the Commonwealth providing for coverage, deductibles, exclusions and margins at the time customary in the insurance market for risk which are to be covered and the Services of the nature to be supplied and performed pursuant to the Contract in light of all relevant circumstances including the Contractor's obligations pursuant to the Contract.

28.1.2 The Contractor must:

- a. on or immediately before the Planned Operative Date;
- b. on each anniversary of the Operative Date; and
- c. on request by the Commonwealth at any time, including after expiry or termination of the Contract,

produce satisfactory evidence that the insurance or registration (in the form of certificates of currency or other documents) in relation to each insurance that the Contractor is required to obtain or maintain has been obtained or maintained in accordance with the requirements of the Contract, including evidence satisfactory to the Commonwealth that the insurance effected by the Contractor will respond and provide indemnity.

28.1.3 The evidence required by clause 28.1.2 must include details of:

- a. the name of the insurance provider;
- b. the type of insurance;
- c. any exclusions which materially affect the scope of cover;
- d. the limits of liability per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
- e. whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover available under the policy; and
- f. the period of insurance.

28.1.4 The Parties agree that nothing arising from or in connection with the Contract affects the right of subrogation of the insurers of the Comcover Policy.

28.2 Public and Products Liability Insurance

28.2.1 The Contractor must obtain and maintain (or cause to be obtained and maintained):

- a. (except in relation to the risks dealt with in clauses 28.2.1b and 28.2.1c) broadform public and products liability insurance for not less than the amount specified at item 12 of the Contract Details which covers liability (including to the Commonwealth and the Contractor Personnel) in respect of:
 - (i) loss of, or damage to, any real or personal property; and
 - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person,

caused by the Contractor or any of the Contractor Personnel arising out of the performance of the Services. The insurance must include cover for Commonwealth property in the care, custody or control of the Contractor;

- b. insurance for not less the amount specified at item 12 of the Contract Details which covers third party property damage related to any plant or vehicles (registered or unregistered) used in respect of the performance of the Contract and which covers injury to, illness of or death of any person related to any unregistered plant or vehicles used in the performance of the Contract; and
- c. compulsory third party motor vehicle insurance in respect of all registrable vehicles used in the performance of the Contract.

28.3 Workers Compensation Insurance

28.3.1 The Contractor must obtain and maintain (or cause to be obtained and maintained), insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person employed or engaged by the Contractor in the work under the Contract (or their dependants):

- a. giving rise to a claim:
 - (i) under any statute relating to workers' or accident compensation; or
 - (ii) where common law claims are not fully covered by the statutory scheme referred to at (i) above, for employer's liability at common law;
- b. in every State or Territory of Australia or other country where the obligations under the Contract will be performed (including where the Services under the Contract will be provided) as well as each State or Territory of Australia or other country where the Contractor's employees normally reside or where their contract of employment was made; and
- c. where possible under the relevant State or Territory of Australia or other country Law or scheme governing workers' compensation insurance, extending to indemnify the Commonwealth as principal for principal's liability.

28.4 Construction Risk Insurance – Not Used

28.5 Errors and Omission Insurance or Professional Indemnity Insurance

28.5.1 The Contractor must obtain and maintain (or cause to be obtained and maintained) a policy of insurance:

- a. to cover civil liabilities of the Contractor of a purely financial nature (whether arising in tort, contract or under statute) arising from errors or omission in judgement by the Contractor or the Contractor Personnel in performing the Services; and
- b. in the amount specified at item 12 the Contract Details.

28.6 Provisions in Policies

28.6.1 The Contractor must ensure that (except for the insurances referred to in clauses 28.2.1c and 28.3) each insurance required to be obtained or maintained by the Contractor pursuant to the Contract provides that:

- a. each of the Commonwealth and its employees, officers agents and subcontractors are named as additional insureds, in each case for its rights and interests in relation to the Contract and the Services (including Commonwealth property);
- b. failure by any named or additional insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other named or additional insured;
- c. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against each named or additional insured (to the extent they are insured under the policy);
- d. the insurer will not impute to any named or additional insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other named or additional insured party;

- e. in the case of any liability insurance, agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or the overall limit of indemnity;
- f. the amount of any deductible, which must be paid by the Contractor, under such insurances will be reasonable and appropriate for a prudent commercial enterprise engaged in operations similar to or reasonably comparable with the delivery of the Services and having regard to the obligations and responsibilities undertaken by virtue of the Contract;
- g. no reduction in limits or coverage affecting the Services will be made in any such policy during the period of such policy, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 30 days prior notification to the Commonwealth;
- h. for any such insurance providing indemnity in respect of loss of or damage to property, the Commonwealth is named as loss payee in respect of any claim under the material damage section of that insurance; and
- i. such insurances will operate:
 - (i) as primary insurance in respect of the Contractor, the Commonwealth and its employees, officers agents and subcontractors to the extent that it applies to the same risk or risks. Any other insurance obtained and maintained by the Contractor will be in excess of and will not contribute to such insurance; and
 - (ii) in excess of Defence's Comcover policy in respect of the Commonwealth and its employees, officers agents and subcontractors to the extent that it applies to the same risk or risks.

28.6.2 The Contractor must:

- a. ensure that each insurance referred to in clause 27.3 is, in the Commonwealth's opinion, obtained from or maintained with reputable insurers having a minimum Moody's Investor Services, Standard and Poor's, AM Best or comparable agency claim payment security rating of A minus or equivalent at the time the relevant coverage is placed; and
- b. advise the Commonwealth of any proposed changes to its insurance cover material to the Contract before it effects any changes to its insurances.

28.6.3 Nothing contained in clause 27.3 relating to insurance coverage, the amounts set out herein or any inspection, approval or agreement with the terms of any insurance will operate as a limitation of the Contractor's liability hereunder in contract, tort including negligence, equity, strict liability, statute or otherwise or to modify any of the Contractor's obligations arising from or in connection with the Contract.

28.6.4 The Contractor must immediately notify the Commonwealth in writing of any occurrence or incident likely to give rise to a claim under the insurance which the Contractor is required to obtain or maintain under the Contract or of any other matter or thing in respect of which notice should be given by the Contractor to the Commonwealth in terms of those insurances. Thereafter, the Contractor must give all such information and assistance as may be reasonably practicable in all the circumstances and, if requested by the Commonwealth, give to the Commonwealth a statutory declaration as to any matters connected therewith. The Contractor must provide the Commonwealth with a copy of all claims and other information submitted to the insurers and insurance brokers in relation to any such insurance which relate to the Contract and all correspondence received from those insurers and insurance brokers.

28.7 **Premiums**

28.7.1 The Contractor must ensure payment is made when due for all premiums, commissions, stamp duties, charges, taxes and other expenses necessary for effecting and maintaining in force each insurance referred to in clause 27.3 which is to be obtained and maintained by the Contractor.

28.8 **Undertaking to Inform**

28.8.1 The Contractor must inform the Commonwealth immediately when it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in clause 27.3 which could materially reduce the available limits of indemnity.

- 28.8.2 The Contractor must immediately notify the Commonwealth if the Contractor becomes aware or reasonably believes that, in relation to any policy of insurance relevant to the Contract,
- a. the policy:
 - (i) is, will or may be cancelled;
 - (ii) has not been, will not be or may not be renewed; or
 - (iii) has had, will have or may have its coverage reduced in any material respect; or
 - b. there has been non-compliance with any conditions to which the policy is subject.
- 28.8.3 The Contractor must notify the Commonwealth as soon as reasonably practical of the occurrence of an event which would or might entitle the Contractor or Commonwealth to make a claim under any insurance which it is obliged to obtain or maintain under the Contract, and promptly take all necessary steps to ensure that its rights, and the rights of the Commonwealth in respect of that claim, are fully preserved.
- 28.8.4 If the Contractor does not comply with this clause 27.3, the Commonwealth may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so, including premiums, as a debt due and payable by the Contractor to the Commonwealth which the Commonwealth may deduct or recover under clause 51.

29 GUARANTEE AND FINANCIAL SECURITY

29.1 Financial security

- 29.1.1 The Contractor must, on or before the Operative Date, provide to the Commonwealth financial security for performance of the Contract of the amount specified at item 17 of the Contract Details.
- 29.1.2 The Contractor must ensure that such financial security is:
- a. irrevocable and unconditional;
 - b. in favour of the Commonwealth;
 - c. issued by a financial institution that is the holder of a current licence issued by APRA, which has a presence and a branch in Melbourne, Australia and which has a minimum long term credit rating of not less than A- (issued by Standard and Poor's Australia), A3 (in respect of Moody's Investor Service) or its equivalent credit rating issued by another generally recognised international credit rating agency; and
 - d. in the form of the Financial Security Deed set out at Annex J to Schedule 6, or such other form as agreed by the Commonwealth.
- 29.1.3 Without limiting the unconditional or on-demand nature of such financial security, the Commonwealth may have recourse to the financial security for any amount the Commonwealth claims it is entitled to arising from or in connection with the Contract.
- 29.1.4 The Contractor covenants with the Commonwealth that it will not institute any proceedings, nor exercise any right, nor take any steps to restrain or enjoin the financial institution which issued that financial security or the Commonwealth from exercising its rights under the security, even where the Contractor disputes the Commonwealth's claim (including where dispute resolution proceedings have been commenced).

29.2 Guarantee

- 29.2.1 The Contractor must, on or before the Operative Date, provide to the Commonwealth a guarantee executed by the Contractor and the Guarantor and in the form set out in Annex K to Schedule 6 or such other form as agreed by the Commonwealth.
- 29.2.2 The guarantee provided in accordance with clause 29.2.1 must remain in place until the Commonwealth notifies the Contractor that it is no longer required.

29.3 Securities

- 29.3.1 If the Contractor fails to provide or maintain the security required under clauses 29.1 or 29.2, the Commonwealth may withhold all or part of any payment under the Contract until the Contractor meets those obligations.

- 29.3.2 If the Commonwealth exercises any or all of its rights under the security provided under clauses 29.1 or 29.2, the Commonwealth shall not be liable for, and the Contractor shall release the Commonwealth from liability for, any resultant loss or damage to the Contractor.
- 29.3.3 The rights of the Commonwealth to recover from the Contractor the balance, after draw down or exercise of the financial security provided under clause 29.1, for loss or damage suffered by the Commonwealth shall not be limited by the Commonwealth's exercise of that security.
- 29.4 Right of Commonwealth to Recover Money**
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- 29.4.1 Without limiting the Commonwealth's rights under the Contract, if the Contractor is liable to or owes any amount or debt to the Commonwealth arising from or in connection with the Contract, the Commonwealth may do one or both of the following:
- a. deduct the amount of the liability, amount or debt from payment it is obliged to make to the Contractor as a result of any claim from the Contractor; or
 - b. provide the Contractor with written notice of the existence of the liability, amount or debt recoverable which shall be paid by the Contractor to the Commonwealth within thirty (30) days of the date on which the Contractor receives that notice.
- 29.4.2 If the amount of any liability, amount or debt owed by the Contractor to the Commonwealth is not fully recovered by the Commonwealth under clause 51, the Commonwealth may exercise any or all of its rights in respect of the securities provided under clauses 29.1 or 29.2.
- 29.4.3 If the Commonwealth deducts any liability, amount or debt from any payment, it shall notify the Contractor in writing that it has done so.
- 29.4.4 Nothing in this clause 29.4 affects the right of the Commonwealth to recover from the Contractor the whole of any liability, amount or debt owed by the Contractor, or any balance that remains owing after deduction.
- 29.4.5 If the Commonwealth exercises its rights under clause 29.1 in relation to the financial security then the Contractor must within five Business Days of the exercise of such rights provide a replacement security to the Commonwealth in the same form and amount as required by clause 29.1.

SECTION C – COMPLIANCE

30 CONFIDENTIALITY

30.1 Commercial-In-Confidence Information

- 30.1.1 Subject to clause 30.1.6, a Party must not, without the prior written consent of the other Party, disclose any Commercial-In-Confidence Information of the other Party to a third party.
- 30.1.2 In giving written consent to the disclosure of Commercial-In-Confidence Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 30.1.3 A Party may, at any time, require the other Party to arrange for:
- a. its Advisers; or
 - b. any other third party, other than a Commonwealth employee, to whom information may be disclosed pursuant to clause 30.1.6a or 30.1.6e,
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first Party's Commercial-In-Confidence Information.
- 30.1.4 If the other Party receives a request under clause 30.1.3, it must promptly arrange for all such undertakings to be given.
- 30.1.5 If in connection with the Contract, Commercial-in-Confidence Information is provided or produced by any person, the relevant party must ensure that any person receiving or producing the information protects the confidential nature of the information
- 30.1.6 The obligations on the Parties under clause 30.1.1 will not be taken to have been breached to the extent that:

- a. Commercial-in-Confidence Information is disclosed by a Party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
 - b. Commercial-in-Confidence Information is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
 - c. Commercial-in-Confidence Information is disclosed by the Commonwealth to the responsible Minister;
 - d. Commercial-in-Confidence Information is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. Commercial-in-Confidence Information is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - f. Commercial-in-Confidence Information is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed;
 - g. Commercial-in-Confidence Information is in the public domain otherwise than due to a breach of this clause 30.1.6;
 - h. Commercial-in-Confidence information, other than the Contractor Commercial-in-Confidence information is set out in item 13 of the Contract Details, is disclosed by the Commonwealth to an Other Contractor; and
 - i. the Commonwealth would be prevented from exercising its IP rights under the Contract.
- 30.1.7 The Commonwealth may require the Contractor to ensure that the Contractor Personnel engaged in the performance of the Contract give a written undertaking in the form of the Deed of Confidentiality and Fidelity set out at Annex I to Schedule 6 prior to the disclosure of Commercial-in-Confidence Information. The Contractor must provide properly executed Deeds of Confidentiality and Fidelity as required by this clause.
- 30.1.8 The Contractor must not, in marking information supplied to the Commonwealth, misuse the term 'Commercial-in-Confidence' or the Contractor's equivalent. The marking of information as 'Commercial-in-Confidence' must not affect the legal nature and character of the information.
- 30.1.9 Without limiting any rights of the Commonwealth provided for elsewhere in the Contract, and in particular in clauses 20 and 30, the Contractor grants to the Commonwealth the right to disclose information relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by the Commonwealth so as to allow software or equipment to connect to or communicate with anything provided to the Commonwealth in the course of the Services.
- 30.1.10 The Parties agree that the conditions of Contract and Schedules, or the parts of them, listed in item 13 of the Contract Details are Commercial-in-Confidence Information to the relevant Party as at the Effective Date.
- 30.1.11 The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Commercial-in-Confidence Information of the Commonwealth on the earlier of:
- a. demand by the Commonwealth; or
 - b. the time the documents and other material are no longer required for the purposes of the Contract.
- 30.1.12 If the Commonwealth makes a demand under clause 30.1.11a and the Contractor has placed or is aware that documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Commercial-in-Confidence Information and the identity of the person in whose custody or control they lie.
- 30.1.13 The Contractor, when directed by the Commonwealth in writing, must destroy any document in its possession, power or control, which contain or relate to any Commercial-in-Confidence Information.

30.1.14 Return or destruction of the documents referred to in this clause 30 does not release the Contractor from its obligations under the Contract.

30.2 Additional confidential information

30.2.1 The Parties may agree that certain additional information is to constitute Commercial-In-Confidence Information for the purposes of this Contract.

30.2.2 Where the Parties agree that certain additional information is to constitute Commercial-In-Confidence Information for the purposes of this Contract, the Contractor shall submit a CCP in accordance with clause 18.1 to give effect to the addition of the information.

30.3 No Reduction in Privacy Obligations

30.3.1 Nothing in this clause 30 derogates from any obligation which either Party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

31 PROTECTION OF PERSONAL INFORMATION

31.1 Privacy and security classified information

31.1.1 The Contractor must not store or process on an offshore cloud computing network or on a domestically hosted (onshore) public cloud computing network (in accordance with the Australian Government Policy and Risk Management Guidelines for the Storage and Processing of Australian Government Information in Outsourced or Offshore ICT Arrangements) any:

- a. Personal Information obtained in the course of performing the Contract; or
- b. Australian Government security classified information.

31.1.2 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;
- 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.

31.1.3 The Contractor shall promptly notify the Commonwealth if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 31 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 or by any individual to whom such Personal Information relates.

31.1.4 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 31.

31.1.5 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 has the same awareness and obligations as the Contractor has under this clause 31, including the requirement in relation to Subcontracts.

31.1.6 In this clause 31;

- a. the terms 'APP code', 'registered APP code', 'organisation', 'Personal Information', 'organisation', Australian Privacy Principles' have the same meaning as they have in the Privacy Act; and

- b. 'subcontract' and other grammatical forms of that word, have the meaning given in the Privacy Act.

32 PUBLIC ANNOUNCEMENTS AND PUBLICATIONS

32.1 Public announcements

- 32.1.1 The Contractor must not make any public announcement or other statement which refers, or is connected to the Contract, including on any matter related to the Services, without obtaining the prior written Approval from the Commonwealth.
- 32.1.2 Clause 32.1.1 does not apply to:
 - a. announcements required by law or the rules of any stock exchange or similar body on which the Contractor is listed; or
 - b. routine marketing activities promoting the Contractor's product or to information that is public knowledge other than by breach of this clause 32.1.

32.2 Publications

- 32.2.1 The Contractor must not submit for publication, distribute or publish any material related to the Contract, including the provision of the Services without the prior written permission of the Commonwealth.

33 FAIR WORK

- 33.1.1 The Contractor shall inform the Commonwealth of any judicial decision made against the Contractor (not including decisions under appeal) relating to employee entitlements and the payment of claims.
- 33.1.2 The Commonwealth may, in accordance with clause 50.2.1a, terminate the Contract if the Contractor has had a judicial decision against it relating to employee entitlements, not including decisions under appeal, and the Contractor has not paid the claim.

34 INDIGENOUS OPPORTUNITIES POLICY

34.1 Contractor to submit to the IOP Administrator an Indigenous Training, Employment and Supplier Plan

- 34.1.1 The Contractor must submit an Indigenous Training, Employment and Supplier Plan (**ITES Plan**) to the IOP Administrator for approval no more than 90 days after the Effective Date.
- 34.1.2 The Contractor must provide the Commonwealth with notification of submission of the ITES Plan within 5 days of submission.
- 34.1.3 The Contractor must amend and resubmit its ITES Plan until it is approved by the IOP Administrator.
- 34.1.4 The Contractor must provide the Commonwealth with its notification of approval of the ITES Plan no more than 10 Business Days after approval of the ITES Plan is confirmed by the IOP Administrator.
- 34.1.5 The Contractor shall comply with the Indigenous Opportunities Policy, including by implementing the Contractor's approved ITES Plan when carrying out work under the Contract, complying with the Commonwealth's reporting requirements and maintaining the currency of its plan over the Contract Period.
- 34.1.6 If the Contractor's ITES Plan is suspended by the IOP Administrator, the Contractor shall within 14 days of notice of that suspension, provide a written notice to the Commonwealth Representative of the reasons for the suspension and proposed remedial action.

34.2 Reporting

- 34.2.1 The Contractor must provide the IOP Administrator with an annual implementation and outcomes report (**Report**) that meets the implementation and outcomes report requirements stipulated in the Indigenous Opportunities Policy Guidelines. The Report must be submitted no more than two months after the anniversary of the approval of the Contractor's ITES Plan or as otherwise advised by the Commonwealth or the IOP Administrator.

34.2.2 The Contractor must maintain a current ITES Plan throughout the Contract Period and meet all reporting requirements pursuant to clause 34.2.1.

34.3 Consent to release information

34.3.1 The Contractor consents to the Commonwealth or any Government Agency:

- a. publicising or reporting on the Contractor's performance in relation to the ITES Plan and level of compliance with the ITES Plan; and
- b. publicising or reporting on any information contained in the ITES Plan or the Report under the Contract.

34.4 Failure to comply

34.4.1 Without limiting the Commonwealth's rights including pursuant to clause 21.1.2, the Commonwealth may withhold or suspend any payment in whole or in part, if the Contractor has not performed its obligations under the Contract related to maintaining a current ITES Plan and reporting to the satisfaction of the Commonwealth.

35 FREEDOM OF INFORMATION

35.1.1 In this clause 35, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

35.1.2 The Contractor acknowledges that the Contract is a Commonwealth contract.

35.1.3 Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of the Contract (and not to the entry into the Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.

35.1.4 The Contractor must include in any subcontract relating to the performance of the Contract provisions that will enable the Contractor to comply with its obligations under this clause 35.

36 ILLEGAL WORKERS

36.1.1 The Contractor must ensure that each person engaged by the Contractor or Contractor Personnel would not, in doing the work for which they are engaged, be an Illegal Worker.

36.1.2 The Contractor must remove or cause to be removed any Illegal Worker from any involvement in the carrying out of Services and arrange for the Illegal Worker's replacement at no cost to the Commonwealth immediately when it becomes aware of the involvement of the Illegal Worker. The Contractor must immediately notify the Commonwealth of the involvement of the Illegal Worker and the removal.

36.1.3 To avoid doubt, compliance with the Contractor's obligations under this clause 36 will not give rise to an entitlement to claim any delay or postponement or otherwise excuse the Contractor from compliance with its obligations under the Contract and the Contractor waives any such right.

36.1.4 When requested by the Commonwealth, the Contractor will provide evidence that it has taken all reasonable steps to ensure it has complied and is complying with its obligations under this clause 36, including in relation to any subcontractors.

36.1.5 The Contractor must provide the Commonwealth with evidence referred to in clause 36.1.4 within 5 Business Days of receiving the Commonwealth's request.

36.1.6 The Contractor must make compliance by each Subcontractor with the provisions of this clause 36 a condition of each Subcontract.

36.1.7 For the purposes of this clause 36:

- a. 'Illegal Worker' means a person who:
 - (i) is an Unlawful Non-Citizen who is working without a visa; or
 - (ii) a Non-Citizen who is performing work in breach of a Visa Work Condition;
- b. 'Non-Citizen' has the meaning given to that term by the *Migration Act 1958* (Cth);

- c. 'Unlawful Non-Citizen' has the meaning given to that term by the *Migration Act* 1958 (Cth); and
- d. 'Visa Work Condition' means a condition (as set out in Schedule 8 of the *Migration Regulations* 1994) attached to a visa restricting the work that the Non-Citizen may do in Australia; and

37 WORK HEALTH AND SAFETY

37.1 Work Health and Safety

37.1.1 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 Subcontractor personnel; and
 - (iii) other persons,

in connection with the Services.

37.1.2 Without limiting the application of the WHS Legislation, the Contractor acknowledges that to the extent that any Commonwealth Personnel:

- a. are located on the Contractor's or Subcontractor's premises in relation to the Contract; and
- b. whose activities in carrying out work in relation to the Contract are influenced or directed by the Contractor,

such Commonwealth Personnel will be taken to be workers for the purposes of the WHS Legislation.

37.1.3 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.

37.1.4 The Contractor shall:

- a. provide the Services in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Services (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 Services for the purposes for which they are intended, and to maintain, support and develop them,

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.

37.1.5 Without limiting the Contractor's obligations under the Contract or at Law, the Contractor shall, in connection with the Services, provide and shall:

- a. ensure that an Approved Subcontractor provides; and

- b. use its best endeavours to ensure that any other Subcontractor engaged in any Prescribed Activities provides in respect of those Prescribed Activities,
- to the Commonwealth Representative:
- c. within 10 Business Days (or such other period as agreed by the Commonwealth in writing) 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;
 - d. in respect of:
 - (i) the Contractor or an Approved Subcontractor, within 10 Business Days of receipt or submission of the notice, written communication or written undertaking by the Contractor or Approved Subcontractor (as the case may be); or
 - (ii) any other Subcontractor engaged in any Prescribed Activities, within 10 Business Days of a request by the Commonwealth,
- copies of:
- (iii) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or Subcontractor (as the case may be) relating to WHS matters;
 - (iv) all formal notices issued by a health and safety representative of the Contractor or Subcontractor, under or in compliance with the applicable WHS Legislation; and
 - (v) all formal notices, written communications and written undertakings given by the Contractor or Subcontractor (as the case may be), to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation; and
- e. within 10 Business Days of a request by the Commonwealth Representative written assurances specifying that to the best of the Contractor's or the Subcontractor's (as the case may be) knowledge that it and its officers, employees, agents and Subcontractors are compliant with:
 - (i) the applicable WHS Legislation; and
 - (ii) any relevant or applicable approved codes of practice under the *Work Health and Safety Act 2011* (Cth) except where the Contractor complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of WHS that is equivalent to or higher than the standard required in the code of practice,

and that the Contractor or Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.

37.1.6 Without limiting clause 46.2, 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.

37.1.7 The Contractor shall ensure that if the WHS Legislation requires that:

- a. a person (including a Subcontractor):
 - (i) be authorised or licensed (in accordance with the WHS Legislation) to carry out any works at the workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (ii) has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- b. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.

- 37.1.8 If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an Authorisation relating to WHS, it shall immediately notify the Commonwealth giving full particulars (so far as they are known to it).
- 37.1.9 Without limiting clause 46.2, the Contractor shall give and ensure that an Approved Subcontractor gives, the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:
- a. premises to conduct site inspections for the purpose of monitoring the Contractor's or the Approved Subcontractor's (as the case may be) compliance with any applicable laws, Authorisations or Approved plans in connection with WHS in relation to the Contract; and
 - b. all internal and third party audit results in relation to WHS in relation to the Services or work performed under the Contract.
- 37.1.10 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 provision of the Services. 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 submit claim for postponement or waiver under clause 7.15 and the Contractor waives any right to submit such a claim.
- 37.1.11 The Contractor shall not use ACM in providing the Services and shall not take any ACM onto Commonwealth Premises in connection with providing the Services.
- 37.1.12 Subject to clause 37.1.12b and without limiting the Contractor's obligations under the Contract:
- a. the Contractor shall ensure that all Approved Subcontracts contain equivalent provisions to those set out in this clause 37.1; and
 - b. where in relation to an Approved Subcontract:
 - (i) the WHS Legislation does not apply in respect of any work performed under that Approved 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 Approved Subcontractor,

the Contractor shall only be required to ensure that an Approved Subcontract contains equivalent provisions to that set out in clauses 37.1.1b, 37.1.3, 37.1.4 and 37.1.11 in respect of that Approved Subcontract.

38 ENVIRONMENTAL OBLIGATIONS

- 38.1.1 The Contractor must 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 Services for the purposes for which they are intended without being in breach of,
- any applicable environmental legislation and regulations including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 38.1.2 The Contractor represents and warrants that:
- a. it has given careful, prudent and professional consideration to the environmental implications of the work to be performed by it under the Contract; and
 - b. as at the Effective Date, the proposed method of performance of that work complies with all applicable environmental policy and legislation.
- 38.1.3 If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke or amend an Authorisation under a Law relating to the Environment that the Contractor requires to carry out the work under the Contract, it shall notify the Commonwealth without delay, giving full particulars (so far as they are known to it).

- 38.1.4 Without limiting clause 46, the Contractor shall give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:
- a. premises for the purpose of monitoring the Contractor's compliance with any applicable laws or Approved plans in connection with the protection of the Environment; and
 - b. all internal and third party audit results in relation to the Environment.

39 HAZARDOUS SUBSTANCES AND OZONE DEPLETING SUBSTANCES

- 39.1.1 The Contractor must not provide the Services in a way which would involve or emit an Ozone Depleting Substance or Hazardous Substance except for those substances authorised in writing by the Commonwealth Representative.
- 39.1.2 The Contractor must ensure that:
- a. full details of the authorised substances incorporated into or emitted through the provision of the Services, including the location and protective measures adopted, are provided to the Commonwealth in the format of a material safety data sheet in accordance with NOHSC:2011 (2003) "National Code of Practice for the Preparation of Material Safety Data Sheets";
 - b. all documentation for the Services clearly identifies the nature of the hazard; and
 - c. all Services containing or emitting the authorised substance are labelled to clearly identify the nature of the substance and its associated hazards.
- 39.1.3 To the extent consistent with their function, the Services must not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to Personnel, the environment or the operation of equipment.

40 CONFLICT OF INTEREST

40.1 Warranty that there is no Conflict

- 40.1.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Effective Date, no Conflict exists or is likely to arise in the performance of its obligations under the Contract.

40.2 Notification of a Conflict

- 40.2.1 If, during the Contract Period, a Conflict arises, or appears likely to arise, the Contractor must:
- a. notify the Commonwealth immediately in writing;
 - b. make full disclosure of all relevant information relating to the conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - c. take such steps as have been proposed by the Contractor, or at the discretion of the Commonwealth, the Commonwealth requires to resolve or otherwise deal with the Conflict.

40.3 Termination

- 40.3.1 If the Contractor fails to notify the Commonwealth under this clause 40, or is unable or unwilling to resolve or deal with the Conflict as required by the Commonwealth, the Commonwealth may terminate the Contract including, without limitation, in accordance with clause 50.2.1g.

40.4 Contractor to avoid Conflict

- 40.4.1 The Contractor shall not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of the Contract that is likely to conflict with or restrict the Contractor in undertaking the Services fairly and independently.

41 DEFENCE SECURITY

- 41.1.1 If the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence, or the ADF, the Contractor shall:

- a. comply with any security requirements (including those contained in the Defence Security Manual) notified to the Contractor by the Commonwealth Representative from time to time; and
 - b. ensure that the Contractor's Personnel are aware of and comply with the Commonwealth's security requirements.
- 41.1.2 The Contractor shall:
- a. ensure that the Contractor's Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
 - b. notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and
 - c. provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.
- 41.1.3 ¹Subject to clause 41.1.4, the security classification of work to be performed under the Contract will be up to and including Protected. The Contractor shall possess a minimum personnel security clearance of Baseline and shall comply with the requirements and procedures of the DSM, as amended from time to time.
- 41.1.4 Despite clause 41.1.3, the Commonwealth Representative may, from time to time:
- a. require specified Contractor Personnel to possess a personnel security clearance higher than Baseline and the Contractor shall comply with any such requirement; and
 - b. waive the requirement for specified Contractor Personnel to possess a minimum personnel security clearance of Baseline.
- 41.1.5 The Contractor shall obtain and maintain membership of the Defence Industry Security Program in accordance with DSM Part 2:42.
- 41.1.6 The Contractor shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide and shall ensure that such information is safeguarded and protected according to its level of security classification.
- 41.1.7 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.
- 41.1.8 The Contractor shall promptly report to the Commonwealth Representative any instance 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.
- 41.1.9 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 Part 2:33 of the DSM, as amended from time to time.
- 41.1.10 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.
- 41.1.11 If there has been a breach by the Contractor, or the Contractor's Personnel, of clause 41, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 50.2.1g.
- 41.1.12 The Contractor shall ensure the requirements of clause 41 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to security classified information, in order to perform the obligations of the Subcontract.

¹ CCP 2015-107, C-2015-00150 minor word changes approved 30 Nov 2015

- 41.1.13 Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract. This does not include the Australian Government Security Vetting Agency (AGSVA) industry fee per clearance which will be reimbursed by the Commonwealth IAW Reimbursement of Costs clause 21.7.2.²

42 COMPLIANCE WITH POLICIES AND LAW

42.1 General obligations of the Contractor

- 42.1.1 The Contractor must, at all times:

- a. in carrying out the Contract, comply with:
 - (i) the provisions of all relevant statutes, including the *Crimes Act 1914* (Cth), *Criminal Code Act 1995* (Cth), *Privacy Act 1988* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**), *Age Discrimination Act 2004* (Cth), *Ombudsman Act 1976* (Cth); the *Archives Act 1983* (Cth) and *Auditor-General Act 1997* (Cth);
 - (ii) all Laws and requirements relevant to the provision of the Services; and
 - (iii) any policies of the Commonwealth that the Contractor is reasonably aware of that are relevant to the provision of the Services, or as otherwise notified by the Commonwealth to the Contractor in writing;
- b. ensure that, in carrying out the Contract, it does not place the Commonwealth in breach of any relevant Laws or relevant Commonwealth policy; and
- c. work with the Commonwealth in a collaborative manner.

- 42.1.2 The Contractor must provide a current letter of compliance with the WGE Act:

- a. within 18 months of the Effective Date; and
- b. annually on and from the second anniversary of the Effective Date.

- 42.1.3 If, in the course of fulfilling the Contract, the Contractor fails to comply with its obligations under the WGE Act, the Contractor shall immediately notify the Commonwealth Representative; and, the Commonwealth may send a notice in writing advising that failure to comply constitutes a breach of the Contract and that the Contractor should contact the Workplace Gender Equality Agency for information on the WGE Act's compliance requirements.

42.2 Change of Law

- 42.2.1 As soon as the Contractor becomes aware of a Change of Law, the Contractor must promptly notify the Commonwealth of the Change of Law outlining:

- a. full details of the Change of Law;
- b. full details of any impact on the Contractor's performance of the Contract, including any change in the cost of providing the Services (if any); and
- c. the obligations under the Contract that the Contractor would not be able to comply with (if any) following the Change of Law.

- 42.2.2 On receipt of the Change of Law notice, and without limiting the Contractor's obligation to comply with all Laws and the Contract, the Commonwealth will advise the Contractor of its preferred method for the Contractor to address the Change of Law, which may include the Contractor proposing a CCP for consideration by the Commonwealth in accordance with clause 18.

42.3 Defence Policies and Procedures

- 42.3.1 Subject to clause 42.3.2, the Contractor must comply with and require Contractor Personnel to comply with the following Defence policies and procedures of general application relevant or applicable to the Contract, including:

² C-2014-00130, WEF 1 Jan 2015, CA Approved 27 Mar 2015

- a. Australian Government policy and guidance on Australian Industry Capability, as detailed in the DPPM;
 - b. Conflict of Interest policy, as detailed in the DPPM;
 - c. Contract Publication policy, as detailed in the DPPM;
 - d. Defence and Industry policy, as detailed in the *Defence and Industry Policy Statement*;
 - e. Defence Equity and Diversity policy, as detailed in DI(G) PERS 35-3;
 - f. Defence Stocktaking policy, as detailed in DI(G) LOG 4-3-014;
 - g. Equal Opportunity for Women in the Workplace policy, as set out in the DPPM;
 - h. Fraud Control policy, as detailed in DI(G) FIN 12-1;
 - i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy, as set out in the DPPM;
 - j. Information Management policy, as detailed in DIMPI 1/2004, DIMPI 5/2001 and DI(G) ADMIN 10-6;
 - k. Hazardous Substances policy, as set out in the DPPM;
 - l. Ozone Depleting Substances policy, as set out in the DPPM;
 - m. Work Health and Safety policy, as detailed in the DPPM; and
 - n. Defence Environmental policy, as detailed in the DPPM.
- 42.3.2 Notwithstanding clause 42.3, if the SOW is inconsistent with a policy mentioned in clause 42.3.1, the Contractor must comply with the SOW to the extent of the inconsistency.
- 42.3.3 The Contractor shall, and shall ensure that each of its Subcontractors, fully comply with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

43 AUSTRALIAN INDUSTRY CAPABILITY

43.1 AIC Plan

- 43.1.1 The Contractor must comply with and achieve the AIC requirements set out in the AIC Plan.
- 43.1.2 If any conflict arises between any part of the AIC Plan and any other part of the Contract, the other part of the Contract prevails to the extent of that inconsistency.
- 43.1.3 The Contractor acknowledges that:
- a. compliance with the AIC Plan does not relieve the Contractor from responsibility to provide the Services, or from liability for any defect in the Services arising from the design, workmanship or materials provided by Australian and New Zealand (ANZ) industry; and
 - b. acceptance of the Services by the Commonwealth, or provision of Services by the Contractor, does not relieve the Contractor from meeting its obligations under the AIC Plan.
- 43.1.4 The Contractor must maintain, develop, deliver and update the AIC Plan in accordance with the Australian Industry Capability Toolkit, as in force from time to time.

44 OMBUDSMAN INVESTIGATIONS

- 44.1.1 The Contractor acknowledges that:
- a. it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under that Act; and
 - b. the Commonwealth will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the Contract.

45 BOOKS AND RECORDS

45.1 Contractor to keep books and records

45.1.1 The Contractor must:

- a. keep and require its subcontractors to keep adequate books and records, in accordance with relevant accounting standards, in sufficient detail to enable the amounts payable by the Commonwealth under the Contract to be determined; and
- b. retain and require its Subcontractors to retain for a period of seven years after the expiry or termination of the Contract all books and records relating to the Services.

45.2 Costs

45.2.1 The Contractor must bear its own costs of complying with this clause 45.

45.3 Survival

45.3.1 This clause 45 applies for the Contract Period and for a period of seven years from the expiry or termination of the Contract.

46 AUDIT AND ACCESS

46.1 Right to conduct audits

46.1.1 The Commonwealth, or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- a. the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
- b. the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- c. the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
- d. material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
- e. any other matters determined by the Commonwealth to be relevant to the Services or Contract.

46.2 Commonwealth Access and Records

46.2.1 During the performance of the Contract, the Contractor must give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts, relevant to or impacting on the performance of work under the Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.

46.2.2 The Contractor shall ensure that Approved Subcontracts require Approved Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Approved Subcontractors' premises, and access to any of its records and accounts, relevant to or impacting on the performance of work under the Subcontract, including the right to copy any records or accounts for the purposes of the Contract.

46.2.3 Without limiting the generality of clauses 46.2.1 and 46.2.2, 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 are no longer required by the Contractor or Subcontractor for the performance of the Contract;
- b. performing audit and surveillance activities in relation to quality in accordance with the Contract, including Schedule 4 and the SOW;
- c. without being under any obligation to do so, monitoring the Contractor's compliance with any applicable Laws or Approved plans in connection with the protection of work health

and safety or the environment, including the development and implementation of any systems, policies or procedures related to work health and safety and environmental compliance as required under the Contract;

- d. validating the Contractor's progress in meeting the AIC Plan;
- e. investigating the reasonableness of proposed prices or costs submitted in accordance with clause 21, and of prices quoted or claimed for S&Q Services, Surge Services or Services provided pursuant to a CCP. For the purpose of this investigation, the Contractor shall permit the Commonwealth to, or facilitate the Commonwealth being able to, exercise its rights in this clause 46 including providing access to Related Company records (including subsidiary and parent company records) relating to transfer pricing, cross-subsidisation with Related Companies and the allocation of overheads between the Contractor and the Related Company to the extent that such records relate to the S&Q Services, Surge Services or Services provided pursuant to a CCP;
- f. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
- g. investigating the reasonableness of any costs claims made by the Contractor under the Contract, including any claims for postponement and/or waiver;
- h. assessing the performance of the Contractor including against the Performance Management Framework including accessing and inspecting relevant information technology systems to analyse and interrogate data supporting the Contractor's assessment of its performance;
- i. conducting a periodic cost review;
- j. conducting audits under the *Auditor-General Act 1997*; and
- k. auditing raw data for the purpose of validating the Contractor's performance under the Contract.

46.2.4 The Commonwealth will use its reasonable endeavours to comply with, and 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.

46.3 Access by the Commonwealth

46.3.1 The Commonwealth may, at reasonable times and on giving reasonable notice to the Contractor:

- a. access the premises of the Contractor to the extent relevant to the performance of the Contract;
- b. require the provision by the Contractor, and require the Contractor to ensure that Contractor Personnel provide, records and information in a data format and storage medium accessible by the Commonwealth through the use of the Commonwealth's existing computer hardware and software;
- c. inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor or Contractor Personnel, its employees, agents or subcontractors; and
- d. require assistance in respect of any inquiry into or concerning the Services or the Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to Defence), any request for information directed to Defence, and any inquiry conducted by Parliament or any Parliamentary committee.

46.3.2 The Contractor must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 46, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

46.4 Conduct of audit and access

46.4.1 The Commonwealth must use reasonable endeavours to ensure that:

- a. audits performed pursuant to clause 46.1; and
- b. the exercise of the general rights granted by clause 46.3 by the Commonwealth,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.

46.5 Costs

46.5.1 Except as set out in clause 46.5.2, each Party must bear its own costs of any reviews and/or audits.

46.5.2 If the Contractor is able to substantiate that it has incurred direct expenses in the Commonwealth's exercise of the rights granted under clause 46.3 or clause 46.1 which, having regard to the value of this Contract, are substantial, the Contractor may, in accordance with clause 21.7 claim reimbursement of its costs. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

46.6 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner

46.6.1 The rights of the Commonwealth under clause 46.3.1a to 46.3.1c apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.

46.7 Contractor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements

46.7.1 The Contractor must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's, or his or her delegate's requirements, notified under clause 46.3, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her respective delegate.

46.8 No reduction in responsibility

46.8.1 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.

46.9 Subcontractor requirements

46.9.1 The Contractor must ensure that any subcontract entered into for the purpose of the Contract contains an equivalent clause granting the rights specified in this clause 46.

46.10 Related Companies

46.10.1 The Contractor must ensure that any of the Contractor's Related Companies and the Guarantor grant the Commonwealth the same rights specified in this clause 46 with respect to their financial records, accounts, financial material and information.

46.11 No restriction

46.11.1 Nothing in the Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate. The rights of the Commonwealth under the Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate.

46.12 Survival

46.12.1 This clause 46 applies for the Contract Period and for a period of seven years from the expiry or termination of the Contract.

47 LIAISON

- 47.1.1 The Contractor must liaise with, and report to, the Commonwealth Representative as reasonably required by the Commonwealth Representative for the purposes of the Contract.
- 47.1.2 Upon receipt of written notice, the Contractor must:
- within the timeframe stipulated in the notice; or
 - if no timeframe is stipulated in the notice, within a reasonable timeframe,
- provide any information in relation to the Services requested by the Commonwealth for the purposes of the Contract, including monitoring and evaluation.

48 ACCESS TO PREMISES

48.1 Contractor access

- 48.1.1 The Commonwealth will allow the Contractor Personnel access to the Base for the purpose of performing the Services.
- 48.1.2 The Contractor must comply with, and require persons afforded access under clause 48.1.1 to comply with, any relevant Commonwealth safety requirements, regulations, standing orders, or codes of behaviour for the Defence premises.
- 48.1.3 The Commonwealth may deny access on occasions to Contractor Personnel because of safety and security arrangements or as a result of failure by the Contractor or its Personnel to comply with clauses 13 or 41.

SECTION D – DISPUTE RESOLUTION AND TERMINATION

49 DISPUTE RESOLUTION

49.1 Resolution of Disputes

- 49.1.1 A Party shall not commence court proceedings relating to any Dispute arising from the Contract except when that Party seeks urgent relief from a court or when dispute resolution in a Party's reasonable opinion has failed under clause 49. If a Party fails to comply with clause 49, the other Party is not required to undertake dispute resolution for the Dispute in accordance with clause 49.
- 49.1.2 Where a Dispute arises from or in connection with the Contract (other an Issue pursuant to Schedule 4), and a Party wishes to pursue that Dispute, that Party shall submit to the other Party a notice of Dispute (**Notice of Dispute**) specifying:
- the nature of the Dispute;
 - the relief or outcome being sought; and
 - the representative with the authority to negotiate and settle an outcome.
- 49.1.3 The Dispute shall be considered at a meeting of the Commonwealth Representative and the Contractor Representative within 5 Business Days of the receipt of the Notice of Dispute by the other Party.
- 49.1.4 If the Parties have not resolved the Dispute within 10 Business Days of a meeting of the Commonwealth Representative and the Contractor Representative or 15 Business Days of receipt of the Notice of Dispute by the other Party, and a Party wishes to pursue that Dispute, the Party shall refer the Dispute for final resolution in accordance with clause 49.2.1

49.2 Arbitration

- 49.2.1 If a Dispute is referred for final resolution in accordance with clause 49.1.4, the Parties must, within 20 Business Days of the Notice of Dispute, the refer the Dispute for resolution by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.
- 49.2.2 The Parties shall at all times during any Dispute continue to fulfil their obligations under the Contract.

49.3 Expert determination arising out of the PMF

- 49.3.1 If an Issue is referred for final resolution in accordance with clause 5.6.8 of Schedule 4, the Parties must, within 15 Business Days of a meeting of the Commonwealth Representative and the Contractor Representative in accordance with clause 5.6.7 of Schedule 4 or 20 Business Days from the receipt of the Notice of Issue by the Contractor, meet in an endeavour to agree upon a single Expert (who must be independent of the Parties and must have qualifications and experience appropriate to the matter in dispute) to whom the matter in dispute must be referred for determination.
- 49.3.2 If within 30 Business Days of the Notice of Issue, the Parties fail to agree upon the appointment of a single Expert the Parties must request the president for the time being of the Institute of Arbitrators and Mediators Australia to appoint the Expert to resolve the Issue as follows:
- a. The Expert is not an arbitrator of the matters in dispute and is deemed not to be acting in an arbitral capacity.
 - b. The Process (as defined by the Institute of Arbitrators & Mediators Australia Expert Determination Rules) is not an arbitration within the meaning of any statute.
 - c. The Expert is to adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Issue.
 - d. The Expert must be independent of, and act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of putting its case and dealing with that of any opposing Party, and a reasonable opportunity to make submissions on the conduct of the process.
- 49.3.3 The Parties must instruct the Expert to do the following:
- a. Determine the Issue within the shortest practicable time
 - b. Deliver a report stating his or her opinion with respect to the matters in dispute setting out the reasons for the decision.
 - c. Determine the procedures for the conduct of the process in order to resolve the Issue and provide each Party with a fair opportunity to make submissions in relation to the matter in issue.
 - d. Act and as expert and not as an arbitrator and his or her decision will, except in the case of fraud or error manifest on the face of it, be final and binding on the Parties.
- 49.3.4 Each Party must bear the costs of the Expert equally and otherwise bear its own costs of and incidental to any proceedings in accordance with this clause 49.3.

50 TERMINATION

50.1 Termination and reduction for convenience

- 50.1.1 This clause 50.1 does not apply to a reduction in scope of the Contract as a result of a postponement event, in which case clause 7.15 applies.
- 50.1.2 In addition to any other rights it has under the Contract, the Commonwealth may at any time at its sole and absolute discretion terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing and that termination or reduction in scope will occur on the date set out in that notice.
- 50.1.3 The Contractor must, in each subcontract entered into for the purposes of providing Services under the Contract, secure the rights of termination and reduction and terms for compensation functionally equivalent to that of the Commonwealth under this clause 50.1 and to the extent it is unable to do so, the Contractor's rights and obligations under this Contract will be read as if it did include those provisions.
- 50.1.4 If the Contract is terminated or reduced in scope in accordance with clause 50.1, the Commonwealth will only be liable for:
- a. payments that are due and properly payable under clause 21 for Services rendered in accordance with the Contract before the effective date of termination or reduction in scope; and

- b. any reasonable costs (excluding, without limitation, loss of prospective income or profits and redundancy costs) unavoidably incurred by the Contractor, which are directly attributable to the termination or reduction in scope and which are proper and substantiated to the reasonable satisfaction of the Commonwealth. The Commonwealth will not be liable to pay any amount in excess of the amount of Service Charges remaining unpaid under the Contract at the date of termination or reduction in scope.

50.2 Termination and reduction for default

50.2.1 The Commonwealth may, at any time, by written notice, terminate, suspend or reduce the Contract or reduce the scope of the Services, where:

- a. the Contractor or the Guarantor (as applicable) breaches a material provision of a Transaction Document where that breach is not capable of remedy;
- b. the Contractor or the Guarantor (as applicable) breaches any provision of a Transaction Document and fails to remedy the breach within 5 days after receiving notice requiring it to do so;
- c. in the opinion of the Commonwealth, a Conflict exists which would prevent the Contractor from performing its obligations under the Contract;
- d. the Contractor consistently over a period of six calendar months fails to meet the Performance Standard for one or more Performance Indicators or the Compliance Standard of a Compliance Indicator;
- e. Not Used;
- f. an Insolvency Event occurs or the Contractor or Guarantor wholly or substantially ceases, or threatens to cease, to conduct business; or
- g. the Contract otherwise provides that the Commonwealth may terminate it.

50.2.2 Without limitation, for the purposes of clause 50.2.1a, each of the following is a breach of a material provision of the Contract that is not capable of remedy:

- a. any cap on the amount of damages payable by the Contractor is reached;
- b. failure to achieve each of the obligations in clause 6.1.3 before the Planned Operative Date;
- c. the Contractor assigns or novates, or purports to assign or novate, its rights other than in accordance with the requirements of the Contract;
- d. the Contractor regularly or persistently fails to meet a requirement of the Contract, whether or not the Commonwealth has required the Contractor to remedy the default;
- e. a breach of warranty under clauses 7.3 or 7.4 (Contractor warranties);
- f. a failure to comply with a direction in accordance with clauses 7.11 (Suspension of Services) or 7.14 (Direction and Control);
- g. a failure to comply with clause 20 (Intellectual Property rights);
- h. a failure to comply with clause 30 (Confidentiality);
- i. a failure to comply with clause 30.2 (Protection of Personal Information);
- j. a failure to comply with clause 33 (Fair Work);
- k. a failure to comply with clause 41 (Defence security); and
- l. a failure to comply with clause 42.3 (Defence Policies and Procedures).

50.3 Termination, reduction or suspension of the Services

50.3.1 On receipt of a notice of termination or suspension of the Contract or reduction of the Services, the Contractor must:

- a. stop work as specified in the notice;
- b. comply with all directions given to the Contractor by the Commonwealth;

- c. take all available steps to minimise loss resulting from that termination, suspension or reduction and to protect all Commonwealth property, including GFM and GFF and Foreground IP; and
 - d. continue work on any part of the Services not affected by the notice.
- 50.3.2 If the scope of the Services is reduced or suspended, the Commonwealth's liability to pay the Service Charges or to provide Commonwealth Property, including GFM and GFF abates in accordance with the reduction or suspension in the Services.
- 50.3.3 The Commonwealth may end the suspension of the Service by written notice to the Contractor, subject to preconditions (including variations to the Contract which the Commonwealth may require).

50.4 After termination or reduction in scope

- 50.4.1 On termination or reduction in scope of the Contract:
 - a. 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 the Contractor Personnel, which contain or relate to any Commercial-in-Confidence Information or which are security classified;
 - b. subject to clause 53.1.1, the Parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination or reduction in scope;
 - c. subject to the process set out in clause 50.1, the right to recover damages, including full contractual damages, shall not be affected;
 - d. the Contractor shall deliver all existing documents related to the Services provided prior to the date of termination or reduction in scope, within thirty (30) days after receipt of the notice of termination or reduction in scope, or other period agreed by the Parties; and
 - e. the Contractor must return to the Commonwealth (as required by the Commonwealth) all Commonwealth property, including all CMCA, GFM and GFF in its possession, power or control or in the possession, power or control of the Contractor Personnel.
- 50.4.2 To avoid doubt, and despite anything else in the Contract, if the Contractor delays in providing a deliverable, providing Services or complying with any other obligation in accordance with the Contract, each day of delay is a new breach of the Contract for which the Commonwealth may exercise its rights under clause 50 or at Law, notwithstanding any conduct by the Commonwealth or election not to terminate the Contract for a previous breach of the Contract.

50.5 Termination does not affect accrued rights

- 50.5.1 Termination of the Contract does not affect any accrued rights or remedies of a Party.

51 RIGHT OF THE COMMONWEALTH TO RECOVER MONEY

- 51.1.1 Without limiting the Commonwealth's rights or remedies under the Contract or at law, if the Contractor owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may at its discretion do one or both of the following:
 - a. deduct the amount of the debt from payment of any claim; or
 - b. give the Contractor written notice of the existence of a debt recoverable which must be paid by the Contractor within 30 days of receipt of notice.
- 51.1.2 Nothing in this clause 51 will affect the right of the Commonwealth to recover from the Contractor part of or the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

52 TRANSITION-OUT

- 52.1.1 The Contractor must submit to the Commonwealth for Approval a Transition-Out Plan:
 - a. within one month of a request by the Commonwealth; or
 - b. at the latest, by the third anniversary of the Effective Date.

- 52.1.2 Immediately upon receiving a notice of termination or reduction of scope under clause 50 or three months prior to the expiry of the Contract, the Contractor must comply with the Transition-Out Plan and take any other reasonable steps to ensure an orderly transfer of the various contracted tasks and responsibilities to the Commonwealth or an incoming contractor, if any, notified by the Commonwealth.
- 52.1.3 The Contractor must admit representatives of the incoming contractor to any part of its premises or GFF where the Services are being provided and of which the Contractor has control, at any reasonable time up to six months prior to the expiration of the Contract or immediately upon receiving a notice of termination under clause 50 and allow those representatives to observe any work being performed in connection with the Contract.
- 52.1.4 The Contractor must provide the incoming contractor with any information in its possession concerning the operation of the Contract which is reasonably requested and within 7 days of receipt of that request. Such information may include details of:
- a. the numbers, qualifications, previous experience and designated tasks of personnel; and
 - b. any working arrangements adopted in order to meet the requirements of the Contract;
- 52.1.5 The Contractor may choose not to disclose to the incoming contractor any details of the Contractor's own ownership or management structure, its level of profit, legal opinions, preferential supply arrangements or information received in confidence from third parties.
- 52.1.6 The Contractor must ensure that any accrued entitlements of any of its employees or officers, who are discharged as a consequence of the termination or expiry of the Contract are met and that all payments to Subcontractors and its other Personnel have been paid.
- 52.1.7 If requested by the Commonwealth, the Contractor must provide Transition-Out services for a period of up to 90 days after the expiration of the Contract or the date specified in the notice of termination issued under clause 50 and will negotiate in good faith with the Commonwealth and/or an incoming contractor a plan to determine the nature and extent of Transition-In services required. The Transition-Out Plan will be used as a basis for these negotiations unless the Parties agree otherwise. Where additional Transition-In services are required, the cost of such services will be treated as a CCP in accordance with clause 18. The Contractor must, in the Commonwealth's opinion, provide sufficient experienced Contractor Personnel during the Transition-Out period to ensure that the provision of Services is maintained at the level of proficiency required by the Contract.
- 52.1.8 The Contractor must, within 60 days after receipt of a written request, provide the Commonwealth Representative with all information specified in the Transition-Out Plan including information that the Commonwealth Representative may reasonably require concerning the performance of the Contract to enable the Commonwealth to produce and publish a request for tender for provision of services similar to the Services.
- 52.1.9 Notwithstanding anything in the Statement of Work, the Contractor must, when implementing the Transition-Out Plan:
- a. ensure that there is no interruption to the provision of Services by the Contractor;
 - b. ensure continuity of Services, until take-over of the Contractor's responsibilities by the incoming contractor or the Commonwealth; and
 - c. cooperate as reasonably necessary with the incoming contractor or the Commonwealth.
- 52.1.10 The Contractor acknowledges that it may be replaced by an incoming contractor or the Commonwealth and that retention of highly skilled and trained personnel is of paramount importance for the satisfactory provision of Services.
- 52.1.11 The Contractor agrees to take all reasonable steps to facilitate the engagement of Personnel who wish to be engaged by and who are accepted for engagement by the incoming contractor or the Commonwealth.
- 52.1.12 The Contractor must ensure that it complies with the transfer of business provisions of the *Fair Work Act 2009* (Cth).

SECTION E – GENERAL PROVISIONS

53 SURVIVAL

53.1.1 The following clauses survive the expiration or termination of the Contract:

- a. clause 1 (Definitions and Interpretation);
- b. clause 7.3 (Contractor General Warranties);
- c. clause 7.8.10 (Subcontracting);
- d. clause 14 (Restriction on engaging Personnel of other Party);
- e. clause 18 (Contract Management);
- f. clause 20 (Intellectual Property rights);
- g. clause 22 (GST);
- h. clause 26 (Indemnity);
- i. clause 27 (Liability);
- j. clause 27.3 (Insurance);
- k. clause 30 (Confidentiality);
- l. clause 31 (Protection of Personal Information);
- m. clause 32 (Public announcement and publications);
- n. clause 33 (Fair Work);
- o. clause 35 (Freedom of information);
- p. clause 41 (Defence security);
- q. clause 45 (Books and Records);
- r. clause 46 (Audit and access);
- s. clause 49 (Dispute Resolution);
- t. clause 51 (Right of the Commonwealth to recover money);
- u. clause 52 (Transition-Out);
- v. clause 53 (Survival); and
- w. clause 54 (Notices and other communications).

54 NOTICES AND OTHER COMMUNICATIONS

54.1 Service of notices

54.1.1 Unless the contrary intention appears, any notice under the Contract will be effective if it is:

- a. in writing, in English and signed by a person duly authorised by the sender; and
- b. sent by hand, prepaid post or facsimile to the recipient's address for notices specified in item 14 of the Contract Details, as varied by any notice given by the recipient to the sender.

54.2 Effective on receipt

54.2.1 A notice given in accordance with clause 54.1 is deemed to have been delivered when received (or at a later time specified in it), and is taken to be received:

- a. if hand delivered, on delivery;
- b. if sent by prepaid post, on the second Business Day after the date of posting if posted within Australia (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or

- c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

55 MISCELLANEOUS

55.1 Ownership of Contract

- 55.1.1 All copyright and other IP contained in the Contract remain the property of the Commonwealth.

55.2 Variation

- 55.2.1 No contract or understanding varying or extending the Contract will be legally binding upon either Party unless the Contract or understanding is in writing and signed by both Parties. Any variation to the Contract takes effect from the date specified in the contract or understanding or, if no date is specified, the date on which the Parties agree to the variation in writing.

55.3 Approvals and consents

- 55.3.1 Except where the Contract expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the Contract.

55.4 Assignment and novation

- 55.4.1 The Contractor must not assign, transfer or novate its rights and/or obligations under the Contract without the prior written consent of the Commonwealth.
- 55.4.2 If the Contractor proposes to enter into any arrangement which will require the assignment, transfer or novation of its rights and/or obligations, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed assignment, transfer or novation.
- 55.4.3 The Contractor shall ensure that any arrangement proposed under clause 55.4.2 is governed by an agreement in the form of a deed of substitution and indemnity Approved by the Commonwealth.
- 55.4.4 Notwithstanding the Contractor's compliance with clause 55.4.3, the Commonwealth may, in its discretion, refuse to consent to an arrangement proposed by the Contractor under clause 55.4.2.

55.5 Costs

- 55.5.1 Each Party must pay its own costs of negotiating, preparing and executing the Contract.

55.6 Counterparts

- 55.6.1 The Contract may be executed in counterparts. All executed counterparts constitute one document.

55.7 No merger

- 55.7.1 The rights and obligations of the Parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

55.8 Entire agreement

- 55.8.1 Subject to clause 55.8.2, together with the Guarantee, Financial Security Deed and the Cooperation Deed, the Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- 55.8.2 To the extent that a Dispute arises between the Parties arising from or in connection with the Statement of Work, the Parties may rely on oral, written, expressed and/or implied extrinsic evidence to ascertain the commercial intention of Parties in relation to the provisions of the Statement of Work which are in dispute.

55.9 **Further action**

55.9.1 Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Contract and any transaction contemplated by it.

55.10 **Severability**

55.10.1 A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.

55.11 **Waiver**

55.11.1 Waiver of any provision of or right under the Contract:

- a. must be in writing signed by the Party entitled to the benefit of that provision or right; and
- b. is effective only to the extent set out in any written waiver.

55.12 **Governing law and jurisdiction**

55.12.1 The Contract is governed by the laws of the Australian Capital Territory and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

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)

Executed by Aurecon Australasia Pty Ltd in
accordance with Section 127 of the
Corporations Act 2001

----- Signature of director	←	----- Signature of director/company secretary (Please delete as applicable)	←
----- Name of director (print)		----- Name of director/company secretary (print)	
----- Usual address (print)		----- Usual address (print)	

CONTRACT

BETWEEN

**Commonwealth of Australia represented by the Department of
Defence (the "Commonwealth")**

AND

DynCorp (Aust) Pty Limited (the "Contractor")

FOR

the provision of Project Delivery Services

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CONTRACT INFORMATION

DATE

July 2014

PARTIES

Name Commonwealth of Australia represented by the Department of Defence
ABN 68 706 814 312

Short form name **Commonwealth**

Name DynCorp (Aust) Pty Limited
ABN 87 107 783 675

Short form name **Contractor**

OVERVIEW

- A. The Commonwealth has bases in metropolitan, regional and remote locations in Australia which require various support Services to maintain and sustain capability.
- B. The Services to be provided by the Contractor are described in the Statement of Work including any Survey and Quote Services.
- C. The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.
- D. The Commonwealth has agreed to engage the Contractor to provide the Services on the terms and conditions contained in the Contract.
- E. The Parties intend to administer the Contract in a spirit of collaboration, cooperation and goodwill based on high levels of trust.

CONDITIONS OF CONTRACT

PART 1 – SPECIFIC REQUIREMENTS

SECTION A – INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In the Contract, except where the contrary intention is expressed, the definitions set out in the Glossary are used.

1.2 Interpretation

1.2.1 In the Contract, except where the contrary intention is expressed:

- a. headings are for the purpose of convenient reference only and do not form part of the Contract or affect the interpretation of the Contract;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. another grammatical form of a defined word or expression has a corresponding meaning;
- d. a reference to a person includes a natural person, body politic, body corporate, partnership, trust, joint venture unincorporated body, association, Government Agency or other entity;
- e. a reference to a clause, paragraph, schedule attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to, the Contract, and a reference to the Contract includes any schedule or annexure;
- f. a reference to AUD, \$, \$A, dollar or \$ is to Australian currency;
- g. a reference to time is a reference to time at the location where the Services are being performed;
- h. a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assignees, including any person to whom that Party is permitted to novate any part of the Contract;
- i. examples and use of the word 'includes' in any form is not a word of limitation;
- j. if the Contractor is a trustee, the Contractor enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under the Contract;
- k. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- l. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- m. a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- n. unless there is a provision in the Contract which specifies a period of time in which something must be done by a Party, such things must be done without undue delay;
- o. a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Contract or any part of it;
- p. any property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;

- q. where an obligation or liability is imposed on the Contractor under the Contract, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of the Contract, unless expressly stated;
- r. the term 'may' when used in the context of a right or remedy exercisable by the Commonwealth or a delegate of the Commonwealth means that the Commonwealth or its delegate can exercise that right or remedy in its sole and absolute discretion and the Commonwealth or its delegate has no obligation to the Contractor to do so unless expressly stated; and
- s. references to any agreement or document (including the Contract) are to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by the Contract or that other agreement or document.

1.2.2 The objectives of the Commonwealth in entering into the Contract are to:

- a. ensure that, for the payments provided for under the Contract, the Contractor provides the Services to the required level of performance, safety, quality and capability, including as set out in the Performance Management Framework and otherwise in accordance with the Contract;
- b. procure an effective capability for Defence that:
 - (i) supports the ADF's mission to 'fight and win';
 - (ii) supports the Commonwealth's policy of Defence self-reliance; and
 - (iii) minimises the Total Cost of Ownership (**TCO**);
- c. develop, maintain and enhance appropriate skill sets and capabilities within both the Commonwealth and the Contractor;
- d. obtain value for money for the Commonwealth on an ongoing basis in relation to the provision of the Services;
- e. achieve, over the Contract Period, cost savings in relation to the provision of the Services, through the identification and implementation of efficiencies and otherwise;
- f. allow the Contractor as a commercial entity to earn a reasonable return on its investment when it performs the Contract efficiently and successfully, and a return that appropriately reflects the properly managed risks assumed by the Contractor in the performance of the Contract;
- g. ensure that the Commonwealth obtains appropriate Intellectual Property rights arising out of or in connection with the provision of the Services;
- h. facilitate the retention and enhancement of industry capabilities within Australia and New Zealand (**ANZ**);
- i. encourage the most efficient possible use of resources for the provision of the Services;
- j. work within a framework that ensures safety of persons, material safety and complies with all Laws;
- k. achieve a seamless transition from any previous service providers to the Contractor; and
- l. achieve the objectives in this clause through a culture of mutual respect and co-operation, and in an environment that fosters innovation, continuous improvement, cost efficiency, transparency and open, honest and timely communication.

1.2.3 The Parties agree to achieve the objectives in clause 1.2.2:

- a. through a culture of integrity, trust, open and timely communication, mutual respect, collaboration and co-operation;
- b. by fostering innovation, continuous improvement and cost efficiencies;
- c. by minimising Disputes between them and, if they do arise, by managing such Disputes in accordance with the Contract; and
- d. by developing levels of transparency and accountability in the provision of the Services consistent with the objectives.

2 RELATIONSHIP OF PARTIES

- 2.1.1 The Contract is a contract for the Services and the Contractor is an independent contractor. Nothing in the Contract will create a relationship of partnership, principal and agent, joint venturers or employer/employee between the Commonwealth on the one hand and the Contractor and/or the Contractor Personnel (or any other party) on the other hand.
- 2.1.2 The Contractor must not act and does not have any authority to act as agent of, or in any way bind or commit, the Commonwealth to any obligation, except as expressly stated in the Contract. The Contractor must not represent itself, and must ensure that Contractor Personnel do not represent themselves, as being employees, officers, partners, joint venturers or agents of the Commonwealth or as otherwise able to bind or represent the Commonwealth, except as stated specifically in the Contract.
- 2.1.3 The Contractor must ensure that the Contractor Personnel clearly identify themselves as a contractor to the Commonwealth when communicating through telephone, facsimile, email or any other communication tool in the course of performing the Services.

3 SCOPE AND EXCLUSIVITY

- 3.1.1 The Contractor acknowledges that it is not the exclusive provider of services of the type provided under the Contract and that the Commonwealth may, from time to time and at its absolute discretion, procure such services from other third parties or provide the services itself.
- 3.1.2 The Commonwealth is not liable for any additional work undertaken, or expenditure incurred, by the Contractor that is not in accordance with the Contract, and the Contractor waives any right to make any claim for such additional work.

4 PRIORITY OF CONTRACT DOCUMENTS

- 4.1.1 If there is an ambiguity, inconsistency or discrepancy between any of the documents forming part of the Contract, those documents will be interpreted in the following order of priority to the extent of any ambiguity, inconsistency or discrepancy:
- a. conditions of Contract;
 - b. Schedules (other than the Statement of Work);
 - c. any attachments or annexures to the Schedules;
 - d. documents incorporated by reference in the Contract; and
 - e. the Statement of Work,
- so that the terms of the higher ranked document, to the extent of the ambiguity, inconsistency or discrepancy, prevail.
- 4.1.2 If the Contractor discovers any ambiguity, inconsistency or discrepancy within or between any one or more of the documents forming part of the Contract, the Contractor must give the Commonwealth Representative notice of such ambiguity, inconsistency or discrepancy within a reasonable time of discovering it.
- 4.1.3 If there is an ambiguity, inconsistency or discrepancy within a document forming part of the Contract or two or more documents of the same level of the order of precedence, that ambiguity, inconsistency and discrepancy will be resolved by the Commonwealth in its sole and absolute discretion. The resolution of the ambiguity, inconsistency or discrepancy does not entitle the Contractor to make any claim against the Commonwealth and the Contractor waives any such rights.

5 DURATION OF CONTRACT

5.1 Initial Contract Period

- 5.1.1 The Contract begins on the Effective Date and continues for the duration of the Initial Contract Period, unless terminated earlier or extended in accordance with clause 5.2.

5.2 Extension of Contract Period

- 5.2.1 Before the third anniversary of the Effective Date, the Commonwealth may, by notice to the Contractor:

- a. extend the Contract Period by up to 2 years from the end of the Initial Contract Period; or
- b. advise the Contractor that no extension of the period of the Contract beyond the Initial Contract Period is given.

5.2.2 If a notice of:

- a. extension of the Contract Period is given in accordance with clause 5.2.1a, the Commonwealth may, before the fifth anniversary of the Effective Date, by notice to the Contractor, extend the then Contract Period by up to 2 years; or
- b. no extension of the Contract Period is given in accordance with clause 5.2.1b, the Commonwealth may, before the fourth anniversary of the Effective Date, by notice to the Contractor, extend the then Contract Period by up to 2 years,

such that, subject to clause 5.2.3, the Contract Period must not exceed 10 years.

5.2.3 Notwithstanding clauses 5.2.1 and 5.2.2, the Commonwealth may, by notice to the Contractor of no less than 3 months before the end of the then Contract Period, extend the then Contract Period by up to a further 12 months.

5.2.4 Any extension pursuant to clause 5.2 may be subject to terms and conditions notified by the Commonwealth, including the extension of some or all of the Service Packages.

SECTION B – PROVISION OF SERVICES

6 TRANSITION-IN

6.1 Operative Date

- 6.1.1 The Commonwealth has no obligations under the Contract before the Operative Date other than:
- to the extent provided in this clause 6.1;
 - the obligations under clause 30.1 in relation to the protection of Commercial-in-Confidence Information; and
 - pursuant to clauses 7.5.3, 19.3 and 48.1.
- 6.1.2 This clause 6.1 does not limit or affect the Commonwealth's rights under the Contract, including rights in relation to the Contractor's obligations under this clause 6.1.
- 6.1.3 Before the Planned Operative Date, the Contractor shall:
- within 14 days of the Effective Date, develop and deliver a Transition-In Plan to the Commonwealth in accordance with Annex F to Schedule 7;
 - complete Transition-In activities in accordance with the Approved Transition-In Plan required to be completed before the Planned Operative Date and all other Transition-In activities 12 weeks after the Effective Date;
 - deliver to the Commonwealth the:
 - executed Financial Security Deed, in accordance with clause 29.1;
 - executed Guarantee, in accordance with clause 29.2; and
 - executed Cooperation Deed;
 - obtain and provide to the Commonwealth copies of all necessary Authorisations in accordance with clauses 7.5 and 7.6, including all Authorisations necessary for the nature of the work to be performed at each of the Bases to be used by the Contractor for the purposes of the Contract;
 - Not used;
 - Not used; and
 - provide to the Commonwealth Representative copies of evidence of the insurance required to be obtained and maintained by the Contractor under clause 28.
- 6.1.4 Subject to clause 6.1.5, if the Commonwealth is satisfied that all the obligations under clause 6.1.3 have been fully performed in accordance with the Contract, the Commonwealth Representative shall issue a notice in writing to the Contractor specifying the date on which the last of those obligations was fully performed. The specified date is the Operative Date for the purposes of the Contract.
- 6.1.5 If, for any reason, an obligation under clause 6.1.3 has not been fully performed in accordance with the Contract by the Planned Operative Date, the Commonwealth may, by notice in writing to the Contractor, do any one or more of the following:
- waive the requirement to perform the obligation by the Planned Operative Date (subject to conditions, if any, specified in the notice, which may include conditions as to when the obligation is to be performed) and specify a date as the Operative Date, but the waiver does not affect any rights the Commonwealth may have under the Contract in respect of the failure by the Contractor to perform the obligation (such as a right to recover Liquidated Damages);
 - recover Liquidated Damages (if any) that may be payable in accordance with clause 6.1.8b due to a failure of the Contractor to fulfil an obligation under clause 6.1.3;
 - specify a date, no less than 30 Business Days from the date of the notice, on which the Contract will terminate if the obligation has not been fully performed in accordance with the Contract by that date; and

- d. terminate the Contract from the date of the notice or a later date specified in the notice and recover Liquidated Damages (if any) that are payable in accordance with clause 6.1.8a due to failure of the Contractor to fulfil an obligation under clause 6.1.3.
- 6.1.6 The Contractor shall comply with any condition of a waiver under clause 6.1.5a.
- 6.1.7 The Parties agree that the Glossary shall be amended to specify the date that is the Operative Date. The amendment shall be incorporated into the first CCP to be agreed between the Parties.
- 6.1.8 If the Commonwealth:
 - a. terminates the Contract in accordance with clause 6.1.5d because the Contractor failed to comply with an obligation under clause 6.1.3, subject to clause 6.1.9, the Commonwealth may recover from the Contractor the amount specified at item 8 of the Contract Details as Liquidated Damages and not as a penalty for termination under clause 6.1.5d; or
 - b. notifies the Contractor that it will recover liquidated damages in accordance with clause 6.1.5b because the Contractor failed to comply with an obligation under clause 6.1.3, the Commonwealth may recover the amount specified for that failure at item 8 of the Contract Details for each day from and excluding the Planned Operative Date to and including the date on which the failure ends, as Liquidated Damages and not as a penalty.
- 6.1.9 If the Commonwealth:
 - a. terminates the Contract pursuant to clause 6.1.5 because the Contractor failed to comply with its obligations under clause 6.1.3 and, in the Commonwealth's view, that failure was due to circumstances beyond the reasonable control of the Contractor, then the Commonwealth will not be entitled to make any claim or pursue any remedy against the Contractor, whether at common law, in equity or under statute; and
 - b. elects to recover Liquidated Damages in accordance with clause 6.1.5b, to the extent the failure of the Contractor to fulfil an obligation under clause 6.1.3 is due to circumstances beyond the reasonable control of the Contractor, the Commonwealth will not be entitled to recover Liquidated Damages for the period of delay to fulfilling that obligation which directly resulted from the circumstances which were beyond the control of the Contractor and which the Contractor (using reasonable endeavours) was not able to mitigate.
- 6.1.10 The Parties agree that:
 - a. the amount specified at item 8 of the Contract Details is a genuine pre-estimate of the damage which would be suffered by the Commonwealth in the circumstances to which that clause applies; and
 - b. the amounts (as relevant) specified at item 8 of the Contract Details shall be the Commonwealth's sole right to be compensated for loss or damage suffered :
 - (i) if the Contract terminates before the Operative Date has arisen; and
 - (ii) due to a delay in achieving the Planned Operative Date.
- 6.1.11 The Parties acknowledge and agree that:
 - a. the fact that the Commonwealth has elected (or may have elected) to do any of the things referred to in clause 6.1.5 in respect of any breach shall not, to the extent permitted by law:
 - (i) constitute a waiver or election of any of the Commonwealth's rights under the Contract or otherwise at law or in equity in respect of that breach or in respect of any other breach; or
 - (ii) limit or affect the ability of the Commonwealth to terminate the Contract in respect of any breach, notwithstanding that the Commonwealth may have exercised its rights under clause 6.1.5 in respect of any prior breach; and
 - b. the Contractor releases the Commonwealth from any claim that it otherwise may have been able to make or bring against the Commonwealth arising out of or in connection with any exercise by the Commonwealth of any of its rights under clause 6.1.5 (including as the exercise of those rights is contemplated in this clause 6.1.11).

- 6.1.12 Where the Contractor is obliged to pay the Commonwealth at least 12 months of Liquidated Damages pursuant to clause 6.1.8b, without prejudice to any of its other rights, the Commonwealth may terminate the Contract by providing a notice in writing to the Contractor and the Contract will terminate on the date set out in that notice.

6.2 Due Diligence - Not Used

7 PROVISION OF SERVICES

7.1 Service Package obligation

- 7.1.1 Without limiting any of its other obligations under the Contract, the Contractor must:
- a. subject to clauses 6.1 and 7.2, provide the Services in the Service Packages commencing on the Operative Date;
 - b. perform all work and services necessary and incidental to ensuring that the Services are provided;
 - c. perform all work and Services required of it under the Contract:
 - (i) in a professional manner exercising appropriate skill, care and diligence and in accordance with industry leading practice;
 - (ii) in a manner that is fit for purpose;
 - (iii) in a timely manner including by meeting all timeframes specified under the Contract or imposed by the Commonwealth in accordance with the Contract and if no time is specified or imposed, promptly;
 - (iv) to a standard at least consistent with levels of performance achieved by well managed operations performing services similar to the Services; and
 - (v) in accordance with the Performance Management Framework;
 - d. ensure that the Services are conducted in accordance with all relevant standards, or as otherwise directed by the Commonwealth;
 - e. be responsive to external developments concerning the Services and plan for and respond to those developments to the reasonable satisfaction of the Commonwealth;
 - f. be receptive to comments and other feedback in relation to the Services, and plan for and respond to such comments and feedback to the reasonable satisfaction of the Commonwealth;
 - g. regularly seek feedback on progress of the Services from the Commonwealth and address any issues arising from that feedback to the reasonable satisfaction of the Commonwealth;
 - h. ensure that all reports, plans and other documents required under the Contract are accurate and not misleading in any material respect; and
 - i. ensure that at all times it uses appropriately qualified personnel to provide the Services, considering the nature of the obligations imposed on those personnel.
- 7.1.2 The Contractor has complete responsibility and liability for the provision of the Services notwithstanding:
- a. provision by the Commonwealth to the Contractor of any information, Material or advice including, without limitation, Commonwealth property;
 - b. any review or comment or any other form of Approval or consent in relation to any information provided by the Commonwealth to the Contractor;
 - c. any review of the Services by the Commonwealth; and
 - d. the involvement of the Commonwealth or Other Contractors in the management and/or delivery of the Services.
- 7.1.3 The Contractor acknowledges and agrees that the Commonwealth provides no warranty, assurance or representation in relation to:

- a. the estimated or anticipated volume of Services during any period during the Contract Period; or
- b. the fitness for purpose of the Commonwealth property, including any GFM and GFF.

7.2 Change to Service Package requirement

- 7.2.1 Without limiting any of its other rights under the Contract, the Commonwealth may, from time to time, by notice to the Contractor, do one or more of the following:
- a. direct the Contractor to cease providing the Services in any Service Package notified by the Commonwealth in accordance with the notice, including if the Commonwealth is not satisfied with the Contractor's performance of the Services and for the purpose of directing an Other Contractor to provide similar or identical services; and
 - b. direct the Contractor to prepare and submit a CCP to the Commonwealth Representative, in accordance with clause 18.1.3, to change the service provision obligations, including following a direction to an Other Contractor to cease providing similar or identical services.
- 7.2.2 If, following a notice pursuant to clause 7.2.1a, the Contractor has no obligation to provide any Services pursuant to a Service Package, the Commonwealth may terminate the Contract in accordance with clause 50.2.1g.

7.3 Contractor general warranties

- 7.3.1 The Contractor represents and warrants that:
- a. it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened arising during the Contract Period which could have an adverse effect on the Contractor's ability to perform any of its obligations under the Contract;
 - b. it has full power and authority to enter into, perform and observe its obligations under the Contract;
 - c. it has all Authorisations, interests and property necessary to lawfully perform the Services;
 - d. the execution, delivery and performance of the Contract has been duly and validly authorised by the Contractor;
 - e. no litigation, arbitration, mediation, conciliation or proceedings including any investigations are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under the Contract or the Contractor's reputation;
 - f. unless otherwise disclosed in the Contract, it is not entering into the Contract as trustee of any trust or settlement; and
 - g. all insurance policies required to be held by the Contractor under the Contract:
 - (i) will remain in effect as provided for in the Contract; and
 - (ii) without limiting clause 28, are sufficient to cover any loss or damage, including any consequential loss, that the Commonwealth may suffer as a result of non-performance or partial performance of any obligation of the Contractor under the Contract.

7.4 Contractor performance related warranties

- 7.4.1 The Contractor represents and warrants that the Contractor and Contractor Personnel:
- a. have, and will continue to have and use, the necessary experience, skill, knowledge, qualifications and competence to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness that would be expected of a professional provider of any such service;
 - b. are fit and proper persons to perform their designated roles;
 - c. are not "prohibited persons" under child protection legislation in a State or Territory; and

- d. have and will continue to have the necessary resources, including financial resources, to perform the Services.

7.4.2 The Contractor must hold and maintain, and must ensure that the Contractor Personnel hold and maintain each Authorisation necessary to perform the Services.

7.4.3 The Contractor acknowledges that the Commonwealth, in entering into the Contract, is relying on the warranties and representations contained in the Contract.

7.5 Authorisations

7.5.1 Prior to the Operative Date, the Contractor must obtain and thereafter maintain, at its own cost, all necessary Authorisations. The Contractor must provide to the Commonwealth, upon receipt of a request from the Commonwealth Representative to do so, a copy of any necessary Authorisation or proof that such Authorisation has been obtained. The Contractor must comply with a request within seven days.

7.5.2 The Contractor must notify the Commonwealth Representative in writing of the occurrence of any of the following events within ten days of it occurring:

- a. the application for an Authorisation; and
- b. the Contractor becoming aware of the grant, refusal, suspension, revocation or qualification of or new requirement for an Authorisation.

7.5.3 The Commonwealth Representative must, on request by the Contractor, give the Contractor all assistance reasonably required by the Contractor to facilitate it obtaining or maintaining any Authorisation, including the provision of a certificate by the Commonwealth as to the end use of the Services.

7.5.4 Where an application for an Authorisation is refused, an Authorisation is suspended or revoked, a qualification is imposed on such an Authorisation or there is a new requirement for an Authorisation, the Contractor must immediately propose to the Commonwealth appropriate measures, and must do all other things requested by the Commonwealth, to obtain, reinstate or meet the qualification imposed on that Authorisation.

7.5.5 If the actions undertaken under clauses 7.5.3 and 7.5.4 are not successful in obtaining, reinstating or satisfying the qualification imposed on that Authorisation for the relevant Service or performance of the Contractor's obligations arising from or in connection with the Contract, the Contractor must prepare, for the consideration of the Commonwealth, an alternative item or service which must, as far as possible, be functionally equivalent and have the same performance as the original item or service. The Commonwealth is under no obligation to consider or accept such an alternative service and if it does so the use of that item or service is at the Contractor's sole cost and risk.

7.5.6 Nothing in clause 7.5.3 entitles the Contractor to make any claim, nor releases or modifies any obligation of the Contractor including the responsibility to take all reasonable steps to obtain or maintain any Authorisation required by the Contractor to perform its obligations arising from or in connection with the Contract (including for the Services).

7.6 Import and Customs Entry - Not Used

7.7 Defence environment

7.7.1 The Contractor acknowledges that the Services may be provided to Commonwealth Personnel, Other Contractors and third parties in a Defence environment. The Contractor must:

- a. comply with any security requirements advised by the Commonwealth Representative from time to time;
- b. ensure that it and the Contractor Personnel are aware of the Commonwealth's security requirements and comply with those requirements;
- c. accept reasonable changes to the nature, location or timing of the Services at short notice due to Commonwealth requirements;
- d. ensure that it and the Contractor Personnel are at all times, while on Commonwealth premises or engaged in the performance of the Services, neatly and appropriately attired and behave in a courteous and polite manner;

- e. ensure that the Contractor and the Contractor Personnel do not purport to be employees, officers, partners, joint ventures or agents of the Commonwealth; and
- f. provide the Services in accordance with applicable Defence Policies and Procedures and other Australian Government policies.

7.8 Subcontracting

- 7.8.1 The Contractor must not subcontract the whole of the work under the Contract.
- 7.8.2 The Contractor may, but is not required to, enter into a Subcontract with one or more of the Approved Subcontractors.
- 7.8.3 The Contractor must not subcontract work under the Contract to a Subcontractor who is not an Approved Subcontractor if:
 - a. the total value of all work or services performed by the Subcontractor is expected to exceed 25% of the Fixed Fee claimable over a Financial Year;
 - b. the Subcontractor will in any way be involved in:
 - (i) design and development activities;
 - (ii) modification of systems;
 - (iii) systems installation or integration; or
 - (iv) any Prescribed Activities; or
 - c. the Subcontractor will bring IP to the proposed Subcontract or create IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Services,

unless otherwise agreed between the Parties and the extent of that exception is expressly set out in Annex C to Schedule 7.
- 7.8.4 The Contractor may request the inclusion of additional Approved Subcontractors in Annex C to Schedule 7 by submitting a CCP in accordance with clause 18. The CCP must include full particulars of the work to be Subcontracted, the name and address of each proposed Subcontractor and any other information about the Subcontractor required by the Commonwealth Representative.
- 7.8.5 The Commonwealth must Approve or reject the CCP in accordance with clause 18. The Commonwealth's Approval will not be unreasonably withheld.
- 7.8.6 The Contractor, by Subcontracting any part of the work under the Contract or by obtaining the Commonwealth's Approval of a Subcontractor, is not relieved of its liabilities or obligations under the Contract, and is responsible for all Subcontractors.
- 7.8.7 If a Subcontract is terminated, repudiated or rescinded, whether in relation to its terms or as a result of any legislation relating to any Insolvency Event, the Contractor must promptly notify the Commonwealth Representative and must complete the work under the Contract either itself or by engaging another Subcontractor.
- 7.8.8 The Contractor, if requested by the Commonwealth Representative, must, within 5 Business Days of the request provide the Commonwealth Representative with names of all Subcontractors and a copy of each Subcontract requested, which copy need not contain prices. The Contractor acknowledges and agrees (and must ensure that its Subcontractors also acknowledge and agree) that the Commonwealth may be required to publicly disclose the Subcontractor's participation in the performance of the Contract.
- 7.8.9 The Contractor must:
 - a. not, in any event, enter into a subcontract regarding the Contract or allow any person to be associated with the provision of the Services if that person or subcontractor is:
 - (i) currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
 - (ii) named by the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth); or

- (iii) named on the list of persons and entities listed under clause 20(i) of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*;
- b. ensure that each Approved Subcontractor complies with all applicable Laws and:
 - (i) clause 20 (Intellectual Property rights);
 - (ii) clause 25 (Disclosure);
 - (iii) clause 28 (Insurance);
 - (iv) clause 30 (Confidentiality);
 - (v) clause 31 (Protection of Personal Information);
 - (vi) clause 33 (Fair Work);
 - (vii) clause 35 (Freedom of information);
 - (viii) clause 36 (Illegal Workers);
 - (ix) clause 37 (Health and Safety);
 - (x) clause 38 (Environmental Obligations);
 - (xi) clause 39 (Hazardous Substances and Ozone depleting substances);
 - (xii) clause 40 (Conflict of interest);
 - (xiii) clause 41 (Defence Security);
 - (xiv) clause 45 (Books and records);
 - (xv) clause 46 (Audit and access); and
 - (xvi) clause 52 (Transition-Out).
- 7.8.10 The Commonwealth may publicly disclose the names of any Subcontractors:
- 7.8.11 The Contractor must ensure that each Subcontractor agrees that the Commonwealth may disclose the Subcontractor's name publicly.
- 7.9 **Co-operation with Personnel**

- 7.9.1 The Contractor must, in the performance of the Services, fully co-operate with the Commonwealth Personnel.
- 7.10 **Co-operation with Other Contractors**

- 7.10.1 The Contractor acknowledges that the performance of its obligations under the Contract may require:
 - a. interoperation and integration with capabilities and Services that are provided and maintained by the Commonwealth and/or by third parties under separate contractual arrangements with the Commonwealth (**Other Capabilities**); and
 - b. coordination and cooperation with other entities (including Other Contractors and Commonwealth organisations) performing activities related to the Services or otherwise having a connection with the activities being performed by the Contractor under the Contract (**Associated Parties**).
- 7.10.2 The Contractor must:
 - a. cooperate with all Associated Parties, as may be necessary or required by the Commonwealth, to ensure the interoperation of the Services with Other Capabilities;
 - b. cooperate, as may be required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Services are provided in accordance with the requirements of the Contract;
 - c. cooperate as may be necessary or required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Services do not impact on or interfere with the performance of Other Capabilities or the completion of activities by Associated Parties; and

- d. notify the Commonwealth Representative where it becomes aware of any act, fact, matter, thing or event which may cause, or is likely to cause, interruption to the performance of the Services, as soon as practicable after becoming aware of that act, fact, matter, thing or event.

7.11 Suspension of Services

- 7.11.1 The Contractor acknowledges that the operational or security context for provision of the Services and other circumstances are such that the Commonwealth may require the Contractor to suspend and/or recommence provision of any Services, or part thereof, at short notice.
- 7.11.2 Should an operational or security issue arise, or any other issue considered relevant by the Commonwealth arise, the Commonwealth may, in its sole and absolute discretion, direct the Contractor to suspend provision of any Services, or part thereof, for such time as the Commonwealth reasonably determines, on written notice to the Contractor.
- 7.11.3 Subject to the prevailing circumstances at the time, the Commonwealth must use reasonable endeavours:
 - a. to advise the Contractor before it directs a suspension under clause 7.11.2; and
 - b. after it has directed a suspension under clause 7.11.2, to keep the Contractor updated with information on the anticipated duration of the suspension.
- 7.11.4 If the Commonwealth directs a suspension under clause 7.11.2, the Contractor must:
 - a. suspend provision of the Services in accordance with the notice;
 - b. comply with any directions given to the Contractor by the Commonwealth;
 - c. develop and submit to the Commonwealth Representative a plan for the management of the Services during the suspension and their recommencement which aims to keep the Contractor's costs to a minimum and which will, if followed, ensure the efficient resumption of Services (if resumed); and
 - d. use reasonable endeavours to mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the suspension, including those arising from affected Subcontracts.
- 7.11.5 The Contractor may, in accordance with clause 21.7, claim reimbursement of the reasonable and unavoidable expenses actually incurred by the Contractor which are directly attributable to the suspension under clause 7.11.2, including the costs of the Contractor maintaining the capability for providing the Services and the costs associated with recommencement of the Services. Without limiting clause 21.7, the Contractor must substantiate the amounts claimed (including by providing documentary evidence to the Commonwealth Representative) to the reasonable satisfaction of the Commonwealth Representative.
- 7.11.6 The Contractor must ensure that in each Approved Subcontract, it includes the right for it to suspend the work or services under that Subcontract on terms functionally equivalent to that of the Commonwealth under clauses 7.11.1 to 7.11.4. If the Contractor fails to include such a right in an Approved Subcontract, the amount that the Contractor may claim and for which the Commonwealth is liable under clause 7.11.5 will be calculated on the basis that such a right was included.
- 7.11.7 The Contractor acknowledges that any costs paid to the Contractor pursuant to this clause 7.11 and 21.7 are the Contractor's sole remedy under the Contract and otherwise at law in respect of the suspension under clause 7.11.2 and the Contractor waives any right to make any claim for further costs due to such suspension, other than in accordance with this clause 7.11.
- 7.11.8 Nothing in this clause affects the Commonwealth's obligation to pay for any Services provided by the Contractor in accordance with the Contract prior to the suspension of any Services.
- 7.11.9 If the Contractor fails to comply with any direction by the Commonwealth pursuant to clause 7.11.2, such a failure is a breach of the Contract and the Commonwealth may terminate the Contract immediately in accordance with clause 50.2.2f.

7.12 Recommencement of Suspended Services

- 7.12.1 The Commonwealth may, in its sole and absolute discretion, direct the Contractor to recommence provision of any of the Services, or a part thereof, that have been suspended under clause 7.11, on written notice to the Contractor.
- 7.12.2 If the Commonwealth provides written notice under clause 7.12.1:
- a. the Contractor must recommence provision of the suspended Services in accordance with the notice (including the timeframes for recommencement identified by the Commonwealth in that notice (which must be reasonable));
 - b. the Contractor may, in accordance with clause 21, submit an invoice for a claim for payment for the provision of the Services specified in the Commonwealth's notice from the date of recommencement; and
 - c. the Contractor must not make any claim for, and the Commonwealth is not liable for, any Liability incurred by the Contractor as a result of the recommencement other than for those claimed under clause 7.11.5 and the Contractor waives its rights to make such a claim.

7.13 Pollution and Cleaning Up

- 7.13.1 Without limiting any other provisions of this Contract including clauses 37 and 38, in performing the Services, the Contractor must:
- a. ensure that it does not pollute, contaminate or damage the environment;
 - b. keep the Base clean and tidy and free of refuse; and
 - c. prior to the end of the latter of the Initial Contract Period and the Contract Period:
 - (i) subject to any greater rubbish removal obligation in a Service Package, remove from the relevant part of the Base all rubbish and, materials, to the extent that the rubbish and materials were left by the Contractor or the Contractor Personnel; and
 - (ii) remove all plant and equipment, to the extent that such plant and equipment is not the property of Commonwealth or any Other Contractor and is under the control of the Contractor.
- 7.13.2 The Commonwealth acknowledges and agrees that the Contractor's obligations and liability arising under this clause 7.13 that are applicable to each Base do not extend to any obligation or liability for any loss or damage to the extent arising out of pollution, contamination or environmental damage pre-existing at each Base at the Effective Date.

7.14 Direction and Control

- 7.14.1 The Contractor must, and must ensure that the Contractor Personnel, comply with all requirements that the Senior Australian Defence Force Officer (**SADFO**) advises by way of operational, routine, or similar orders or instructions with respect to operational security.
- 7.14.2 Without limiting the generality of clause 7.14.1, in times of emergency or a deteriorating security environment, as determined by the SADFO, the Contractor shall, and shall ensure that the Contractor Personnel, comply with the direction of the SADFO while performing Services. The Contractor must, in such circumstances, and must ensure that the Contractor Personnel, carry out each direction and request made by the SADFO for the purpose of meeting the emergency or deteriorating security environment.
- 7.14.3 The Contractor may, in accordance with clause 21.7, claim its reasonable direct costs associated with the Contractor's compliance with a direction by the SADFO in accordance with clause 7.14.2.
- 7.14.4 If, as a direct result of a direction by the SADFO, the Contractor is unable to perform the Services, the Contractor may notify the Commonwealth of a claim for postponement or waiver in accordance with clause 7.15.
- 7.14.5 The Contractor must ensure that all Approved Subcontracts include a clause that is functionally equivalent to the direction and control obligation in this clause 7.14. If the Contractor fails to include such a right in an Approved Subcontract, the amount that the Contractor may claim and for which the Commonwealth is liable under clauses 7.14.3 and 21.7 will be calculated on the basis that such a right was included.

- 7.14.6 If the Contractor fails to comply with any directions made by the SADFO pursuant to clause 7.14.2, such a failure is a breach of the Contract and the Commonwealth may terminate the Contract immediately in accordance with clause 50.2.2f.
- 7.14.7 Any direction given by the SADFO under this clause 7.14 remains in effect and is binding upon the Contractor and the Contractor Personnel until the SADFO withdraws it in writing.
- 7.15 **Postponement and waiver**
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- 7.15.1 The Contractor must take all reasonable steps to prevent and minimise delay in the provision of the Services and to mitigate the Parties' Losses and the operational impact due to those delays. For the purposes of this clause delay includes temporary non-delivery of Services.
- 7.15.2 The Contractor must immediately upon becoming aware that delivery of the Services will or may be delayed, by any cause, advise the Commonwealth of the cause and nature of the delay and confirm such advice by notice in writing to the Commonwealth Representative as soon as is reasonably possible.
- 7.15.3 The Contractor must notify the Commonwealth Representative in writing:
- of the steps it will take to minimise the delay; and
 - the anticipated duration of the delay.
- 7.15.4 Subject to clauses 7.15.1 and 7.15.5, the Contractor may claim one or more of the following:
- a waiver of the obligation to provide a Service, including a waiver of an obligation to provide a Deliverable; and
 - a postponement of the date for provision of a Service, including a postponement of the date for delivery of a Deliverable,
- only to the extent that the event giving rise to the claim:
- directly delays the Contractor in the performance of its obligations under the Contract;
 - subject to clause 7.15.9, is beyond the reasonable control of the Contractor and is not caused by a default (including breach of Contract), or an unlawful or negligent act or omission of the Contractor or the Contractor Personnel;
 - could not have been reasonably contemplated and allowed for by the Contractor or Contractor Personnel; and
 - is not provided for elsewhere in the Contract.
- 7.15.5 The Contractor may submit a notice of claim to the Commonwealth for such waiver and/or postponement, within twenty one (21) days after such factors as described in clause 7.15.4 have come to the notice of the Contractor. The notice must provide, in as much detail as possible the nature of the cause of the delay and the anticipated extent of the delay and supplying any supporting information as may be reasonably necessary to support the validity of the claim.
- 7.15.6 Within twenty one (21) days after the circumstances causing the delay referred to in clause 7.15.4 have ceased, the Contractor must notify the Commonwealth in writing of the actual period of the delay and may seek any waiver and/or postponement to the date by which the relevant Services were originally required.
- 7.15.7 The Commonwealth may Approve or reject the waiver and/or postponement sought by the Contractor in clause 7.15.6 within 21 days of receipt of the notice referred to in that clause.
- 7.15.8 The Contractor is not entitled to any such waiver or postponement unless as a condition precedent, the Contractor has complied with the notice provisions under clauses 7.15.2, 7.15.5 and 7.15.6. Unless and until a claim for waiver and/or postponement is Approved by the Commonwealth under clause 7.15.7, the Contractor is fully responsible for any potential or actual delay in the delivery of the Services and any loss, damage, cost or expenses arising from such a delay.
- 7.15.9 Any delay attributable to a Subcontractor will be considered for the purposes of this clause only to the extent that the reasons for the delay satisfy this clause and are beyond the reasonable control of the Subcontractor and the Contractor.

- 7.15.10 Any claim for such waiver or postponement will not give rise to an entitlement for an increase in the amounts payable under Schedule 3 or any amount payable under the Contract.
- 7.15.11 The Contractor must not submit a waiver and/or postponement claim pursuant to this clause 7.15 for events that occur prior to the Effective Date.
- 7.15.12 Whether or not the Contractor has made, or is entitled to make, a claim under this clause 7.15 the Commonwealth may, in its discretion, at any time and by written notice to the Contractor, do one or more of the following:
- immediately decrease the required level of performance for a particular reporting period;
 - postpone the date for provision of a Service or Deliverable; or
 - waive the obligation to provide a Service or Deliverable.
- 7.15.13 The parties acknowledge that:
- the Commonwealth is not required to exercise its discretion under clause 7.15.12 for the benefit of the Contractor; and
 - the exercise or failure to exercise the discretion under clause 7.15.12 is not capable of being the subject of a dispute arising from or in connection with the Contract (including for the purposes of clause 7.15) or otherwise subject to review.
- 7.15.14 If the Commonwealth exercises its discretion under clause 7.15.12, the Contractor must submit a CCP in accordance with clause 18.1 that is consistent with the notice issued under clause 7.15.12 to incorporate the change into the Contract.

7.16 Quality Management System

- 7.16.1 The Contractor shall:
- from the Operative Date, maintain a Quality Management System in accordance with AS/NZS ISO 9001:2008 for all QMS requirements; and
 - gain full ISO 9001 certification within 18 months of the Operative Date.

7.17 Reduced Activity Period

- 7.17.1 Notwithstanding any other provision of the Contract, the Commonwealth may advise the Contractor of a period of reduced activity (**Reduced Activity Period**).
- 7.17.2 An advice given by the Commonwealth pursuant to clause 7.17.1 may include:
- the Services that must not be provided and/or the reduced volume of Services to be provided;
 - the Reduced Activity Period start and end dates, including any phasing in or out; and
 - the reduced amount that the Contractor may claim in accordance with clause 21.1 and Schedule 3 for the Reduced Activity Period.
- 7.17.3 The Contractor shall:
- reduce the provision of Services in accordance with advice given pursuant to clause 7.17.1; and
 - ensure that any claim for payment for a Reduced Activity Period, is in accordance with clauses 7.17.2c and 21.

8 DELIVERABLES

8.1 Provision of Deliverables

- 8.1.1 The Contractor must provide and maintain the Deliverables as required under the Contract.
- 8.1.2 To enable the Commonwealth to thoroughly review each Deliverable for Approval and with sufficient time for the Contractor to make such further amendments as may be required to ensure its Approval by the date required by the Commonwealth, the Contractor must submit Deliverables to the Commonwealth in accordance with the timeframes for review and Approval set out in the Statement of Work.

8.2 Standard of Deliverables

- 8.2.1 The Contractor shall ensure that each Deliverable:
- a. is accurate and fit for its intended purpose in accordance with the Contract;
 - b. is acceptable to the Commonwealth in terms of presentation and scope;
 - c. is in the English language; and
 - d. meets or exceeds the Contract requirements.
- 8.2.2 The Contractor warrants that the preparation, review, maintenance and update of each of the plans and reports which form part of the Deliverables will be carried out with the due care, skill and diligence appropriate to the undertaking and will comply with the requirements of the Contract.

8.3 Approval of Deliverables

- 8.3.1 The Contractor shall produce, update and deliver Deliverables to the Commonwealth in accordance with the Contract..
- 8.3.2 If the Contract provides that a Deliverable must be submitted by the Contractor to the Commonwealth for Approval, the Commonwealth may:
- a. Approve; or
 - b. reject,
- the Deliverable.
- 8.3.3 If the Commonwealth gives the Contractor advice that the Deliverable is rejected, the Contractor must, in accordance with the timeframes in the Contract, or as otherwise specified by the Commonwealth and at no additional cost to the Commonwealth, correct the Deliverable so that it meets or exceeds the requirement of the Contract and resubmit a revised version to the Commonwealth for Approval in which case clause 8.3.2 applies.
- 8.3.4 If, within the time determined under clause 8.3.3, the Contractor submits the rectified Deliverable as conforming to the requirements of the Contract, the Commonwealth may exercise the rights provided by this clause 8.3 as if the Deliverable had been submitted by the Contractor for the first time.
- 8.3.5 If, under clause 8.3.2, the Commonwealth provides the Contractor with advice of Approval, then the Deliverable shall have effect in accordance with that Approval.
- 8.3.6 Approval of any Deliverable by the Commonwealth shall:
- a. be construed as no more than an indication that the Deliverable appears to the Commonwealth Representative to be capable of being used as a basis for further work;
 - b. not be construed as limiting the Contractor's responsibility to provide Services in accordance with the requirements of the Contract; and
 - c. not be construed as a waiver of:
 - (i) any right under this Contract; or
 - (ii) any cause of action,
- arising out of any act or omission of the Contractor or Contractor Personnel.

9 OTHER SERVICES

9.1 Survey & Quote Services

- 9.1.1 The Commonwealth Representative may, in the form of the Request for Quotation for Survey and Quote Services at Annex A to Schedule 6, request the Contractor to provide a quote for the provision of an S&Q Service described in the request.
- 9.1.2 The Contractor must, before the due date specified by the Commonwealth in the request, conduct a survey of the S&Q Service and submit for Approval a Quote for Survey and Quote Services (**S&Q Quote**) in the form of Annex B to Schedule 6. The Contractor shall ensure that each S&Q Quote:

- a. includes a price for the provision of the requested S&Q Service:
 - (i) prepared on the price basis specified by the Commonwealth in the request;
 - (ii) calculated in accordance with:
 - 1) the methodology in the Quote for Survey and Quote Services form at Annex B to Schedule 6; and
 - 2) the 'labour rates' and the 'task rates' for Survey and Quote Services specified at Annex A to Schedule 3.
- 9.1.3 Subject to clause 9.1.4, the Commonwealth Representative must, within 30 days of receiving a quote under clause 9.1.2 (or within the longer period (if any) specified by the Contractor in the quote):
 - a. Approve the quote using the Approval of Quote for Survey and Quote Services form and notify the Contractor of the Approval of the S&Q Quote; or
 - b. reject the quote and notify the Contractor of the reasons for rejection.
- 9.1.4 If the Commonwealth Representative gives no notice under clause 9.1.3 within the period determined in accordance with that clause, the Commonwealth is taken to have rejected the quote.
- 9.1.5 The Commonwealth may, in its discretion, at any time before the Approval of an S&Q Quote, cancel a request under clause 9.1.1 by notice in writing to the Contractor. Upon receipt of such a notice, the Contractor must cease its activities in relation to the request.
- 9.1.6 An S&Q Quote that is Approved in accordance with clause 9.1.3a takes effect when a Purchase Order is executed by the Commonwealth in respect of the S&Q Service.
- 9.1.7 If the Commonwealth executes a Purchase Order in respect of an S&Q Service:
 - a. the Contractor must provide the S&Q Service in accordance with the Contract, the Purchase Order and the Approved S&Q Quote; and
 - b. upon completion of the S&Q Service the Contractor may make a claim in accordance with clause 21 and the Purchase Order for an amount not exceeding the S&Q Quote.
- 9.1.8 The S&Q Service must be performed by the Contractor in accordance with:
 - a. the conditions of Contract (being a Service to be provided under the Contract), except to the extent that the Purchase Order for the S&Q Service expressly states that a provision of the SOW or another Schedule does not apply to the S&Q Service; and
 - b. any other terms and conditions specified by the Commonwealth.
- 9.1.9 The Purchase Order for an S&Q Service must not change any provisions of the Contract. If the Parties agree that performance of an S&Q Service requires a change to the Contract, the Contractor must submit a CCP to give effect to the change.
- 9.1.10 If the Contractor becomes aware that:
 - a. circumstances have arisen in which, in the Contractor's reasonable opinion, the capability of the Base may not be maintained unless an S&Q Service is performed; and
 - b. the Commonwealth Representative may not be aware of those circumstances,the Contractor must notify the Commonwealth Representative of the circumstances as soon as is practicable.
- 9.1.11 The Contractor acknowledges that:
 - a. the Commonwealth Representative will decide whether, and if so when, to make a request for an S&Q Service;
 - b. the Commonwealth has no obligation to reimburse the Contractor in accordance with clause 21.7 for its costs in surveying and quoting for S&Q Services, except to the extent (if any) that the Commonwealth Representative Approves the reimbursement in advance in writing; and
 - c. without limiting clause 3, the Commonwealth may obtain services the same as or similar to one or more of the S&Q Services from a person other than the Contractor.

10 LOCATION OF SERVICES

- 10.1.1 Unless otherwise agreed by the Commonwealth, the Services must be provided by the Contractor at the Base.

SECTION C – SERVICE PERFORMANCE

11 PERFORMANCE REQUIREMENTS

11.1 Design and Development work

- 11.1.1 If the provision of the Services requires the Contractor to undertake design and development work, the Contractor must undertake that design and development work with a high degree of professional skill and care and in accordance with the Contract. If the Contract does not specify a design or development standard, the Contractor must apply industry best practice relevant to the design and development work.
- 11.1.2 The Contractor must undertake the required design and development work so that Services are compatible with and do not restrict the performance of, or adversely affect, existing equipment. For the purposes of this clause, “existing equipment” means equipment specified or referred to in the Contract or any other equipment used by the Commonwealth that the Contractor knows, or reasonably ought to know, will be used with the Services.

11.2 Non-Provision of Services

- 11.2.1 The Contractor must provide all Services in accordance with the Contract.
- 11.2.2 Without limiting any other right of the Commonwealth under the Contract, if the Contractor fails to provide a Service when required by the Contract:
- a. the Contractor shall:
 - (i) immediately advise the Commonwealth of each failure to provide any Service which impacts on security; capability; health and safety; the environment or Commonwealth property (**Significant Service**); and
 - (ii) promptly advise the Commonwealth of each failure to provide a Service that is not a Significant Service; and
 - b. if:
 - (i) the Service is of a type specified at item 19 of Schedule 1, the Contractor shall provide the Service in accordance with clause 11.2.3; or
 - (ii) the Service is of a type not specified at 19 of Schedule 1, the Contractor shall not provide the Service, unless the Commonwealth advises the Contractor in writing to provide that Service in accordance with the advice, including when the Service must be provided.
- 11.2.3 If an advice is given by the Commonwealth under clause 11.2.2b(ii) or a Service is to be provided in accordance with clause 11.2.2b(i), the Contractor must provide the Service:
- a. at no additional cost to the Commonwealth;
 - b. taking all such steps as are reasonably necessary to mitigate the effect on the Commonwealth;
 - c. within the time specified in the advice given pursuant to clause 11.2.2a or as soon as possible if the Service is of a type specified at item 19 of Schedule 1; and
 - d. at times and in a manner which cause as little inconvenience as possible to the Commonwealth and the Contractor's performance of the other Services.
- 11.2.4 If:
- a. the Contractor fails to provide a Service in accordance with clause 11.2.2a; or
 - b. the Commonwealth does not does advise the Contractor to provide a Service in accordance with clause 11.2.2a,
- then:
- c. Commonwealth may, in its absolute discretion, do one or more of the following:
 - (i) perform the Service itself; and
 - (ii) engage a third party to perform the Service; and

- d. the Contractor shall reduce the next claim for payment pursuant to clause 21 by the amount advised by the Commonwealth in accordance with clause 11.2.5 (**Non-Provision Amount**).
- 11.2.5 The Non-Provision Amount for a Service that the Contractor failed to provide may be determined by the Commonwealth based on:
- a. the amount otherwise claimable for the Service not provided, as specified in Schedule 3;
 - b. if Schedule 3 does not specify an amount claimable for the Service, the relevant schedule of rates for Survey and Quote Services or "labour rate and task rate schedules" in Schedule 3; or
 - c. if there is neither an amount claimable for the Service specified in Schedule 3 nor an applicable schedule of rates for the Service, the Commonwealth's reasonable estimate of the third party cost to perform the Service.
- 11.2.6 The exercise or non-exercise by the Commonwealth of all or any of its rights under clause 11.2 will not affect the Commonwealth's other rights at Law or arising from or in connection with the Contract, including the right to terminate or reduce the scope of the Contract for default pursuant to clause 50 or otherwise.
- 11.2.7 The Contractor may, in accordance with clause and subject to clause 7.15, claim postponement or waiver of a Non-Conformance.
- 11.3 **Acceptance of Deliverables – Not Used**
- 11.4 **Ownership and Risk**
-
- 11.4.1 Subject to clauses 9.1.8 and 20, ownership of any Deliverables, or partially completed Deliverables, provided as part of the Services shall pass to the Commonwealth:
- a. for those Deliverables being provided through Survey and Quote Services, on payment of the claim for the applicable Services;
 - b. for Deliverables:
 - (i) if subject to Approval, upon Approval; and
 - (ii) if not subject to Approval, upon delivery; and
 - c. for any other Deliverables, on provision of the Service to which the Deliverable forms a part.
- 11.4.2 The Contractor shall ensure that at the time ownership of any item of Deliverables passes to the Commonwealth, those items are free of any Encumbrance.
- 11.4.3 The Contractor acknowledges that any Deliverables which become owned by the Commonwealth under the Contract are not GFM unless specifically listed as GFM in Schedule 5.
- 11.4.4 Subject to clause 9.1.8:
- a. risk of loss of, or damage to, any Deliverables resides with the Contractor and passes to the Commonwealth on delivery; and
 - b. if:
 - (i) the Commonwealth Representative gives the Contractor an advice rejecting Deliverables in accordance with clause 8.3.2b; or
 - (ii) the Contractor retakes possession of the Deliverables in accordance with the Contract,
- risk of loss of, or damage to, those Deliverables reverts to the Contractor on repossession or on the date of the advice given in accordance with clause 8.3.2b (or as otherwise specified in the advice).

SECTION D – PERSONNEL

12 PERSONNEL

12.1 Personnel and resources

12.1.1 The Contractor must ensure that:

- a. all Contractor Personnel have a sufficient standard of knowledge, training and expertise, including as set out in the Statement of Work, to perform the Services as appropriate to their respective role;
- b. all Contractor Personnel who provide the Services receive formal training and ongoing professional development to ensure they have, and maintain, appropriate skills to deliver the Services, as appropriate to their respective role;
- c. the skills and competencies of Contractor Personnel recruited to provide Services are of a standard that enable the Contractor to provide those Services; and
- d. it has appropriately qualified resources available for reasonable coverage for Surge Services.

12.2 Leave of absence

12.2.1 The Contractor must use its best endeavours to ensure that all positions are filled at all times in the event that Contractor Personnel take planned or unplanned leave or are otherwise unable to perform the Services.

12.3 Commonwealth may require removal of Contractor Personnel

12.3.1 The Commonwealth may require the Contractor to remove and replace any of the Contractor Personnel from performing the Services, including:

- a. if Contractor Personnel fail to observe and conform to Defence Policies and Procedures and, if applicable, the Defence environment;
- b. if Contractor Personnel fail to comply with any Law;
- c. if Contractor Personnel fail to comply with any workplace health and safety requirements of the Contract;
- d. if the Commonwealth, in its sole and absolute discretion, is of the opinion that standards, competence or performance of any of the Contractor Personnel falls below the standards, competence or performance required of the Contractor Personnel or under the Contract; and
- e. to protect people or property.

12.3.2 Where the Contractor is required to replace Contractor Personnel, the Contractor must immediately do so with another appropriately qualified, competent and experienced person.

12.3.3 Any requirement to replace any of the Contractor Personnel during the course of the Contract (whether at the request of the Commonwealth or not) shall not entitle the Contractor to claim postponement under clause 7.15 and the Contractor waives any right to make such a claim for postponement.

12.4 Personnel related expenses

12.4.1 The Contractor is responsible for all payments to Contractor Personnel providing Services under the Contract, including payment by way of salary, remuneration or commissions, bonuses, annual leave, long service leave, personal leave, termination, redundancy, taxes, superannuation or worker's compensation premiums or liabilities.

13 POST DEFENCE SEPARATION EMPLOYMENT

- 13.1.1 The Contractor must ensure that any employee of the Contractor who is a former Defence Employee complies with the requirements of the Defence Workplace Relations Manual and DI(G) PERS 25-4 as applicable.
- 13.1.2 Except with the written Approval of the Commonwealth Representative, the Contractor must not permit a person who:
- a. in a Relevant Period (defined below) was a Employee of, or a Service Provider to, Defence engaged in the preparation or management of the Contract, the selection of the Contractor or the performance of the project or activity to which the Contract relates; or
 - b. in the 12 months immediately preceding the request for Approval was a Defence Employee,
- to perform or contribute to the Contractor's obligations under the Contract.
- 13.1.3 The Commonwealth Representative will not unreasonably withhold or delay Approval under clause 13.1.2 and will consider:
- a. the character and duration of the engagement, services or work performed by the Employee or Service Provider in the period specified in clause 13.1.2a or b (as applicable);
 - b. any information provided by the Contractor about the character and duration of the Services to be performed by the Employee or Service Provider under the Contract;
 - c. the potential for real or perceived Conflicts or probity objections if the Employee or Service Provider performs or contributes to the performance of the Contract;
 - d. any information provided by the Contractor concerning any significant effect which withholding Approval will have on the Employee or Service Provider's employment opportunities or the performance of the Contract; and
 - e. the Commonwealth's policy requirements set out in the Defence Workplace Relations Manual and DI(G)PERS 25-4, as applicable.
- 13.1.4 In this clause 13:
- a. **Relevant Period** means each of:
 - (i) 24 months;
 - (ii) 12 months; and
 - (iii) 6 months,before the request for the Approval contemplated by clause 13.1.2a was made; and
 - b. each restriction created by clause 13.1.2a, by the operation of clause 13.1.4 (due to the three Relevant Periods applying), is separate and independent of the other (although they are concurrent in effect).

14 RESTRICTION ON ENGAGING PERSONNEL OF OTHER PARTY

- 14.1.1 The Contractor must not, without the written prior agreement of the Commonwealth, engage, employ or induce or cause a third party to induce the Commonwealth Personnel engaged in the performance of the Contract to enter into a contract for service or a contract for employment with it.
- 14.1.2 The restriction referred to in clause 14.1.1 applies during the Contract Period and for a period of:
- a. six months after expiry or termination of the Contract;
 - b. three months after expiry or termination of the Contract; or
 - c. one month after expiry or termination of the Contract,
- each of which periods will be regarded as separate, distinct and several so that the enforceability of a restraint in respect of one period will not affect the enforceability of the others.

- 14.1.3 A general solicitation for employment such as a newspaper advertisement is not a breach of this clause 14.

SECTION E – CONTRACT MANAGEMENT

15 ROLES AND RESPONSIBILITIES

15.1 Commonwealth Representative

- 15.1.1 The Commonwealth Representative is responsible for administering the Contract on behalf of the Commonwealth.
- 15.1.2 The Commonwealth may notify the Contractor of any change in the name, title or contact details of the Commonwealth Representative by giving notice to the Contractor and that change will take effect from the date the Contractor is deemed to have received that notice under clause 54.
- 15.1.3 The Commonwealth Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Commonwealth Representative, and the scope of their delegation or authorisation (**Commonwealth Contract Authority**) are set out at clauses 15.2.1 to 15.3.2 or as advised in writing by the Commonwealth from time to time.
- 15.1.4 The Contractor must comply with any directions of:
- the Commonwealth Representative, made within the scope of the administration of the Contract; and
 - any Commonwealth Contract Authority, made within the scope of its delegation or authorisation.
- 15.1.5 The Commonwealth may confirm in writing any direction given orally within fourteen days of giving that direction. Neither the Commonwealth Representatives nor any Commonwealth Contract Authority have any authority to waive any provision of, or release the Contractor from, its obligations under the Contract, except in accordance with clause 18.
- 15.1.6 Any work performed, cost incurred or delay suffered by the Contractor in response to a communication from the Commonwealth Representative or any Commonwealth Contract Authority which is not:
- authorised by the Contract; or
 - a direction for the Contractor to comply with its obligations arising from or in connection with the Contract,
- is at the Contractor's sole cost and risk.

15.2 Commonwealth Contract Authority

- 15.2.1 The Commonwealth Contract Authority:
- is authorised by the Commonwealth to:
 - Approve or effect changes to the Contract in accordance with clause 18 on behalf of the Commonwealth; and
 - issue any notices in accordance with clause 49; and
 - is appointed by the Commonwealth to administer the Contract on behalf of the Commonwealth.
- 15.2.2 The Commonwealth may notify the Contractor of any change in the name, title or contact details of the Commonwealth Contract Authority or any of its Authorised Persons (as defined below) by giving notice to the Contractor and that change will take effect from the date the Contractor is deemed to have received that notice under clause 54.
- 15.2.3 The Commonwealth Contract Authority may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Commonwealth Contract Authority, and the scope of their delegation or authorisation (**Authorised Persons**) are as set out at clause 15.3 or as advised in writing by the Commonwealth from time to time.
- 15.2.4 The Contractor must comply with any directions of:

- a. the Commonwealth Contract Authority, made within the scope of the administration of the Contract; and
 - b. any Authorised Person made within the scope of its delegation or authorisation.
- 15.2.5 The Commonwealth may confirm in writing any direction given orally within fourteen days of giving that direction. Neither the Commonwealth Contract Authority nor an Authorised Person have any authority to waive any provision of, or release the Contractor from, its obligations under the Contract except in accordance with clause 18.
- 15.2.6 Any work performed, cost incurred or delay suffered by the Contractor in response to a communication from the Commonwealth Contract Authority or an Authorised Person which is not:
- a. authorised by the Contract; or
 - b. a direction for the Contractor to comply with its obligations arising from or in connection with the Contract,

is at the Contractor's sole cost and risk.

15.3 **Commonwealth Contract Administrator**

- 15.3.1 The Commonwealth delegates to the Commonwealth Contract Administrator the role of:
- a. day to day management of the Contract, including receipt of notices and communications under the Contract; and
 - b. overseeing the Contractor's performance under the Contract.
- 15.3.2 A reference to the Commonwealth Contract Authority includes a reference to the Authorised Person where the Authorised Person has been delegated the functions or authorised to perform the functions of the Commonwealth Contract Authority under clauses 15.2.1 to 15.2.4 or under any other notice in writing from the Commonwealth.

15.4 **Contractor Representative**

- 15.4.1 The Contractor Representative is responsible for administering the Contract on behalf of the Contractor.
- 15.4.2 The Contractor must notify the Commonwealth of any change in the name, title or contact details of the Contractor Representative by giving notice to the Commonwealth and that change will take effect from the date the Commonwealth is deemed to have received that notice under clause 54.
- 15.4.3 The Contractor Representative may delegate its functions, or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out functions on behalf of the Contractor Representative, and the scope of their delegation or authorisation (**Contractor Contract Authority**) are set out at clauses 15.5.1 to 15.6.2 or as advised in writing by the Contractor from time to time.

15.5 **Contractor Contract Authority**

- 15.5.1 The Contractor must notify the Commonwealth of any change in the name, title or contact details of the Contractor Contract Authority or any other person to whom it has delegated its functions or who it has authorised to carry out its functions pursuant to clauses 15.5.1 to 15.6.2 by giving notice to the Commonwealth and that change will take effect from the date the Commonwealth is deemed to have received that notice under clause 54.
- 15.5.2 The Contractor Contract Authority is appointed by the Contractor to administer the Contract on behalf of the Contractor.
- 15.5.3 The Contractor Contract Authority may delegate its functions or authorise that its functions be carried out on its behalf. The persons who are delegated the functions or authorised to carry out the functions on behalf of the Contractor Contract Authority, and the scope of their delegation or authorisation, are set out at clauses 15.6 or as otherwise Approved by the Commonwealth.

15.6 **Contractor Contract Administrator**

- 15.6.1 The Contractor delegates to the Contractor Contract Administrator the role of:
- a. the day to day management of the Contract; and

b. interfacing with the Commonwealth Contract Administrator.

15.6.2 A reference to the Contractor Contract Authority includes a reference to those people to whom the Contractor Contract Authority has delegated its functions or authorised to perform its functions under clauses 15.6.1 or under any other notice in writing.

16 MEETINGS

16.1.1 The Parties will meet at the times set out in the Performance Management Framework at Schedule 4 (or as otherwise determined by the Commonwealth) to discuss any issues in relation to the provision of the Services.

16.1.2 The Parties must ensure that the relevant Personnel are reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either Party.

17 REPORTING

17.1.1 Reports must be provided by the Contractor to the Commonwealth electronically or in such other form as directed by the Commonwealth.

17.1.2 The Contractor must:

- a. keep the Commonwealth informed of its operations relating to the Services; and
- b. give the Commonwealth such other reports, documents and information in relation to those operations as the Commonwealth reasonably requires,

within the timeframes reasonably required by the Commonwealth.

17.1.3 The Contractor must keep comprehensive written records of the management of the Services.

17.1.4 The Contractor must provide the Commonwealth with the reports specified in the Statement of Work and any CCP in accordance with the timeframe for reporting set out in the SOW and CCP.

17.1.5 The Contractor must ensure that each report contains the information specified in Statement of Work and applicable CCP.

17.1.6 To avoid doubt, and without limiting the Commonwealth's rights, if the Contractor fails to provide a report required in the Statement of Work or a CCP to the Commonwealth within the timeframe specified, then the Commonwealth may withhold or suspend payment of the Service Charges under clause 21.1.2.

17.1.7 The Commonwealth may, by notice in writing to the Contractor, issue any reasonable direction in respect of a report the Contractor is to provide under the Contract specifying one or more of the following:

- a. a format for the report;
- b. information the Contractor is to include in the report; and
- c. the person or persons who is to certify that information contained in the report is accurate.

17.1.8 Where the Commonwealth issues a direction under clause 17.1.7 in respect of a report, the Contractor must comply with the direction in preparing the report to which the direction relates.

18 CONTRACT MANAGEMENT

18.1 Change to the Contract

18.1.1 Except as expressly permitted in the Contract, the Contract may be changed only in accordance with clause 18.1. The Parties are not liable to each other for any additional work undertaken, additional materials or services provided or additional expenditure incurred unless the change has been Approved under clause 18.1.6a and taken effect in accordance with clause 18.1.9.

18.1.2 Either Party may propose a change to the Contract. CCPs must be in the format set out at Annex F to Schedule 6.

18.1.3 If the Commonwealth Representative proposes a change to the Contract it may:

- a. notify the Contractor and the Contractor must submit a CCP to the Commonwealth Representative within a period of 30 days after receipt of such notice or such other period as agreed; or
 - b. provide a CCP to the Contractor and the Contractor must notify the Commonwealth Representative of any changes it requires (if any) to the CCP within 30 days of receipt.
- 18.1.4 The Contractor must calculate the effect of a CCP on the Contractor's payment entitlements (if any) under the Contract in accordance with the worksheet attached to Annex A to Schedule 3, including any rates it contains, unless the Contract otherwise provides or the Commonwealth Representative notifies the Contractor that it may be calculated on a different basis..
- 18.1.5 The Commonwealth Representative may at its discretion require the Contractor to provide a not to exceed (**NTE**) quote for the preparation of a CCP, prior to the Contractor preparing the CCP in accordance with clause 18.1.3. If the Commonwealth Representative exercises its discretion under this clause the Commonwealth's payment of the reasonable costs of preparation of a CCP under clause 18.1.3 or through a change to the Contract Approved under clause 18.1.6 must not exceed the NTE quote provided.
- 18.1.6 The Commonwealth Representative may evaluate a CCP submitted under clause 18.1, and must:
 - a. Approve the CCP; or
 - b. reject the CCP, giving reasons for such rejection.
- 18.1.7 The Commonwealth Representative must Approve or reject a CCP under clause 18.1.6 within:
 - a. 30 days after receipt; or
 - b. such other period as may be agreed.
- 18.1.8 Subject to clause 18.1.5, the cost of preparing the CCPs (other than pursuant to clause 18.1.3b) will be borne by the Contractor.
- 18.1.9 A CCP Approved by the Commonwealth Representative takes effect:
 - a. if no date for taking effect is specified in the CCP, on the date it is executed by both Parties and if executed on different days, the date of the last execution; or
 - b. on the date specified in the CCP, following its execution by both Parties.
- 18.1.10 The Commonwealth may prepare and issue a conformed copy of the Contract to incorporate CCPs that have taken effect under clause 18.1.9. The conformed copy of the Contract does not have any legal status.

19 GOVERNMENT FURNISHED MATERIAL

19.1 Provision and Management of GFM

- 19.1.1 The Commonwealth will use its reasonable endeavours to deliver or provide access to, and the Contractor must manage, GFM in accordance with the Contract.
- 19.1.2 The Contractor acknowledges and agrees that:
 - a. the Commonwealth's obligations to provide GFM on the dates or at the times described in Schedule 5, are subject to the Contractor performing the Services in accordance with clause 7; and
 - b. any delay of the Contractor in meeting its obligations under the Contract may result in the Commonwealth not being able to provide GFM at the time the Contractor requires delivery or access to that GFM.
- 19.1.3 If at any time the Contractor's requirement for the timing of delivery or access to GFM changes because of a delay by the Contractor in meeting its obligations under the Contract, but subject to the Commonwealth's rights under clause 7.14, the Commonwealth:
 - a. will use reasonable endeavours to accommodate changes to the Contractor's requirements for delivery or access to GFM and to deal with them in accordance with clause 18; and

- b. is only required to deliver or provide access to the GFM at the time it becomes available for use for the purposes of the Contract.
- 19.1.4 To avoid doubt, clause 19.1.3 does not require the Commonwealth to remove GFM from operational requirements, or to provide GFM allocated to or available for other contracts.
- 19.1.5 If the Commonwealth fails to deliver or provide access to GFM on the dates set out in Schedule 5, the Contractor may give notice of a claim for postponement in relation to the affected Services, except to the extent that the failure to deliver or provide access to the GFM was caused by a default or an unlawful or negligent act or omission of the Contractor or the Contractor Personnel. The process for submission and consideration of the claim must be undertaken, and any rights of the Contractor determined, in accordance with clause 7.15.
- 19.1.6 Subject to this clause 19, the Commonwealth's inability to deliver or provide access to GFM in the circumstance described in clause 19.1.3 shall not entitle the Contractor to claim postponement in accordance with clause 7.15 and the Contractor waives any such right to claim postponement.
- 19.1.7 Clause 19.1.6 does not operate to limit the operation of clause 7.15 in circumstances where:
 - a. the relevant GFM is Commonwealth Mandated GFM; or
 - b. the delay or failure giving rise to the Contractor's changed requirement for delivery of or access to GFM is an event in respect of which the Commonwealth has suspended or reduced the scope of Services in accordance with clause 7.11.
- 19.1.8 The Contractor must ensure that the GFM does not adversely impact on the provision of the Services.
- 19.1.9 The Parties acknowledge that the GFM is not furnished to the Contractor for the purpose of either directing or guiding the Contractor's task under the Contract. The Commonwealth does not warrant the suitability of such GFM for any particular use or application, nor does the Commonwealth warrant the accuracy or precision of the GFM.
- 19.1.10 Except as otherwise provided in this clause 19, the Contractor is responsible for the application or use of the GFM and any conclusions, assumptions or interpretations made by the Contractor on the basis of the GFM, or its application or use of them.

19.2 GFM Ownership and Restrictions

- 19.2.1 Subject to the IP rights notified to the Contractor by the Commonwealth in accordance with clause 19.2.5, GFM remains the property of the Commonwealth. The Commonwealth may reasonably identify GFM as its property and the Contractor must preserve any means of identification.
- 19.2.2 The Commonwealth will provide GFM to the Contractor for use solely for the purposes of the Contract.
- 19.2.3 The Contractor must ensure that all GFM is used strictly in accordance with any conditions or restrictions set out in Schedule 5, and any direction by the Commonwealth.
- 19.2.4 The Contractor must not:
 - a. without the prior written Approval of the Commonwealth Representative, except as specifically set out in the Contract:
 - (i) use GFM other than for the purposes of the Contract;
 - (ii) modify the GFM;
 - (iii) transfer possession or control of GFM to any other person; or
 - (iv) communicate or divulge GFM to any other person; or
 - b. create or allow to be created any Encumbrance over any GFM.
- 19.2.5 The Commonwealth Representative may notify the Contractor of any IP rights applicable to the GFM and the Contractor must ensure that it uses the GFM strictly in accordance with those rights.
- 19.2.6 The Contractor must return all items of GFM that are required to be returned to the Commonwealth in accordance with Schedule 5, or as otherwise specified in the Contract.

19.3 Governmental Furnished Facilities – Not Used

19.4 Use of Commonwealth Property

- 19.4.1 The Contractor must not, without the prior written Approval of the Commonwealth:
- use Commonwealth property other than for the purpose of the Contract;
 - modify Commonwealth property;
 - transfer possession or control of Commonwealth property to any other person; or
 - create or allow to be created any Encumbrance over any Commonwealth property.

19.5 Contractor Managed Commonwealth Assets

- 19.5.1 The Contractor must take all reasonable care of CMCA and must provide facilities to store and handle all CMCA as they are received.
- 19.5.2 The Contractor must, within seven days of becoming aware that any CMCA are lost, destroyed, damaged, defective or deficient, notify the Commonwealth Representative of the event in writing.
- 19.5.3 Without limiting clause 26, the Contractor will be liable to the Commonwealth for loss or destruction of, damage to or defects or deficiencies in, the CMCA, except to the extent that the loss, destruction, damage or defects or deficiencies results from any unlawful or negligent act or omission on the part of the Commonwealth, its officers, employees or agents. Subject to clause 19.5.4, or any agreement by the Parties to replace the CMCA, the Contractor must compensate the Commonwealth for the loss or destruction of, damage to or defects or deficiencies in, the CMCA and the Commonwealth may recover an amount equivalent to the value of the compensation under clause 51.
- 19.5.4 If in the opinion of the Commonwealth Representative the Contractor has the necessary capacity, the Commonwealth Representative may require the Contractor, by notice in writing, to transport, dispose of or repair damaged, defective or deficient CMCA. If the Contractor is liable under clause 19.5.3 for the damage, defect or deficiency, the work performed by the Contractor under this clause 19.5.4 will discharge or partially discharge the Contractor's liability. If the Contractor is not liable under clause 19.5.3 for the damage, defect or deficiency, the Contractor must, if the Parties agree in advance to the cost of the work, perform the work for no more than the agreed cost.

19.6 Shared Resources

- 19.6.1 Certain resources may be made available for use by the Contractor, while still being utilised by the Commonwealth, and they may be designated by the Commonwealth Contract Authority as shared resources. The Contractor must, in the Commonwealth's opinion, act reasonably in its use of shared resources.

19.7 Not Used

19.8 Commonwealth Infrastructure

- 19.8.1 The Contractor:
- may use water, electricity and metered gas supplies connected to the Base;
 - must exercise reasonable economy in usage of all utilities at the Base;
 - may have access to internal mail, telephone, facsimile and Defence networked computer systems at the Base;
 - must use these systems in accordance with Defence Policy and Procedures (including all relevant energy management plans applicable to the Base) and only for the purpose of performing the Services;
 - may be provided with access to means of communicating externally from the Base; and
 - may use the utilities in clause 19.8.1a, the systems and the means of communication in clause 19.8.1e at no charge at the Base.

19.9 Members Required in Uniform

- 19.9.1 The Commonwealth may make MRU available for utilisation by the Contractor.

- 19.9.2 Subject to clause 19.9.3, the Contractor must utilise MRU made available by the Commonwealth to perform the duties specified at Annex D to Schedule 7.
- 19.9.3 The Contractor acknowledges that the utilisation of MRU is subject to the MRU Entitlements set out in Annex D to Schedule 7.
- 19.9.4 The Contractor must:
- a. credit the Commonwealth with the amount specified in Annex D to Schedule 7 multiplied by each hour the MRU are available to the Contractor for utilisation in the provision of the Services (**MRU Credit**) as set out in Schedule 3; and
 - b. offset against the claims made by the Contractor under clause 21 any MRU credit outstanding when a claim is made.
- 19.9.5 For the purposes of the Contract, the MRU are at all times to be taken to be employees of the Commonwealth.
- 19.9.6 MRU are taken to be suitably qualified to perform the specific duties identified in Annex D to Schedule 7.
- 19.10 **Vehicles - Not Used**
- 19.11 **Information Systems Support for Base Services**
-
- 19.11.1 The Commonwealth may, including in accordance with Annex G to Schedule 7, provide the Contractor with access to relevant Commonwealth information systems to assist in the contract management and accounting.
- 19.11.2 The Contractor represents and warrants that:
- a. it will not, nor will it suffer or permit any third party under its direction or control, including any Subcontractor, to, negligently introduce into the Commonwealth's systems or any Deliverables any Harmful Code; and
 - b. if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Commonwealth and, where that Harmful Code is introduced as a result of a breach of clause 19.11.2a, it will:
 - (i) take all necessary action to eliminate the Harmful Code; and
 - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

SECTION F – INTELLECTUAL PROPERTY

20 INTELLECTUAL PROPERTY

20.1 Ownership of Intellectual Property

- 20.1.1 Ownership of all Foreground IP vests on its creation in the Commonwealth.
- 20.1.2 The Contractor:
- a. grants to the Commonwealth a Licence in respect of all Background IP that is owned by the Contractor to exercise the Background IP for Defence Purposes; and
 - b. must ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.
- 20.1.3 Before an Approved Subcontractor commences work in relation to the provision of the Services (or within 28 days after the Effective Date, if that is later), the Contractor must:
- a. ensure that ownership of all Foreground IP produced by the Approved Subcontractor vests on its creation in the Commonwealth;
 - b. ensure that the Commonwealth is granted a Licence from the Approved Subcontractor in respect of Background IP owned by the Approved Subcontractor on the same terms as clause 20.1.2; and
 - c. arrange for the Approved Subcontractor to execute a deed substantially in the form set out in Annex H to Schedule 6 and provide the deed to the Commonwealth.
- 20.1.4 The Contractor acknowledges that the rights granted under clauses 20.1.2 and 20.1.3 include the right of the Commonwealth, or a person on behalf of the Commonwealth, to exercise the Background IP with the Foreground IP to:
- a. properly use and support the Services, including any Deliverables;
 - b. continue to provide or complete the provision of the Services if the Contract is terminated (except under clause 50.1); and
 - c. remedy errors, omissions, non-conforming materials or work or other Non-Conformances in the Services, including Deliverables, in accordance with the Contract.
- 20.1.5 The Licences granted under clauses 20.1.2 and 20.1.3 do not permit the Commonwealth, or a person on behalf of the Commonwealth, to commercialise the licensed IP. However, the Licence permits the Commonwealth to sub-license the IP to a third party for the purpose of providing goods and services to the Commonwealth for Defence Purposes.
- 20.1.6 The Contractor warrants that the only IP embodied in the Services, including any Deliverables that has not been vested in the Commonwealth, or in respect of which the Commonwealth has not been granted a Licence under clause 20.1.2 and 20.1.3, is Third Party IP.
- 20.1.7 The Commonwealth may, on request, grant the Contractor or an Approved Subcontractor a licence to exercise Foreground IP owned by the Commonwealth on terms acceptable to the Commonwealth, including an appropriate licence fee.

20.2 Contractor IP – Release to Third Parties by the Commonwealth

- 20.2.1 If the Commonwealth makes available to another person any IP that is owned by the Contractor or an Approved Subcontractor and which is Background IP, the Commonwealth shall use its reasonable endeavours to obtain from that person a Deed of Confidentiality in the form set out in Annex I to Schedule 6.

20.3 Moral Rights

- 20.3.1 The Contractor represents and warrants that the provision of the Services and use of the Deliverables for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees or agents of the Contractor or its Subcontractors.
- 20.3.2 The Contractor shall ensure that none of its:
- a. officers, employees or agents;

- b. Subcontractors; or
- c. Subcontractors' officers, employees or agents,
institute, maintain or support any claim or proceeding against the Commonwealth or its officers,
employees or agents for infringement of any of their Moral Rights.

PART 2 – GENERAL REQUIREMENTS

SECTION A – PAYMENT AND CHARGES

21 PAYMENT

21.1 Claims for payment

21.1.1 Subject to clauses 19.9 and 21.2, the Contractor may submit claims for payment for:

- a. the Service Charges set out in Schedule 3, including:
 - (i) Fixed Fees;
 - (ii) Volume Based Fees;
 - (iii) Survey and Quote Services Fees;
 - (iv) Cost Reimbursement Payments; and
 - (v) Project Management (Earned Value) Services Fees; and
- b. any other amounts payable pursuant to the Contract.

21.1.2 Without limiting clause 34.4.1, the Commonwealth may defer, reduce or not make a payment under clause 21 until the Contractor has performed all of its obligations that are required to be performed up to the due date of that payment under the Contract.

21.2 Payment subject to the PMF and Non-Provision

21.2.1 Within 30 days of the end of each Assessment Period, the Contractor shall reduce the amount of the next claim for payment for Service Charges pursuant to clause 21.1.1 by:

- a. the amount of the Abatement advised by the Commonwealth in accordance with clause 6.3.5 of Schedule 4; and
 - b. the Non-Provision Amount, as determined in accordance with clause 11.2.5,
- or if there is no next claim for payment for Services Charges, or the Contractor fails to reduce the amount claimed in accordance with this clause 21.2.1 and clause 21.1.1, the Abatement and Non-Provision Amount may be recovered by the Commonwealth as a debt under clause 51

21.3 Contractor to provide invoice

21.3.1 If the Contractor submits a claim for payment, it must:

- a. submit an invoice for a claim for payment in writing to the Commonwealth in accordance with Schedule 3 and this clause 21;
- b. ensure that the invoice has been reduced by the amount of any Abatement and Non-Provision Amount (if any) calculated in accordance with clause 21.2.1;
- c. submit the invoice within thirty (30) days of the claim arising; and
- d. if any of the Services are carried out in the State of New South Wales, submit a supporting statement that includes a declaration to the effect that all subcontractors have been paid all amounts that have become due and payable in relation to any construction work (as that term is defined in the *Building and Construction Industry Security of Payment Act 1999* (NSW)) which is in the form prescribed by the *Building and Construction Industry Security of Payment Regulation 2008* (NSW).

21.4 Due date for payment

21.4.1 On receipt of an invoice for a claim for payment, the Commonwealth must, within 7 business days of that receipt:

- a. Approve the entire claim if the Contractor has:
 - (i) performed the Services in accordance with the Contract, or if no standard is specified in the Contract, to the satisfaction of the Commonwealth;

- (ii) complied with the provisions of the Contract applicable to a payment, including clause 21.2.1; and
 - (iii) made a claim for the payment and the claim satisfies the requirements of Schedule 3 and Schedule 4; or
 - b. Approve only part of the claim if:
 - (i) without limiting clause 11.2 the Contractor has performed part of the Services in accordance with the Contract or, if no standard is specified in the Contract, to the satisfaction of the Commonwealth;.
 - (ii) the Contractor has complied with the provisions of the Contract applicable to a payment; and
 - (iii) the Contractor has made a claim for the payment and the claim satisfies the requirements of clause 21 and Schedule 3,

in which case, the Commonwealth will indicate the amount of payment it proposes to make and the reasons why the amount of the payment it proposes to make is less than the amount claimed by the Contractor and the Contractor may submit a rectified new claim for payment (and in which case the rectified new claim for payment will be subject to the same conditions as if it were the original claim for payment); or
 - c. reject the claim if it fails to comply with one or more of the terms and conditions of the Contract or the Contractor is not otherwise entitled to the amount claimed.
- 21.4.2 The Commonwealth must pay an invoice for a claim Approved under clause 21.4.1a within 8 business days from the date of receipt of a correctly rendered invoice.
- 21.4.3 The application of an Abatement or Non-Provision Amount does not in any way limit any other right, remedy or recourse of the Commonwealth pursuant to the Contract, at Law or otherwise.
- 21.4.4 For the purposes of this clause 21.4, to the extent that the Services are to be carried out:
- a. in any jurisdiction other than the State of Victoria, the State of South Australia, the State of Tasmania, the Northern Territory or the Australian Capital Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public holiday in the State or Territory in which the Site is situated;
 - b. in the State of Victoria, references to "business days" are to days other than:
 - (i) a Saturday or Sunday; or
 - (ii) a day that is partly or wholly observed as a public holiday throughout Victoria;
 - c. in the Northern Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday in the Northern Territory;
 - d. in the State of South Australia, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December;
 - (ii) a public holiday in the State of South Australia; or
 - (iii) any other day on which there is a Statewide shutdown of the operations of the building and construction industry;
 - e. in the State of Tasmania, references to "business days" are to days other than:
 - (i) a Saturday or Sunday;
 - (ii) a statutory holiday as defined in the *Statutory Holidays Act* 2000 (Tas); or
 - f. in the Australian Capital Territory, references to "business days" are to days other than:
 - (i) a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
 - (ii) a public or bank holiday in the Australian Capital Territory under the *Holidays Act* 1958 (ACT).

21.5 Incorrect invoices, under/over payment

- 21.5.1 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently owed by the Commonwealth to the Contractor.
- 21.5.2 Except to the extent expressly provided for in the Contract, the Service Charges include all amounts claimable by the Contractor for all labour, supervision, goods, materials, plant, equipment, spare parts, consumables, facilities, on and off site overheads and all other work and services (**Work**) necessary for the Services:
- whether or not expressly mentioned in the Statement of Work or otherwise in the Contract; and
 - regardless of the volume of any Services required to be performed by the Contractor.
- 21.5.3 The Commonwealth shall use its reasonable endeavours to advise the Contractor of:
- an incorrectly rendered invoice; and
 - the application of an offset by the Commonwealth.

21.6 Early and Late Payment

- 21.6.1 If payment of an amount due under the Contract is made early, interest shall be payable to the Commonwealth in accordance with the formula at clause 21.6.3.
- 21.6.2 If the payment of an amount under the Contract is made late, interest shall be payable by the Commonwealth in accordance with the formula at clause 21.6.3. Any payment not made within 60 days after the date it is to be made under the Contract shall be in breach of the Contract.
- 21.6.3 For the purposes of this clause, an interest payment shall be calculated in accordance with the formula:

$$\frac{I\% \times P \times n}{365}$$

where:

- 'I%' for early payments, means the Reserve Bank of Australia cash rate target current at the date of payment expressed as a percentage per annum;
 - 'I%' for late payment, means the Australian Taxation Office sourced general interest charge rate current at the due date of payment expressed as a percentage per annum;
 - 'P' means the amount of the early or late payment; and
 - 'n' means the number of days before or after the due date for payment that the payment is made.
- 21.6.4 If the interest payment is not offset or paid as part of the subject claim, the Commonwealth Representative shall adjust the next Approved payment under the Contract. If there are no further payments, the relevant Party shall pay the interest payment within 30 days of being provided with written notice in the form of a tax invoice.

21.7 Reimbursement of costs

- 21.7.1 The Contractor may claim reimbursement of the costs set out in Schedule 3. The Contractor must not seek reimbursement of costs other than those set out in Schedule 3.
- 21.7.2 Subject to this clause 21.7, Approved Cost Reimbursement Payments for the actual direct costs incurred by the Contractor may be claimed by the Contractor in accordance with this clause 21.7.2, clause 21.1 and Schedule 3. The Commonwealth will only Approve Cost Reimbursement Payments when the Contractor has provided evidence of the actual costs incurred by the Contractor to the satisfaction of the Commonwealth.
- 21.7.3 The Contractor must not claim Costs Reimbursement Payments relating to taxes and duties already provided for under the Contract, including GST.
- 21.7.4 The Contractor must maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to justify all costs claimed to have been incurred by it in

respect of the Cost Reimbursement Payments. In addition to the Commonwealth's rights in clause 48, the Contractor must make these records available to the Commonwealth on request and the Commonwealth and Commonwealth officers authorised by the Commonwealth may cost investigate the records.

- 21.7.5 When a Cost Reimbursement Payment claim is received by the Commonwealth, the Commonwealth may do one or more of the following:
- Approve the claim;
 - reject the claim; or
 - conduct a further cost investigation of the claim.
- 21.7.6 If the Commonwealth rejects the claim, the Commonwealth must, within 14 days of receipt, advise the Contractor in writing of the need to resubmit the claim and the reasons for the rejection.
- 21.7.7 If the Commonwealth requires further cost investigation of a claim, the Commonwealth may advise the Contractor within 14 days of receipt of the claim. The Commonwealth may conduct the cost investigation process and Approve or reject the claim.
- 21.7.8 If a claim is Approved under clause 21.7.5, the Contractor may submit a claim for payment of the Cost Reimbursement Payment in accordance with clause 21.1 within 30 days of the Approval. If a claim is rejected and resubmitted, processing of the resubmitted claim is subject to the same conditions as if it were the original claim.

21.8 Variation of Service Charges

- 21.8.1 The Contractor may vary the Service Charges in accordance with the process set out in Annex C to Schedule 3.

21.9 Stamp duty

- 21.9.1 The Contractor must pay all stamp duty (including penalties and interest) assessed or payable in respect of the Contract and the undertaking of the Services.

22 TAXES AND DUTIES

22.1 Applicability of GST clause

- 22.1.1 The GST obligations of the Parties (and any associated obligations) under this Contract apply as follows:
- up until the Commonwealth notifies the Contractor – clause 22.2 applies, and Annex E to Schedule 7 does not apply; and
 - from the date of commencement notified pursuant to clause 22.1.1a onwards - Annex E to Schedule 7 applies and clause 22.2 does not apply.

22.2 GST

- 22.2.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract other than GST shall be met by the Contractor at no additional cost to the Commonwealth.
- 22.2.2 Subject to clause 22.2.4, the Commonwealth shall, in addition to the other payments to be made to the Contractor under this Contract, pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under the Contract.
- 22.2.3 For the purposes of clause 22.2.2 the additional amount is the amount of GST payable on that part of the Contractor's entitlements to payment to which the taxable supply relates as if that part of those entitlements were the value of the taxable supply for the purpose of the GST Act.
- 22.2.4 The Contractor shall submit each claim for payment under clause 21 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.
- 22.2.5 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.

- 22.2.6 If the Commonwealth makes, or is assessed by the Australian Taxation Office (**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.
- 22.2.7 Any amount of GST to be paid by the Contractor under clause 22.2.6 shall be a debt due to the Commonwealth and may be recovered under clause 51.
- 22.2.8 If the Contractor has a claim for an amount under the Contract, the claim is for the amount less any input tax credit to which the Contractor is entitled in respect of the claim. The Commonwealth may treat the Contractor as entitled to full input tax credits for GST included in an amount unless the Contractor satisfies the Commonwealth otherwise.
- 22.2.9 For the purposes of this clause 22.2, "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "GST", "adjustment note", "input tax credit", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

23 INVOICES, AUDITING AND PAYMENT

23.1 Collection of Public and Third Party Monies – Not Used

23.2 Cost Auditing

- 23.2.1 The Contractor must operate on open book approach, providing the Commonwealth with visibility of supply chain costs, income and expenses and profit.
- 23.2.2 A cost audit may be conducted periodically by the Commonwealth or Commonwealth Personnel. This process may be used to ensure that the costing information provided by the Contractor to the Commonwealth is accurate and valid.

23.3 Electronic Transfer of Payments under the Contract

- 23.3.1 Payments by the Commonwealth under the Contract:
- may be made by electronic transfer directly to the bank accounts nominated in Item 20 of the Contract Details; and
 - are deemed to be made on the date of the request by the Commonwealth for the electronic transfer.

24 SECURITY OF PAYMENT AND GAIN SHARE

24.1 Security of Payment

- 24.1.1 The Contractor must:
- promptly give the Commonwealth a copy of any notice the Contractor:
 - receives from a subcontractor under the Security of Payment Act; or
 - has been required to supply to a subcontractor under section 15(1) of the Contractors Debts Act 1997 (NSW) setting out the Commonwealth's name; and
 - procure that each subcontractor promptly gives the Commonwealth a copy of any notice that the subcontractor receives from another person under the Security of Payment Act.
- 24.1.2 If the Commonwealth becomes aware that a subcontractor is entitled to suspend work under the Security of Payment Act, the Commonwealth may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Services and the Commonwealth may recover from the Contractor any amount paid as a debt due and payable.
- 24.1.3 The Contractor indemnifies the Commonwealth and Commonwealth Personnel against all claims suffered or incurred by the Commonwealth arising out of or in connection with:
- a suspension by a subcontractor of work, which forms part of the Services, under the Security of Payment Act; and
 - a failure by the Contractor to comply with this clause 24.
- 24.1.4 The Contractor's liability to indemnify the Commonwealth under this clause 24, will be reduced proportionately to the extent that the Liability was suffered or incurred by, or made against, the

Commonwealth as a result of any breach, negligent or wilful act, omission or conduct by the Commonwealth, its officers, agents or employees.

24.1.5 For the purposes of this clause 24:

- a. a 'subcontractor' is a person engaged by the Contractor, its subcontractor or any other person to carry out work which forms part of the Services; and
- b. 'work' is work, including all Services, which the Contractor is, or may be, required to do under the Contract.

24.2 **Gain Share**

24.2.1 The Contractor may:

- a. in accordance with clause 21 and Annex D to Schedule 3, submit a claim for the payment of an Approved Gain Share; or
- b. in accordance with clause 18.1 and Annex D to Schedule 3, submit a CCP to implement an Approved Gain Share.

SECTION B – RISK MANAGEMENT

25 DISCLOSURE

25.1 Change of Control

- 25.1.1 The Contractor shall ensure that there is no Change of Control of the Contractor without the prior written consent of the Commonwealth Representative.
- 25.1.2 The Commonwealth Representative's consent under clause 25.1.1 may be given subject to any conditions that the Commonwealth Representative considers appropriate and the Contractor shall comply with such conditions.
- 25.1.3 If there is a Change of Control of the Contractor without the prior written consent of the Commonwealth Representative under clause 25.1.1, then the Commonwealth may give the Contractor a notice of termination for default in accordance with clause 50.2.1g.

26 INDEMNITY

26.1 Contractor's Employees

- 26.1.1 The Contractor shall indemnify the Commonwealth against liability, cost (including the cost of any settlement and legal costs on a full indemnity basis), compensation or expense incurred or sustained by the Commonwealth for death of, or personal injury to, any person employed by the Contractor on work or performance of Services under the Contract, except to the extent that such death or injury results from any unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting (but not including the Contractor or Contractor Personnel).

26.2 Property Damage and Public Risk

- 26.2.1 The Contractor shall indemnify the Commonwealth and Commonwealth Personnel against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a full indemnity basis), compensation or expense sustained or incurred by any of them:
- in respect of personal injury to, or death of, any person, except to the extent that the Contractor's indemnity under clause 26.1 (**Contractor's Employees**) applies;
 - in respect of loss of, or damage to, any property of any person (other than property of the Contractor or any Contractor Personnel, CMCA, GFM and GFF); and
 - that comprises costs and expenses of defending or settling any claim referred to in clauses 26.2.1a or 26.2.1b,
- arising out of or as a consequence of any breach of the Contract, or any unlawful or negligent act or omission on the part of the Contractor or the Contractor's Personnel, except to the extent that such death, injury, or property loss or damage results from any unlawful or negligent act or omission on the part of the Commonwealth, or any person through whom the Commonwealth is acting in relation to the Contract (but excluding the Contractor or the Contractor's Personnel).

26.3 Care of the Deliverables

- 26.3.1 Subject to clauses 9.1.8b and 19.5, the Contractor shall make good any loss of or damage caused to the Deliverables while risk resides with the Contractor except to the extent that the loss or damage was a direct consequence of an excepted risk.
- 26.3.2 For the purposes of clause 26.3.1, 'excepted risk' means:
- any negligent act or omission of the Commonwealth or officers, employees or agents of the Commonwealth in relation to the Contract;
 - war, invasion, acts of foreign enemies, hostilities between nations, civil insurrection or militarily usurped power;
 - nuclear explosion, ionising radiation, contamination by radioactivity from nuclear fuel or waste, or combustion of nuclear fuels;
 - acts of terrorism; or
 - chemical and biological contamination,

which in each case is not caused by the Contractor or any Contractor Personnel.

- 26.3.3 In the event of loss or damage being caused by any of the excepted risks as set out in clause 26.3.2 (whether or not in combination with other risks), the Contractor shall, to the extent directed by the Commonwealth, rectify the loss or damage and such rectification shall be a deemed variation to the Contract and the Contractor may, in accordance with the Contract, claim its reasonable direct costs actually incurred and may claim postponement or waiver (as relevant) for the direct delay caused for the rectification.

26.4 Intellectual Property Indemnity

- 26.4.1 The Contractor shall indemnify the Commonwealth and Commonwealth Personnel, including its licensees and sub-licensees (**Those Indemnified**) against the liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses, on a full indemnity basis), compensation or expense sustained or incurred by Those Indemnified which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:
- infringement of that third party's IP (including Moral Rights) if the infringement arises out of any activity permitted under any licence, sub-licence or assignment referred to in clause 20 or otherwise arising from or in connection with the Contract; or
 - breach or alleged breach of any duty of confidentiality owed to that third party, where the breach is caused by any act or omission on the part of the Contractor or any of the Contractor's Personnel, whether or not such act or omission constitutes a breach of the Contract.
- 26.4.2 For the purposes of this clause 26.4, 'infringement' includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act* 1990 (Cth), section 100 of the *Designs Act* 2003 (Cth), section 183 of the *Copyright Act* 1968 (Cth), and section 25 of the *Circuits Layout Act* 1989 (Cth), constitute an infringement.
- 26.4.3 The Commonwealth shall hold on trust for its Personnel the benefit of each indemnity granted under this Contract and that indemnity may be exercised by the Commonwealth as trustee or by its Personnel as beneficiaries under that trust.

26.5 Privacy Indemnity

- 26.5.1 The Contractor shall indemnify the Commonwealth against any loss, liability or expense suffered or incurred by the Commonwealth which arises directly from a breach of any of the Contractor's or Subcontractor's obligations referred to in clause 31.

26.6 Indemnity as to Provisions of Subcontracts

- 26.6.1 The Contractor shall indemnify Those Indemnified against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a full indemnity basis), compensation or expense sustained or incurred by any of the Those Indemnified arising out of or as a consequence of a failure by the Contractor to ensure that Subcontracts include provisions as required by the Contract.

27 LIABILITY

27.1 Limitation

- 27.1.1 Subject to clause 27.1.2, the liability of each Party arising out of or in connection with the Contract shall be limited in the aggregate to the amount specified in item 11 of the Contract Details.
- 27.1.2 The limitations in clause 27.1.1 do not apply to liability of the Contractor, including under an indemnity whether or not expressly referred to in this clause, for:
- personal injury and death;
 - loss of, or damage to, third party property or Commonwealth property;
 - liability in respect of claims in connection with the Contract by third parties against Those Indemnified;
 - the cost of the Commonwealth procuring an alternative service provider arising from a breach of the Contract;

- e. any amounts payable for Liquidated Damages;
- f. any liability, amount or debt owed by the Contractor to the Commonwealth that is recoverable by the Commonwealth under clause 51;
- g. breach of IP rights, confidentiality, privacy or security obligations;
- h. any additional liability incurred by the Commonwealth in having the Services performed if the Contract is terminated for default by the Contractor;
- i. fraud, wilful default or dishonesty;
- j. unlawful or illegal acts;
- k. the IP indemnity provided by the Contractor under clause 26.4; and
- l. the privacy indemnity provided by the Contractor under clause 26.5.

27.2 Review of limitation

- 27.2.1 The Parties acknowledge that the limitation of liability specified in item 11 of the Contract Details will be subject to review, and may be amended in accordance with clause 18.1, in the event that S&Q Services and/or Surge Services are procured or the Contract is varied or extended.

27.3 Refresh of limitation of liability

- 27.3.1 If the liability of the Contractor reaches or exceeds the amount specified in item 11 of the Contract Details (**Liability Limit**):
- a. the Contractor may, by CCP agree, to increase the Liability Limit by the amount specified in item 11; or
 - b. if the Contractor fails to agree to increase the Liability Limit in accordance with clause 27.3.1a, within 30 Business Day of reaching or exceeding that limit, the Commonwealth may terminate the Contract by providing notice in writing to the Contractor and the Contract will terminate on the date set out in that notice.
- 27.3.2 The Parties agreed that this clause 27.3.1 applies each time the Liability Limit or increased Liability Limit is reached or exceeded.

28 INSURANCE

28.1 Insurance Generally

- 28.1.1 The Contractor must:
- a. subject to clause 28.1.1b obtain and maintain (or cause to be obtained and maintained) the insurances or registrations required under this clause 28 from the date which is on or before the Operative Date until the Contractor completes its obligations under the Contract;
 - b. for the obligations that survive expiry or termination of the Contract, ensure that the cover is maintained for the period that those obligations survive expiry or termination, or as otherwise specified by the Commonwealth; and
 - c. obtain and maintain (or cause to be obtained and maintained) the insurance identified in the Contract upon the minimum terms specified in the Contract for that insurance and, to the extent not so specified, upon commercially reasonable terms and conditions reasonably acceptable to the Commonwealth providing for coverage, deductibles, exclusions and margins at the time customary in the insurance market for risk which are to be covered and the Services of the nature to be supplied and performed pursuant to the Contract in light of all relevant circumstances including the Contractor's obligations pursuant to the Contract.
- 28.1.2 The Contractor must:
- a. on or immediately before the Planned Operative Date;
 - b. on each anniversary of the Operative Date; and
 - c. on request by the Commonwealth at any time, including after expiry or termination of the Contract,

produce satisfactory evidence that the insurance or registration (in the form of certificates of currency or other documents) in relation to each insurance that the Contractor is required to obtain or maintain has been obtained or maintained in accordance with the requirements of the Contract, including evidence satisfactory to the Commonwealth that the insurance effected by the Contractor will respond and provide indemnity.

28.1.3 The evidence required by clause 28.1.2 must include details of:

- a. the name of the insurance provider;
- b. the type of insurance;
- c. any exclusions which materially affect the scope of cover;
- d. the limits of liability per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
- e. whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover available under the policy; and
- f. the period of insurance.

28.1.4 The Parties agree that nothing arising from or in connection with the Contract affects the right of subrogation of the insurers of the Comcover Policy.

28.2 **Public and Products Liability Insurance**

28.2.1 The Contractor must obtain and maintain (or cause to be obtained and maintained):

- a. (except in relation to the risks dealt with in clauses 28.2.1b and 28.2.1c) broadform public and products liability insurance for not less than the amount specified at item 12 of the Contract Details which covers liability (including to the Commonwealth and the Contractor Personnel) in respect of:
 - (i) loss of, or damage to, any real or personal property; and
 - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person,
caused by the Contractor or any of the Contractor Personnel arising out of the performance of the Services. The insurance must include cover for Commonwealth property in the care, custody or control of the Contractor;
- b. insurance for not less the amount specified at item 12 of the Contract Details which covers third party property damage related to any plant or vehicles (registered or unregistered) used in respect of the performance of the Contract and which covers injury to, illness of or death of any person related to any unregistered plant or vehicles used in the performance of the Contract; and
- c. compulsory third party motor vehicle insurance in respect of all registrable vehicles used in the performance of the Contract.

28.3 **Workers Compensation Insurance**

28.3.1 The Contractor must obtain and maintain (or cause to be obtained and maintained), insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person employed or engaged by the Contractor in the work under the Contract (or their dependants):

- a. giving rise to a claim:
 - (i) under any statute relating to workers' or accident compensation; or
 - (ii) where common law claims are not fully covered by the statutory scheme referred to at (i) above, for employer's liability at common law;
- b. in every State or Territory of Australia or other country where the obligations under the Contract will be performed (including where the Services under the Contract will be provided) as well as each State or Territory of Australia or other country where the Contractor's employees normally reside or where their contract of employment was made; and

- c. where possible under the relevant State or Territory of Australia or other country Law or scheme governing workers' compensation insurance, extending to indemnify the Commonwealth as principal for principal's liability.

28.4 Construction Risk Insurance – Not used

28.5 Errors and Omission Insurance or Professional Indemnity Insurance

- 28.5.1 The Contractor must obtain and maintain (or cause to be obtained and maintained) a policy of insurance:
- a. to cover civil liabilities of the Contractor of a purely financial nature (whether arising in tort, contract or under statute) arising from errors or omission in judgement by the Contractor or the Contractor Personnel in performing the Services; and
 - b. in the amount specified at item 12 the Contract Details.

28.6 Provisions in Policies

- 28.6.1 The Contractor must ensure that (except for the insurances referred to in clauses 28.2.1c and 28.3) each insurance required to be obtained or maintained by the Contractor pursuant to the Contract provides that:
- a. each of the Commonwealth and Commonwealth Personnel are named as additional insureds, in each case for its rights and interests in relation to the Contract and the Services (including Commonwealth property);
 - b. failure by any named or additional insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other named or additional insured;
 - c. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against each named or additional insured (to the extent they are insured under the policy);
 - d. the insurer will not impute to any named or additional insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other named or additional insured party;
 - e. in the case of any liability insurance, agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or the overall limit of indemnity;
 - f. the amount of any deductible, which must be paid by the Contractor, under such insurances will be reasonable and appropriate for a prudent commercial enterprise engaged in operations similar to or reasonably comparable with the delivery of the Services and having regard to the obligations and responsibilities undertaken by virtue of the Contract;
 - g. no reduction in limits or coverage affecting the Services will be made in any such policy during the period of such policy, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 30 days prior notification to the Commonwealth;
 - h. for any such insurance providing indemnity in respect of loss of or damage to property, the Commonwealth is named as loss payee in respect of any claim under the material damage section of that insurance; and
 - i. such insurances will operate:
 - (i) as primary insurance in respect of the Contractor, the Commonwealth and Commonwealth Personnel to the extent that it applies to the same risk or risks. Any other insurance obtained and maintained by the Contractor will be in excess of and will not contribute to such insurance; and
 - (ii) in excess of Defence's Comcover policy in respect of the Commonwealth and Commonwealth Personnel to the extent that it applies to the same risk or risks.

- 28.6.2 The Contractor must:

- a. ensure that each insurance referred to in clause 28 is, in the Commonwealth's opinion, obtained from or maintained with reputable insurers having a minimum Moody's Investor Services, Standard and Poor's, AM Best or comparable agency claim payment security rating of A minus or equivalent at the time the relevant coverage is placed; and
- b. advise the Commonwealth of any proposed changes to its insurance cover material to the Contract before it effects any changes to its insurances.

28.6.3 Nothing contained in clause 28 relating to insurance coverage, the amounts set out herein or any inspection, approval or agreement with the terms of any insurance will operate as a limitation of the Contractor's liability hereunder in contract, tort including negligence, equity, strict liability, statute or otherwise or to modify any of the Contractor's obligations arising from or in connection with the Contract.

28.6.4 The Contractor must immediately notify the Commonwealth in writing of any occurrence or incident likely to give rise to a claim under the insurance which the Contractor is required to obtain or maintain under the Contract or of any other matter or thing in respect of which notice should be given by the Contractor to the Commonwealth in terms of those insurances. Thereafter, the Contractor must give all such information and assistance as may be reasonably practicable in all the circumstances and, if requested by the Commonwealth, give to the Commonwealth a statutory declaration as to any matters connected therewith. The Contractor must provide the Commonwealth with a copy of all claims and other information submitted to the insurers and insurance brokers in relation to any such insurance which relate to the Contract and all correspondence received from those insurers and insurance brokers.

28.7 Premiums

28.7.1 The Contractor must ensure payment is made when due for all premiums, commissions, stamp duties, charges, taxes and other expenses necessary for effecting and maintaining in force each insurance referred to in clause 28 which is to be obtained and maintained by the Contractor.

28.8 Undertaking to Inform

28.8.1 The Contractor must inform the Commonwealth immediately when it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in clause 28 which could materially reduce the available limits of indemnity.

28.8.2 The Contractor must immediately notify the Commonwealth if the Contractor becomes aware or reasonably believes that, in relation to any policy of insurance relevant to the Contract,

- a. the policy:
 - (i) is, will or may be cancelled;
 - (ii) has not been, will not be or may not be renewed; or
 - (iii) has had, will have or may have its coverage reduced in any material respect; or
- b. there has been non-compliance with any conditions to which the policy is subject.

28.8.3 The Contractor must notify the Commonwealth as soon as reasonably practical of the occurrence of an event which would or might entitle the Contractor or Commonwealth to make a claim under any insurance which it is obliged to obtain or maintain under the Contract, and promptly take all necessary steps to ensure that its rights, and the rights of the Commonwealth in respect of that claim, are fully preserved.

28.8.4 If the Contractor does not comply with this clause 28, the Commonwealth may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so, including premiums, as a debt due and payable by the Contractor to the Commonwealth which the Commonwealth may deduct or recover under clause 51.

29 GUARANTEE AND FINANCIAL SECURITY

29.1 Financial security

29.1.1 The Contractor must, on or before the Operative Date, provide to the Commonwealth financial security for performance of the Contract of the amount specified at item 17 of the Contract Details.

29.1.2 The Contractor must ensure that such financial security is:

- a. irrevocable and unconditional;
 - b. in favour of the Commonwealth;
 - c. issued by a financial institution that is the holder of a current licence issued by APRA, which has a presence and a branch in Melbourne, Australia and which has a minimum long term credit rating of not less than A- (issued by Standard and Poor's Australia), A3 (in respect of Moody's Investor Service) or its equivalent credit rating issued by another generally recognised international credit rating agency; and
 - d. in the form of the Financial Security Deed set out at Annex J to Schedule 6, or such other form as agreed by the Commonwealth.
- 29.1.3 Without limiting the unconditional or on-demand nature of such financial security, the Commonwealth may have recourse to the financial security for any amount the Commonwealth claims it is entitled to arising from or in connection with the Contract.
- 29.1.4 The Contractor covenants with the Commonwealth that it will not institute any proceedings, nor exercise any right, nor take any steps to restrain or enjoin the financial institution which issued that financial security or the Commonwealth from exercising its rights under the security, even where the Contractor disputes the Commonwealth's claim (including where dispute resolution proceedings have been commenced).
- 29.2 Guarantee**
-
- 29.2.1 The Contractor must, on or before the Operative Date, provide to the Commonwealth a guarantee executed by the Contractor and the Guarantor and in the form set out in Annex K to Schedule 6 or such other form as agreed by the Commonwealth.
- 29.2.2 The guarantee provided in accordance with clause 29.2.1 must remain in place until the Commonwealth notifies the Contractor that it is no longer required.
- 29.3 Securities**
-
- 29.3.1 If the Contractor fails to provide or maintain the security required under clauses 29.1 or 29.2, the Commonwealth may withhold all or part of any payment under the Contract until the Contractor meets those obligations.
- 29.3.2 If the Commonwealth exercises any or all of its rights under the security provided under clauses 29.1 or 29.2, the Commonwealth shall not be liable for, and the Contractor shall release the Commonwealth from liability for, any resultant loss or damage to the Contractor.
- 29.3.3 The rights of the Commonwealth to recover from the Contractor the balance, after draw down or exercise of the financial security provided under clause 29.1, for loss or damage suffered by the Commonwealth shall not be limited by the Commonwealth's exercise of that security.
- 29.4 Right of Commonwealth to Recover Money**
-
- 29.4.1 Without limiting the Commonwealth's rights under the Contract, if the Contractor is liable to or owes any amount or debt to the Commonwealth arising from or in connection with the Contract, the Commonwealth may do one or both of the following:
- a. deduct the amount of the liability, amount or debt from payment it is obliged to make to the Contractor as a result of any claim from the Contractor; or
 - b. provide the Contractor with written notice of the existence of the liability, amount or debt recoverable which shall be paid by the Contractor to the Commonwealth within thirty (30) days of the date on which the Contractor receives that notice.
- 29.4.2 If the amount of any liability, amount or debt owed by the Contractor to the Commonwealth is not fully recovered by the Commonwealth under clause 51, the Commonwealth may exercise any or all of its rights in respect of the securities provided under clauses 29.1 or 29.2.
- 29.4.3 If the Commonwealth deducts any liability, amount or debt from any payment, it shall notify the Contractor in writing that it has done so.
- 29.4.4 Nothing in this clause 29.4 affects the right of the Commonwealth to recover from the Contractor the whole of any liability, amount or debt owed by the Contractor, or any balance that remains owing after deduction.

- 29.4.5 If the Commonwealth exercises its rights under clause 29.1 in relation to the financial security then the Contractor must within five Business Days of the exercise of such rights provide a replacement security to the Commonwealth in the same form and amount as required by clause 29.1.

SECTION C – COMPLIANCE

30 CONFIDENTIALITY

30.1 Commercial-In-Confidence Information

- 30.1.1 Subject to clause 30.1.6, a Party must not, without the prior written consent of the other Party, disclose any Commercial-In-Confidence Information of the other Party to a third party.
- 30.1.2 In giving written consent to the disclosure of Commercial-In-Confidence Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 30.1.3 A Party may, at any time, require the other Party to arrange for:
- a. its Advisers; or
 - b. any other third party, other than a Commonwealth employee, to whom information may be disclosed pursuant to clause 30.1.6a or 30.1.6e,
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first Party's Commercial-In-Confidence Information.
- 30.1.4 If the other Party receives a request under clause 30.1.3, it must promptly arrange for all such undertakings to be given.
- 30.1.5 If in connection with the Contract, Commercial-in-Confidence Information is provided or produced by any person, the relevant party must ensure that any person receiving or producing the information protects the confidential nature of the information
- 30.1.6 The obligations on the Parties under clause 30.1.1 will not be taken to have been breached to the extent that:
- a. Commercial-in-Confidence Information is disclosed by a Party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
 - b. Commercial-in-Confidence Information is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
 - c. Commercial-in-Confidence Information is disclosed by the Commonwealth to the responsible Minister;
 - d. Commercial-in-Confidence Information is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. Commercial-in-Confidence Information is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - f. Commercial-in-Confidence Information is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed;
 - g. Commercial-in-Confidence Information is in the public domain otherwise than due to a breach of this clause 30.1.6;
 - h. Commercial-in-Confidence information, other than the Contractor Commercial-In-Confidence information set out in item 13 of the Contract Details, is disclosed by the Commonwealth to an Other Contractor; and
 - i. the Commonwealth would be prevented from exercising its IP rights under the Contract.
- 30.1.7 The Commonwealth may require the Contractor to ensure that the Contractor Personnel engaged in the performance of the Contract give a written undertaking in the form of the Deed of Confidentiality and Fidelity set out at Annex I to Schedule 6 prior to the disclosure of Commercial-in-Confidence Information. The Contractor must provide properly executed Deeds of Confidentiality and Fidelity as required by this clause.

- 30.1.8 The Contractor must not, in marking information supplied to the Commonwealth, misuse the term 'Commercial-in-Confidence' or the Contractor's equivalent. The marking of information as 'Commercial-in-Confidence' must not affect the legal nature and character of the information.
- 30.1.9 Without limiting any rights of the Commonwealth provided for elsewhere in the Contract, and in particular in clauses 20 and 30, the Contractor grants to the Commonwealth the right to disclose information relating to communication protocols, interface standards, message formats, or any other electrical, mechanical or optical interface or other requirements which may be required to be released by the Commonwealth so as to allow software or equipment to connect to or communicate with anything provided to the Commonwealth in the course of the Services.
- 30.1.10 The Parties agree that the conditions of Contract and Schedules, or the parts of them, listed in item 13 of the Contract Details are Commercial-in-Confidence Information to the relevant Party as at the Effective Date.
- 30.1.11 The Contractor agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Commercial-in-Confidence Information of the Commonwealth on the earlier of:
- a. demand by the Commonwealth; or
 - b. the time the documents and other material are no longer required for the purposes of the Contract.
- 30.1.12 If the Commonwealth makes a demand under clause 30.1.11a and the Contractor has placed or is aware that documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Commercial-in-Confidence Information and the identity of the person in whose custody or control they lie.
- 30.1.13 The Contractor, when directed by the Commonwealth in writing, must destroy any document in its possession, power or control, which contain or relate to any Commercial-in-Confidence Information.
- 30.1.14 Return or destruction of the documents referred to in this clause 30 does not release the Contractor from its obligations under the Contract.

30.2 Additional confidential information

- 30.2.1 The Parties may agree that certain additional information is to constitute Commercial-In-Confidence Information for the purposes of this Contract.
- 30.2.2 Where the Parties agree that certain additional information is to constitute Commercial-In-Confidence Information for the purposes of this Contract, the Contractor shall submit a CCP in accordance with clause 18.1 to give effect to the addition of the information.

30.3 No Reduction in Privacy Obligations

- 30.3.1 Nothing in this clause 30 derogates from any obligation which either Party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

31 PROTECTION OF PERSONAL INFORMATION

31.1 Privacy

- 31.1.1 The Contractor must not store or process on an offshore cloud computing network or on a domestically hosted (onshore) public cloud computing network (in accordance with the Australian Government Policy and Risk Management Guidelines for the Storage and Processing of Australian Government Information in Outsourced or Offshore ICT Arrangements) any:
- a. Personal Information obtained in the course of performing the Contract; or
 - b. Australian Government security classified information.
- 31.1.2 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;

- 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.
- 31.1.3 The Contractor shall promptly notify the Commonwealth if:
- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 31 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 or by any individual to whom such Personal Information relates.
- 31.1.4 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 31.
- 31.1.5 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 has the same awareness and obligations as the Contractor has under this clause 31, including the requirement in relation to Subcontracts.
- 31.1.6 In this clause 31;
- a. the terms 'organisation', 'Personal Information', 'organisation', Australian Privacy Principles' have the same meaning as they have in the Privacy Act; and
 - b. 'subcontract' and other grammatical forms of that word, have the meaning given in the Privacy Act.

32 PUBLIC ANNOUNCEMENTS AND PUBLICATIONS

32.1 Public announcements

- 32.1.1 The Contractor must not make any public announcement or other statement which refers, or is connected to the Contract, including on any matter related to the Services, without obtaining the prior written Approval from the Commonwealth.
- 32.1.2 Clause 32.1.1 does not apply to:
- a. announcements required by law or the rules of any stock exchange or similar body on which the Contractor is listed; or
 - b. routine marketing activities promoting the Contractor's product or to information that is public knowledge other than by breach of this clause 32.1.

32.2 Publications

- 32.2.1 The Contractor must not submit for publication, distribute or publish any material related to the Contract, including the provision of the Services without the prior written permission of the Commonwealth.

33 FAIR WORK

- 33.1.1 The Contractor shall inform the Commonwealth of any judicial decision made against the Contractor (not including decisions under appeal) relating to employee entitlements and the payment of claims.
- 33.1.2 The Commonwealth may, in accordance with clause 50.2.1a, terminate the Contract if the Contractor has had a judicial decision against it relating to employee entitlements, not including decisions under appeal, and the Contractor has not paid the claim.

34 INDIGENOUS OPPORTUNITIES POLICY

34.1 Contractor to submit to the IOP Administrator an Indigenous Training, Employment and Supplier Plan

- 34.1.1 The Contractor must submit an Indigenous Training, Employment and Supplier Plan (**ITES Plan**) to the IOP Administrator for approval no more than 90 days after the Effective Date.
- 34.1.2 The Contractor must provide the Commonwealth with notification of submission of the ITES Plan within 5 days of submission.
- 34.1.3 The Contractor must amend and resubmit its ITES Plan until it is approved by the IOP Administrator.
- 34.1.4 The Contractor must provide the Commonwealth with its notification of approval of the ITES Plan no more than 10 Business Days after approval of the ITES Plan is confirmed by the IOP Administrator.
- 34.1.5 The Contractor shall comply with the Indigenous Opportunities Policy, including by implementing the Contractor's approved ITES Plan when carrying out work under the Contract, complying with the Commonwealth's reporting requirements and maintaining the currency of its plan over the Contract Period.
- 34.1.6 If the Contractor's ITES Plan is suspended by the IOP Administrator, the Contractor shall within 14 days of notice of that suspension, provide a written notice to the Commonwealth Representative of the reasons for the suspension and proposed remedial action.

34.2 Reporting

- 34.2.1 The Contractor must provide the IOP Administrator with an annual implementation and outcomes report (**Report**) that meets the implementation and outcomes report requirements stipulated in the Indigenous Opportunities Policy Guidelines. The Report must be submitted no more than two months after the anniversary of the approval of the Contractor's ITES Plan or as otherwise advised by the Commonwealth or the IOP Administrator.
- 34.2.2 The Contractor must maintain a current ITES Plan throughout the Contract Period and meet all reporting requirements pursuant to clause 34.2.1.

34.3 Consent to release information

- 34.3.1 The Contractor consents to the Commonwealth or any Government Agency:
 - a. publicising or reporting on the Contractor's performance in relation to the ITES Plan and level of compliance with the ITES Plan; and
 - b. publicising or reporting on any information contained in the ITES Plan or the Report under the Contract.

34.4 Failure to comply

- 34.4.1 Without limiting the Commonwealth's rights including pursuant to clause 21.1.2, the Commonwealth may withhold or suspend any payment in whole or in part, if the Contractor has not performed its obligations under the Contract related to maintaining a current ITES Plan and reporting to the satisfaction of the Commonwealth.

35 FREEDOM OF INFORMATION

- 35.1.1 In this clause 35, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 35.1.2 The Contractor acknowledges that the Contract is a Commonwealth contract.
- 35.1.3 Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of the Contract (and not to the entry into the Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 35.1.4 The Contractor must include in any subcontract relating to the performance of the Contract provisions that will enable the Contractor to comply with its obligations under this clause 35.

36 ILLEGAL WORKERS

- 36.1.1 The Contractor must ensure that each person engaged by the Contractor or Contractor Personnel would not, in doing the work for which they are engaged, be an Illegal Worker.
- 36.1.2 The Contractor must remove or cause to be removed any Illegal Worker from any involvement in the carrying out of Services and arrange for the Illegal Worker's replacement at no cost to the Commonwealth immediately when it becomes aware of the involvement of the Illegal Worker. The Contractor must immediately notify the Commonwealth of the involvement of the Illegal Worker and the removal.
- 36.1.3 To avoid doubt, compliance with the Contractor's obligations under this clause 36 will not give rise to an entitlement to claim any delay or postponement or otherwise excuse the Contractor from compliance with its obligations under the Contract and the Contractor waives any such right.
- 36.1.4 When requested by the Commonwealth, the Contractor will provide evidence that it has taken all reasonable steps to ensure it has complied and is complying with its obligations under this clause 36, including in relation to any subcontractors.
- 36.1.5 The Contractor must provide the Commonwealth with evidence referred to in clause 36.1.4 within 5 Business Days of receiving the Commonwealth's request.
- 36.1.6 The Contractor must make compliance by each Subcontractor with the provisions of this clause 36 a condition of each Subcontract.
- 36.1.7 For the purposes of this clause 36:
- a. 'Illegal Worker' means a person who:
 - (i) is an Unlawful Non-Citizen who is working without a visa; or
 - (ii) a Non-Citizen who is performing work in breach of a Visa Work Condition;
 - b. 'Non-Citizen' has the meaning given to that term by the *Migration Act* 1958 (Cth);
 - c. 'Unlawful Non-Citizen' has the meaning given to that term by the *Migration Act* 1958 (Cth); and
 - d. 'Visa Work Condition' means a condition (as set out in Schedule 8 of the *Migration Regulations* 1994) attached to a visa restricting the work that the Non-Citizen may do in Australia; and

37 WORK HEALTH AND SAFETY

37.1 Work Health and Safety

- 37.1.1 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 Subcontractor personnel; and
 - (iii) other persons,in connection with the Services.
- 37.1.2 Without limiting the application of the WHS Legislation, the Contractor acknowledges that to the extent that any Commonwealth Personnel:
- a. are located on the Contractor's or Subcontractor's premises in relation to the Contract; and

- b. whose activities in carrying out work in relation to the Contract are influenced or directed by the Contractor,

such Commonwealth Personnel will be taken to be workers for the purposes of the WHS Legislation.

37.1.3 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.

37.1.4 The Contractor shall:

- a. provide the Services in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Services (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 Services for the purposes for which they are intended, and to maintain, support and develop them,

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.

37.1.5 Without limiting the Contractor's obligations under the Contract or at Law, the Contractor shall, in connection with the Services, provide and shall:

- a. ensure that an Approved Subcontractor provides; and
- b. use its best endeavours to ensure that any other Subcontractor engaged in any Prescribed Activities provides in respect of those Prescribed Activities,

to the Commonwealth Representative:

- c. within 10 Business Days (or such other period as agreed by the Commonwealth in writing) 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;
- d. in respect of:
 - (i) the Contractor or an Approved Subcontractor, within 10 Business Days of receipt or submission of the notice, written communication or written undertaking by the Contractor or Approved Subcontractor (as the case may be); or
 - (ii) any other Subcontractor engaged in any Prescribed Activities, within 10 Business Days of a request by the Commonwealth,

copies of:

- (iii) all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or Subcontractor (as the case may be) relating to WHS matters;
 - (iv) all formal notices issued by a health and safety representative of the Contractor or Subcontractor, under or in compliance with the applicable WHS Legislation; and
 - (v) all formal notices, written communications and written undertakings given by the Contractor or Subcontractor (as the case may be), to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation; and
- e. within 10 Business Days of a request by the Commonwealth Representative written assurances specifying that to the best of the Contractor's or the Subcontractor's (as the case may be) knowledge that it and its officers, employees, agents and Subcontractors are compliant with:

- (i) the applicable WHS Legislation; and
- (ii) any relevant or applicable approved codes of practice under the *Work Health and Safety Act 2011* (Cth) except where the Contractor complies with the WHS Legislation in a manner that is different from the relevant code of practice but provides a standard of WHS that is equivalent to or higher than the standard required in the code of practice,

and that the Contractor or Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.

37.1.6 Without limiting clause 46.2, 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.

37.1.7 The Contractor shall ensure that if the WHS Legislation requires that:

- a. a person (including a Subcontractor):
 - (i) be authorised or licensed (in accordance with the WHS Legislation) to carry out any works at the workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (ii) has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- b. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.

37.1.8 If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an Authorisation relating to WHS, it shall immediately notify the Commonwealth giving full particulars (so far as they are known to it).

37.1.9 Not used

37.1.10 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 provision of the Services. 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 submit claim for postponement or waiver under clause 7.15 and the Contractor waives any right to submit such a claim.

37.1.11 The Contractor shall not use ACM in providing the Services and shall not take any ACM onto Commonwealth Premises in connection with providing the Services.

37.1.12 Subject to clause 37.1.12b and without limiting the Contractor's obligations under the Contract:

- a. the Contractor shall ensure that all Approved Subcontracts contain equivalent provisions to those set out in this clause 37.1; and
- b. where in relation to an Approved Subcontract:
 - (i) the WHS Legislation does not apply in respect of any work performed under that Approved 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 Approved Subcontractor,

the Contractor shall only be required to ensure that an Approved Subcontract contains equivalent provisions to that set out in clauses 37.1.1b, 37.1.3, 37.1.4 and 37.1.11 in respect of that Approved Subcontract.

38 ENVIRONMENTAL OBLIGATIONS

- 38.1.1 The Contractor must 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 Services for the purposes for which they are intended without being in breach of,
- any applicable environmental legislation and regulations including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 38.1.2 The Contractor represents and warrants that:
- a. it has given careful, prudent and professional consideration to the environmental implications of the work to be performed by it under the Contract; and
 - b. as at the Effective Date, the proposed method of performance of that work complies with all applicable environmental policy and legislation.
- 38.1.3 If the Contractor becomes aware of any intention on the part of a regulatory authority to cancel, revoke or amend an Authorisation under a Law relating to the Environment that the Contractor requires to carry out the work under the Contract, it shall notify the Commonwealth without delay, giving full particulars (so far as they are known to it).
- 38.1.4 Without limiting clause 46, the Contractor shall give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:
- a. premises for the purpose of monitoring the Contractor's compliance with any applicable laws or Approved plans in connection with the protection of the Environment; and
 - b. all internal and third party audit results in relation to the Environment.

39 HAZARDOUS SUBSTANCES AND OZONE DEPLETING SUBSTANCES

- 39.1.1 The Contractor must not provide the Services in a way which would involve or emit an Ozone Depleting Substance or Hazardous Substance except for those substances authorised in writing by the Commonwealth Representative.
- 39.1.2 The Contractor must ensure that:
- a. full details of the authorised substances incorporated into or emitted through the provision of the Services, including the location and protective measures adopted, are provided to the Commonwealth in the format of a material safety data sheet in accordance with NOHSC:2011 (2003) "National Code of Practice for the Preparation of Material Safety Data Sheets";
 - b. all documentation for the Services clearly identifies the nature of the hazard; and
 - c. all Services containing or emitting the authorised substance are labelled to clearly identify the nature of the substance and its associated hazards.
- 39.1.3 To the extent consistent with their function, the Services must not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation, which could be detrimental to Personnel, the environment or the operation of equipment.

40 CONFLICT OF INTEREST

40.1 Warranty that there is no Conflict

- 40.1.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Effective Date, no Conflict exists or is likely to arise in the performance of its obligations under the Contract.

40.2 Notification of a Conflict

- 40.2.1 If, during the Contract Period, a Conflict arises, or appears likely to arise, the Contractor must:
- a. notify the Commonwealth immediately in writing;
 - b. make full disclosure of all relevant information relating to the conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and

- c. take such steps as have been proposed by the Contractor, or at the discretion of the Commonwealth, the Commonwealth requires to resolve or otherwise deal with the Conflict.

40.3 Termination

- 40.3.1 If the Contractor fails to notify the Commonwealth under this clause 40, or is unable or unwilling to resolve or deal with the Conflict as required by the Commonwealth, the Commonwealth may terminate the Contract including, without limitation, in accordance with clause 50.2.1g.

40.4 Contractor to avoid Conflict

- 40.4.1 The Contractor shall not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of the Contract that is likely to conflict with or restrict the Contractor in undertaking the Services fairly and independently.

41 DEFENCE SECURITY

- 41.1.1 If the Contractor requires access to any Commonwealth place, area or facility under the control or responsibility of the Department of Defence, or the ADF, the Contractor shall:

- a. comply with any security requirements (including those contained in the Defence Security Manual) notified to the Contractor by the Commonwealth Representative from time to time; and
- b. ensure that the Contractor's Personnel are aware of and comply with the Commonwealth's security requirements.

- 41.1.2 The Contractor shall:

- a. ensure that the Contractor's Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
- b. notify the Commonwealth of any changes to circumstances which may affect the Contractor's capacity to provide Services in accordance with the Commonwealth's security requirements; and
- c. provide a written undertaking in respect of security or access to the Commonwealth place, area or facility in the form required by the Commonwealth.

- 41.1.3 ¹Subject to clause 41.1.4, the security classification of work to be performed under the Contract will be up to and including Protected. The Contractor shall possess a minimum personnel security clearance of Baseline and shall comply with the requirements and procedures of the DSM, as amended from time to time.

- 41.1.4 Despite clause 41.1.3, the Commonwealth Representative may, from time to time:

- a. require specified Contractor Personnel to possess a personnel security clearance higher than Baseline and the Contractor shall comply with any such requirement; and
- b. waive the requirement for specified Contractor Personnel to possess a minimum personnel security clearance of Baseline.

- 41.1.5 The Contractor shall obtain and maintain membership of the Defence Industry Security Program in accordance with DSM Part 2:42.

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

- 41.1.7 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.

- 41.1.8 The Contractor shall promptly report to the Commonwealth Representative any instance in which it is known or suspected that security classified information furnished or generated under

¹ CCP2015-106, C-2015-00149 minor word changes, approved 30 Nov 2015

the Contract has been lost or disclosed to unauthorised parties, including a representative of another country.

- 41.1.9 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 Part 2:33 of the DSM, as amended from time to time.
- 41.1.10 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.
- 41.1.11 If there has been a breach by the Contractor, or the Contractor's Personnel, of clause 41, the Commonwealth Representative may give the Contractor a notice of termination for default under clause 50.2.1g.
- 41.1.12 The Contractor shall ensure the requirements of clause 41 are included in all Subcontracts where the Subcontractor requires access to any Commonwealth place, area or facility, or to security classified information, in order to perform the obligations of the Subcontract.
- 41.1.13 Unless otherwise agreed in writing by the Commonwealth, the Contractor shall bear the cost of complying with the Commonwealth's security requirements under the Contract. This does not include the Australian Government Security Vetting Agency (AGSVA) industry fee per clearance which will be reimbursed by the Commonwealth IAW Reimbursement of Costs clause 21.7.2.²

42 COMPLIANCE WITH POLICIES AND LAW

42.1 General obligations of the Contractor

- 42.1.1 The Contractor must, at all times:
 - a. in carrying out the Contract, comply with:
 - (i) the provisions of all relevant statutes, including the *Crimes Act 1914* (Cth), *Criminal Code Act 1995* (Cth), *Privacy Act 1988* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**), *Age Discrimination Act 2004* (Cth), *Ombudsman Act 1976* (Cth); the *Archives Act 1983* (Cth) and *Auditor-General Act 1997* (Cth);
 - (ii) all Laws and requirements relevant to the provision of the Services; and
 - (iii) any policies of the Commonwealth that the Contractor is reasonably aware of that are relevant to the provision of the Services, or as otherwise notified by the Commonwealth to the Contractor in writing;
 - b. ensure that, in carrying out the Contract, it does not place the Commonwealth in breach of any relevant Laws or relevant Commonwealth policy; and
 - c. work with the Commonwealth in a collaborative manner.
- 42.1.2 The Contractor must provide a current letter of compliance with the WGE Act:
 - a. within 18 months of the Effective Date; and
 - b. annually on and from the second anniversary of the Effective Date.
- 42.1.3 If, in the course of fulfilling the Contract, the Contractor fails to comply with its obligations under the WGE Act, the Contractor shall immediately notify the Commonwealth Representative; and, the Commonwealth may send a notice in writing advising that failure to comply constitutes a breach of the Contract and that the Contractor should contact the Workplace Gender Equality Agency for information on the WGE Act's compliance requirements.

42.2 Change of Law

- 42.2.1 As soon as the Contractor becomes aware of a Change of Law, the Contractor must promptly notify the Commonwealth of the Change of Law outlining:

² C-2014-00131, WEF 1 Jan 2015, CA Approved 27 Mar 2015

- a. full details of the Change of Law;
 - b. full details of any impact on the Contractor's performance of the Contract, including any change in the cost of providing the Services (if any); and
 - c. the obligations under the Contract that the Contractor would not be able to comply with (if any) following the Change of Law.
- 42.2.2 On receipt of the Change of Law notice, and without limiting the Contractor's obligation to comply with all Laws and the Contract, the Commonwealth will advise the Contractor of its preferred method for the Contractor to address the Change of Law, which may include the Contractor proposing a CCP for consideration by the Commonwealth in accordance with clause 18.

42.3 Defence Policies and Procedures

- 42.3.1 Subject to clause 42.3.2, the Contractor must comply with and require Contractor Personnel to comply with the following Defence policies and procedures of general application relevant or applicable to the Contract, including:
- a. Australian Government policy and guidance on Australian Industry Capability, as detailed in the DPPM;
 - b. Conflict of Interest policy, as detailed in the DPPM;
 - c. Contract Publication policy, as detailed in the DPPM;
 - d. Defence and Industry policy, as detailed in the *Defence and Industry Policy Statement*;
 - e. Defence Equity and Diversity policy, as detailed in DI(G) PERS 35-3;
 - f. Defence Stocktaking policy, as detailed in DI(G) LOG 4-3-014;
 - g. Equal Opportunity for Women in the Workplace policy, as set out in the DPPM;
 - h. Fraud Control policy, as detailed in DI(G) FIN 12-1;
 - i. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy, as set out in the DPPM;
 - j. Information Management policy, as detailed in DIMPI 1/2004, DIMPI 5/2001 and DI(G) ADMIN 10-6;
 - k. Hazardous Substances policy, as set out in the DPPM;
 - l. Ozone Depleting Substances policy, as set out in the DPPM;
 - m. Work Health and Safety policy, as detailed in the DPPM; and
 - n. Defence Environmental policy, as detailed in the DPPM.
- 42.3.2 Notwithstanding clause 42.3, if the SOW is inconsistent with a policy mentioned in clause 42.3.1, the Contractor must comply with the SOW to the extent of the inconsistency.
- 42.3.3 The Contractor shall, and shall ensure that each of its Subcontractors, fully comply with any judgment against it from any Court or Tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

43 AUSTRALIAN INDUSTRY CAPABILITY

43.1 AIC Plan

- 43.1.1 The Contractor must comply with and achieve the AIC requirements set out in the AIC Plan.
- 43.1.2 If any conflict arises between any part of the AIC Plan and any other part of the Contract, the other part of the Contract prevails to the extent of that inconsistency.
- 43.1.3 The Contractor acknowledges that:

- a. compliance with the AIC Plan does not relieve the Contractor from responsibility to provide the Services, or from liability for any defect in the Services arising from the design, workmanship or materials provided by Australian and New Zealand (ANZ) industry; and
 - b. acceptance of the Services by the Commonwealth, or provision of Services by the Contractor, does not relieve the Contractor from meeting its obligations under the AIC Plan.
- 43.1.4 The Contractor must maintain, develop, deliver and update the AIC Plan in accordance with the Australian Industry Capability Toolkit, as in force from time to time.

44 OMBUDSMAN INVESTIGATIONS

- 44.1.1 The Contractor acknowledges that:
- a. it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under that Act; and
 - b. the Commonwealth will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the Contract.

45 BOOKS AND RECORDS

45.1 Contractor to keep books and records

- 45.1.1 The Contractor must:
- a. keep and require its subcontractors to keep adequate books and records, in accordance with relevant accounting standards, in sufficient detail to enable the amounts payable by the Commonwealth under the Contract to be determined; and
 - b. retain and require its Subcontractors to retain for a period of seven years after the expiry or termination of the Contract all books and records relating to the Services.

45.2 Costs

- 45.2.1 The Contractor must bear its own costs of complying with this clause 45.

45.3 Survival

- 45.3.1 This clause 45 applies for the Contract Period and for a period of seven years from the expiry or termination of the Contract.

46 AUDIT AND ACCESS

46.1 Right to conduct audits

- 46.1.1 The Commonwealth, or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:
- a. the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
 - b. the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
 - c. the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
 - d. material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
 - e. any other matters determined by the Commonwealth to be relevant to the Services or Contract.

46.2 Commonwealth Access and Records

- 46.2.1 During the performance of the Contract, the Contractor must give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to its premises, and access to any of its records or accounts, relevant to or impacting on the

performance of work under the Contract. The Commonwealth may copy any records or accounts for the purposes of the Contract.

46.2.2 The Contractor shall ensure that Approved Subcontracts require Approved Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, access to Approved Subcontractors' premises, and access to any of its records and accounts, relevant to or impacting on the performance of work under the Subcontract, including the right to copy any records or accounts for the purposes of the Contract.

46.2.3 Without limiting the generality of clauses 46.2.1 and 46.2.2, 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 are no longer required by the Contractor or Subcontractor for the performance of the Contract;
- b. performing audit and surveillance activities in relation to quality in accordance with the Contract, including Schedule 4 and the SOW;
- c. without being under any obligation to do so, monitoring the Contractor's compliance with any applicable Laws or Approved plans in connection with the protection of work health and safety or the environment, including the development and implementation of any systems, policies or procedures related to work health and safety and environmental compliance as required under the Contract;
- d. validating the Contractor's progress in meeting the AIC Plan;
- e. investigating the reasonableness of proposed prices or costs submitted in accordance with clause 21, and of prices quoted or claimed for S&Q Services, Surge Services or Services provided pursuant to a CCP. For the purpose of this investigation, the Contractor shall permit the Commonwealth to, or facilitate the Commonwealth being able to, exercise its rights in this clause 46 including providing access to Related Company records (including subsidiary and parent company records) relating to transfer pricing, cross-subsidisation with Related Companies and the allocation of overheads between the Contractor and the Related Company to the extent that such records relate to the S&Q Services, Surge Services or Services provided pursuant to a CCP;
- f. determining whether and to what extent steps should be taken to register or otherwise protect Commonwealth IP;
- g. investigating the reasonableness of any costs claims made by the Contractor under the Contract, including any claims for postponement and/or waiver;
- h. assessing the performance of the Contractor including against the Performance Management Framework including accessing and inspecting relevant information technology systems to analyse and interrogate data supporting the Contractor's assessment of its performance;
- i. conducting a periodic cost review;
- j. conducting audits under the *Auditor-General Act 1997*; and
- k. auditing raw data for the purpose of validating the Contractor's performance under the Contract.

46.2.4 The Commonwealth will use its reasonable endeavours to comply with, and 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.

46.3 Access by the Commonwealth

46.3.1 The Commonwealth may, at reasonable times and on giving reasonable notice to the Contractor:

- a. access the premises of the Contractor to the extent relevant to the performance of the Contract;

- b. require the provision by the Contractor, and require the Contractor to ensure that Contractor Personnel provide, records and information in a data format and storage medium accessible by the Commonwealth through the use of the Commonwealth's existing computer hardware and software;
 - c. inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor or Contractor Personnel, its employees, agents or subcontractors; and
 - d. require assistance in respect of any inquiry into or concerning the Services or the Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to Defence), any request for information directed to Defence, and any inquiry conducted by Parliament or any Parliamentary committee.
- 46.3.2 The Contractor must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 46, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.
- 46.4 Conduct of audit and access**
-
- 46.4.1 The Commonwealth must use reasonable endeavours to ensure that:
- a. audits performed pursuant to clause 46.1; and
 - b. the exercise of the general rights granted by clause 46.3 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.
- 46.5 Costs**
-
- 46.5.1 Except as set out in clause 46.5.2, each Party must bear its own costs of any reviews and/or audits.
- 46.5.2 If the Contractor is able to substantiate that it has incurred direct expenses in the Commonwealth's exercise of the rights granted under clause 46.3 or clause 46.1 which, having regard to the value of this Contract, are substantial, the Contractor may, in accordance with clause 21.7 claim reimbursement of its costs. Any reimbursement must not be greater than the direct expenses incurred and substantiated.
- 46.6 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner**
-
- 46.6.1 The rights of the Commonwealth under clause 46.3.1a to 46.3.1c apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.
- 46.7 Contractor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements**
-
- 46.7.1 The Contractor must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's, or his or her delegate's requirements, notified under clause 46.3, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her respective delegate.
- 46.8 No reduction in responsibility**
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- 46.8.1 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.
- 46.9 Subcontractor requirements**
-
- 46.9.1 The Contractor must ensure that any subcontract entered into for the purpose of the Contract contains an equivalent clause granting the rights specified in this clause 46.

46.10 Related Companies

46.10.1 The Contractor must ensure that any of the Contractor's Related Companies and the Guarantor grant the Commonwealth the same rights specified in this clause 46 with respect to their financial records, accounts, financial material and information.

46.11 No restriction

46.11.1 Nothing in the Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate. The rights of the Commonwealth under the Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate.

46.12 Survival

46.12.1 This clause 46 applies for the Contract Period and for a period of seven years from the expiry or termination of the Contract.

47 LIAISON

47.1.1 The Contractor must liaise with, and report to, the Commonwealth Representative as reasonably required by the Commonwealth Representative for the purposes of the Contract.

47.1.2 Upon receipt of written notice, the Contractor must:

- a. within the timeframe stipulated in the notice; or
- b. if no timeframe is stipulated in the notice, within a reasonable timeframe,

provide any information in relation to the Services requested by the Commonwealth for the purposes of the Contract, including monitoring and evaluation.

48 ACCESS TO PREMISES

48.1 Contractor access

48.1.1 The Commonwealth will allow the Contractor Personnel access to the Base for the purpose of performing the Services.

48.1.2 The Contractor must comply with, and require persons afforded access under clause 48.1.1 to comply with, any relevant Commonwealth safety requirements, regulations, standing orders, or codes of behaviour for the Defence premises.

48.1.3 The Commonwealth may deny access on occasions to Contractor Personnel because of safety and security arrangements or as a result of failure by the Contractor or its Personnel to comply with clauses 13 or 41.

SECTION D – DISPUTE RESOLUTION AND TERMINATION

49 DISPUTE RESOLUTION

49.1 Resolution of Disputes

- 49.1.1 A Party shall not commence court proceedings relating to any Dispute arising from the Contract except when that Party seeks urgent relief from a court or when dispute resolution in a Party's reasonable opinion has failed under clause 49. If a Party fails to comply with clause 49, the other Party is not required to undertake dispute resolution for the Dispute in accordance with clause 49.
- 49.1.2 Where a Dispute arises from or in connection with the Contract (other an Issue pursuant to Schedule 4), and a Party wishes to pursue that Dispute, that Party shall submit to the other Party a notice of Dispute (**Notice of Dispute**) specifying:
- the nature of the Dispute;
 - the relief or outcome being sought; and
 - the representative with the authority to negotiate and settle an outcome.
- 49.1.3 The Dispute shall be considered at a meeting of the Commonwealth Representative and the Contractor Representative within 5 Business Days of the receipt of the Notice of Dispute by the other Party.
- 49.1.4 If the Parties have not resolved the Dispute within 10 Business Days of a meeting of the Commonwealth Representative and the Contractor Representative or 15 Business Days of receipt of the Notice of Dispute by the other Party, and a Party wishes to pursue that Dispute, the Party shall refer the Dispute for final resolution in accordance with clause 49.2.1

49.2 Arbitration

- 49.2.1 If a Dispute is referred for final resolution in accordance with clause 49.1.4, the Parties must, within 20 Business Days of the Notice of Dispute, the refer the Dispute for resolution by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.
- 49.2.2 The Parties shall at all times during any Dispute continue to fulfil their obligations under the Contract.

49.3 Expert determination arising out of the PMF

- 49.3.1 If an Issue is referred for final resolution in accordance with clause 5.6.8 of Schedule 4, the Parties must, within 15 Business Days of a meeting of the Commonwealth Representative and the Contractor Representative in accordance with clause 5.6.7 of Schedule 4 or 20 Business Days from the receipt of the Notice of Issue by the Contractor, meet in an endeavour to agree upon a single Expert (who must be independent of the Parties and must have qualifications and experience appropriate to the matter in dispute) to whom the matter in dispute must be referred for determination.
- 49.3.2 If within 30 Business Days of the Notice of Issue, the Parties fail to agree upon the appointment of a single Expert the Parties must request the president for the time being of the Institute of Arbitrators and Mediators Australia to appoint the Expert to resolve the Issue as follows:
- The Expert is not an arbitrator of the matters in dispute and is deemed not to be acting in an arbitral capacity.
 - The Process (as defined by the Institute of Arbitrators & Mediators Australia Expert Determination Rules) is not an arbitration within the meaning of any statute.
 - The Expert is to adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Issue.
 - The Expert must be independent of, and act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of putting its case and dealing with that of any

opposing Party, and a reasonable opportunity to make submissions on the conduct of the process.

- 49.3.3 The Parties must instruct the Expert to do the following:
- a. Determine the Issue within the shortest practicable time
 - b. Deliver a report stating his or her opinion with respect to the matters in dispute setting out the reasons for the decision.
 - c. Determine the procedures for the conduct of the process in order to resolve the Issue and provide each Party with a fair opportunity to make submissions in relation to the matter in issue.
 - d. Act and as expert and not as an arbitrator and his or her decision will, except in the case of fraud or error manifest on the face of it, be final and binding on the Parties.
- 49.3.4 Each Party must bear the costs of the Expert equally and otherwise bear its own costs of and incidental to any proceedings in accordance with this clause 49.3.

50 TERMINATION

50.1 Termination and reduction for convenience

- 50.1.1 This clause 50.1 does not apply to a reduction in scope of the Contract as a result of a postponement event, in which case clause 7.15 applies.
- 50.1.2 In addition to any other rights it has under the Contract, the Commonwealth may at any time at its sole and absolute discretion terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing and that termination or reduction in scope will occur on the date set out in that notice.
- 50.1.3 The Contractor must, in each subcontract entered into for the purposes of providing Services under the Contract, secure the rights of termination and reduction and terms for compensation functionally equivalent to that of the Commonwealth under this clause 50.1 and to the extent it is unable to do so, the Contractor's rights and obligations under this Contract will be read as if it did include those provisions.
- 50.1.4 If the Contract is terminated or reduced in scope in accordance with clause 50.1, the Commonwealth will only be liable for:
- a. payments that are due and properly payable under clause 21 for Services rendered in accordance with the Contract before the effective date of termination or reduction in scope; and
 - b. any reasonable costs (excluding, without limitation, loss of prospective income or profits and redundancy costs) unavoidably incurred by the Contractor, which are directly attributable to the termination or reduction in scope and which are proper and substantiated to the reasonable satisfaction of the Commonwealth. The Commonwealth will not be liable to pay any amount in excess of the amount of Service Charges remaining unpaid under the Contract at the date of termination or reduction in scope.

50.2 Termination and reduction for default

- 50.2.1 The Commonwealth may, at any time, by written notice, terminate, suspend or reduce the Contract or reduce the scope of the Services, where:
- a. the Contractor or the Guarantor (as applicable) breaches a material provision of a Transaction Document where that breach is not capable of remedy;
 - b. the Contractor or the Guarantor (as applicable) breaches any provision of a Transaction Document and fails to remedy the breach within 5 days after receiving notice requiring it to do so;
 - c. in the opinion of the Commonwealth, a Conflict exists which would prevent the Contractor from performing its obligations under the Contract;
 - d. the Contractor consistently over a period of six calendar months fails to meet the Performance Standard for one or more Performance Indicators or the Compliance Standard of a Compliance Indicator;

- e. Not Used;
- f. an Insolvency Event occurs or the Contractor or Guarantor wholly or substantially ceases, or threatens to cease, to conduct business; or
- g. the Contract otherwise provides that the Commonwealth may terminate it.

50.2.2 Without limitation, for the purposes of clause 50.2.1a, each of the following is a breach of a material provision of the Contract that is not capable of remedy:

- a. failure to achieve each of the obligations in clause 6.1.3 before the Planned Operative Date;
- b. any cap on the amount of damages payable by the Contractor is reached;
- c. the Contractor assigns or novates, or purports to assign or novate, its rights other than in accordance with the requirements of the Contract;
- d. the Contractor regularly or persistently fails to meet a requirement of the Contract, whether or not the Commonwealth has required the Contractor to remedy the default;
- e. a breach of warranty under clauses 7.3 or 7.4 (Contractor warranties);
- f. a failure to comply with a direction in accordance with clauses 7.11 (Suspension of Services) or 7.14 (Direction and Control);
- g. a failure to comply with clause 20 (Intellectual Property rights);
- h. a failure to comply with clause 30 (Confidentiality);
- i. a failure to comply with clause 30.2 (Protection of Personal Information);
- j. a failure to comply with clause 33 (Fair Work);
- k. a failure to comply with clause 41 (Defence security); and
- l. a failure to comply with clause 42.3 (Defence Policies and Procedures).

50.3 **Termination, reduction or suspension of the Services**

50.3.1 On receipt of a notice of termination or suspension of the Contract or reduction of the Services, the Contractor must:

- a. stop work as specified in the notice;
- b. comply with all directions given to the Contractor by the Commonwealth;
- c. take all available steps to minimise loss resulting from that termination, suspension or reduction and to protect all Commonwealth property, including GFM and GFF and Foreground IP; and
- d. continue work on any part of the Services not affected by the notice.

50.3.2 If the scope of the Services is reduced or suspended, the Commonwealth's liability to pay the Service Charges or to provide Commonwealth Property, including GFM and GFF, abates in accordance with the reduction or suspension in the Services.

50.3.3 The Commonwealth may end the suspension of the Service by written notice to the Contractor, subject to preconditions (including variations to the Contract which the Commonwealth may require).

50.4 **After termination or reduction in scope**

50.4.1 On termination or reduction in scope of the Contract:

- a. 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 the Contractor Personnel, which contain or relate to any Commercial-in-Confidence Information or which are security classified;
- b. subject to clause 53.1.1, the Parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination or reduction in scope;

- c. subject to the process set out in clause 50.1, the right to recover damages, including full contractual damages, shall not be affected;
 - d. the Contractor shall deliver all existing documents related to the Services provided prior to the date of termination or reduction in scope, within thirty (30) days after receipt of the notice of termination or reduction in scope, or other period agreed by the Parties; and
 - e. the Contractor must return to the Commonwealth (as required by the Commonwealth) all Commonwealth property, including all CMCA, GFM and GFF in its possession, power or control or in the possession, power or control of the Contractor Personnel.
- 50.4.2 To avoid doubt, and despite anything else in the Contract, if the Contractor delays in providing a deliverable, providing Services or complying with any other obligation in accordance with the Contract, each day of delay is a new breach of the Contract for which the Commonwealth may exercise its rights under clause 50 or at Law, notwithstanding any conduct by the Commonwealth or election not to terminate the Contract for a previous breach of the Contract.

50.5 Termination does not affect accrued rights

- 50.5.1 Termination of the Contract does not affect any accrued rights or remedies of a Party.

51 RIGHT OF THE COMMONWEALTH TO RECOVER MONEY

- 51.1.1 Without limiting the Commonwealth's rights or remedies under the Contract or at law, if the Contractor owes any debt to the Commonwealth in relation to the Contract, the Commonwealth may at its discretion do one or both of the following:
- a. deduct the amount of the debt from payment of any claim; or
 - b. give the Contractor written notice of the existence of a debt recoverable which must be paid by the Contractor within 30 days of receipt of notice.
- 51.1.2 Nothing in this clause 51 will affect the right of the Commonwealth to recover from the Contractor part of or the whole of any debt owed by the Contractor, or any balance that remains owing after deduction.

52 TRANSITION-OUT

- 52.1.1 The Contractor must submit to the Commonwealth for Approval a Transition-Out Plan:
- a. within one month of a request by the Commonwealth; or
 - b. at the latest, by the third anniversary of the Effective Date.
- 52.1.2 Immediately upon receiving a notice of termination or reduction of scope under clause 50 or three months prior to the expiry of the Contract, the Contractor must comply with the Transition-Out Plan and take any other reasonable steps to ensure an orderly transfer of the various contracted tasks and responsibilities to the Commonwealth or an incoming contractor, if any, notified by the Commonwealth.
- 52.1.3 The Contractor must admit representatives of the incoming contractor to any part of its premises where the Services are being provided and of which the Contractor has control, at any reasonable time up to six months prior to the expiration of the Contract or immediately upon receiving a notice of termination under clause 50 and allow those representatives to observe any work being performed in connection with the Contract.
- 52.1.4 The Contractor must provide the incoming contractor with any information in its possession concerning the operation of the Contract which is reasonably requested and within 7 days of receipt of that request. Such information may include details of:
- a. the numbers, qualifications, previous experience and designated tasks of personnel; and
 - b. any working arrangements adopted in order to meet the requirements of the Contract;
- 52.1.5 The Contractor may choose not to disclose to the incoming contractor any details of the Contractor's own ownership or management structure, its level of profit, legal opinions, preferential supply arrangements or information received in confidence from third parties.
- 52.1.6 The Contractor must ensure that any accrued entitlements of any of its employees or officers, who are discharged as a consequence of the termination or expiry of the Contract are met and that all payments to Subcontractors and its other Personnel have been paid.

- 52.1.7 If requested by the Commonwealth, the Contractor must provide Transition-Out services for a period of up to 90 days after the expiration of the Contract or the date specified in the notice of termination issued under clause 50 and will negotiate in good faith with the Commonwealth and/or an incoming contractor a plan to determine the nature and extent of Transition-In services required. The Transition-Out Plan will be used as a basis for these negotiations unless the Parties agree otherwise. Where additional Transition-In services are required, the cost of such services will be treated as a CCP in accordance with clause 18. The Contractor must, in the Commonwealth's opinion, provide sufficient experienced Contractor Personnel during the Transition-Out period to ensure that the provision of Services is maintained at the level of proficiency required by the Contract.
- 52.1.8 The Contractor must, within 60 days after receipt of a written request, provide the Commonwealth Representative with all information specified in the Transition-Out Plan including information that the Commonwealth Representative may reasonably require concerning the performance of the Contract to enable the Commonwealth to produce and publish a request for tender for provision of services similar to the Services.
- 52.1.9 Notwithstanding anything in the Statement of Work, the Contractor must, when implementing the Transition-Out Plan:
- a. ensure that there is no interruption to the provision of Services by the Contractor;
 - b. ensure continuity of Services, until take-over of the Contractor's responsibilities by the incoming contractor or the Commonwealth; and
 - c. cooperate as reasonably necessary with the incoming contractor or the Commonwealth.
- 52.1.10 The Contractor acknowledges that it may be replaced by an incoming contractor or the Commonwealth and that retention of highly skilled and trained personnel is of paramount importance for the satisfactory provision of Services.
- 52.1.11 The Contractor agrees to take all reasonable steps to facilitate the engagement of Personnel who wish to be engaged by and who are accepted for engagement by the incoming contractor or the Commonwealth.
- 52.1.12 The Contractor must ensure that it complies with the transfer of business provisions of the *Fair Work Act 2009* (Cth).

SECTION E – GENERAL PROVISIONS

53 SURVIVAL

- 53.1.1 The following clauses survive the expiration or termination of the Contract:
- a. clause 1 (Definitions and Interpretation);
 - b. clause 7.3 (Contractor General Warranties);
 - c. clause 7.8.10 (Subcontracting);
 - d. clause 14 (Restriction on engaging Personnel of other Party);
 - e. clause 18 (Contract Management);
 - f. clause 20 (Intellectual Property rights);
 - g. clause 22 (GST);
 - h. clause 26 (Indemnity);
 - i. clause 27 (Liability);
 - j. clause 28 (Insurance);
 - k. clause 30 (Confidentiality);
 - l. clause 31 (Protection of Personal Information);
 - m. clause 32 (Public announcement and publications);
 - n. clause 33 (Fair Work);
 - o. clause 35 (Freedom of information);

- p. clause 41 (Defence security);
- q. clause 45 (Books and Records);
- r. clause 46 (Audit and access);
- s. clause 49 (Dispute Resolution);
- t. clause 51 (Right of the Commonwealth to recover money);
- u. clause 52 (Transition-Out);
- v. clause 53 (Survival); and
- w. clause 54 (Notices and other communications).

54 NOTICES AND OTHER COMMUNICATIONS

54.1 Service of notices

- 54.1.1 Unless the contrary intention appears, any notice under the Contract will be effective if it is:
- a. in writing, in English and signed by a person duly authorised by the sender; and
 - b. sent by hand, prepaid post or facsimile to the recipient's address for notices specified in item 14 of the Contract Details, as varied by any notice given by the recipient to the sender.

54.2 Effective on receipt

- 54.2.1 A notice given in accordance with clause 54.1 is deemed to have been delivered when received (or at a later time specified in it), and is taken to be received:
- a. if hand delivered, on delivery;
 - b. if sent by prepaid post, on the second Business Day after the date of posting if posted within Australia (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

55 MISCELLANEOUS

55.1 Ownership of Contract

- 55.1.1 All copyright and other IP contained in the Contract remain the property of the Commonwealth.

55.2 Variation

- 55.2.1 No contract or understanding varying or extending the Contract will be legally binding upon either Party unless the Contract or understanding is in writing and signed by both Parties. Any variation to the Contract takes effect from the date specified in the contract or understanding or, if no date is specified, the date on which the Parties agree to the variation in writing.

55.3 Approvals and consents

- 55.3.1 Except where the Contract expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the Contract.

55.4 Assignment and novation

- 55.4.1 The Contractor must not assign, transfer or novate its rights and/or obligations under the Contract without the prior written consent of the Commonwealth.
- 55.4.2 If the Contractor proposes to enter into any arrangement which will require the assignment, transfer or novation of its rights and/or obligations, it shall notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed assignment, transfer or novation.

55.4.3 The Contractor shall ensure that any arrangement proposed under clause 55.4.2 is governed by an agreement in the form of a deed of substitution and indemnity Approved by the Commonwealth.

55.4.4 Notwithstanding the Contractor's compliance with clause 55.4.3, the Commonwealth may, in its discretion, refuse to consent to an arrangement proposed by the Contractor under clause 55.4.2.

55.5 **Costs**

55.5.1 Each Party must pay its own costs of negotiating, preparing and executing the Contract.

55.6 **Counterparts**

55.6.1 The Contract may be executed in counterparts. All executed counterparts constitute one document.

55.7 **No merger**

55.7.1 The rights and obligations of the Parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

55.8 **Entire agreement**

55.8.1 Subject to clause 55.8.2, together with the Guarantee Financial Security Deed and the Cooperation Deed, the Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

55.8.2 To the extent that a Dispute arises between the Parties arising from or in connection with the Statement of Work, the Parties may rely on oral, written, expressed and/or implied extrinsic evidence to ascertain the commercial intention of Parties in relation to the provisions of the Statement of Work which are in dispute.

55.9 **Further action**

55.9.1 Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Contract and any transaction contemplated by it.

55.10 **Severability**

55.10.1 A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.

55.11 **Waiver**

55.11.1 Waiver of any provision of or right under the Contract:

- a. must be in writing signed by the Party entitled to the benefit of that provision or right; and
- b. is effective only to the extent set out in any written waiver.

55.12 **Governing law and jurisdiction**

55.12.1 The Contract is governed by the laws of the Australian Capital Territory and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

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:

Signed by Greg Dreghorn as attorney for
DynCorp (Aust) Pty Limited under power
of attorney dated 31 July 2014 in the
presence of

Signature of witness



Greg Dreghorn



Name of witness (print)

SCHEDULE 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details
1. ³	Commonwealth Representative	15.1	First Assistant Secretary – Service Delivery Estate and Infrastructure Group Department of Defence R1-6-A006 Russell Drive Russell ACT 2601 PO Box 7902 Canberra BC ACT 2610
2.	Commonwealth Contract Authority	15.2	Director General – Estate Service Delivery ⁴ Estate and Infrastructure Group Department of Defence CP2-5-032 Northcott Drive Campbell ACT 2600 PO Box 7911 Canberra BC ACT 2610
3.	Commonwealth Contract Administrator	15.3	Product and Services Manager Director Estate Works Program Office ¹ CP1-5-121 Northcott Drive Campbell Park Offices Campbell ACT 2600 Contract Amendments, Outline Agreement and Purchase Orders Director Contract Governance and Contract Administration Support Level 18, Defence Plaza ¹ 270 Pitt St Sydney NSW 2000
4.	Contractor Representative	15.4	David Barnes Head of Business Development – Defence Aurecon Centre – Level 8 850 Collins Street DOCKLANDS VIC 3008

³ CCP2016-293, C-2016-00296 text changes approved 17 Oct 2016

⁴ C-2015-0135, WEF 03 Mar 2015, CA approved 02 Mar 2015

Schedule 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details
5.	⁵⁶ Contractor Contract Authority	15.5	Mr Stephen Carroll Technical Director Office Manager Canberra Suite 6.02, Level 6, 14 Moore Street CANBERRA CITY ACT 2601 ⁷
6.	Contractor Contract Administrator	15.6	Mr Michael Palmer PDS Program Director Suite 6.02, Level 6, 14 Moore Street CANBERRA CITY ACT 2601
7.	Planned Operative Date	6.1.3	3 September 2014 ²
8.	Liquidated Damages	6.1.8a	
	Termination in accordance with clause 6.1.5d	6.1.8a	\$95,323.00
	Failure to fulfil an obligation under clause 6.1.3 by the Planned Operative Date	6.1.8b	\$1,567.00 per day multiplied by each day from and excluding the Planned Operative Date to and including the date on which the failure to comply with clause 6.1.3 ends.
9.	Initial Contract Period	5.1	Six years
10.	Base Date	7.6.2	1 April 2013
11.	Limitation of liability – cap	27.1	\$40,000,000
12.	Insurance	27.3	Insurances to be maintained by the Contractor
		28.2.1a	Public and Products Liability Insurance In the amount of \$20,000,000 in respect of any one occurrence and in the aggregate in respect of products liability.
		28.2.1b	Third Party Property Damage related to any plant or vehicles In the amount of \$20,000,000 in respect of each and every occurrence.
		28.5.1	Errors and Omission Insurance or Professional Indemnity Insurance A limit of indemnity of not less than

⁵ CCP2017-177, C-2017-00186 Schedule 1 contract updates, approved 25 Aug 17⁶ CCP2016-165, C-2016-00173 Schedule 1 Contact updates, approved 10 June 2016⁷ CCP2015-199, C- 2015-00312, Office Address approved 26 June 2015, updated 23 July 2015² C-2015-0135, WEF 03 Mar 2015, CA approved 02 Mar 2015
Contract for the provision of Project Delivery Services

Schedule 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details								
			\$20,000,000 in respect of each and every occurrence, and in the aggregate, including one full policy reinstatement. Policy to be maintained for 7 years following the expiration or termination of the Contract.								
13.	Commercial-In-Confidential Information	30.1.6h	<p>Commonwealth Commercial-In-Confidential Information:</p> <table><tr><th>Item</th><th></th></tr><tr><td>Contract, including each Schedule each Deliverable</td><td>Contract Period</td></tr></table> <p>Contractor Commercial-In-Confidential Information:</p> <table><tr><th>Item</th><th>Period of confidentiality</th></tr><tr><td>Clause 28, Schedule 1 and Schedule 3, Contractor Personnel</td><td>Contract Period</td></tr></table>	Item		Contract, including each Schedule each Deliverable	Contract Period	Item	Period of confidentiality	Clause 28, Schedule 1 and Schedule 3, Contractor Personnel	Contract Period
Item											
Contract, including each Schedule each Deliverable	Contract Period										
Item	Period of confidentiality										
Clause 28, Schedule 1 and Schedule 3, Contractor Personnel	Contract Period										
14.	Address for Notices	54.1	<p>Commonwealth: Director Contract Governance and Contract Administration Support Level 18, Defence Plaza 270 Pitt St Sydney NSW 2000 Fax: 02 9393 2331 Email: DSO.ContractAdminSupport@defence.gov.au³</p> <p>Contractor: PDS Program Management Office Aurecon Australasia Pty Ltd Suite 6.02, Level 6, 14 Moore Street CANBERRA CITY ACT 2601</p>								
15.	Base		The Services must be provided at the Bases detailed in the Statement of Work.								
16.	SADFO	7.14	Means the person advised by the Commonwealth from time to time as the Senior ADF officer at each Base								

³ C-2015-0135, WEF 03 Mar 2015, CA approved 02 Mar 2015-03-03
Contract for the provision of Project Delivery Services

Schedule 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details
17.	Amount of the financial security	29.1	\$95,323.00
18.	Guarantor	29.2	Aurecon Advisory Pty Ltd ABN 83 133 655 419
19.	Services that are of a type to be provided following failure to provide	11.2.2b(i)	<p>Each Service that:</p> <ol style="list-style-type: none"> 1. in the Contractor's reasonable opinion satisfies one or more of the following: <ol style="list-style-type: none"> a. if provided after the time required, would still provide a benefit to the Commonwealth; b. the provision of the Service is not time critical to the Commonwealth; c. the provision of another Service is dependent on the provision of the delayed Service; or 2. the Commonwealth has otherwise notified the Contractor that the delayed Services is of a type that must be provided following a failure to provide.
20.	Contractor's financial institution account details	23.3.1	<p>Bank: National Australia Bank Address: Level 28, 500 Bourke St, Melbourne VIC 3000 EFT Payments: BSB 083054 Account: 130378351 Swift Code: NATAAU3303M</p>

SCHEDULE 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details
1. ³	Commonwealth Representative	15.1	<p>First Assistant Secretary – Service Delivery</p> <p>Estate and Infrastructure Group Department of Defence</p> <p>R1-6-AOO6 Russell Drive Russell ACT 2601</p> <p>PO Box 7902 Canberra BC ACT 2610</p>
2.	Commonwealth Contract Authority	15.2	<p>Director General – Estate Service Delivery</p> <p>Estate and Infrastructure Group Department of Defence</p> <p>CP2-5-032 Northcott Drive Campbell ACT 2600</p> <p>PO Box 7911 Canberra BC ACT 2610</p>
3.	Commonwealth Contract Administrator	15.3	<p>Product and Services Manager</p> <p>Director Estate Works Program Office¹ CP1-5-121 Northcott Drive Campbell Park Offices Campbell ACT 2600</p> <p>Contract Amendments, Outline Agreement and Purchase Orders</p> <p>Director Contract Governance and Contract Administration Support Level 18, Defence Plaza¹ 270 Pitt St Sydney NSW 2000</p>
4.	⁴Contractor Representative	15.4	<p>Mr Jonathon Moulds Vice President and Managing Director DynCorp (Aust.) Pty Limited</p>

³ CCP2016-292, C-2016-00295 text changes approved 17 Oct 2016

⁴ CCP2017-005, C-2017-0004 Schedule 1 Change, approved 30 Jan 2017
Contract for the provision of Project Delivery Services

Item number	Description	Clause reference	Details
5.	Contractor Contract Authority	15.5	PDS Contract Authority DynCorp (Aust.) Pty Limited
6.	Contractor Contract Administrator	15.6	Service Management PDS Service Manager DynCorp (Aust.) Pty Limited Contract Administration PDS Contract Administrator DynCorp (Aust.) Pty Limited
7.	Planned Operative Date	6.1.3	22 August 2014 ⁵
8.	Liquidated Damages	6.1.8	
	Termination in accordance with clause 6.1.5d	6.1.8a	\$17,640
	Failure to fulfil an obligation under clause 6.1.3 by the Planned Operative Date	6.1.8b	\$290 per day multiplied by each day from and excluding the Planned Operative Date to and including the date on which the failure to comply with clause 6.1.3 ends.
9.	Initial Contract Period	5.1	Six years
10.	Base Date	7.6	Not used
11.	Limitation of liability – cap	27.1	\$40,000,000
12.	Insurance	28	Insurances to be maintained by the Contractor
		28.2.1a	Public and Products Liability Insurance In the amount of \$20,000,000 in respect of each and every occurrence and in the aggregate in respect to products liability.
		28.2.1b	Third Party Property Damage related to any plant or vehicles No less than \$20,000,000 in respect of each and every occurrence.
		28.5.1	Errors and Omission Insurance or Professional Indemnity Insurance A limit of indemnity of not less than \$20,000,000 in respect of each and every

⁵ C-2014-00008, WEF 22 Aug 2014, CA Approved 23 Oct 2014
Contract for the provision of Project Delivery Services

Schedule 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details								
			occurrence claim, including one full policy reinstatement. Policy to be maintained for 7 years following the expiration or termination of the Contract.								
13.	Commercial-In-Confidential Information	30	<div>Commonwealth Commercial-In-Confidential Information:</div> <table><tr><th>Item</th><th>Period of confidentiality</th></tr><tr><td>Contract, including Schedule and each Deliverable</td><td>Contract Period</td></tr></table> <div>Contractor Commercial-In-Confidential Information:</div> <table><tr><th>Item</th><th>Period of confidentiality</th></tr><tr><td>Schedule 3</td><td>Contract Period</td></tr></table>	Item	Period of confidentiality	Contract, including Schedule and each Deliverable	Contract Period	Item	Period of confidentiality	Schedule 3	Contract Period
Item	Period of confidentiality										
Contract, including Schedule and each Deliverable	Contract Period										
Item	Period of confidentiality										
Schedule 3	Contract Period										
14.	Address for Notices	54.1	<div>Commonwealth: Director Contract Governance and Contract Administration Support Level 18, Defence Plaza 270 Pitt St Sydney NSW 2000 Fax: 02 9393 2331 Email: DSO.ContractAdminSupport@Defence.gov.au²</div> <div>Contractor:⁶ DynCorp (Aust.) Pty Ltd Level 2, 40 Macquarie Street BARTON ACT 2600 GPO Box 54 CANBERRA ACT 2601 Facsimile: 02 6103 5777</div>								
15.	Base		The Services must be provided at the Bases detailed in the Statement of Work.								

² C-2014-00134, WEF 03 Mar 2015, CA approved 03 Mar 2015

⁶ C-2014-00006, WEF 1 OCT 2014, CA Approved 20 Nov 2014
Contract for the provision of Project Delivery Services

Schedule 1 – CONTRACT DETAILS

Item number	Description	Clause reference	Details
16.	SADFO	7.14	Means the person advised by the Commonwealth from time to time as the Senior ADF officer at each Base
17.	Amount of the financial security	29.1	\$17,640
18.	Guarantor	29.2	DynCorp International LLC 1700 Old Meadow Road McLean VA 22102 USA
19.	Services to be provided following failure to provide	11.2.2b(i)	Each Service that: <ul style="list-style-type: none"> 1. in the Contractor's reasonable opinion satisfies one or more of the following: <ul style="list-style-type: none"> a. if provided after the time required, would still provide a benefit to the Commonwealth; b. the provision of the Service is not time critical to the Commonwealth; c. the provision of another Service is dependent on the provision of the delayed Service; or 2. the Commonwealth has otherwise notified the Contractor that the delayed Services is of a type that must be provided following a failure to provide.
20.	Contractor's bank account details	23.3.1	Bank: ANZ Account Name: DynCorp (Aust.) Pty Limited Account Number: 497 001 577 BSB: 012 984

PROJECT DELIVERY SERVICES

SECTION 8.1

MANAGEMENT, INTEGRATION AND COORDINATION

¹DESCRIPTION AND DELIVERABLES

1.1.1. ¹ CCP 2015-067, C-2015-00738 Word Changes, approved 4 April 2016

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1. SERVICE BACKGROUND

1.1. Background

- 1.1.1. Project Delivery Services (PDS) management defines the requirements for the provision of PDS across the Defence Estate. PDS governs the requirements for the provision of Project Delivery Services in support of the Defence Estate Works Program. PDS delivers specific projects and works that support the Base Services continuum.
- 1.1.2. PDS shall be undertaken in accordance with Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines, Australian Standards and Defence Policy.

2. SERVICE OUTCOME

2.1. Overview

- 2.1.1. The Contractor shall provide Project Delivery Services that contributes to the:
 - a. delivery, operation and protection of Defence capability;
 - b. safe use of Defence land, facilities and equipment;
 - c. sustainment and development of the estate;
 - d. protection of environment and heritage; and
 - e. protection of Defence's reputation.
- 2.1.2. The PDS Contractor shall:
 - a. deliver the Project Delivery Services SOW Package;
 - b. establish and maintain effective working relationships with all stakeholders involved in successful delivery of the PDS SOW;
 - c. collaborate with Defence and other Defence contactors to ensure a continuum of services that support Defence capability without adversely impacting Defence activities or the Estate; and
 - d. improve service delivery efficiency and effectiveness and the overall value proposition to Defence through continuous improvement and innovation.

3. DEFENCE OBLIGATIONS AND EXPECTATIONS

3.1. General

- 3.1.1. The following information provides context to Defence's expectations on estate stewardship and the PDS Contractor's management, integration and coordination obligation for Project Delivery Services.

3.2. Supporting Defence Capability

- 3.2.1. In order to defend Australia and its interests, Defence raises, trains and sustains military capabilities which enable the Government to apply military power when required. Components of military capability include readiness and sustainability: both of which are supported by Fundamental Inputs to Capability (organisations, personnel, collective training, major systems, supplies, facilities and training areas, command and management). Works delivered by the PDS Contractor provide essential estate sustainment and development outcomes to support daily and future Defence demands of the estate.

3.3. Defence Culture and Values

- 3.3.1. Defence is a highly capable organisation bound by complementarities of its strong single Service (Navy, Army and Air Force) and Australian Public Service (APS) cultures. Defence people are dedicated professionals who rise to the challenge large and small, demonstrate high standards of professionalism and contribute to Defence's reputation for excellence within the Australian community.
- 3.3.2. The PDS Contractor shall ensure that its Contractor Personnel observe, respect and support Defence's culture, values and military tradition.

3.4. Supporting Defence's Reputation

- 3.4.1. Defence's reputation contributes to positive retention and recruitment and underpins operational capability. Defence's reputation is managed through a number of means, including: effective and timely internal communications; media engagement; local community engagement; liaison with other Government agencies; high profile public activities; relationships with Defence industry and contractors; internal relationships and Defence branding.
- 3.4.2. The PDS Contractor shall ensure that Defence's positive reputation is protected, fostered and enhanced through the Contractor's and sub-contractors' own actions by having its own risk management processes in place to mitigate any reputation risks.

3.5. Supporting Defence Base Management

- 3.5.1. Under the Base Accountabilities Model (BAM), the Estate services division (ESD) Base Support Manager (BSM), the Senior Australian Defence Force Officer (SADFO) and Heads of Resident Units (HRU) all have specific responsibilities, which are defined in the Base Support Agreement (BSA).

- 3.5.2. The EMOS Contractor is an integral part of the Base Support Management team, assisting the BSM to deliver the range of Base Services to Defence.
- 3.5.3. The PDS Contractor will be responsible to work collaboratively with the EMOS Contractor, other contractors and Defence personnel for the management of all operational and strategic issues involved in reducing the impact of the delivery of projects on Defence activities and capability.
- 3.5.4. Regional Defence personnel (particularly the Base Support Management Team and the EMOS Contractor) are the key stakeholder(s) for project related site planning approvals. The PDS must work proactively with the Region and Base Support Management Team to facilitate access to Defence properties, facilities and utilities for the delivery of projects.

3.6. Collaborative Relationships and Mutual Obligations

- 3.6.1. The PDS Contractor shall develop and maintain collaborative working relationships with Defence personnel (Military and Australian Public Service), other Defence contractors and external agencies and industry.

3.7. Business Continuity

- 3.7.1. The PDS Contractor shall submit to the Contract Authority for approval:
 - a. develop and maintain a Business Continuity Plan (BCP) for the contracted service;
 - b. as part of project start up, develop Risk Management and Continuity Plans specific to each project;
 - c. be required to contribute to the development of Estate Works Program (EWP) Business Continuity Plans (BCP) for the Defence Estate Works Program Office; and
 - d. where deemed necessary by Defence provide input into Base Services BCPs.

3.8. Continuous Improvement and Service Optimisation

- 3.8.1. In meeting Defence's expectations of increased value of the contract duration, the PDS Contractor shall provide a Business Improvement Plan (BIP) within six months of the Commencement date and updated annually.
- 3.8.2. The BIP is intended to be an integral strategic document to assist the achievement of Defence Reform objectives and should be developed with reference to these objectives.
- 3.8.3. The BIP is a plan to the PDS Contractor to improve the overall value proposition from that originally contacted: and should at its most fundamental level aim to provide ongoing improvement in efficiency and effectiveness over the contract duration.

- 3.8.4. Whilst the plan will be formally reviewed annually, the PDS Contractor shall the BIP reflects initiatives being developed from identification through to implementation.
- 3.8.5. It is expected that the PDS Contractor shall develop business cases following the identification of initiatives. Business cases should be detailed at a level commensurate with their value and risk, and clearly identify financial /non-financial benefits, costs and risks. Final business cases should include gain share proposals. Business cases should consider the following:
- a. effectiveness of services under the contract;
 - b. improving PDS outcomes, Defence outcomes and value for money;
 - c. applicability and implementation across the whole of the Defence estate;
 - d. measurement of proposed improvements and expected time to realise the improvement; and
 - e. expected costs (and savings) to implement and sustain the recommendation.
- 3.8.6. Assessment of business cases will consider applicability across the estate, effectiveness, impacts on occupants and beneficiaries and the management of the contracted Base Services. The PDS Contractor is expected to support the assessment process through provision of additional information as required.
- 3.8.7. As part of its commitment to providing Defence with updated industry knowledge, the PDS Contractor should include as part of its BIP, how they intends to engage at the industry level to make both themselves and Defence aware of ongoing development in relation to contemporary industry practices (e.g. innovation) and report any benefits that Defence may derive from adoption of such practices. This may include providing analysis in relation to key measures of Defence project delivery efficiency and effectiveness against industry benchmarks and driving and responding to changing requirements in the management, maintenance and operation of the estate.
- 3.8.8. Achievement relative to the BIP, as well, as other specific instances of activities which improve efficiency and effectiveness should be reported as part of the Annual Contract review. Performance against the BIP will significantly inform any contract extension decision consistent with Schedule 4 of the Contract.

3.9. Supporting Defence Value for Money Contracting Outcomes

- 3.9.1. The PDS Contractor shall seek best Value For Money (VFM) outcomes in Project Delivery including but not limited to:
- a. proposed Contract Change Proposals (CCP);
 - b. procurement conducted on behalf of the Commonwealth; and
 - c. responding to service requests from Customers.

- 3.9.2. Additionally, the PDS Contractor shall understand and utilise the Commonwealth principles governing VFM and all procurement must be in accordance with the Commonwealth Procurement Regulations and Defence Policy.

3.10. Supporting Defence's Security

- 3.10.1. Defence has an obligation to provide and maintain a safe and secure environment for the protection of its people, information, capabilities and assets. Threat sources include criminals, terrorists, foreign intelligence collectors (human and technical), disgruntled insiders or nuisances. Threat activities may include deliberate acts of physical violence/terrorism; threats; sabotage/ damage; exploitation of personnel and information systems; cybercrime; espionage; subversion; disruption/ hacking of information systems; theft; and unauthorised releases of official information.
- 3.10.2. The PDS Contractor shall contribute to maintaining a safe and secure environment through the following:
- a. complying with Base Security plans and procedures;
 - b. if requested provide advice to inform the development of Base Security plans
 - c. obtaining and maintaining security clearances for its employees and sub-contractors; and
 - d. ensuring that its employees and sub-contractors are correctly inducted onto sites and adhere to Defence's security alert system (SAFEBASE) and are aware of the different security levels and status.

3.11. SAFEBASE

- 3.11.1. Defence's protective security alert system is known as SAFEBASE. The SAFEBASE alert system provides planning guidance and standards to Defence on appropriate measures to take in response to varying threat levels. At heightened alert levels, Contractors and contracted employees are to follow the direction of designated Defence personnel.

3.12. Supporting Environment and Heritage Obligations

- 3.12.1. Environmental Management Defence is committed to Ecologically Sustainable Development (ESD) (including energy, water and waste minimisation) across the Defence Estate. Defence ESD principles govern the efficient use, operation and maintenance of the Estate.
- 3.12.2. The PDS Contractor in delivery of its services must act and deliver services on behalf of Defence in a manner consistent with Defence's commitment to Environmental management..
- 3.12.3. Energy Management Defence is committed to best practice energy management as energy is a critical requirement to maintain and enhance its capability. Under the

Commonwealth Government Policy Energy Efficiency in Government Operations (EEGO), 2006, Defence is required to report annually on energy management performance and to demonstrate that steps are being taken to consume energy more efficiently. The PDS Contractor will pro-actively support Defence by:

- a. ensuring projects delivered maximise the use of energy efficient principles in design, equipment and materials.
- b. identifying areas of energy inefficiency or wastage;
- c. identifying opportunities for saving energy; and
- d. showing continuous improvement in energy consumption reduction.

- 3.12.4. Heritage Management Defence has over 130 sites on the Commonwealth Heritage List (CHL), National Heritage List (NHL) and the Defence Heritage Register. The Defence Estate contains other heritage values, which, to date, have not been identified or formally listed, but require appropriate management. Heritage values include built environments, cultural landscapes, archaeological values, indigenous cultural and natural heritage sites.
- 3.12.5. Defence seeks to protect its heritage assets in line with EPBC Act requirements and the primary mechanism for managing heritage values on the Defence Estate is through the implementation of Defence Heritage Management Plans (HMP).
- 3.12.6. The PDS Contractor must seek to be fully aware of and act in accordance with any requirements associated with heritage sensitive areas or assets affected by projects delivered through PDS services.
- 3.12.7. Pollution Management Defence uses many hazardous substances (potential pollutants) which have potential to have an adverse impact on human health and the environment. Defence is committed to managing the risk associated with pollution and has a Defence Pollution Prevention Strategy (DPPS) in place. This strategy focuses on the minimisation of emissions and discharges of pollutants during use, maintenance and disposal of existing and future assets.
- 3.12.8. The PDS Contractor will support Defence in the implementation of the DPPS by managing all potential pollutant risks associated with contracted activities and proactively reduce the likelihood and impact of pollution incidents through project scope, design and delivery.
- 3.12.9. The PDS Contractor must report any project generated pollution events to Defence and remediate to meet best practice standards.
- 3.12.10. Waste Management Defence is committed to waste minimisation and the Defence Waste Minimisation Policy (DWMP) aims to reduce the amount of waste materials generated by Defence. The DWMP provides a framework within which waste can be managed effectively in accordance with the fundamental principles of the waste management hierarchy. The DWMP is consistent with best practice environmental

management and complimentary to the principles of ecologically sustainable development (ESD).

- 3.12.11. The PDS Contractor is expected to pro-actively support Defence by exploiting opportunities for reducing waste and recycle where practicable in project delivery.
- 3.12.12. The PDS Contractor is responsible for the management of all waste generated by Projects managed by the PDS contractor.
- 3.12.13. Green Procurement. Defence is committed under the Defence Procurement Policy Manual, to procure products and services, not just on a value for money assessment and the whole of life basis, but also considering the environmental impacts from inception to product cessation.
- 3.12.14. The PDS Contractor shall act and deliver services on behalf of Defence in a manner consistent with Defence's commitment to Green Procurement.
- 3.12.15. Biodiversity and Sustainable Landscape Management. Defence is committed to sustainable land management (e.g. bushfire, feral animal, weed, overabundant native species, soil and biosecurity management).
- 3.12.16. The primary mechanism for managing environmental values on the Defence Estate is the implementation of a range of regional/local management plans that address key risks to the environmental sustainability of the estate.
- 3.12.17. The PDS Contractor shall be fully aware of, and act in accordance with, any requirements associated with sensitive areas or assets affected by projects delivered through PDS services.
- 3.12.18. The PDS Contractor shall be required to provide advice to Defence related to Biodiversity and Landscape Management.
- 3.12.19. Contamination Management. Defence is proactively identifying and then remediating contamination issues (e.g. asbestos) across the Estate. The PDS Contractor is required to pro-actively contribute to the identification of contamination and deliver projects in a manner that does not contribute to further contamination of the estate.
- 3.12.20. Water Management. Defence is committed to efficient and effective water management. Water usage is a critical requirement for Defence to maintain and enhance its capability and as such Defence is committed to best practice water management through the Defence Water Management Strategy.
- 3.12.21. The PDS Contractor will pro-actively support Defence by:
 - a. ensuring projects delivered maximise the use of water efficient principles in design, equipment and materials.
 - b. identifying areas of water inefficiency or wastage;

- c. identifying opportunities for saving water; and
- d. showing continuous improvement in water consumption reduction.

3.13. Supporting Defence Emergency Management

- 3.13.1. Natural Disasters and Accidents Defence responds to emergency situations and natural disasters (e.g. bushfires, lightning strikes, floods, cyclones and storm damage) as required. The PDS Contractor shall be required to assist in the emergency response. The range of responses may include isolate and make safe facilities and services and secure areas under your control.
- 3.13.2. The PDS Contractor may be required to develop and deliver projects as a priority to assist Defence (and potentially the civil authorities) during disaster recovery.

3.14. Security Incidents

- 3.14.1. Defence responds to security incidents as required. The PDS Contractor shall report all incidents to Defence immediately. The PDS Contractor may be required to assist in security situations, including responding to an area, building or base wide lockdown as directed by Defence or civilian emergency authorities.

3.15. Contingency Plans, Exercises, Drills and Training

- 3.15.1. Defence enacts and supports contingency plans, conducts exercises, drills and training to meet emergencies. The PDS Contractor will be expected to participate in, contribute to and support contingency plans, drills and exercises as directed by Defence or civilian emergency authorities.

3.16. Liaison For Project Delivery Services

- 3.16.1. The PDS Contractor shall liaise with other parties in support of the estate projects delivered through a variety of business processes and business models including:
 - a. Major Capital Facilities Projects;
 - b. Public Private Partnership Projects;
 - c. Leasing Projects;
 - d. Acquisition and Disposal Projects; and
 - e. Estate Works Projects.
- 3.16.2. The PDS Contractor shall ensure the allocation of resources for project support by others (within their area of responsibility) in response to the demand arising from projects in the EWP, including:
 - a. liaising with the relevant MSP, NPS, EMOS , ESD regions, Technical Authorities and Infrastructure Division relevant to their area of responsibility

to maintain an understanding of the forecast program of projects, including providing advice to the CA on upcoming workload requirements;

- b. providing advice to relevant MSP, NPS, EMOS , ESD regions and ID on the workload requirements for each project;
- c. liaising with relevant MSP's, NPS, EMOS , ESD regions regarding upcoming project requirements;
- d. provide or seek timely resourcing estimates and quotes for provision of project development;
- e. liaise with EMOS to ensure necessary resources to support project specific agreements such as Project Integration Deeds, are agreed; and
- f. review and ensure that all necessary uploads into the DEIS of information deliverables at all stages of the project, including manuals, data, NPOC estimates, compliance and maintenance requirements and drawings and spatial data. (PDS must upload the minimum documents into Objective as specified in Annex B Appendix E of Sub-Section 8.2 PDS Description and Deliverables. Appendix E does not preclude the upload of other non specified documents as required by the project for historical and auditing purposes).²

3.16.3. During the project Feasibility , Scope and design (phase 1 and 2), the PDS Contractor shall:

- a. Engage where relevant with EMOS, NPS, ESD Region, Resident Units, MSP, Tech Authority and ID to provide advice on intended designs and project scope in accordance with the Project Design Review process (in Defence Quality Management System) including but not limited to:
 - 1. lifecycle management including choice of equipment for longer life, affordability and ability to provide support;
 - 2. useability;
 - 3. maintainability;
 - 4. operation and maintenance compliance requirements;
 - 5. expected through life net personnel and operating costs relating to all services within the Base Services contracts;
 - 6. resource implications;
 - 7. project planning for stakeholder engagement, environmental management, security, base emergency management, bushfire management, traffic management;

1.1.2. ² CCP2017-036, C-2017-00034 approved 11 Dec 17

8. impacts of Building Code of Australia and other design dispensations on through life support; and
 9. impacts of environmental clearance requirements on project delivery and through life support.
- b. coordinate advice from all stakeholders (EMOS, Resident Units, ESD Region, Tech Authority ID, etc).;
 - c. manage and coordinate the requirements for the handover and takeover plan to be used as part of the project acceptance process;
 - d. ensure the information deliverables required for project including manuals, data, compliance and maintenance requirements and drawings and spatial data,
 - e. ensure the development of compliance requirements, and
 - f. support site visits from parties associated with the development of the project, including provision of access to controlled areas.
- 3.16.4. During the project delivery phase, the PDS Contractor shall provide the following services:
- a. liaise with EMOS the provision of site possession including vacating the site and coordinating services of other providers;
 - b. liaise with EMOS to manage the temporary or permanent cessation of services arising from the project including EMOS and MSP services, utilities and other services by other contractors (eg fuel supply).
 - c. support the identification and operation of site constraints in support of the delivery of the project
 - d. provide site inductions and access in support of the project; and
 - e. support site visits from parties associated with the delivery of the project, including provision of access to controlled areas.
- 3.16.5. During project acceptance, the PDS Contractor shall act as Estate Service's acceptance authority in the following services:
- a. Handover and Takeover
 1. Assess defects and defect correction strategies;
 2. Ensure that all necessary information have been upload into the DEIS of information deliverables including manuals, data (including the Estate

Data Tool)³, compliance and maintenance requirements and drawings and spatial data;

3. Training in the operation and maintenance of the facility;
4. Compliance requirements;
5. Advise the CA and project office of non-acceptance of project deliverables; and
6. Liaise with the project in the resolution of non-acceptances.

b. Commissioning

1. Assess the operation and maintenance requirements through the contract amendment process;
2. Facilitate access for occupants and users; and
3. Facilitate training of occupants and users by others.

c. Defect Liability Period

1. Ensure arrangements to manage defect generated calls through the Base Services Support Centre (BSSC) are in place
2. Assess DLP liability.
3. Route defect correction requirements to the appropriate agent for resolution; and
4. Ensure the resolution of defects is tracked.

3.17. Supporting Defence Work Health Safety (WHS) Management Obligations

3.17.1. WHS Obligations. Defence recognises its duties as a Person Conducting a Business or Undertaking (PCBU) under the Work Health and Safety Act 2011 (Cth). In particular, Defence recognises its primary duty to ensure, so far as is reasonably practicable, the health and safety of its workers, including contractors, and its duties to consult with other duty holders, workers and persons with duties under corresponding WHS laws (i.e. State and Territory Laws).

3.17.2. The Contactor shall comply with, and shall ensure that all Subcontractors under PDS Contractor management comply with the applicable WHS Legislation when providing the Services including the obligation under the WHS Legislation to consult, co-operate and co-ordinate activities with the Commonwealth and any other person who, concurrently with the Contractor, bears a work health and safety duty in relation to the same matter.

1.1.3. ³ CCP2017-243 Estate Data Tool approved 22 Mar 2018

3.17.3. Under the Work Health and Safety Act 2011 (Cth), contractors are workers of the PCBU (Defence) and are to comply with worker duties including:

- a. while at work, a Contractor must take reasonable care for his or her own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of others; and
- b. complying, so far as reasonably able, with any reasonable instruction that is given by Defence to allow Defence to comply with the Act; and, once notified, co-operating with any reasonable Defence policy or procedure relating to health and safety at the workplace.

3.17.4. In the absence of instructions, policies, or procedures, Defence requires contractors to comply with the Work Health and Safety Act 2011 (Cth) as if they are a PCBU under that Act, including all duties. This requirement includes any subordinate legislation (e.g. the Work Health and Safety Regulations 2011 (Cth)) as well as the Commonwealth model Codes of Practice, and applies whilst undertaking work for Defence, and/or whenever present on Defence property or undertaking a Defence activity.

3.17.5. An example of a duty under the Work Health and Safety Act 2011 (Cth) to which Defence requires Contractor compliance is:

“Duty to consult with other duty holders

“If more than one person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.”

3.17.6. Applicable instructions, policies and procedures include, but are not limited to:

- a. Adopt the use of ChemAlert mandated as the corporate hazardous chemicals register maintained by Defence.
- b. A list of Hazardous Chemicals to be used in Defence workplaces and/or brought onto Defence sites is to be submitted for approval prior to being introduced. Any changes to the list of approved Hazardous Chemicals must be submitted prior to the change taking place. If the PDS Contractor becomes aware that an unapproved change has occurred, the Contractor must eliminate the Hazardous Chemical until approval is given.
- c. Full compliance with the WHS Regulation 2011 Part 8 Asbestos, approved Codes of Practice and Defence Safety Manual. The DSRG Strategic Asbestos Management Plan (SAMP) is the DSRG Governance Policy for Asbestos. Each region maintains a Regional Asbestos Management Plan (RAMP) which is a subordinate document to the SAMP. Contractors must integrate RAMP compliance in any procedures associated with asbestos management for which they are responsible. Assurance of compliance is to be provided to the

respective Regional Asbestos Officer or equivalent position within Estate Facilities Services.

- d. Safe systems of work including ensuring inductions, licenses, competencies and permits are sufficient for the safe conduct of work.
- e. The PDS Contractor is to ensure they, their workers and contractors under their management are inducted on to bases and into the workplaces they control. The Contractor is to ensure any person accessing workplaces under the contractor's control are inducted or escorted as appropriate to ensure their health and safety. The PDS Contractor is to ensure they and their workers and contractors under their management complete inductions required by Defence and other contractors to Defence in order to ensure health and safety.
- f. The PDS Contractor is to participate in any WHS consultative processes or forums when requested to do so by Defence. The PDS Contractor may also request participation in such forums or processes where there is a perceived need or obligation.
- g. Contractors are to ensure all records in regards to induction and consultation compliance are maintained and made available to DSRG on request.
- h. Contractors are to ensure they are aware of Defence's procedures for managing hazardous chemicals. Contractors may be asked to work to these procedures at the discretion of Defence.

3.17.7. Hazard Identification and Risk Management. The PDS Contractor, in accordance with the Work Health and Safety Act 2011 (Cth), is to:

- a. eliminate risks to health and safety, so far as is reasonably practicable; and
- b. if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

3.17.8. In support of Defence's obligation to provide safe workplaces, the PDS Contractor is to:

- a. report to the Defence nominated authority any hazards or unsafe workplaces that they identify during the conduct of their activities on the estate: and
- b. develop and implement hazard mitigation strategies for hazards associated with the activities of the Contractor and contractors under their management and provide advice to Defence on those hazards and hazard mitigation strategies.

3.17.9. The PDS Contractor is to maintain a register of project identified risks and hazards, including associated assessments, mitigations and treatments in a format agreed to by Defence.

- 3.17.10. Personal Protective Equipment (PPE). The PDS Contractor shall supply PPE for activities that require the use of protective equipment and ensure that contractors delivering projects under their management provide appropriate PPE to their Contracted Personnel.

3.18. Supporting Defence Information Management

- 3.18.1. Data Collection and Management. The PDS Contractor shall collect record and maintain all data relating to activities and projects it or its contractors under their management delivers. In particular, the PDS Contractor will be required to provide specific data relating to Whole of Life facilities and equipment maintenance, operating manuals, geospatial, planning, service delivery activities, reports and other information, in format (s) prescribed by Defence.
- 3.18.2. Use of Defence Information Systems. Defence has a number of Information Systems that support Defence decision-making. The PDS Contractor shall use the prescribed information formats for transfer of information on projects and estate data.
- 3.18.3. Defence Spatial Data Management Plan (SDMP). Defence collect spatial data (e.g. Geographic Information System (GIS)) mapping and cadastral information). The PDS Contractor shall provide technical, graphical and spatial data to the Contract Authority in a format prescribed for uploading into Defence Information Management Systems.
- 3.18.4. Provision of Data and Documentation. The PDS Contractor must provide all data and documentation required for commissioning, handover and maintenance to Defence or the Defence's nominated representative in accordance with the terms agreed in the PDS SOW or as specified in the project contract. This includes the requirements for the Estate Data Tool.

3.19. Staff Management

- 3.19.1. PDS Contracted Employees. The PDS Contractor is responsible for the selection, training and provision of the appropriate number of personnel with the necessary qualifications, skills and licences.
- 3.19.2. ⁴ Contractor Full Time Equivalent Reporting. The PDS Contractor is required to report their total Full Time Equivalent (FTE) dedicated to or working in relation to the Base Services Contract to Director Contract Governance on a quarterly basis for reporting to the Defence Civilian Committee (DCC).
- 3.19.3. The report is to include the number of (staff) contractors and subcontractors that support the delivery of the Base Services Contract on a regular basis. This number should not include those contractors that are called in to do a "one off job".

⁴ CCP 2015-308, C-2015-00450 MIC (FTE) approved 18 Sep 2015

- 3.19.4. Security Clearances. The PDS Contractor must ensure that all of its Contractor Personnel are cleared to the appropriate level commensurate with the level of information they will access in the performance of their duties. The PDS Contractor must ensure that all of its Contractor Personnel have, as a minimum, a BASELINE clearance in place before they are granted access to the Defence Restricted Network (DRN), access to information classified RESTRICTED; or unescorted access to Defence sites. Contracted personnel may require a higher clearance level due to the activities they perform or to access secure rooms or buildings, or due to the activities they perform.
- 3.19.5. Records of Contractor Personnel security clearances shall be maintained and made available to the EMOS Contractor or Defence on request.
- 3.19.6. Training and Qualifications. The PDS Contractor shall ensure that all Contractor Personnel attain and maintain relevant training, qualifications, skills and competencies. Training, qualifications, skills and competencies shall be in accordance with National, State/Territory accepted competency level(s) and Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines, Australian Standards and Defence Policy and Instructions.
- 3.19.7. Initial attendance at Defence specific courses on Contract commencement shall be at Defence expense. Further training to sustain relevant competencies by the Contractor shall be at the Contractor's expense and shall be undertaken on a cost recovery basis.
- 3.19.8. The PDS Contractor will also monitor and assure that contractors delivering projects under their management also possess and maintain relevant training, qualifications, skills and competencies required to deliver the project scope.
- 3.19.9. Records of PDS Contractor personnel competencies shall be maintained and made available to the Defence Estate Works Program Office, EMOS Contractor or Defence on request.
- 3.19.10. All Contractor personnel are to complete the following Mandatory Annual Awareness Training either through CAMPUS (DRN or CAMPUS Anywhere) or face-to-face:
- a. Workplace Behaviour Awareness
 - b. Security Awareness
 - c. Ethics and Fraud Awareness (once every two years), and
 - d. WHS Awareness
- 3.19.11. Contractor Employee Compliance. The PDS Contractor shall ensure that all its employees and sub-contractor personnel comply with all relevant Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines, Australian Standards and Defence Policy and Instructions in relation to human resource and workplace relations issues.

- 3.19.12. The PDS Contractor shall ensure that all Contractor Personnel observe all local orders and regulations relating to the daily operations of each site, including local traffic, parking regulations and induction training.
- 3.19.13. The PDS Contractor shall implement a drug and alcohol management policy and testing regime for its Contractor Personnel and report aggregate testing results to the Contract Authority.
- 3.19.14. Contractor Employee Presentation. The PDS Contractor shall ensure that all Contractor Personnel are to be well presented and wear clothing suitable to the work being undertaken. The PDS Contractor may use a Contractor approved uniform that features the official Contractor logo. PDS Contractor Personnel are not to wear any badge, emblem or slogans that could be considered offensive or of any political or social cause or movement while at a Defence site.
- 3.19.15. Contact with the Media. The PDS Contractor and sub-contractor staff are not to provide public comment to any Media outlet on any Defence related matter. All media contact is to be referred to the local Defence Public Affairs and Corporate Communication office.

3.20. Sub-Contractor Management

- 3.20.1. The PDS Contractor must effectively manage the relationship with, and the performance of, sub-contractors in the day to day delivery of services. The PDS Contractor shall manage the relationship with their sub-contractors and contractors delivering projects under management, and as appropriate provide information, training and ongoing support to enable them to improve their service delivery and continue to meet Defence's changing requirements.

3.21. Small and Medium Enterprise (SME) Management

- 3.21.1. Defence is committed to maximising the opportunity for SME participation and to ensuring SME providers gain access to the Commonwealth market. The PDS Contractor shall engage with a range of SMEs, and provide additional ongoing support to these SMEs to enable them to improve their service delivery, develop their capabilities and to continue to meet Defence's changing requirements.

3.22. Assurance

- 3.22.1. The PDS Contractor shall develop, implement and maintain a Quality Management Plan (QMP) which focuses on the high risk activities under this contract and complies with the Defence Compliance and Risk Management Plan. The QMP shall include an audit program that ensures that contract deliverables are achieved in the specified timeframes and in accordance with the defined standard(s). Defence reserves the right to audit any component of the QMP at any time during the contract utilising internal Defence or external subject matter experts.

3.23. Government Furnished Facilities (GFF)

- 3.23.1. If GFF are offered to the PDS Contractor, and is subsequently occupied by the PDS Contractor, all premises occupied within Defence sites shall be licensed in accordance with Defence Policy. The PDS Contractor shall maintain these premises in a clean, fit for purpose state throughout the life of the contract at contractor's expense.

3.24. Government Furnished Materiel (GFM) and Government Furnished Equipment (GFE)

- 3.24.1. The PDS Contractor shall ensure all GFM/GFE allocated by Defence are to be maintained in a clean, safe and fit for purpose condition. The PDS Contractor shall conduct annual stocktakes of all GFM/GFE allocated to the PDS Contractor at each site at the frequency detailed in DEFLOGMAN Part 2 Volume 05 Chapter 17, and report the results to the Contract Authority.

3.25. Contract Change Proposals

- 3.25.1. The Contract Change Process provides governance around changes to either the scope or price of the contract and is currently a manual process with the intention to automate it through a prescribed Defence Information Management System.
- 3.25.2. The PDS Contractor shall ensure that all amendments to the contract requested by the Contract Authority or proposed by the PDS Contractor as a result of changes to the Defence Estate and/or business requirements are presented to the Contract Authority in accordance with the Defence Contract Amendment Process and timeframes.
- 3.25.3. The PDS Contractor shall ensure that any services and/or equipment requiring statutory maintenance is maintained at all times, notwithstanding that a Contract Amendment may not have been requested, finalised or approved.

3.26. Complaint Management

- 3.26.1. The PDS Contractor shall develop, implement and maintain a complaint management and resolution process. The process will be visible and available through-out Defence properties.
- 3.26.2. The PDS Contractor shall provide to the Directorate of Estate Works Program Office (DEWPO) and the Contract Authority, a monthly report, including:
- a. handling of complaints relating to the delivery of the services; and
 - b. handling of complaints related to the performance of contracted personnel.
- 3.26.3. The Contract Authority may request detail on any complaint received by the Contractor. The PDS Contractor shall provide all reasonable assistance to the Contract Authority in reviewing any complaint handling.

- 3.26.4. The Contract Authority may from time to time undertake a review of the Contractor's Complaint Management processes and complaint handling.

3.27. Complaint Resolution

- 3.27.1. The PDS Contractor shall endeavour to resolve all complaints in accordance with the agreed complaint management and resolution process. Escalation to DEWPO is required where the complaint is not resolved to both parties satisfaction.
- 3.27.2. Where the dispute remains unresolved it is to be elevated to the Contract Authority. Where the parties may initiate proceedings under the Dispute Resolution provisions of the Conditions of Contract (Clause 49).

3.28. Performance Management

- 3.28.1. The PDS Contractor shall adhere to the Base Services Contract Performance Management Framework (PMF) and demonstrate a commitment to the following shared behaviours:
- a. Trust / Respect;
 - b. Transparency;
 - c. Accountability;
 - d. Integrity / Fairness;
 - e. Commitment;
 - f. Flexibility; and
 - g. Collaboration

3.29. Meeting Attendance

- 3.29.1. In addition to normal Project management meetings the PDS Contractor shall be required to attend a range of meetings as identified by DEWPO. The PDS Contractor may also be required to attend meetings identified by the EMOS Contractor and/or Defence on sites where projects are being delivered. A suitable level of management is required to represent the PDS Contractor.

3.30. Logistic Support

- 3.30.1. Vehicles, Plant, Equipment and Consumables. The PDS Contractor shall provide and manage vehicles, plant, material, equipment, and consumables required for the contracted activities where they are not provided by Defence. Procurement of this material shall be in accordance with Defence's Green Procurement Guidelines.
- 3.30.2. Waste. All Waste generated by the PDS Contractor in the delivery of Base Services activities shall be disposed in accordance with Legislation, local requirements

(State/Territory or Local bylaws) and Defence Policy and at the Contractor's expense. The PDS Contractor shall endeavour where feasible to minimise Waste, reduce Waste diverted to landfill and recycle where practicable.

- 3.30.3. Keys and Access Cards. The PDS Contractor is required to manage all keys and access cards allocated to the PDS Contractor by Defence to enable access to facilities. The PDS Contractor is to immediately report all lost keys and/or access cards, (including subsequent remedial action), to the EMOS Contractor and DEWPO.
- 3.30.4. The replacement of contractor-lost/misplaced or damaged Defence locks, padlocks, keys and access cards, the PDS Contractor shall reimburse Defence. Loss of any Master Key (s) by the PDS Contractor or contractors delivering projects under PDS Contractor management will require replacement of all affected locks, padlocks and keys for the facility and/ base and the PDS Contractor shall reimburse Defence.

3.31. Period of Operational Standby (POS)

- 3.31.1. During periods of operational standby (e.g. Christmas) access to sites, staff, occupants and facilities will be reduced. The PDS Contractor is to consider this in scheduling the delivery of projects. In addition the PDS Contractor may negotiate reduced services with the Contract Authority by end of November each year and develop staffing levels to meet the POS requirement. A reduction in the level of service shall not result in a reduction in the quality of the service.

3.32. Supporting Defence Operational Outcomes

- 3.32.1. Coordination of Service Delivery. The EMOS Contractor is responsible for coordinated outcomes to Defence, across all Base Services. The PDS Contractor shall work collaboratively with all Defence Contractors to meet Defence requirements.
- 3.32.2. The EMOS Contractor is designated as the Lead Contractor and it is the primary point of contact between customers, Estate Services and other Contractors.
- 3.32.3. The PDS Contractor shall establish communications with key project stakeholders as part of project development and work with that group to deliver the project. The PDS Contractor needs to engage with the EMOS Contractor or ESD Point of Contacts for non project related communications.
- 3.32.4. Coordination and Management of Service Requests. The EMOS Contractor will provide the Base Services Service Centre. The BSSC is to provide a resource to all customers to report an urgent and non-urgent service requests using a single point of contact across the entire suite of base services within a region(s). The BSSC will receive, record, resolve if possible, action and follow-up/escalate on behalf of customers any outstanding service requests.
- 3.32.5. The PDS Contractor shall:

- a. responding to each service request applicable to PDS;
 - b. assist the EMOS Contractor in co-ordinating requests which involve projects under management to ensure a seamless delivery to the customer;
 - c. providing updates to the service request in the DEIS at each change in status; and
 - d. respond to BSSC request for any escalated service request.
- 3.32.6. Contiguous Boundaries. For each project, the PDS Contractor will document and negotiate all contiguous boundaries relevant to the delivery of the project. Of particular consideration is the identification of security-based (e.g. airside versus landside). The PDS Contractor is to advise the EMOS Contractor of the agreed project boundaries.
- 3.32.7. The EMOS Contractor shall lead the de-confliction of any contiguous boundary issues between Defence and other contractors, including the PDS Contractor. Any unresolved de-confliction issues are to be escalated to the Contract Authority.
- 3.32.8. Hours of Operation. Defence undertakes a wide range of activities outside normal business hours. The PDS Contractor will be expected to understand these activities and consider them in the delivery of projects. The PDS Contractor may be required to support programmed activities (e.g. late night access) that occur outside normal business hours.
- 3.32.9. Support to Defence Events. In support of Defence activities, the PDS Contractor may be required to provide support to Defence events through the temporary ceasing of work, adjustment of work programs and project scheduling.
- 3.32.10. Escorting. Escorting will be required for any PDS Contractor Personnel where a security clearance or a waiver (for employment on Defence bases) has not been secured. The PDS Contractor will be required to arrange appropriately cleared/ approved escorts for contractors or staff conducting PDS Contractor activities.
- 3.32.11. Surge Support. Surge requirements are not readily definable in advance and will be dependent on the Defence activity. The types of activities that may require surge support include but are not limited to: large and small training activities, short notice support to meet Defence contingency operations and support to Government directed activities. The majority of Base Service products will be required to have a surge capacity. Surge support includes but is not limited to: additional hospitality and catering, fire fighting, waste management, accommodation management, storm responses and cleaning services.
- 3.32.12. The PDS Contractor may be requested to adjust works programs or develop and deliver short notice high priority projects in support of surge activities.
- 3.32.13. Contact Information. The PDS Contractor will develop, maintain and retain a management contact list for all PDS Contractor Personnel that would be expected to

regularly interact with Defence or other Base Services Contractors. The management contact list is to be provided to DEWPO, the EMOS Contractor and the senior local DSRG representative on a quarterly basis, or as management contacts are updated.

- 3.32.14. Incident Reporting. Defence is committed to recording and reporting all incidents in accordance with Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines, Australian Standards and Defence Policy.
- 3.32.15. The PDS Contractor shall record and report incidents in the prescribed format for, but not limited to:
- a. Workplace Health and Safety incidents;
 - b. Critical Systems failure;
 - c. Security incidents; and
 - d. Hazardous material incidents.
- 3.32.16. Mandatory Reporting. Defence requires mandatory reporting for Project Delivery Services, which is documented in attached Statement of Work.

3.33. Field Training Areas and Indigenous Land Use Agreements

- 3.33.1. A number of ranges and training areas are either subject to or will be subject to Indigenous Land Use Agreements (ILUA). Currently Bradshaw Field Training Area has an ILUA in place while a draft ILUA for Delamere Air Weapons Range is being negotiated. A principles-based agreement providing some access to Traditional Owners is currently being considered for Yampi Sound Training Area.
- 3.33.2. ILUAs are an agreement about the use and management of land and waters made between one or more native title groups and other people. An ILUA is a legal agreement that allows an organisation to carry out an activity that may impede Native Title.
- 3.33.3. Defence ILUAs are a joint agreement negotiated between the Commonwealth, the Traditional Owners, the associated Representative Body such as a Land Council and/or The National Native Title Tribunal.
- 3.33.4. In general ILUAs place the following obligations on Defence:
- a. to maximise the involvement of, and employment, training and business opportunities for, Traditional Owners and Aboriginal Businesses in connection with the ILUA;
 - b. to monitor contractors associated with the range subject to the ILUA in their adherence to any method of increasing Traditional Owners' opportunities;
 - c. to provide access for Traditional Owners and others within the terms of the ILUA;

- d. to enable Traditional Owners to inspect and monitor environmental effects of training and construction;
- e. to assist in identifying and protecting sacred sites;
- f. to monitor the social impact on the surrounding communities of Defence operations of the range area subject to a, ILUA;
- g. to provide regular reports to the Traditional Owners and seek agreements regarding Defence activities; and
- h. to restrict alcohol consumption in and around the range subject to the ILUA.

3.33.5. It is essential to Defence that the Contractor is aware of, and works within the boundaries, detailed by the ILUA. The relationship between all ILUA signatories needs to be maintained in order to ensure continued access to the training area which is essential to maintain operational capability.

4. SERVICE SCOPE

4.1.1. The PDS Contractor shall deliver the Miscellaneous Package of Project Delivery Services.

5. SPECIFICATIONS – CONTRACT DELIVERABLES

5.1.1. The PDS Contractor shall deliver the following Project Delivery Services and outcomes:

PD00.01 Deliver the Project Delivery Services Statement of Work.

PD00.02 Support Defence Environment and Heritage Obligations

PD00.03 Support Defence Estate management, including but not limited to:

- a. Contribute to the development and maintenance of Base Plans (e.g. Business Continuity, WHS and Security Plans);
- b. Participate in a range of meetings as required (e.g. emergency management and security); and
- c. Provide expert advice.

PD00.04 Assist in Defence security management, including but not limited to:

- a. obtain and maintain Defence security clearances for all contracted staff and sub-contractors;
- b. report any security related incidents; and
- c. manage all keys and access cards allocated by Defence.

PD00.05 Assist in emergency management; including but not limited to:

- a. comply with Base Emergency Management Plans; and
- b. participate in emergency management planning and exercises, including but not limited to security lockdowns, fire evacuations and bomb threats.

PD00.06 Assist the EMOS Contractor in the management of WHS requirements by

- a. conducting a risk assessment for each contracted activity on each Defence property, including the provision of a remedial plan;
- b. compliant recording, storage and handling of hazardous chemicals and waste by all contractors and sub-contractors, including the use of the mandated ChemAlert system; and
- c. providing compliant WHS reporting.

PD00.07 Ensure Contractor Personnel have the appropriate accredited competencies, skills, proficiencies, licences and qualifications.

PD00.08 Implement and maintain a drug and alcohol management policy and testing/reporting regime for all Contractor Personnel located on or visiting sites.

PD00.09 Maintain records of all Contractor Personnel competencies, inductions, training and security clearances.

PD00.10 Manage allocated Government Furnished Material (GFM) and Government Furnished Equipment (GFE), including the conduct of an annual stocktake and condition assessment.

PD00.11 Implement and manage a Complaints Management System (CMS), including an escalation process.

PD00.12 Develop and submit Contract Change Proposals.

PD00.13 Maintain management contact details.

PD00.14 Provide a surge capacity to meet ad hoc or unscheduled Defence requirements (e.g. exercises, ceremonial and emergency activities).

PD00.15 Provide reports and audits in accordance with the reporting and auditing regime.

6. EXCEPTIONS TO THIS SOW

6.1.1. The following exceptions apply:

- a. Waste receptacles provide for use by Defence are not to be used for the disposal of Contractor generated waste.

7. STANDARDS AND MEASURES

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.01	Deliver the Project Delivery Services Statement of Work	On commencement of the contract and ongoing	Nil subject to an agreed Excusable Delay	<p>The provision of Project Delivery services are compliant with:</p> <p>Commonwealth, State/Territory and Local Legislation</p> <p>Australian Standards</p> <p>Defence Policy</p>	<p>Service delivery planning and execution is seamless</p> <p>Services are coordinated and delivered within specified quality, timeframes and locations</p> <p>Service delivery is compatible with base operations and does not adversely affect Defence activities</p>	Project Delivery Services Statement of Works is delivered

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.02	Support environment and heritage obligations	On commencement of the contract and ongoing	Nil	<p>The provision of Project Delivery services are compliant with:</p> <p>Commonwealth, State/Territory and Local Legislation</p> <p>Australian Standards</p> <p>Defence Policy</p>	<p>Deliver services on behalf of Defence in a manner consistent with Defence's commitment to Environmental management.</p> <p>Ensure projects delivered maximise the use of sustainable and resource efficient principles in design, equipment and materials.</p> <p>Works are delivered without incurring additional contamination or pollution.</p> <p>Waste and material to landfill is minimised</p>	<p>Environment and heritage obligations are met without breaches.</p> <p>Contractors' actions clearly demonstrate commitment to Defence's environment and sustainability principles.</p>

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.03	Support Defence Estate management, including but not limited to: contribute to the development of relevant Base Plans, participate in a range of meetings as required, work collaboratively with Base Services Management (inc EMOS and other contractors) to minimise the impact of the delivery of projects on Defence activities and capability and provide expert advice	On commencement of the contract and ongoing	Nil subject to an agreed Excusable Delay	The support of Defence Estate management is in accordance with: Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy	PDS Contractor representatives at meetings have the relevant seniority and skills to contribute and make decisions Contractor input into Base Plans is provided by employees with the relevant skills Projects are delivered with accepted levels of impact project related interruptions to base activities are planned and agreed with sufficient notice to minimise impact Expert advice aligns with Industry Standards	Defence Estate Management is supported through contribution to Base Plans Defence Estate Management is supported through attendance and contribution to designated meetings

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.04	Assist in Defence security management, including but not limited to: obtain and maintain Defence security clearances as necessary for all contracted staff and where necessary ensure sub-contractors under management have required security clearances; report any security related incidents occurring as a result of project delivery; and manage all keys allocated by Defence to the PDS Contractor or to managed sub-contractors delivering projects	On commencement of the contract and ongoing	Nil	Security management activities are compliant with: Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy	100% of contracted employees and sub-contractors have employment-appropriate security clearances prior to commencing with Defence 100% of terminating employers security passes are collected and provided to the EMOS Contractor 100% of keys are accounted for at all times Lost keys are reported to the EMOS Contractor upon discovery and replaced within 48 hours at Contractor expense	Defence security management is supported

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.05	Assist in emergency management; including but not limited to: comply with Base Emergency Management Plans and participate in emergency management planning and exercises, including but not limited to security lockdowns, fire evacuations and bomb threats.	On commencement of the contract and ongoing	Nil	Emergency management activities are compliant with: Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy	The Contractor participates in emergency management requirements The Contractor complies with Base Emergency Management Plans	Defence emergency management requirements are supported

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.06	Assist the EMOS Contractor in the management of WHS requirements by: conducting a risk assessment for each contracted activity on each Defence property, including the provision of a remedial plan, compliant recording, storage and handling of hazardous chemicals and waste by all contractors and sub-contractors, using the mandated Chemaalert system and providing compliant reporting	On commencement of the contract and ongoing	Nil	WH&S management is compliant with: Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy	Hazards are identified, monitored and mitigated Hazards are reported to the EMOS Contractor	Assistance is provided in WHS management

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.07	Ensure contracted employees and managed sub-contractors have the appropriate accredited competencies, skills, proficiencies, licences and qualifications	On commencement of the contract and ongoing	Nil	Qualifications are compliant with: Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy	100% of contracted employees and sub-contractors have employment-appropriate qualifications prior to commencement, and during employment, with Defence	Contracted employees and sub-contractors have appropriate accredited competencies, skills, proficiencies, licences and qualifications
PD00.08	Comply with the EMOS drug and alcohol management policy and testing/reporting regime for contracted and subcontracted employees	On commencement of the contract and ongoing	Nil	The Contractor is to comply with the EMOS Contractor and the Contractor Authority in the management of a drugs and alcohol policy and testing regime.	100% of contracted employees are free from the influence of drug and alcohol during work hours on the Defence Estate	NA

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.09	Maintain records of all contracted employees and sub-contractor (s) inductions, training and security clearances	On commencement of the contract and ongoing	Nil	NA	<p>100% accuracy of recording contracted employees and sub-contractor(s) competencies, training and security clearances</p> <p>Records are provided to the EMOS Contractor as required</p>	Records of competencies, training and security clearances are maintained
PD00.10	Manage allocated Government Furnished Material (GFM) and Government Furnished Equipment (GFE), including the conduct of an annual stock take and condition assessment	On commencement of the contract and ongoing	Nil subject to an agreed Excusable Delay	GFF and GFE is managed in accordance with Defence Policy	<p>GFE and GFM is maintained in a serviceable condition</p> <p>A stock take of GFE and GFM is conducted annually.</p>	Allocated GFM and GFE is managed

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.11	Implement and manage a Complaints Management System (CMS), including an escalation process	On commencement of the contract and ongoing	Nil	NA	<p>The CMS captures all complaints</p> <p>The CMS has agreed management and escalation procedures</p>	A CMS is implemented and managed
PD00.12	Develop and submit contract amendments	On commencement of the contract and ongoing	Nil subject to an agreed Excusable Delay	Contract amendments are compliant with Defence Policy	<p>Contract amendments are approved by the Contract Authority</p> <p>Contract amendments demonstrate value for money</p>	Contract amendments are developed and submitted to DEWPO

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.13	Provide management contact details	On commencement of the contract and ongoing	Nil	NA	100% of contact details are accurate for management employees at all times	Contact details for relevant management employees are maintained
PD00.14	Provide a surge capacity to meet ad-hoc or unscheduled Defence requirements (e.g. priority or urgent Project Delivery Services)	As required	Nil subject to an agreed Excusable Delay	The provision of surge services is to compliant with: Commonwealth, State/Territory and Local Legislation Australian Standards; and Defence Policy	Surge capacity is provided to meet Defence requirements	Surge capacity is provided

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD00.15	Provide reports and audits in accordance with the reporting and auditing regime	As specified	Nil subject to an agreed Excusable Delay.	Reports and audits are provided in the format prescribed by Defence	<p>Quality of reports and audits meets Defence requirements</p> <p>Reports and audits are provide on time</p>	Reports and audits are provided

8. REPORTING

8.1.1. The Contractor shall develop and implement a reporting regime in accordance with the format prescribed by Defence. The reporting must include the following details

Reporting Requirement	Frequency	Deliverable Specifications
CHEMALERT reporting	On occurrence and six monthly	Contract Authority
Mandatory reportable compliance with Legislative requirements	Six monthly	Contract Authority
Non-compliance with Legislative requirements.	On occurrence and six monthly	Contract Authority
Any adverse effects on Defence assets, facilities and personnel from the use of chemicals	On occurrence and six monthly	Contract Authority
Any unsafe and/or inappropriate handling and use of hazardous chemicals	On occurrence and six monthly	Contract Authority
Any incidents	On occurrence and six monthly	IAW IDS.ALL.60.02 Incident Report.
High and above Project Risks and Hazards with mitigations	On occurrence and six monthly	Contract Authority
Customer complaints (listed with resolution or escalation)	Monthly	IAW IDS.ALL.60.02 Incident Report Escalation details provided by email to the Contract Authority on a case by case basis

9. ASSURANCE

- 9.1.1. The Contractor shall develop, implement and maintain a Quality Management Plan (QMP) which includes all activities under this SOW. The QMP shall include an audit program that ensures that contract deliverables are achieved in the specified timeframes and in accordance with the defined standard(s). Defence reserves the right to audit any component of the QMP at any time during the contract.
- 9.1.2. Mandatory assurance requirements are detailed in the attached Project Delivery Services SOW.

10. FUTURE INTENTIONS

- 10.1.1. The Contractor may be required to respond to variations (increase or decrease) in the scope and/or level of service during the life of the contract.

11. RESTRICTIONS AND LIMITATIONS

- 11.1.1. During periods of heightened alert, access to a base or range of bases may be unavailable for an extended period.
- 11.1.2. Contractor and sub-contractor staff members are not to wear any badge, emblem or slogans of any political or social cause or movement while at a Defence site.
- 11.1.3. Where Contractor employees and sub-contractors do not have appropriate security clearances, the Contractor shall arrange escort (s) while the employee is on-site.
- 11.1.4. Higher classifications of security clearances may be required for access to some properties/sites and/or information. Due to the sensitive nature of some Defence activities, access may be restricted and have:
- a. higher levels of security clearances;
 - b. a requirement for accompaniment by a Defence escort, irrespective of clearance; and
 - c. limited hours of access/availability.

12. APPLICABLE DOCUMENTS

APPLICABLE DOCUMENTS	
<p align="center">Project Delivery Services</p> <p align="center"><i>The Contractor is to comply with all Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines and Australian Standards. In addition the Contractor is to comply with the following list of applicable Defence documents.</i></p>	
PRIMARY DOCUMENTS	
Document	Source
DI(G) ADMIN 20-29 Defence Security Manual	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DI/G/GA20_29.PDF
Defence Instructions Security	The relevant Defence Instructions Security will be issued once contract is signed.
E&IG Business Rule 41 Defence Estate Management Systems – Access, Use and Reporting	http://intranet.defence.gov.au/DSG/sites/DCOORD/comweb.asp?page=63716&Title=Business%20Rules%20List
DI(AF) OPS 6-19 Airside Access Control	http://intranet.defence.gov.au/home/documents/DATA/RAAFPUBS/DIAF/RO06_19.PDF
GENERIC DOCUMENTS	
Documents	Source
CHEMALERT Website	http://intranet.defence.gov.au/People/Sites/WHSTools/ComWeb.asp?Page=112252
Defence Energy Strategy (currently being updated)	http://intranet.defence.gov.au/im/environment/eerm/energy_efficiency/docs/energy_strategy_v1_may07.pdf
Defence Environmental Policy	http://intranet.defence.gov.au/environment/
Defence Environmental Strategic Plan 2010-2014	http://intranet.defence.gov.au/estatemangement/environment/Policy/docs/strat_plan.pdf
Defence National Environmental Management System (EMS) Process and Templates	http://intranet.defence.gov.au/estatemangement/support/templates/templates.htm
DI(G) ADMIN 40-2 Environment and Heritage Management in Defence	http://defweb.cbr.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA40_02.PDF
DI(G) ADMIN 40-3 Assessment and Approval of Defence Actions Under the Environment Protection and Biodiversity Conservation Act 1999	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DIG/GA40_3.PDF
Defence Energy Policy	http://intranet.defence.gov.au/estatemangement/environment/Programs/Energy%20Efficiency/docs/energy_policy_v1_may07.pdf

APPLICABLE DOCUMENTS	
<p align="center">Project Delivery Services</p> <p align="center"><i>The Contractor is to comply with all Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines and Australian Standards. In addition the Contractor is to comply with the following list of applicable Defence documents.</i></p>	
Defence Sustainability Initiatives	http://intranet.defence.gov.au/im/environment/eerm/sustainability_
Defence Water Management Strategy 2006-2009	http://intranet.defence.gov.au/estatemangement/environment/Programs/Water/main.htm
Defence Waste Minimisation Policy	http://intranet.defence.gov.au/estatemangement/environment/Programs/Waste/main.htm
Defence Pollution Prevention Strategy	http://intranet.defence.gov.au/estatemangement/environment/Programs/Pollution/docs/DPPS_may08.pdf
Green Procurement	http://intranet.defence.gov.au/estatemangement/environment/Programs/Green%20Procurement/main.htm
Defence Ecologically Sustainable Development Strategy	http://intranet.defence.gov.au/estatemangement/environment/Programs/ESD/docs/esd_strategy.pdf http://intranet.defence.gov.au/estatemangement/environment/Programs/ESD/main.htm
Environmental Clearance Certificate (ECC) Use and Management	To be provide to the successful tenderer
Defence Instructions Relating to Environmental Management in Defence	http://intranet.defence.gov.au/im/environment/policy/defence_instructions.htm
DI(G) ADMIN 20-26 Defence Manual of Fire Protection Engineering	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DI/G/GA20_26.PDF
Work Health and Safety Website	http://intranet.defence.gov.au/People/Sites/WH/ComWeb.asp?Page=111932
SAFETYMAN – Defence Safety Manual Vol.1 - General	http://intranet.defence.gov.au/home/documents/departmental/manuals/safetymav1.htm
DI(G) PERS 19-18 Defence Safety Manual	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DI/G/GP19_18.PDF
Electronic Defence Security Manual (eDSM)	http://intranet.defence.gov.au/dsa/dsm/
DI(G) FIN 12-1 The Control of Fraud in Defence and the Recovery of Public Monies	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DI/G/GF12_01.PDF
Strategic Reform Program	http://intranet.defence.gov.au/oscdfweb/sites/SRP/ComWeb.asp?page=48722
DI(G) ADMIN 45-2 The Reporting and Management of Notifiable Incidents	http://intranet.defence.gov.au/home/documents/DATA/ADFPUBS/DI/G/GA45_02.PDF

APPLICABLE DOCUMENTS	
<p align="center">Project Delivery Services</p> <p align="center"><i>The Contractor is to comply with all Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines and Australian Standards. In addition the Contractor is to comply with the following list of applicable Defence documents.</i></p>	
⁵ DI(G) ADMIN 67-2 Incident Recording	http://intranet.defence.gov.au/home/documents/data/ADFPUBS/DIG/ga67_02.pdf
Defence Polyvinyl Chloride (PVC) Policy V1.0 January 2014	Hardcopy supplied

⁵ CCP 2015-504, C-20415-00712 Admin 67-2 approved 19 Nov 2015

PROJECT DELIVERY SERVICES

SECTION 8.2

PROJECT DELIVERY SERVICES

DESCRIPTION AND DELIVERABLES

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1. ¹SERVICE BACKGROUND

1.1 Overview

- 1.1.1 The Description and Deliverables defines the requirements for the provision of Project Delivery Services (PDS) to Defence properties at all Defence sites including major bases, minor sites, training areas and leased facilities, within Australia and its Territories, in support of the Defence Estate Works Program (EWP).
- 1.1.2 Defence has a requirement to program manage and provide delivery of approved construction, maintenance and consultancy projects that requires a centrally coordinated approach across multiple sites.
- 1.1.3 The EWP is an ongoing 'rolling' program that has the following attributes:
 - a. A five year planning horizon;
 - b. A three year programming window;
 - c. 12 month cash expenditure/ management cycles locked to financial years; and
 - d. An Australia wide footprint.
- 1.1.4 The processes described in this document are not to be considered one off activities. These activities sustain a continual program of works and other projects in all regions of Australia. These processes are to be delivered.
- 1.1.5 PDS providers will be providing project management services on projects in all regions across Australia and are to sustain a continual program of works and other projects on an ongoing basis through the term of the contract engagement. Activities will be delivered in accordance with a schedule defined by Directorate of Estate Works Program Office (DEWPO).
- 1.1.6 Project Delivery services shall be undertaken in accordance with Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines, Australian Standards and Defence Policy.
- 1.1.7 Acronyms:
 - a. National Program Services provider will be referred to as the NPS;
 - b. Estate Maintenance & Operational Support contractors will be referred to as the EMOS;
 - c. Project Delivery Service contractors will be referred to as the PDS;

¹ CCP2015-067, C-2015-00738 Word changes, approved 4 April 2016

- d. Directorate of Estate Works Program Office will be referred to as the DEWPO;
- e. Estate Works Program will be referred to as the EWP;
- f. Defence Estate Information Systems will be referred to as DEIS; and
- g. Estate Appraisal will be referred to as EA.
- h. Infrastructure Division will be referred to as ID

2. SERVICE OUTCOME

2.1 General

- 2.1.1 Defence will engage a multi-disciplined Project Delivery Service provider to provide a broad range of Services for program and project management.
- 2.1.2 The Project Delivery Service provider shall provide a coordinated approach to program management and project delivery services that contribute to the:
 - a. deliver, operation and protection of Defence capability;
 - b. safe use of Defence land, facilities and equipment;
 - c. protection of environment and heritage; and
 - d. protection of Defence's reputation.
- 2.1.3 Projects will be allocated through the Estate Works Program via DEWPO and the intent is that the PDS Contractor pro-actively engages with the NPS provider, DEWPO, EMOS and Estate Services Division regional organisations to deliver the Defence EWP.
- 2.1.4 The Contractor shall:
 - a. provide contemporary whole of life project management focusing on value for money outcomes using best practice project management methodologies;
 - b. provide expert advice on program management and project delivery; and
 - c. shall work productively with all Defence stakeholders, including but not limited to:
 - i) the EMOS Contractor;
 - ii) Base Support Managers;
 - iii) Regional Estate and Facilities Services;

- iv) ID (Including Capital Facilities and Infrastructure (CFI), Estate Planning (EP), Directorate Estate Engineering Policy (DEEP))
- v) Technical authorities, internal and external to Defence;
- vi) The Defence Estate Works Program Office; and
- vii) End user customers or sponsors.

3. SERVICE SCOPE

3.1 Overview

3.1.1 The Contractor is required to be dynamic and responsive using best practice project delivery methodologies. Services required include, but are not limited to:

- a. Project and Program management and planning services;
- b. Whole of Life cost modelling for projects and sub-programs;
- c. Management of project scope and schedule;
- d. Contract Administrator Services;
- e. Procurement Services including, but not limited to the provision of AusTender documentation in a form that allows direct upload to the AusTender system;
- f. Defects Liability Period (DLP) management;
- g. Information Data management; and
- h. Financial Management and Reporting.

3.1.2 The Project Delivery Service Contractor shall leverage their expertise and resources to maximise the value for money solutions provided to Defence.

3.1.3 The types of projects could range from:

- a. Small to medium value;
- b. Simple to complex;
- c. Single through to multi sites; and
- d. Regional through to National.
- e. Projects delivered on Greenfield and existing sites may include:
- f. Design services;
- g. Construction works;
- h. Civil works;
- i. Environmental and Heritage Management works;
- j. Remediation works (e.g. asbestos, contamination); and
- k. Consultancies.

3.1.4 Projects and programs of work are dynamic and the Contractor shall be required to respond to priority or urgent works with short notice and in compressed timeframes. Historically, short notice or urgent works comprise 20-50% of the estate program annually.

3.1.5 In broad terms projects offered to the Project Delivery Service Contractor will be considered in three phases:

<p>Phase 1: Scope and Feasibility Study</p> <p>General inclusions for this phase are:</p> <ul style="list-style-type: none"> • Initial scoping study; • Initial stakeholder identification and engagement; • Feasibility assessment' and • Reporting 	<p>Phase 2: Design</p> <p>General inclusions for this phase are:</p> <ul style="list-style-type: none"> • Full Scope and Design; • Schedule Management; • Cost Management; • Risk Management; • Stakeholder engagement; • Procurement/Contract Administration where required; and • Prepare documentation for procurement; and • Reporting 	<p>Phase 3: Manage and Deliver</p> <p>General inclusions for this phase are:</p> <ul style="list-style-type: none"> • Facilitate engagement in accordance with procurement decisions, manage tender, establish contracts; • Project Delivery Management; • Provision of technical advice; • Cost Management; • Stakeholder Management; • Deliverable management (Scope, Variations Time Cost, Quality); • Handover/takeover; • DLP management; and • Reporting
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3.1.6 The PDS Contractor may be required to develop and/or deliver any or all phases of project delivery. Defence may at its sole discretion not proceed with an individual project or use another delivery mechanism to progress the project for some or all future phases (e.g. major capital facilities program). In these cases the PDS provider may be required to contribute to the transition of project delivery to alternate methods.

3.1.7 The delivery approach for projects in the EWP is based on a three phase lifecycle consisting of :

- Phase 1 Scope and Feasibility Study;

- Phase 2 Design; and
- Phase 3 Manage and Delivery.

3.1.8 Each of these phases may be managed as a separate procurement or decision point.

3.1.9 Not all projects will require a separate scope and feasibility study phase, in which case the procurement will be for the design phase. Not all projects will require a scope and feasibility study or design activity, in which case the procurement will be for manage and delivery. Defence may at its sole discretion instruct and/or agree that any, all or some project phases apply to the project. In some cases where the works are localised and do not require project management services, the procurement activity may be directed at the EMOS Planned Works function within the Estate Upkeep service.

3.1.10 The PDS is to be compliant with the Commonwealth Procurement Rules (CPR) procurement function for all phases of the project lifecycle. Where a value for money benefit can be demonstrated PDS providers are encouraged to use CPR compliant multi use lists for engagement of suppliers.

3.1.11 Contracts for engagement of suppliers will be between the Commonwealth and the supplier(s) directly, using where appropriate existing Defence procurement arrangements including panels and multi-user lists and/or the Estate Works Program suite of contracts. The PDS is to facilitate the formation and detail for these contracts and manage the suppliers on behalf of the Commonwealth.

3.2 PDS Fees

3.2.1 DEWPO, on advice from the NPS provider, agrees on an initial project budget estimate. The project budget estimate is adjusted as required as the project progresses through the lifecycle. All changes to project budget estimates are approved by DEWPO on advice from the NPS provider.

Project Phase	Basis from PDS brief.
Phase 1 Scope and Feasibility Study	Approved project budget at commencement of Phase 1.
Phase 2 Design	Approved project budget at commencement of Phase 2.
Phase 3 Manage and Delivery	Final approved project value.

3.2.2 DEWPO, on advice from the NPS, will assess performance and approve project progress claims and PDS fee payment.

3.3 EWP Business Model

3.3.1 The roles and responsibilities of the PDS and other key stakeholders DEWPO, EMOS and the NPS provider through this process are described herein and in appendices at Annex B. However, the Defence Estate Quality Management System

(DEQMS) is the authoritative source of this information and is the basis for compliant delivery of PDS services.

- 3.3.2 The relative responsibilities for DEWPO, PDS, NPS, EMOS and other key practitioners involved in management of the delivery of estate works projects are a key aspect to effective delivery of the program. Roles and responsibilities are provided in swim lane form at Annex B Appendix A Roles and Responsibilities.
- 3.3.3 The program management and project delivery workflow at Annex B Appendix B Program Management Lifecycle provides a more detailed representation of the roles and responsibility. The flow chart describes the actions undertaken by the PDS in support of the estate works program.
- 3.3.4 A number of project scenarios are provided at Annex B Appendix C Project Scenarios to illustrate the varying PDS functions depending on the nature of the project. The scenarios are:
 - a. a single site, single function project;
 - b. a single site, multiple function project;
 - c. a complex multi site project; and
 - d. a simple multi site project.

3.4 Allocation of Projects

- 3.4.1 Projects will use the engagement process as described in Annex B Appendix D Engagement of PDS Providers. The NPS provider is to prepare the Project Brief and “Request for Proposal” and the PDS provider is to provide the “Proposal” is response. Upon agreement, the PDS proposal forms the basis for informing program management requirements and measuring project performance.
- 3.4.2 Annex B Appendix D provides a draft Request for Proposal template. Unless advised otherwise by the Commonwealth, PDS proposals are considered from two perspectives;
 - a. Likelihood of the proposal achieving successful project delivery; and
 - b. Value for Money presented by the proposal.
- 3.4.3 Annex B Appendix D provides details on the criteria the Commonwealth will use to evaluate a PDS proposal.

3.5 Initial Allocation of Projects

- 3.5.1 The Commonwealth will establish an initial program of PDS suitable projects, developed from the existing Estate Works Program.
- 3.5.2 Projects will be distributed between the PDS providers with consideration to the holistic value to Defence in delivering the overall program and will include

consideration of equitable distribution between providers. There are approximately 2000 work packages in the three year EWP; however E&IG expects that bundling of work packages into larger projects will be applied prior to allocation to PDS providers, such that the initial allocation will involve fewer than 2000 projects. The definitive quantity cannot be determined as the degree of bundling is a function of the specifics of each work packages in the program.

3.6 Batch Allocation of Projects

- 3.6.1 The ongoing allocation of projects to PDS providers will occur on a quarterly basis following the quarterly Program Update or when urgent delivery is required. Projects will be distributed between the PDS providers with consideration to the holistic value to Defence in delivering the overall program and will include consideration of equitable distribution between providers. The allocation will be further influenced by PDS performance against the PDS performance measures. DEWPO, supported by the NPS, is the decision authority for project specific PDS engagement strategies.
- 3.6.2 Bundling of work packages into larger projects is expected to reduce the number of projects such that the quantity of projects coming into the EWP.

3.7 Competitive Allocation of Projects

- 3.7.1 For larger or more complex projects, E&IG will apply a competitive approach to determining the PDS provider through the “Request for Proposal” process.
- 3.7.2 Circumstances where the batch allocation approach will not apply and the competitive allocation approach will apply are as follows;
 - a. High complexity;
 - b. High value;
 - c. High technical risk;
 - d. High diversity of requirements;
 - e. Significance of coordination requirements;
 - f. Location; and/or
 - g. Geographic distribution
- 3.7.3 Schedule requirements for newly approved urgent projects may not be able to be held off until the quarterly batch allocation process and may require immediate commencement

3.8 PDS Resourcing²

- 3.8.1 In Phase 1 Scope and Feasibility, the PDS providers are to resource and conduct the scope and feasibility activity. Where this activity requires specialist technical resources outside the PDS fee, this must be identified in the Request for Proposal response. The preferred DEWPO option is to conduct design or technical services in-house. The Scope and Feasibility Report is to include the recommendation for the proposed procurement methodology and a proposal for in-house design or technical services, in accordance with Clause 3.8.5.
- 3.8.2 In Phase 2 Design, the PDS will resource and develop the design and procurement documentation aspects. Where this activity requires development of detailed technical specifications, drawings and detailed instructions by specialist technical resources outside the PDS fee, this must be identified in the Phase 1 Scope and Feasibility report.
- 3.8.3 In Phase 3 Manage and Delivery, the PDS is to resource and manage contract documentation including specifications, procurement, management and finalisation of the project delivery activities.
- 3.8.4 Project proposals are to identify the fees and resources proposed by the PDS for each phase of the project. Projects proposals are an opportunity to demonstrate understanding of the project requirements and risk mitigation strategies. Where PDS providers propose such resources outside the PDS project management fee, the proposal should include value for money based justification for the requirement and the resourcing methodology proposed.
- 3.8.5 For any design or technical services which are outside the PDS fee, the PDS are to provide a recommendation for appropriate procurement of those services. Where the PDS recommend in-house design or technical services, the PDS are to provide the proposal using the hourly rates and fee schedules located in Schedule 3 Annex E for in-house design or technical services.
- 3.8.6 DEWPO has the discretion to direct the PDS towards external design or technical services. In making the decision DEWPO will consider factors material to the services being sought, including compliance with the Commonwealth Procurement Rules and the management of risk and/or level of complexity associated with the project.
- 3.8.7 DEWPO may seek to leverage the in-house design services during specific Phase 3 Manage and Delivery activities for latent conditions or other reasons not identified during Phases 1 or 2. The need to procure additional in-house design or technical services would require a recommendation and supporting proposal from the PDS as soon as this service requirement has been identified. This would be sought on an as-required basis and as directed by DEWPO.

² C-2014-00152, WEF 16 Mar 2015 – 17 Mar 2016, CA Approved 19 Mar 2015.

- 3.8.8 ³DEWPO will undertake an annual review, within two months of the anniversary date of the implementation of the In-House Design and Technical Service, of total design and expert advice costs against total delivered value. This review will assess the fees spent on in-house design or technical services versus the associated project budget at the program level to provide value for money assessment.
- 3.8.9 DEWPO reserves the right to, as a part of the annual review, cancel the In-House Design and Technical Service if it is determined that value for money is ineffective or can not be justified.
- 3.8.10 The PDS shall provide sufficient resourcing to deliver DEIS requirements in accordance with Legislation, Defence Security Manual and Defence Records Management Policy and any other relevant policy.⁴

3.9 EMOS Planned Works Service

- 3.9.1 The scope of EMOS services includes the ability to deliver Planned Works through the Estate Upkeep Service. Non complex projects that don't justify full project management oversight may be considered for direct allocation to the EMOS provider.
- 3.9.2 Non complex projects that require strong cross regional coordination should be considered for management by a PDS provider. In this case, the PDS providers should consider using the EMOS Planned Works function in Estate Upkeep as a value for money delivery mechanism.

3.10 Information Management

- 3.10.1 The scope of works for all activities is to include clear deliverables, especially in the specification of supporting information deliverables. Information deliverables are to be provided in a compliant standard for loading into Defence Estate Information Systems (DEIS). Appropriate withholding arrangements are to be applied to the provision of information deliverables such that the Commonwealth is assured of receiving and loading of quality accurate information into it the DEIS.
- 3.10.2 Project details and documentation is to be recorded and uploaded into the DEIS. It is expected this information will be transferred from E&IG to PDS and from PDS to E&IG using Contractor Information Exchange functions in the DEIS. This will require adherence to specified information transfer formats.
- 3.10.3 The upload of mandatory PDS project documentation into Objective is appended at Annex B, Appendix E of Sub-Section 8.2 PDS Description and Deliverables. Appendix E specifies the minimum requirement for project documentation defines roles and responsibilities for upload into Objective. It should be noted that this is a minimum requirement for project documentation and does not preclude the possibility of other documents that support project delivery outcomes and for

³ CCP2017-043, C-2017-00041 In house Design approved 16 Mar 2017

⁴ CCP2017-036, C-2017-00034 approved 11 Dec 2017

historical and auditing purposes. Additional documentation and reports will vary on occasion and is dependent on the project scope, size and complexity.

- 3.10.4 It is expected that Project reporting information will be supported by the Garrison Estate Management System (GEMS). However GEMS is not currently available.
- 3.10.5 There is expected to be a delay in the delivery of the GEMS functionality of up to 18 months from PDS contract commencement. For the majority of Base Services contracts, the DEIS will be provided using interim arrangements. However, the proposed interim arrangements will not support the full functionality required in the PDS service, therefore an interim process will need to be established for transfer of project and estate information between PDS providers and the DEWPO.
- 3.10.6 The PDS will work collaboratively with the EMOS provider to ensure the identification and provision of timely data to ensure that necessary contract variations are approved before Hand Over Take Over (HOTO) occurs. The contract variations are EMOS and MSP documents but need the timely provision of necessary data from the PDS.

3.11 Future Intentions

- 3.11.1 As part of the ongoing reform program for estate management, E&IG intends that where possible projects will be bundled to improve delivery performance and allow efficiencies in scale to be realised. Over time, PDS providers should expect larger and more complex projects.
- 3.11.2 Subject to in year and forecast variance in budgets and other extraneous factors, PDS providers should expect ongoing programs are within the range indicated in the rate of effort information, noting E&IG's intention is that the number of projects will be reduced over time through bundling of smaller projects into larger more diverse and effective projects.

4. SPECIFICATIONS – CONTRACT DELIVERABLES

4.1.1 The Contractor shall provide Program and Project Delivery Services to lead and support the delivery of the following Defence EWP outcomes:

PD01 Develop, manage and maintain a rolling three year PDS Project Delivery Plan (PDS Delivery Plan) for projects and sub-programs allocated for delivery, including but not limited to:

- a. overall program reporting;
- b. cost estimates for delivery and whole of life;
- c. baseline and updated schedules;
- d. program and individual project milestones setting, monitoring and reporting;
- e. consolidated projects and works to maximise delivery efficiency and value for money. (e.g. bundling of like projects into sub-programs or larger projects);
- f. procurement planning, management and governance; and
- g. financial and performance analysis and reporting.

PD02 Project management of the Phase 1 Scope and Feasibility Study activities to define and evaluate suitability/justification of projects in the PDS Delivery Plan, including but not limited to:

- a. stakeholder engagement; and
- b. assessment of potential impacts of the proposed project, including impacts of existing infrastructure, neighbours and planning.

PD03 Project management of Phase 2 Design and specification for the projects in the PDS Delivery Plan, including but not limited to:

- a. whole of life design including detailed technical specifications and drawings sufficient for producing value for money outcomes and successful completion of the project;
- b. pre-tender cost and time estimates;
- c. ensuring fitness for purpose in the design;
- d. consideration of base activities and other factors affecting project achievement;
- e. stakeholder engagement and variation/ scope management;
- f. develop procurement documentation for the design phase; and

g. risk identification and assessment.

PD04 Deliver the Phase 3 Manage and Delivery activity for projects and sub-programs in accordance with the PDS Delivery Plan, agreed scope and schedule; including but not limited to:

- a. procurement services;
- b. management of delivery; and
- c. reporting.

PD05 Manage contractors that have been engaged to deliver projects and works (e.g. services, performance and material).

PD06 Manage program and project financial requirements.

PD07 Finalise Projects and Programs, including but not limited to:

- a. commissioning;
- b. handover/takeover;
- c. estate records;
- d. defect liabilities; and
- e. post occupancy reviews.

PD08 Provide expert advice to assist Defence in effectively managing the Defence Estate, including but not limited to:

- a. to inform Defence Estate planning activities;
- b. on delivery and future programming options;
- c. on market and industry trends; and
- d. in-year prioritisation, resourcing and scheduling of projects.

PD09 Provide report and audits in accordance with the reporting regime.

5. EXCEPTIONS

5.1.1 The following exceptions apply:

- a. Maintenance services provided under the Estate Upkeep SOW. There may be instances where Estate Upkeep maintenance activities are bundled and delivered as a project under this SOW.
- b. Major Capital Facilities Projects delivered by Infrastructure Division.

6. STANDARDS AND MEASURES

6.1.1 The table below details the required Standards and Measures that will be applied to the Project Delivery Services contract.

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD01	Develop, manage and maintain a rolling three year PDS Project Delivery Plan (PDS Delivery Plan) for projects and sub-programs allocated for delivery.	Refer PD01.1 PD01.2 PD01.3 PD01.4 PD01.5 PD01.6	Refer PD01.1 PD01.2 PD01.3 PD01.4 PD01.5 PD01.6	The PDS Delivery Plan must be compliant with: <ul style="list-style-type: none"> Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy 	Refer PD01.1 PD01.2 PD01.3 PD01.4 PD01.5 PD01.6	Refer PD01.1 PD01.2 PD01.3 PD01.4 PD01.5 PD01.6
PD01.1	PDS delivery of the approved program meets the allocated budget for the applicable financial year. $\text{ABS} \left(\frac{\text{Program Achievement} - \text{Program Budget}}{\text{Program Budget}} \right) \leq 2\%$	Annual	98% (refer formula)	Refer PD01	The approved program is delivered within the agreed program budget for the financial year.	Program delivery meets allocated budget. Data is included in DEIS updates.
PD01.2	PDS proposals where the project is directly allocated meet the requirement and are acceptable. $\left(\frac{\text{Qty Proposals} - \text{Qty Proposals Rejected}}{\text{Qty Proposals}} \right) > 95\%$	Annual	95% (refer formula)	Refer PD01	The percentage of directly allocated project proposals that meet the requirement and are acceptable.	Project proposals are accepted. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD01.3	PDS proposals where the project is competitively allocated are agreed for delivery. $\left(\frac{\text{Qty Proposals} - \text{Qty Proposals Rejected}}{\text{Qty Proposals}} \right) > 45\%$	Annual	45% (refer formula)	Refer PD01	The percentage of competitively allocated projects agreed for delivery.	Project proposals are accepted. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD01.4	The contractor confirms that all procurement complies with the CPR's.	Quarterly	Not applicable	The contractor confirms that all procurement complies with the CPR's	Compliance report is provided within the agreed timeframe. Compliance report is provided in accordance with Compliance With Legislative Requirements Report.	All procurement activity is compliant with the CPR's.
PD01.5	PDS procurement documentation is acceptable to meet the requirements and is compliant for all project phases. $\left(\frac{\text{Qty Drafts Submitted} - \text{Qty Drafts Rejected}}{\text{Qty Drafts Submitted}} \right) > 95\%$	Quarterly	95% (refer formula)	Refer PD01	The percentage of final drafts of procurement documentation submitted for approval in the past year, that are accepted, using a sample size of the last 12 months of submitted procurement documents.	Procurement documentation is accepted. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD01.6	When plotted over history of the contract, there is improvement in the overall trend in the percentage of acceptable procurement documentation.	Quarterly	Improving trend	Refer PD01	Continuous improvement in the historic trend for PD01.5, percentage of final drafts of procurement documentation submitted	Procurement documentation is accepted.

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
					for approval in the past year, that are accepted.	
PD02	Project management of the Phase 1 Scope and Feasibility Study activities to define and evaluate project outcomes for projects in the PDS Delivery Plan.	Refer PD02.1 PD02.2 PD02.3 PD02.4	Refer PD02.1 PD02.2 PD02.3 PD02.4	PDS delivery must be compliant with: <ul style="list-style-type: none"> Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy 	Refer PD02.1 PD02.2 PD02.3 PD02.4	Refer PD02.1 PD02.2 PD02.3 PD02.4
PD02.1	The Phase 1 Scope and Feasibility Study deliverables are compliant.	Quarterly	Not applicable	The contractor confirms that the Phase 1 Scope and Feasibility Study deliverables comply with all relevant legislation, standards and Defence policy requirements including but not limited to policies and procedures on DEQMS and WHS legislation, using a sample size of the last 12 months of completed Phase 1 Scope and Feasibility Study phases.	Compliance report is provided within the agreed timeframe.	The Phase 1 Scope and Feasibility Study deliverables are compliant. Compliance report is provided in accordance with Compliance With Legislative Requirements Report.
PD02.2	Continuous improvement in accuracy of PDS's project estimate after completion of the Phase 1 Scope and Feasibility Study phase, measured as an improvement in the average percentage difference between project estimate and actual project cost.	Monthly	< prev year and < 15% (refer formula)	Refer PD02	The average absolute percentage difference between the project estimate (applicable after acceptance of phase 1 scope and feasibility Study) and the actual cost of subsequent phases (phase 2 design and phase 3 manage and delivery or phase 3 manage and delivery only, depending on the project) of all projects completed in the past year, improves on the previous year and is less than 15%, using a sample size of the last 12 months of completed projects.	Project estimates are accurate. Data is included in DEIS updates.
	Average $\left(\text{ABS} \left(\frac{\text{Project Estimate (Scope)-Actual Project Cost}}{\text{Actual Project Cost}} \right) \right) < \{ \text{same measure previous year AND 15\%} \}$					
PD02.3	Phase 1 Scope and Feasibility Study is delivered per the agreed schedule. Formula: Average (Actual Phase 1 Completion Date – Agreed Planned Phase 1 Completion Date) < 0	Quarterly	0 weeks (refer formula)	Refer PD02	The average difference between the actual Phase 1 Scope completion date and the agreed planned Phase 1 Scope completion date is greater than zero, using a sample size of the last 12 months of completed Phase 1 Scope and Feasibility Study phases.	Phase 1 Scope and Feasibility Study is delivered per the agreed schedule. Data is included in DEIS updates.
PD02.4	The Phase 1 Scope and Feasibility Study Scope Reports are accepted, where acceptance includes stakeholder signoff. $\left(\frac{\text{Qty Submitted} - \text{Qty Rejected}}{\text{Qty Submitted}} \right) > 95\%$	Monthly	>95 % (refer formula)	Refer PD02	The percentage of accepted final drafts of the 1 Scope and Feasibility Study Report delivered in the quarter.	The Phase 1 Scope and Feasibility Study Scope Reports are accepted. Program report is provided within the

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
						agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD03	Project management of Phase 2 Design – Designs and specifications for the projects in the PDS Delivery Plan.	Refer PD03.1 PD03.2 PD03.3 PD03.4	Refer PD03.1 PD03.2 PD03.3 PD03.4	PDS delivery must be compliant with: <ul style="list-style-type: none"> Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy 	Refer PD03.1 PD03.2 PD03.3 PD03.4	Refer PD03.1 PD03.2 PD03.3 PD03.4
PD03.1	The Phase 2 Design deliverables are compliant.	Quarterly	Not applicable	The contractor confirms that Phase 2 Design deliverables comply with all relevant legislation, standards and Defence policy requirements including but not limited to policies and procedures on DEQMS and WHS legislation, using a sample size of the last 12 months of completed Phase 2 Designs.	Compliance report is provided within the agreed timeframe. Compliance report is provided in accordance with Compliance With Legislative Requirements Report.	The Phase 1 Scope and Feasibility Study deliverables are compliant.
PD03.2	Continuous improvement in accuracy of PDS's project estimate after completion of the 1 Scope and Feasibility Study phase, measured as an improvement in the average percentage difference between project estimate and actual project cost.	Monthly	< prev year and < 10% (refer formula)	Refer PD03	The average absolute percentage difference between the delivery estimate (applicable after acceptance of phase 2 design) and the actual cost of delivery phases of all projects completed in the past year, improves on the previous year and is less than 10%, using a sample size of the last 12 months of completed projects.	Project estimate after completion of Phase 1 Scope and Feasibility Study is accurate. Data is included in DEIS updates.
	Average $\left(\text{ABS} \left(\frac{\text{Project Estimate (Design) - Actual Project Cost}}{\text{Actual Project Cost}} \right) \right) < \{ \text{same measure previous year AND 10\%} \}$					
PD03.3	Phase 2 Design is delivered per the agreed schedule. Formula: Average (Actual Phase 2 Completion Date – Agreed Planned Phase 2 Completion Date) < 0	Quarterly	0 weeks (refer formula)	Refer PD03	The average difference between the actual Phase 2 design completion date and the agreed planned Phase 2 Delivery completion date is greater than zero, using a sample size of the last 12 months of completed Phase 2 Designs.	Phase 2 Design is delivered per the agreed schedule. Data is included in DEIS updates.
PD03.4	The Phase 2 Designs are accepted, where acceptance includes stakeholder signoff. $\left(\frac{\text{Qty Submitted} - \text{Qty Rejected}}{\text{Qty Submitted}} \right) > 95\%$	Monthly	>95 % (refer formula)	Refer PD03	The percentage of accepted final drafts of the Phase 2 Designs delivered in the quarter.	Phase 2 Designs are accepted. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD04	Deliver the Phase 3 Manage and Deliver	Refer	Refer	PDS delivery must	Refer	Refer

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
	activity for projects and sub-programs in accordance with the PDS Delivery Plan, agreed scope and schedule.	PD04.1 PD04.2 PD04.3	PD04.1 PD04.2 PD04.3	be compliant with: <ul style="list-style-type: none"> Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy 	PD04.1 PD04.2 PD04.3	PD04.1 PD04.2 PD04.3
PD04.1	Phase 3 Manage and Deliver is compliant, using a sample size of the last 12 months of completed projects.	Quarterly	Not applicable	The contractor confirms that Phase 3 Manage and Deliver complies with all relevant legislation, standards and Defence policy requirements including but not limited to policies and procedures on DEQMS and WHS legislation.	Not applicable	Phase 3 Manage and Deliver is compliant. Compliance report is provided within the agreed timeframe. Compliance report is provided in accordance with Compliance With Legislative Requirements Report.
PD04.2	Phase 3 Manage and Deliver is delivered per the agreed schedule. Formula: Average (Actual Phase 3 duration (weeks) – Agreed Planned Phase 3 duration (weeks)) < 0	Quarterly	0 weeks (refer formula)	Refer PD04	The average difference between the actual Phase 3 duration and the agreed planned Phase 3 duration is greater than zero, using a sample size of the last 12 months of completed Phase 2 Design. This is measured in weeks as forecast duration is to be included in the Phase 2 Design deliverables. Forecast dates may not be relevant measures due to program management constraints.	Phase 3 Manage and Deliver is per the agreed schedule. Data is included in DEIS updates.
PD04.3	The Phase 3 Manage and Deliver is in accordance with the accepted design.	Quarterly	>95 % (refer formula)	Refer PD04	The percentage of completed projects that are compliant with the accepted design in the last quarter.	Phase 3 Manage and Deliver is in accordance with the accepted design. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
	$\left(\frac{\text{Qty Projects Complete} - \text{Qty Project Completed, Not Compliant with Accepted Design}}{\text{Qty Project Complete}} \right) > 95\%$					
PD05	Manage contractors that have been engaged to deliver projects and works (e.g. services, performance and material).	Refer PD05.1 PD05.2	Refer PD05.1 PD05.2	PDS delivery must be compliant with: <ul style="list-style-type: none"> Commonwealth, State/Territory and Local Legislation Australian Standards Defence Policy 	Refer PD05.1 PD05.2	Refer PD05.1 PD05.2

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
PD05.1	Management of contracts for delivery of projects and works is compliant with the engagement contract.	Quarterly	Not Applicable	Refer PD05	The contractor confirms that management of contracts is in accordance with the engagement contract.	Management of contracts is compliant. Compliance report is provided within the agreed timeframe. Compliance report is provided in accordance with Compliance With Legislative Requirements Report.
PD05.2	Contracts are managed to minimise contract variations. $ABS \left(\frac{\text{Final Contract Price} - \text{Initial Contract Price}}{\text{Initial Contract Price}} \right) \leq 10\%$	Quarterly	<10% (refer formula)	Refer PD05	The average difference between the agreed contract price and the final contract price is less than 10%, for all contracts completed in the last quarter.	Contracts are managed to minimise contract variations. Data is included in DEIS updates.
PD06	Manage program and project financial requirements.	Refer PD06.1	Refer PD06.1	PDS delivery must be compliant with: • Commonwealth, State/Territory and Local Legislation • Australian Standards • Defence Policy	Refer PD06.1	Refer PD06.1
PD06.1	Project finances are managed with minimal disputes. $\left(\frac{\text{Qty Active Projects} - \text{Qty Financial Disputes}}{\text{Qty Active Projects}} \right) > 95\%$	Quarterly	<5 % (refer formula)	Refer PD06	Percentage of financial disputes comprising such events as under payments or claims, over payments or claims and timeliness of payments or claims in the program is less than 5%, during the last quarter	Project finances are managed with minimal disputes. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
PD07	Finalise projects and sub-programs, including but not limited to: commissioning, handover/takeover, estate records, defect liabilities; and post occupancy reviews	Refer PD07.1	Refer PD07.1	PDS delivery must be compliant with: • Commonwealth, State/Territory and Local Legislation • Australian Standards • Defence Policy	Refer PD07.1	Refer PD07.1
PD07.1	Information deliverables are compliant with data standards for upload to Defence Estate Information Systems.	Monthly	>95% (refer formula)	Refer PD07	Percentage of completed projects where the final draft information deliverables are compliant with Defence data standards, for all completed project in the last year.	Information deliverables are compliant with data standards for upload to Defence Estate Information Systems. Program report is provided within the agreed timeframe. Program report is provided in accordance with Program Management Progress Report.
	$\left(\frac{\text{Qty Completed Projects} - \text{Qty Projects With Non-compliant Final Draft Information Deliverables}}{\text{Qty Completed Projects}} \right) > 95\%$					
PD09	Provide report and audits in accordance with the reporting regime.	Refer PD09.1	Refer PD09.1	PDS delivery must be compliant with: • Commonwealth, State/Territory and Local	Refer PD09.1	Refer PD09.1

Unique Identifier	Product Deliverable	Frequency	Variance	Compliance	Performance Standards	Conformance
				Legislation <ul style="list-style-type: none"> Australian Standards Defence Policy 		
PD09.1	Reports are accepted. $\left(\frac{\text{Qty Reports} - \text{Qty Reports Rejected}}{\text{Qty Reports}} \right) > 90\%$	Quarterly	>90% (refer formula)	Refer PD09	Percentage of final draft reports accepted in accordance with reporting standards, for all reports provided in the last quarter.	Reports are accepted. Reports are provided within the agreed timeframe. Reports are provided in accordance with Reporting requirements.

7. REPORTING

- 7.1 The Contractor will develop and implement a reporting regime in accordance with the PDS Delivery Plan in the format prescribed by Defence. The reporting must include the following details:

Reporting Requirement	Frequency	Recipient
Program Management Progress Reports	Monthly	DEWPO
Quarterly PDS Delivery Plan Review Report	Quarterly	DEWPO
Environmental Management Plan/Environmental Certificate of Compliance	Commencement of Project	Contract Authority
Site Management Plan	Commencement of Project	Contract Authority
Financial reporting	In accordance with ROMAN timeframes	Contract Authority
Post Occupancy Report	Within 6 months after Practical Completion	Contract Authority
Monthly Project Status Report	Monthly	Contract Authority
Compliance with legislative requirements	Monthly	Contract Authority
Non-compliance with legislative requirements	On occurrence Six monthly consolidated report on non compliances.	Contract Authority/ DEWPO
Incident Reporting	On occurrence Six monthly consolidated report on incidents	Contract Authority/ DEWPO

8. ASSURANCE

8.1 The Contractor must have a Quality Management Plan (QMP) which includes all activities under this SOW. The QMP shall include an audit program that ensures that contract deliverables are achieved in the specified timeframes and in accordance with the defined standard(s) The Commonwealth reserves the right to audit any component of the QMP at any time during the contract.

<i>Product Deliverable</i>	<i>Risk Level</i>	<i>Frequency</i>	<i>Audit Process (internal by contractor/external by subject matter expert)</i>	<i>Remediation (if required)</i>
Handover/Takeover	Medium	Random Minimum of 15% of project handover/takeover processes below \$500,000 audited per annum 100% handover/takeover process of projects over \$500,000	External audit: evidence of effective handover/takeover processes	Remediation of any issues to at the Contractor's expense and to be finalised within four weeks
Financial Management	High	Annually	Internal audit: evidence of compliant financial management of 100% of projects under \$500,000	Remediation of any issues to at the Contractor's expense and to be finalised within four weeks

<i>Product Deliverable</i>	<i>Risk Level</i>	<i>Frequency</i>	<i>Audit Process (internal by contractor/external by subject matter expert)</i>	<i>Remediation (if required)</i>
			External audit: evidence of compliant financial management for 100% of projects over \$500,000	

9. FUTURE INTENTIONS

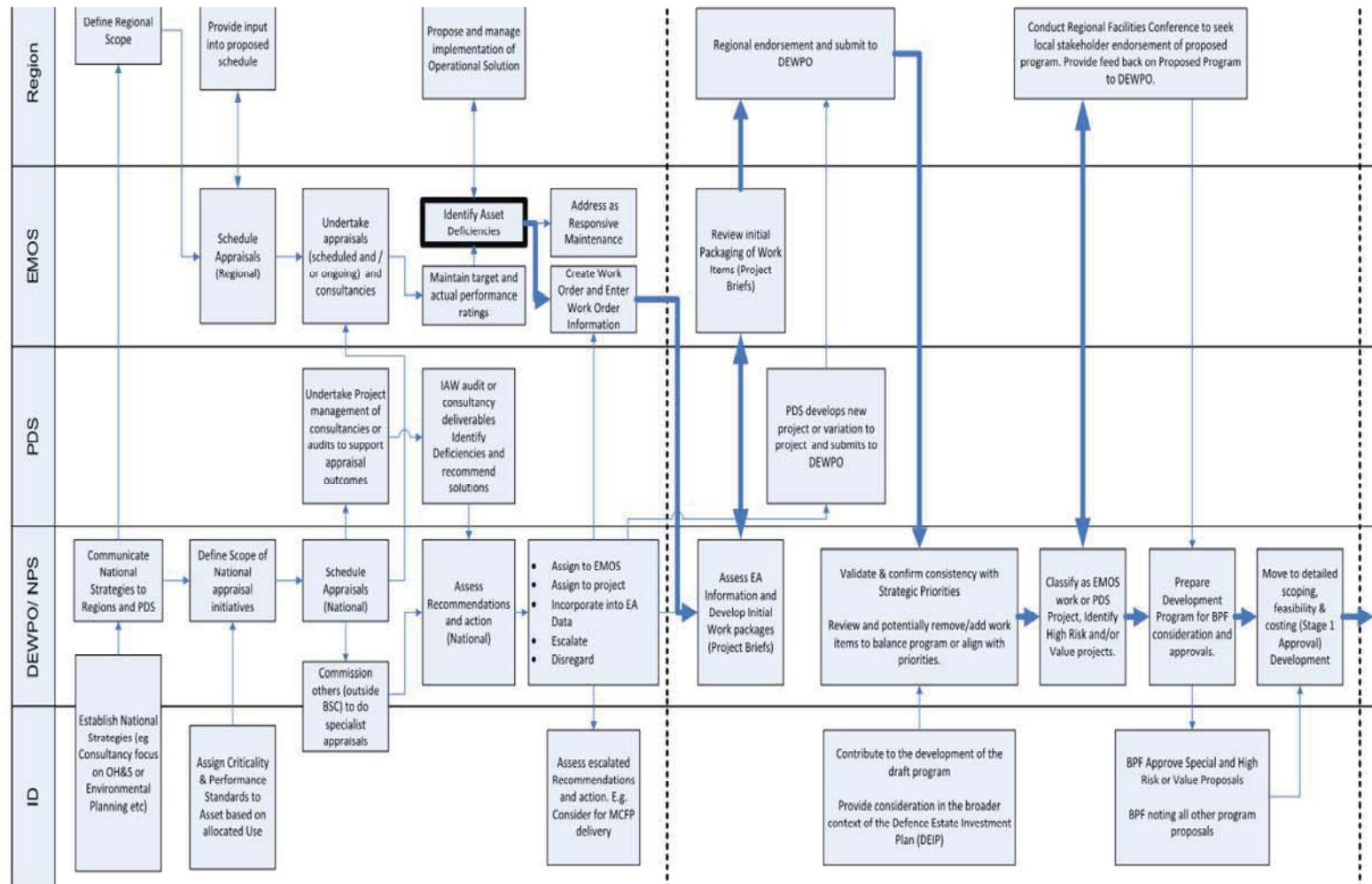
- 9.1 The Contractor may be required to respond to variations to the scope of the service during the life of the contract. Requirements may increase or decrease to reflect Defence requirements.

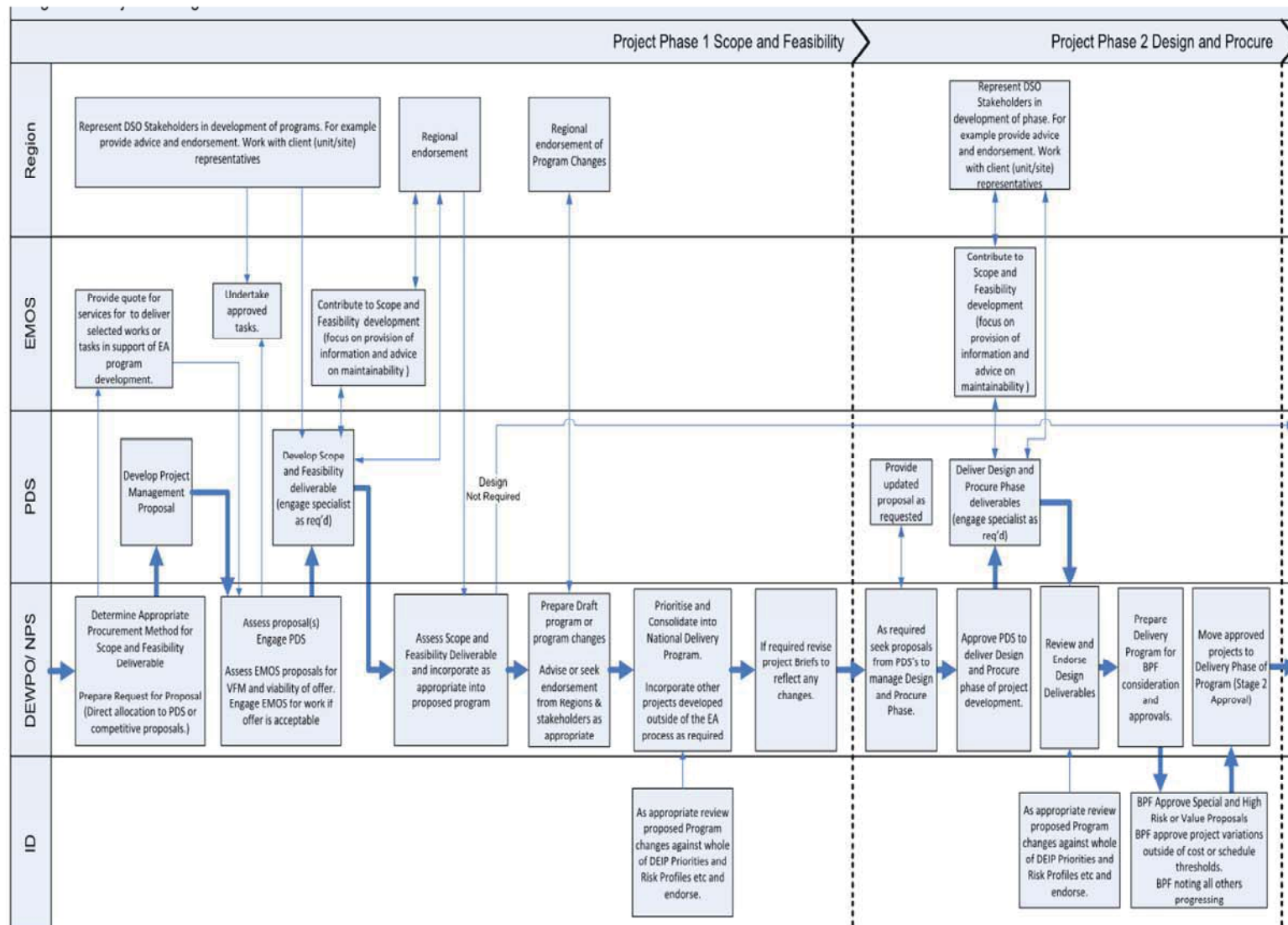
10. RESTRICTIONS AND LIMITATIONS

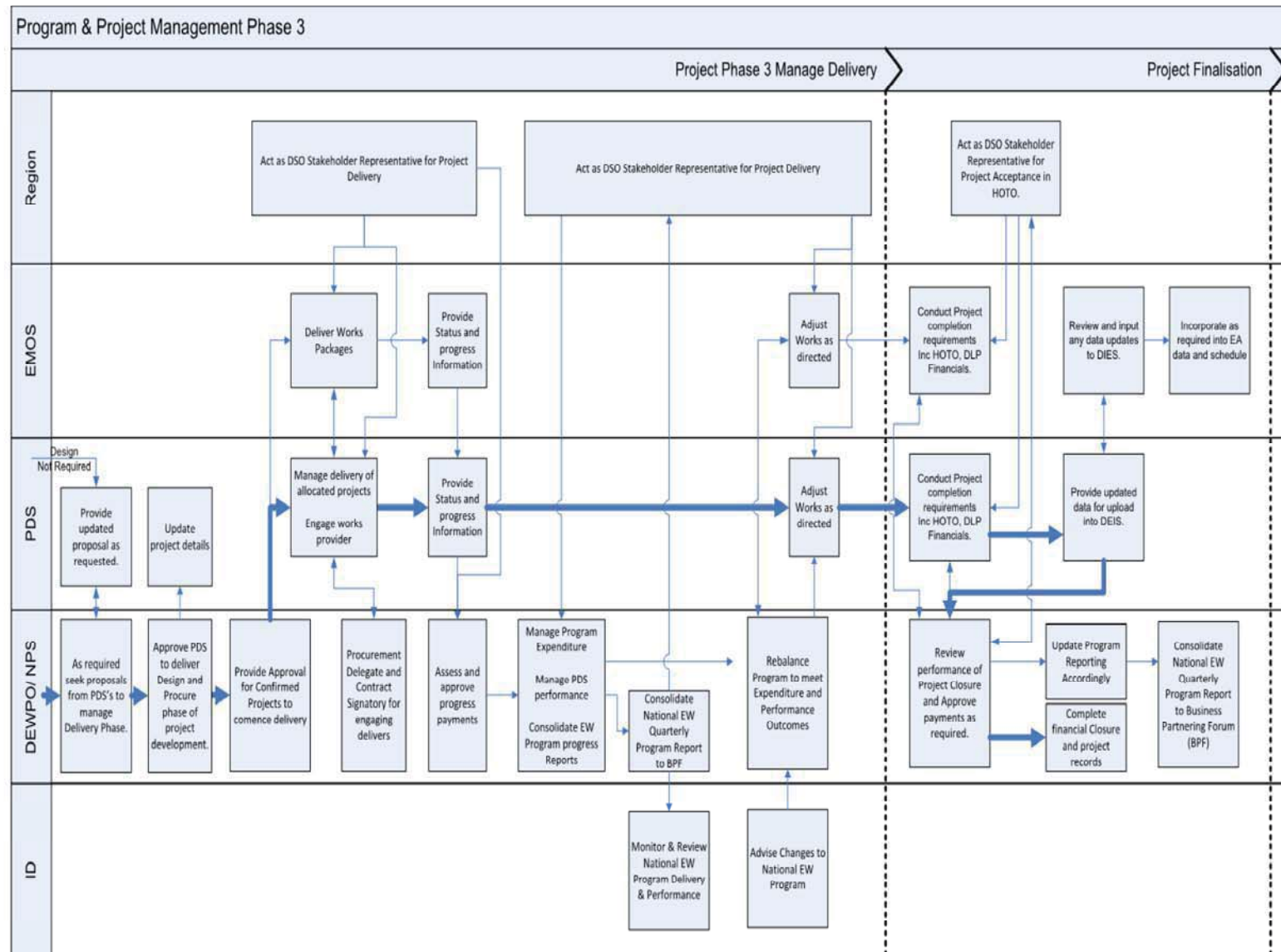
- 10.1 The Project Delivery Service Contractor will be responsible to work collaboratively with the EMOS Contractor, other contractors and Base Support Managers for the management of all operational and strategic issues involved in reducing the impact of the delivery of projects on Defence activities and capability. Issues may include assisting the coordination of the temporary relocation of staff and equipment for projects, and the management and implementation of temporary accommodation solutions and connection of services such as Defence Restricted Network, power, lighting, sewer and water.
- 10.2 Access to Defence properties, facilities and utilities may be restricted as directed by Defence (e.g. for operational training activities, a change in security status, emergency responses).

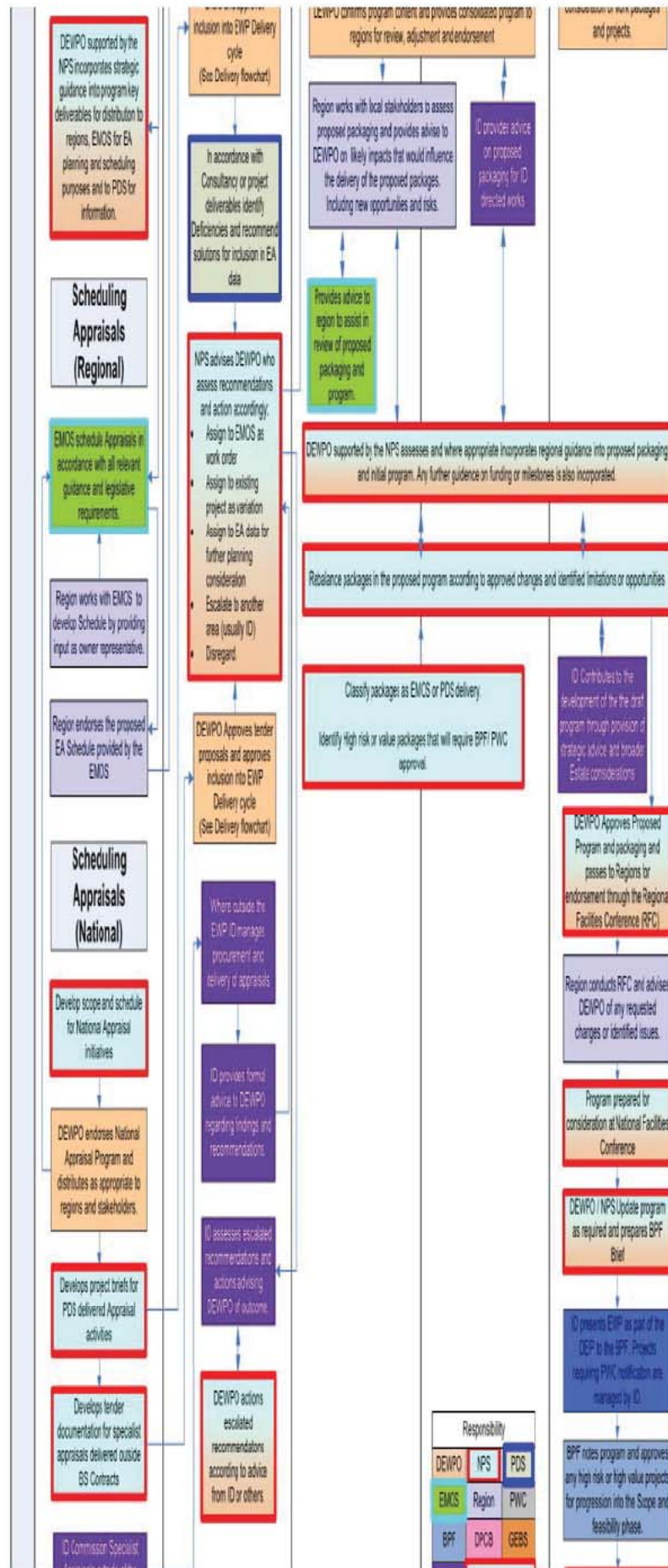
11. APPLICABLE DOCUMENTS

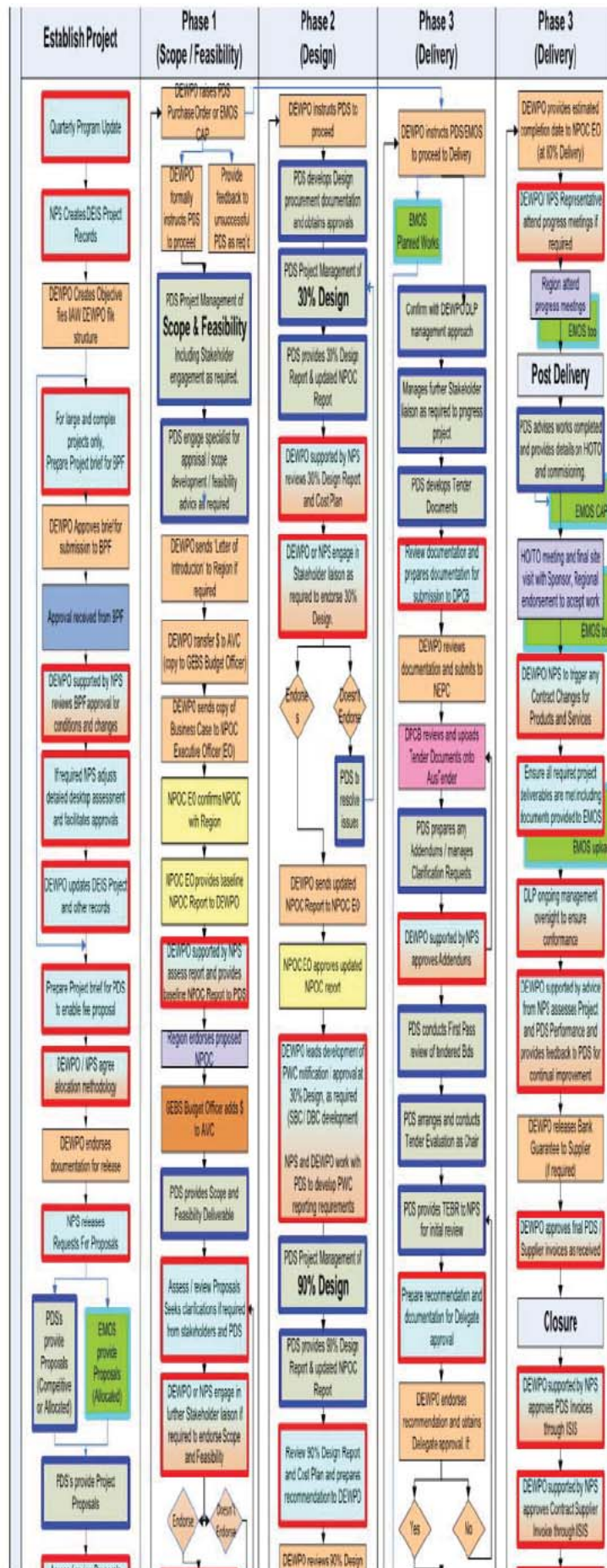
APPLICABLE DOCUMENTS	
<p style="text-align: center;">Project Delivery</p> <p><i>The Contractor is to comply with all Commonwealth, State/Territory and Local Legislation, Regulations, Codes and Guidelines and Australian Standards. The Contractor will also be required to comply with a number of Estate related planning and zoning documents as well as Base Operating Procedures and Standing Orders. These requirements are region/site specific and use will be advised and made available by the Defence Support personnel in the region as required. In addition the Contractor is to comply with the following list of applicable Defence documents.</i></p>	
PRIMARY DOCUMENTS	
Document	Source
Commonwealth Procurement Rules (CPR)	Home Page - Commonwealth Procurement Rules - DMO
Defence Procurement Policy Manual (DPPM)	DPPM - Commercial Policy and Practice Branch - DMO
Procurement of Estate Maintenance Contracts	Section 7.2 Annex A, and when superseded, source from Defence Estate Quality Management System (DEQMS)
Defence Environmental Policy	Environmental Management
Defence Estate Quality Management System (DEQMS)	Defence Estate Quality Management System (DEQMS)
GENERIC DOCUMENTS	
Documents	Source
Building Code of Australia (BCA)	ABCB - Home
National Construction Code	ABCB - Home
Manual of Fire Protection Engineering (MFPE)	DEFWEB - MFPE Contents
Defence Polyvinyl Chloride Policy January 2014	Section 7.2 Annex A, and when superseded, source from Defence Estate Quality Management System (DEQMS)











PROJECT DELIVERY SERVICES

ANNEX B APPENDIX C

PROJECT SCENARIOS

¹²This document provides examples of Project Delivery Services (PDS) functions in the context of four different project scenarios. The scenarios are:

1. a single site, single function project;
2. a single site, multiple function project;
3. a complex multi site project; and
4. a simple multi site project.

1. Scenario 1 – Single Site, Single Function Project

- 1.1 This scenario represents the current majority case for EWP projects. It is predominantly a maintenance project with its background requirements identified in the Estate Appraisal Process. The work has been packaged for common location and common function on the site.

Project Description

- 1.2 An Estate Appraisal work package has been developed identifying the requirement for the refurbishment of the pontoon jetty, boat harbour and boat ramp at Camp Sapper located near the Holsworthy Military Area in Western Sydney.
- 1.3 The boat harbour is relatively small effectively consisting of a sea wall offering protection from river currents for boats using and moving around the pontoon jetty and boat ramp. The boat ramp is heavy duty and is approximately 50m wide by 50m long. It is in poor condition with evidence of erosion, cracking and potholes. The ramp was built for, and is used by, military Prime Movers with trailers. These vehicles launch and retrieve floating bridge components and large (up to 11m) trailer transported water craft from the ramp.
- 1.4 The pontoon jetty and ramp is in average condition requiring cleaning, inspection and resurfacing. The associated concrete pylons show evidence of significant wear and tear including concrete cancer and erosion around the pylon bases.
- 1.5 The project has an initial cost estimate of \$2M +/- 50% and has been approved to enter the first stage of project approval, Scope and feasibility.

Phase 1 Scope and Feasibility

- 1.6 PDS actions for Phase 1 Scope and Feasibility are:

¹ CCP 2015-067, C-2015-00738 Word Changes, approved 4 April 2016

² CCP2015-320, C-2015-460 Project Scenarios approved 24 Aug 2015

1. Respond to Request for Proposal, including the Project Brief, in a timely manner including cost estimate to deliver Phase 1 deliverables.
 2. Detailed assessment of the boat ramp to ascertain and cost to make safe and sound for return into service.
 3. In accordance with user requirements, assess viability and costs for increasing the gradient and extending the boat ramp further below the waterline to increase usability.
 4. Establish cost estimates for dredging.
 5. Survey the harbour sea walls and provide scope and cost to make sound.
 6. Detailed assessment of the pontoon jetty and associated infrastructure sufficient to define scope and costs to refurbish the jetty.
 7. Conduct initial environmental assessment sufficient to ascertain compliance requirements and any associated costs or impediments to project delivery.
 8. Conduct initial siting and services assessment if required.
 9. Provide overall scope, including schedule and cost estimates, incorporating all elements sufficient for consideration and progression into second stage, design and procure.
 10. Provide a cost estimate for PDS management services to manage Phase 2 Design and Phase 3 Delivery.
 11. Provide proposed methodology for delivery. Including procurement plan and project management approach.
- 1.7 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 2 Design

- 1.8 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 2 Design.
- 1.9 PDS actions for Phase 2 Design are in accordance with approved procurement plan:
1. Procure detailed design of the boat ramp solution, pontoon jetty works, sea wall and any harbour work required.
 2. Procure any environmental assessments required.
 3. Facilitate negotiations for E&IG to progress required approvals and certifications.
 4. Conduct siting boards and services assessment if required.
 5. Obtain required stakeholder sign offs and acceptances.
 6. Establish relevant plans to facilitate critical project requirements including site possession, HOTO, DL, NPOC and compliance deliverables.
 7. Provide detailed scope and costings to 10% confidence for cost and schedule incorporating all elements sufficient for consideration and progression into third stage, manage delivery.
 8. Develop documentation suitable to go straight to market if approved for delivery.

9. Confirm approach and cost estimate for management services to manage Phase 3 Delivery.
- 1.10 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 3 Delivery

- 1.11 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 3 Delivery.
- 1.12 PDS actions for Phase 3 Delivery are:
 1. Facilitate approach to market including tender assessment Provide procurement recommendation to Defence
 2. Facilitate contract documentation to enable Defence to engage successful tenders
 3. negotiate on behalf of Defence with preferred tenderers to finalise offer
 4. Facilitate contract signing.
 5. Work with delivery contractor/s and stakeholders to facilitate successful project delivery.
 6. Facilitate contract administration e.g. progress claims and variations, on behalf of Defence
 7. Engage with stakeholders to facilitate HOTO and DLP.
 8. Ensure delivery of compliant information deliverables.
 9. Provide progress reporting to DEWPO.
- 1.13 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.
- 1.14 DEWPO, on advice from the NPS, will sign off on project acceptance.

2. Scenario 2 – Single Site, Multiple Function Project

- 2.1 This scenario is representative of E&IGs future intentions for the packaging of maintenance works into multiple function projects.

Project Description

- 2.2 An Estate Appraisal work package has been developed bundling a number of maintenance work items at RAAF Base Williamtown into a single project.

- 2.3 The works include: Est. Cost \pm 50%

Replacement of roofing on four buildings.	\$1.5M
Road repairs and reseals on several roads around the base.	\$900K
Demolition of three obsolete Accommodation blocks.	\$800K
Replacement of burnt fencing around the airfield.	\$980K
Decontamination of AFFF contaminated soil and water at fire training pit	\$1.2M
Replacement of street lighting around accommodation with LED lighting	\$200K

- 2.4 The project is required to be delivered in full within the next financial year.

Phase 1 Scope and Feasibility

- 2.5 PDS actions for Phase 1 Scope and Feasibility are:

1. Respond to Request for Proposal, including the Project Brief, in a timely manner including cost estimate to deliver Phase 1 deliverables.
2. Detailed assessment of the requirement.
3. In accordance with user requirements assess viability and costs to deliver requirement.
4. Conduct initial siting.
5. Establish cost and time estimates for project elements.
6. Conduct initial environmental assessment sufficient to ascertain compliance requirements and any associated costs or impediments to project delivery.
7. Working with the NPS, on DEWPO behalf, engage with the EMOS provider and Base Support Team.
8. Provide overall scope, including schedule and cost estimates, incorporating all elements sufficient for consideration and progression into second stage, design and procure.
9. Provide proposed methodology for delivery. Including procurement plan and project management approach.
10. Provide a cost estimate for PDS management services to manage Phase 2 Design and Phase 3 Delivery.

- 2.6 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 2 Design

- 2.7 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 2 Design.
- 2.8 PDS actions for Phase 2 Design are in accordance with approved procurement plan:
1. Procure the detailed design required for the delivery of the solution.
 2. Procure any environmental assessments required
 3. Facilitate negotiations for E&IG to progress required approvals and certifications.
 4. Conduct siting boards and services assessment as required.
 5. Obtain required stakeholder sign offs and acceptances.
 6. Establish relevant plans to facilitate critical project requirements including site possession, HOTO, DLP, NPOC and compliance deliverables.
 7. Provide detailed scope and costings to 10% confidence for cost and schedule incorporating all elements sufficient for consideration and progression into third stage, manage delivery.
 8. Develop documentation suitable to go straight to market if approved for delivery.
 9. Confirm approach and cost estimate for management services to manage Phase 3 Delivery.
- 2.9 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 3 Delivery

- 2.10 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 3 Delivery.
- 2.11 PDS actions for Phase 3 Delivery are:
1. Facilitate approach to market including tender assessment.
 2. Provide procurement recommendation to DEWPO.
 3. Facilitate contract documentation to enable Defence to engage successful tenders
 4. Negotiate on behalf of E&IG with preferred tenderers to finalise offer.
 5. Confirm with EMOS and Base Support teams to finalise details as required.
 6. Facilitate contract signing.
 7. Work with delivery contractors, EMOS and stakeholders to facilitate successful project delivery.
 8. Facilitate contract administration e.g. progress claims and variations, on behalf of Defence.

9. Engage with stakeholders to facilitate HOTO, certification and DLP.
 10. Provide progress reporting to DEWPO
- 2.12 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.
- 2.13 DEWPO, on advice from the NPS, will sign off on project acceptance.

3. Scenario 3 – Complex Multi Site Project

- 3.1 This scenario represents a frequent and often unplanned requirement, where a project is identified by a sponsor (groups and services) and that sponsor is going to fund the works from budgets outside Estate Works Budget.

Project Description

- 3.2 A National project has been established to complete a program of hanger upgrades to meet the new requirements for the storage of specialised communications equipment used in the aircraft.
- 3.3 The project requires the construction of a hardened room and the installation of a security system to a defined specification. The project also includes the need to install fire and other services necessary for the compliance and general operation of the room and equipment in the room. The project needs to deliver these rooms at RAAF Townsville, RAAF Amberley, RAAF Darwin, RAAF Tindal and RAAF Pearce.
- 3.4 While there is a standard specification there is still a requirement for design to meet the specific needs and constraints of each location. Based on the standard design the project has an initial cost estimate of \$6M +/- 50%. The work package has been approved to progress to Phase 1 Scope and Feasibility.

Phase 1 Scope and Feasibility

- 3.5 PDS actions for Phase 1 Scope and Feasibility are:
1. Respond to Request for Proposal, including the Project Brief, in a timely manner including cost estimate to deliver Phase 1 deliverables.
 2. Detailed assessment of the requirement.
 3. In accordance with user requirements, assess viability and costs to deliver requirement.
 4. Conduct initial siting and services assessment.
 5. Establish cost and time estimates for project elements.
 6. Conduct initial environmental assessment sufficient to ascertain compliance requirements and any associated costs or impediments to project delivery.
 7. Provide overall scope, including schedule and cost estimates, incorporating all elements sufficient for consideration and progression into second stage, design and procure.
 8. Provide a cost estimate for PDS management services to manage Phase 2 Design and Phase 3 Delivery.

9. Provide proposed methodology for delivery. Including procurement plan and project management approach.
- 3.6 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 2 Design

- 3.7 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 2 Design.
- 3.8 PDS actions for Phase 2 Design are in accordance with approved procurement plan:
1. Procure detailed design for the delivery of the solution.
 2. Facilitate negotiations for E&IG to progress required approvals and certifications.
 3. Conduct siting boards and services assessment if required.
 4. Obtain required stakeholder sign offs and acceptances.
 5. Establish relevant plans to facilitate critical project requirements including site possession, HOTO, DL, NPOC and compliance deliverables.
 6. Provide detailed scope and costings to 10% confidence for cost and schedule incorporating all elements sufficient for consideration and progression into third stage, manage delivery.
 7. Develop documentation suitable to go straight to market if approved for delivery.
 8. Confirm approach and cost estimate for management services to manage Phase 3 Delivery.
- 3.9 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 3 Delivery

- 3.10 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 3 Delivery.
- 3.11 PDS actions for Phase 3 Delivery are:
1. Facilitate approach to market including tender assessment
 2. Provide procurement recommendation to NPS.
 3. Facilitate contract documentation to enable Defence to engage successful tenders
 4. negotiate on behalf of Defence with preferred tenderers to finalise offer
 5. Facilitate contract signing.
 6. Work with delivery contractor/s and stakeholders to facilitate successful project delivery.
 7. Facilitate contract administration e.g. progress claims and variations, on behalf of Defence

8. Engage with stakeholders to facilitate HOTO and DLP.
 9. Ensure delivery of compliant information deliverables.
 10. Provide progress reporting to DEWPO.
- 3.12 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.
- 3.13 DEWPO, on advice from the NPS, will sign off on project acceptance.

4. Scenario 4 – Simple Multi Site Project

- 4.1 This scenario represents a project that has a basis outside traditional maintenance requirements. Such projects may arise from change in legislation or policy or incremental changes in the way facilities are being used.

Project Description

- 4.2 A National project has been established to recognise traditional owners at Defence sites through the installation of a identifying plaques at the front gate. This project is a Government driven initiative and as such has a high profile. The sites have been nominated by Defence and include all major and most medium size bases with a permanent Defence presence. The project also includes all major training areas.
- 4.3 The project requires the supply and installation of a standardised plaque and the collation and confirmation of information on the traditional owners to be recognised for the site. While there is a standard plaque there is still a requirement for consideration of the appropriate siting to meet the specific needs and constraints of each location.
- 4.4 To minimise project overheads for this multi site but relatively straight forward requirement, Defence requires the PDS, where appropriate, to engage with the local EMOS provider to supply install the plaques. The work package has an initial cost estimate of \$400k +/- 50% and has been approved to progress to Phase 1 Scope and Feasibility.

Phase 1 Scope and Feasibility

- 4.5 PDS actions for Phase 1 Scope and Feasibility are:
1. Respond to Request for Proposal, including the Project Brief, in a timely manner including cost estimate to deliver Phase 1 deliverables.
 2. Prepare detailed assessment of the requirement.
 3. In accordance with user requirements assess viability and costs to deliver.
 4. Conduct initial siting.
 5. Establish cost and time estimates for project elements.
 6. Conduct initial environmental assessment sufficient to specify compliance requirements for these plaques.
 7. Working with the NPS, on behalf of DEWPO, engage with the EMOS provider and Base Support Team

8. Provide overall scope, including schedule and cost estimates, incorporating all elements sufficient for consideration and progression into second stage, design and procure.
 9. Provide a cost estimate for PDS management services to manage Phase 2 Design and Phase 3 Delivery.
 10. Provide proposed methodology for delivery. Including procurement plan and project management approach.
- 4.6 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 2 Design

- 4.7 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 2 Design.
- 4.8 PDS actions for Phase 2 Design are in accordance with approved procurement plan:
1. Procure detailed design for the design and wording for the plaques.
 2. Facilitate negotiations for E&IG to progress required approvals and certifications.
 3. Conduct siting boards as required.
 4. Obtain required stakeholder sign offs and acceptances.
 5. Establish relevant plans to facilitate critical project requirements including site possession, HOTO, DL, NPOC and compliance deliverables.
 6. Provide detailed scope and costings to 10% confidence for cost and schedule incorporating all elements sufficient for consideration and progression into third stage, manage delivery.
 7. Develop documentation suitable to go straight to market if approved for delivery, including justification for use of EMOS provider as required.
 8. Confirm approach and cost estimate for management services to manage Phase 3 Delivery.
- 4.9 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.

Phase 3 Delivery

- 4.10 DEWPO will advise if or when the project will progress and if the PDS will deliver Phase 3 Delivery.
- 4.11 PDS actions for Phase 3 Delivery are:
1. Facilitate approach to market including tender assessment
 2. Provide procurement recommendation to NPS.
 3. Facilitate contract documentation to enable Defence to engage successful tenders
 4. Negotiate on behalf of Defence with preferred tenderers to finalise offer

5. Facilitate contract signing.
 6. Work with EMOS and stakeholders to facilitate successful supply and installation of plaques with required wording across the nominated sites.
 7. Facilitate contract administration e.g. progress claims and variations, on behalf of Defence
 8. Engage with stakeholders to facilitate HOTO and DLP.
 9. Ensure delivery of compliant information deliverables.
 10. Provide progress reporting to DEWPO.
- 4.12 DEWPO, on advice from the NPS, will assess performance and approve PDS progress claims.
- 4.13 DEWPO, on advice from the NPS, will sign off on project acceptance.

PROJECT DELIVERY SERVICES

ANNEX B APPENDIX D

¹PROJECT SPECIFIC ENGAGEMENT OF PDS PROVIDER

1. Introduction

- 1.1 The following provides a summary of the requirements for engagement of the PDS provider for project management of a specific project. Notwithstanding transitional arrangement relating to the initial allocation of project to PDS providers, these requirements apply for each project or group of projects subject to the PDS procurement process.
- 1.2 Whilst the works contract is between the Commonwealth, as represented by Directorate of Estate Works Program Office (DEWPO), and the contractor doing the work, much of the procurement activity will be performed by the PDS provider on behalf of and in direct liaison with the NPS on behalf of DEMP.

2. Contract Documents

- 2.1 The following documents will comprise the supporting project documentation for the engagement of the PDS provider:
 - a. Letter of Defence Acceptance;
 - b. Contract Particulars;
 - c. Terms of Engagement as contained in the overarching PDS Contract ;
 - d. Project Brief ;
 - e. PDS Proposal, updated to include any changes agreed prior to acceptance; and
 - f. PDS Acceptance of project. *As with the DIP panel this may be considered as met if the PDS submits a proposal.*
- 2.2 The following documents will comprise the supporting procurement documentation for engagement of the PDS provider as required:
 - a. PDS Evaluation Plan;
 - b. Evaluation criteria;
 - c. PDS contract framework;
 - d. Program approvals;
 - e. PDS proposal evaluation report;
 - f. Delegates decision; and
 - g. Sponsor agreements;

3. Request For Proposal

- 3.1 On behalf of DEMP, the NPS will issue the Request For Proposal in accordance with the approved procurement methodology. Where the project is to be delivered through the PDS

¹ CCP2015-067, C-2015-00738 Word changes, approved 4 April 2016

(expected to be the majority case) the Request For Proposal is issued to PDS providers. The circumstances for allocation of projects to PDS providers or for competitive proposal process are detailed in the NPS Supplementary Information and PDS Supplementary Information documents.

- 3.2 The Request For Proposal is to be in the form of a standard template, populated with project specific details. An example of the standard Request for Proposal template is provided at Attachment A. The Request For Proposal is accompanied by the Project Brief.

4. Project Brief

- 4.1 The project brief is prepared by the NPS provider as part of the formation of the work package. The level of detail will depend on the nature of the project.
- 4.2 The project brief describes the Scope of Services for the particular project and will contain a range of project specific information and requirements. The Brief is divided into four parts.

Part 1 Project Outline and Project Objectives

- 4.3 DEMP provides up to date and accurate details of the Project in a template format. This information must be suitable for inclusion in the Contract and appropriate for the purpose of the Services being sought.
- 4.4 The brief would include the following standard information:

Background	Origin of project.
Timeframes	Critical timeframes. Desired delivery windows and known availability/ access issues.
Location/s	Sites where project is to be delivered.
Project type	Construction, consultancy, maintenance etc.
Initial Budget Estimate	Budget estimate at +/- 50%.
Sponsor	Identify key sponsors or project owner and their role. Particularly if they have an active role in the management of the Project. For predominantly maintenance works, E&IG is the sponsor.
Stakeholders	Identify key stakeholders and their role. Particularly if they have an active role in the management of the Project.
Work to date	Presents linkages to other projects or activities that have informed or established the project as it stands. Identifies reports etc available for review in development of the project.
Deliverables	Clear outline of project deliverables.
Performance indicators	Clear outline of Project performance indicators. Not Contractual but project deliverable specific.

Special considerations	Any other factors that should be considered during development of proposals.
Risk profile of the project	Defence's opinion on how difficult the project will be to deliver. Not the risks the project will address.

Part 2 Scope of Project Delivery Service Services

- 4.5 This part of the Brief describes the Services that DEMP requires the PDS to perform. The Scope of Services can be tailored to suit the Project under consideration and where it is through its life cycle. E.g conduct one or more of the following project phases:

Phase 1 - Scope and Feasibility

Phase 2 - Design & Procure

Phase 3 - Manage Delivery

Part 3 Special Conditions

- 4.6 Special Conditions should only be used where the Project has identified needs and particular conditions that are outside the standard engagement framework.

Part 4 Specific Insurance Requirements

- 4.7 Specific Insurance Requirements, as required, that reflect the risk profile of the particular project, requiring specific mitigation through insurance arrangements.

5. PDS Proposal

- 5.1 In response to the Request For Proposal the PDS provider is to provide a Project Proposal back to the NPS in accordance with the specified timeframe. The PDS will provide their proposal for services in a page limited standard template. This approach is desired for the following reasons:

- a. Reduces effort for all parties involved.
- b. The template makes it clear what information Defence wants the PDS to provide.
- c. Provides a concise representation of the services the PDS is offering making for easier evaluation.
- d. Recognises that the PDS contractors are pre-qualified therefore a complete procurement process is not required.

- 5.2 The standard content for PDS proposal is to include the following content.

Appreciation of Project	Validation that the PDS understood the brief.
Methodology	The PDS approach to manage the project.
Ability to Deliver	Confirmation of ability to meet any key milestones or critical dates.
Resourcing	Who, how many and where the resources are the PDS propose to use. Also if established any panels or multi-lists they will

	use.
Fee proposal	Based on fee structure with breakdown of elements if possible.
Conditions or assumptions	Provides for PDS to raise any issues for Defence's consideration.
Project Schedule	Proposed scheduled and milestones for the project, including PSD fee schedule.
Value Adds	The PDS may be able to demonstrate value through leveraging existing works.

6. Evaluation Criteria

6.1 A clear statement of the evaluation criteria is to be included with each Request For Proposal. It is intended that the standard evaluation criteria applied for EWP projects will be per the following list. The use of unique criteria is to be avoided wherever possible.

6.2 Standard criteria:

- a. Project or Task Appreciation;
- b. Proposed Management approach;
- c. Key resources, experience, skill, numbers, location, use of external providers;
- d. Fee with breakdown of costs including resource usage and reimbursable;
- e. Risks to project raised by assumptions or conditions raised by the PDS; and
- f. Value adding proposition.

ATTACHMENT A

PROJECT DELIVERY SERVICES REQUEST FOR PROPOSAL

Director Estate Maintenance Program

Campbell Park Offices,
Northcott Drive,
ACT
Phone 02 6266 xxxx

Project Delivery Services Request for Proposal

[Insert Name of PDS contact]

Dear [Insert name]

RE: [Insert Project number and name] - Request for Proposal

1. We refer to your Agreement with the Commonwealth for the provision of Project Delivery Services.
2. The following documents comprise this Request for Proposal:
 - (a) This letter;
 - (b) Annexure A ("**Project Brief**") and its Attachments; and
 - (c) Annexure B PDS Proposal Template.
3. The Commonwealth is undertaking the project outlined in the Project Brief ("Project").
4. You are requested to provide a proposal for the performance of the Services described in the Brief in connection with the Project.
5. To submit a conforming proposal, you must:
 - (a) submit your proposal in the standard PDS Proposal format to DEMP by [Insert date];
 - (b) keep your proposal valid for 90 days; and
 - (c) submit a proposal which accepts without departure, qualification, amendment, limitation or exclusion the Project Delivery Services Agreement and Terms of Engagement.
6. Subject to paragraph 7, a proposal will be regarded as non-conforming and will be rejected if it does not conform with or was not submitted in accordance with the requirements of paragraph 5 above. Non-conformance in provision of a proposal will be recorded for consideration in the Performance Management Framework.
7. Where a proposal does not conform with or was not submitted in accordance with the requirements of:
 - (a) paragraph 5(a), then the proposal will be deemed to be late. If the reason for the lateness was solely due to mishandling by the Commonwealth, then the Commonwealth will admit the proposal to evaluation; or

- (b) paragraphs 5(b) and 5(c), and the Commonwealth considers (in its absolute discretion) that this was due to an unintentional error by the Consultant, the Commonwealth may (in its absolute discretion) seek, review and accept any correction to this error.

8. PDS providers are requested to endorse the email response to request for proposals as follows:

Project Number: Project Title : PDS Provider Details

The Commonwealth retains the right to appoint one or more preferred tenderers and to negotiate any or all aspects of the provider's proposal. The appointment of a provider as a preferred PDS Provider will not confer any rights on the provider or prevent the Commonwealth from discontinuing negotiations or rejecting the proposal at any time and for any reason in its complete discretion.

9. Once submitted, your proposal will be accepted or declined by the Commonwealth through the issue of a Letter either of Acceptance or Decline.

10. The Contract entered into for the engagement of Services for the Project will be on the terms of:

- (a) the Letter of Acceptance;
- (b) PDS Contract Particulars, terms and conditions;
- (c) the Project Brief in Annexure A (as completed); and
- (d) the PDS Provider's proposal.

11. Unless otherwise advised in the Project Brief the Commonwealth will assess your proposal from two perspectives;

- (a) Likelihood of the proposal achieving successful Project delivery.
- (b) Value for Money presented by the proposal.

12. The Commonwealth will use the following criteria to evaluate your proposal:

- (a) understanding of and approach to delivering the Services required in the Brief (noting that the type of information the Commonwealth is seeking is outlined in the PDS Contract Statement of Work);
- (b) understanding of Project deliverables, mandatory requirements and approach proposed to deliver the Project described in the Brief (noting that the type of information the Commonwealth is seeking is outlined in Annexure A);
 - (i) Technical merit of approach to managing the Project to achieve outcomes and timeframes within budget;
 - (ii) Efficiency of approach
 - (iii) Appreciation of project risks
 - (iv) Forecast Schedule for achieving deliverables
 - (v) Approach to stakeholder engagement.
- (c) Key Personnel proposed for the management of Project. Including:
 - (i) Skill set and experience
 - (ii) Numbers
 - (iii) Location
 - (iv) Use of sub-contractors for provision of management services;

- (d) Any actual or perceived conflicts of interest the you may have regarding the project or any actual or potential stakeholders or providers of services related to delivery of the project;
 - (e) Assumptions, limitations and conditions proposed by the provider that could impact successful project delivery; and
 - (f) Allocation of Fee structures and fee estimate, including travel, management fees and other (noting that the type of information the Commonwealth is seeking is outlined in the PDS Contract Statement of Work).
13. In addition to the matters in paragraph 5 of this letter, your proposal should also address:
- (a) Any additional insurances, licences or external services that you propose to procure for the management of the Project;
 - (b) If requested evidence that you comply with the insurance or qualification requirements as specified in the Brief in Annexure A.
14. Unless prior approval is provided by DEMP, PDS Provider proposals addressing details as per paragraph 12 and 13 are to be presented to DEMP in the PDS Proposal Template format. The total proposal is not to exceed 10 pages in length including annexes. Proposals exceeding 10 pages, without prior approval, will be considered as non-conforming.
15. The Commonwealth may amend this Request for Proposal at any time prior to the closing date and time set out in paragraph 5(a) above. Any amendment to this Request for Proposal will be issued in the form of an addendum and will be issued to all PDS providers. No explanation or interpretation of the Request for Proposal may be relied upon by the provider unless it is given in the form of an addendum. Addenda issued under this paragraph 14 will become part of this Request for Proposal.
16. Dependant on project complexity, DEMP may at its sole discretion or if requested by providers conduct a PDS provider briefing specific to the project. You are requested to nominate up to two (2) persons to attend such industry briefings. Details on any briefings will be provided as part of the Project Brief or as an Addendum under paragraph 14. You should note that:
- (a) any briefing is conducted for the purposes of providing background information only; and
 - (b) you are not entitled to and must not rely on a statement made at any industry briefing as amending or adding to this Request for Proposal unless the amendment or addition is confirmed by DEMP in writing, expressly stating that it is an amendment or addition to this Request for Proposal under paragraph 14 of this Request for Proposal.
17. Any inquiries with respect to this letter should be directed to **DEMP**.

Yours faithfully

.....
Attachments:

- A. Project Brief

ATTACHMENT B: PDS PROPOSAL TEMPLATE

Project Number:

Project Title:

Proposal Closing Date:

PDS Provider Details including POC

Task Appreciation:

Approach proposed to delivering the Services required in the Project Brief;

Understanding of Project deliverables, mandatory requirements and approach proposed to deliver the Project described in the Project Brief;

Identification of Project delivery risks;

Forecast Schedule for achieving deliverables including project milestones and payment schedule;

Key Personnel proposed for the management of Project. Include:

- (i) Skill set and experience
- (ii) Numbers
- (iii) Location
- (iv) Use of sub-contractors for provision of management services;

Assumptions, limitations and conditions proposed by the provider that could impact successful project delivery;

Allocation of Fee structures and fee estimate including:

- (i) travel,
- (ii) management fees and
- (iii) other.

Any actual or perceived conflicts of interest regarding the project or any actual or potential stakeholders or providers of services related to delivery of the project;

Details of any additional insurances, licences or external services that you propose for the management of the Project;

If requested evidence of compliance with specialist insurance or qualification requirements as specified in the Brief in Annexure A.

DEFENCE SUPPORT & REFORM GROUP

BASE SERVICES GLOSSARY

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1. GENERAL INFORMATION

1.1 The Base Services Glossary provides a standardised interpretation of abbreviations, definitions and words used in the SOWs for Base Service contracts. This document includes the following sections;

- a. **SECTION 2 – Abbreviations.** Abbreviations are defined to standardise interpretation across SOWs.
- b. **SECTION 3 – Definitions.** Definitions of terms are provided to standardise interpretation SOWs.
- c. **SECTION 4 – Context Glossary.** The glossary includes a list of words used to define the context of the work required.

2. ABBREVIATIONS

ABBREVIATIONS	
Statement of Works	
AACHQ-NSW	Australian Army Cadet Headquarters – New South Wales
AAP	Australian Air Publication
ABGR	Australian Building Greenhouse Rating
ABIM	Assistant Base Infrastructure Manager
ABR	Australian Book of Reference
ABSR	Army Base Support Representative
ACM	Assistant Contract Manager
ADDP	Australian Defence Doctrine Publication
ADEL	Army Doctrine Electronic Library
ADF	Australian Defence Force
ADFFS	Australian Defence Force Food Specifications
ADFILS	Australian Defence Families and Liaison Staff
ADFP	Australian Defence Force Publication
ADI	Australian Defence Industries
ADO	Australian Defence Organisation
ADS	Australian Defence Standard
AEO	Activity Environment Officer
AEST	Australian Eastern Standard Time
AF	Air Force
AFC	Air Force Cadet
AFP	Australian Federal Police
AFSU	Army Financial Services Unit / Army Financial Support Unit
AFV	Armoured Fighting Vehicle
AGO	Australian Greenhouse Office
ALI	Army Logistic Instruction
ALO	Acquisition and Logistics Office
ALTC	Army Logistic Training Command
AME	Aero Medical Evacuation
AMMO	Ammunition
AMSL	Above Mean Sea Level
ANTA	Australian National Training Authority
AOF	Application Of Fire
APA-T	Army Personnel Agency – Townsville
APS	Australian Public Service

ABBREVIATIONS	
Statement of Works	
AQIS	Australian Quarantine and Inspection Service
ARCO	Assistant Range Control Officer
ARFF	Aerodrome Rescue and Fire Fighting
ARFF	Airfield Rescue and Fire Fighting
ARMD	Armoured
ARTC	Army Recruit Training Centre
AS	Australian Standards
ASA	Air Services Australia
ASIO	Australian Security Intelligence Organisation
ASTO	Army School of Transport and Ordnance
ASTO-MW	Army School of Transport and Ordnance – Maritime Wing
ATC	Air Traffic Control
AUSMIMPS	Australian Standard Material Issue and Movement Priority System
AWR	Air Weapons Range
BBE	Boat Bridging Erection
BCA	Building Code of Australia
BCDR	Base Commander
Bde	Brigade
BFC	Base Facilities Conference
BFI	Bulk Fuel Installation
BFIMI	Bulk Fuel Installation Maintenance Instruction
BFQCO	Base Fuel Quality Control Officer
BIM	Base Infrastructure Manager
BIP	Business Improvement Project
BOHSCO	Base Occupational Health Safety Coordinating Officer
BOS	Board of Survey
BMP	Bushfire Management Plan
BPCM	Base Planning and Coordination Manager
BSI	Base Security Instruction
BSM	Base Support Manager
BSO	Base Support Operations
BUO	Base Utilities Officer
BWOD	Base Warrant Officer Discipline
CA	Contract Authority
CAA	Contract Administration Assistant
CAD	Computer-aided Design

ABBREVIATIONS	
Statement of Works	
CAPMAN	Contract Accountability and Performance Management tool
CAR	Contract Authority Representative
CASA	Civil Aviation Safety Authority
CASEVAC	Casualty Evacuation
CBFU	Cairns Based Fleet Units
CBTA	Cowley Beach Training Area
CBR	Chemical, Biological and Radioactive
CCTV	Closed Circuit Television
CDRI	Commonwealth Defect Risk Item
CEIs	Chief Executive Instructions
CES	Complete Equipment Schedule
CF1	Contribution Factor 1
CFI	Capital Facilities & Infrastructure Branch, Infrastructure Division
CFS/A	Country Fire Services / Authority
CGF	Contract Governance Framework
CGO	Contract Governance Officer
CHEMALERT	Chemical Alert
CI	Compliance Indicators
CL	Commercial Line
CM	Contract Manager
CMC	Comprehensive Maintenance Contractor
CMMS	Computerised Maintenance Management System
CMP	Cleaning Management Plan
CMS	Comprehensive Maintenance Services
CNNWSW	Central and Northern New South Wales
COO	Chief Operating Officer Division
CR5M	Combat Ration Five Man
CRP	Combat Ration Pack
CSIG	Corporate Support and Infrastructure Group
CSIR	Corporate Services and Infrastructure Requirement
CT	Counter Terrorist
CTAF	Common Traffic Aviation Frequency
CVMP	Commercial Vehicle Management Program
DACC	Defence Assistance to the Civil Community
DART	Drop Automatic Retaliatory Target
DC	Dangerous Cargo

ABBREVIATIONS	
Statement of Works	
DCAC	Defence Common Access Card
DCT	Data Capture Tool
DEC	Defence Estate Committee
DEF (Aust)	Defence Standards
DEFS	Director Estate & Facilities Services
DEFWEB	Defence Web
DEH	Defence Environment and Heritage
DEHP	Defence Environment and Heritage Panel
DEIS	Defence Estate Information System
DEMP	Directorate of Estate Maintenance Program
DEMS	Defence Estate Management System
DEW	Defence Establishment Woomera
DFSW	Direct Fire Support Weapon
DG	Dangerous Goods
DI	Defence Instruction
DI(A)	Defence Instruction (Army)
DI(AF)	Defence Instruction (Air Force)
DI(AF)AAP	Defence Instruction (Air Force) Australian Air Publication
DI(G)	Defence Instruction (General)
DI(N)	Defence Instruction (Navy)
DIDS	Defence Integrated Distribution System
DIGO	Defence Information & Geospatial Organisation
DISP	Defence Industrial Security Program
DLP	Defects Liability Period
DMEO	Disposal of Malfunctioned Explosive Ordnance
DML	Demolition
DMO	Defence Material Organisation
DMO-CVO	Defence Material Organisation – Commercial Vehicle Office
DOTAM	Directorate Operations and Training Area Management t
DPA	Defence Practice Area
DPCU	Disruptive Pattern Camouflage Uniform
DPPM	Defence Procurement Policy Manual
DPRAC	Director of Practice
DRN	Defence Restricted Network
DRTI	Defence Road Transport Instructions
DS	Defence Support

ABBREVIATIONS	
Statement of Works	
DSA	Defence Security Authority
DSB	Defence Security Branch
DSCM	Defence Supply Chain Manual
DSRG	Defence Support & Reform Group
DSM	Defence Security Manual
DSMA	Defence Safety Management Agency
DSO	Defence Support Operations Division
DSTO	Defence Science and Technology Organisation
DTAM	Director Training Area Management
DTC	Defence Travel Card
DUF	Direct Unit Funding
(E)	And/or equivalent
EA	Estate Appraisal
ECC	Environmental Clearance Certificate
ECOPP	Environmental Code of Practice for Packaging
EEGO	Energy Efficiency in Government Operations
EEV	Equipment Entitlement Variation
EFS	Estate and Facilities Services
EIA	Environmental Impact Assessment
EIP	Environmental Impact Plan
EIS	Environmental Impact Study
EMEI	Electrical and Mechanical Engineering Instructions
EMP	Environmental Management Plan
EMOS	Estate Maintenance and Operational Services
EMP	Estate Maintenance Programs
EMPS	Enhanced Meal Pass System
EMS	Environmental Management System
EMSIP	Environmental Management System Implementation Plan
EOCP	Environmental Operational Control Procedure
EOD	Explosive Ordnance Demolition
EOM	Explosive Ordnance Material
EOSF	Explosive Ordnance Storage Facility
EP	Environmental Plans
EPBC Act	Environment Protection and Biodiversity Conservation Act
EPU	Electronic Purchasing Unit
ERIM	Estate Register Information Model

ABBREVIATIONS	
Statement of Works	
ESD	Ecologically Sustainable Development
ESM	Estate Support Manager
ESO	Estate Support Officer
ESOF	Explosives Storage Facility
EU	Estate Upkeep
EUMS	Estate Upkeep Maintenance Schedule
FAS	Facilities Acquisition Strategy
FESA	Fire Emergency Services Authority
FFA	Field Firing Area
FFRS	Fire Fighting Rescue Services
FFT	Field Firing Target
FINMAN	Finance Manual
FLD	Field
FOD	Foreign Object Debris
FOM	Facilities Operations Manager
FOO	Financial Operations Officer
FP & E	Fixed Plant and Equipment
FQC	Fuel Quality Control
FTE	Full Time Equivalent
FTX	Field Training Exercise
FUA	Fostered Units Accounts
GE	General Estate
GEMS	Garrison and Estate Management System
GEWM	General Estate Works Management
GFE	Government Furnished Equipment
GFF	Government Furnished Facilities
GFM	Government Furnished Materiel
GIS	Geographic Information System
GLO	Garrison Liaison Officer
GR	Grid Reference
GS	Grid Square
GS	General Service
GSM	Garrison Support Manager
GSO	Garrison Support Officer

ABBREVIATIONS	
Statement of Works	
GST	Goods and Services Tax
G & Z	Group and Zero
Ha	Hectare
HACCP	Hazard Analysis Critical Control Point
HAZCHEM	Hazardous Chemicals
HAZMAT	Hazardous Materials
HDSO	Head Defence Support Operations
HE	High Explosive
HEDP	High Explosive Dual Purpose
HI	Head Infrastructure Division
HITA	Horn Island Training Area
HMAS	Her Majesty's Australian Ship
HV	High Voltage
Hrs	Hours
IA	Infrastructure Appraisal
IAW	In accordance with
ICAO	International Civil Aviation Organisation
ICT	Information and Communications Technology
ID	Infrastructure Division
IFS	Inspector Foodstuffs
IFS	Items For Sale
ILUA	Indigenous Land Use Agreement
IM	Infrastructure Management Website
ITRS	Infrastructure Technical Regulatory System
JFLA	Joint Fuels and Lubricants Agency
JLU	Joint Logistics Unit
KPI	Key Performance Indicator
LDBO	Liquid Dry Breathing Oxygen
LEAP	Living Environment and Accommodation Precinct
LFX	Live Fire Exercise
LIA	'Living-In' Accommodation
LIM	'Living-In' Meals
LIP	Local Industry Providers
LV	Low Voltage
LSA	Local site administrator

ABBREVIATIONS	
Statement of Works	
MAS	Maintenance Advisory Service
MBZ	Mandatory Broadcast Zone
MCF	Major Capital Facilities
MEFS	Manager – Estate & Facilities Services
MEMA	Manual of Equipment Management Accounting
MEO	Malfunctioned Explosive Ordnance
MEOMS	Mechanical Engineering Operations Maintenance Squadron
MFPE	Manual of Fire Protection Engineering
MFS	Metropolitan Fire Service
MHE	Materials Handling Equipment
MIMS	Mincom Information Management Systems
MLW	Manual of Land Warfare
MMC	Manual of Movement Control
MMP	Material Maintenance Plan
MMR	Mobile Mechanical Range
MOE	Method Of Entry
MOUT	Military Operations in Urban Terrain
MRU	Members Required in Uniform
MRU	Minimum Replacement Unit
MSDS	Material Safety Data Sheets
MSTA	Mount Stuart Training Area
MTA	Macrossan Training Area
MTR	Marksmanship Training Range
MUD	Multi-User Depot
MUR	Mock Up Range
MVA	Motor Vehicle Accident
NC	Network Controller
NCO	Non Commissioned Officer
NCS	Net Control Station
NEP	Non Equipment Procurement
NFC	National Facilities Conference
NGS	Naval Gunfire Support
NOTAM	Notice to Airmen
NOTMAR	Notice to Mariners
NPC	National Packaging Covenant
NPMA	Non Public Monies Accounts

ABBREVIATIONS	
Statement of Works	
NSESD	National Strategy for Ecologically Sustainable Development
Ops	Operations
OPSCoord	Operations Coordinator
OQE	Objective Quality Evidence
PACMAN	Australian Defence Force Pay and Conditions Manual
PAN	Possible Assistance Needed
PAN	Priority Aircraft Notifications
PBM	Performance Based Maintenance
PCBU	Persons Conducting a Business Undertaking
PI	Performance Indicators
PLO	Planning Liaison Officer
PLS	Projectile Locating System
PMCA	Project Management Contract Authority
POI	Program of Issue
POL	Petroleum, Oils and Lubricants
POLMAN 3	Policy Manual 3
PROC C	Procured Centrally
PROC L	Procured Locally
PS	Personnel Services
PSL	Plant Special Licence
PSO	Project Support Officer
PT	Physical Training
PTI	Physical Training Instructor
PVP	Pest and Vermin Program
PTP	Program Tender Plan
QA	Quality Assurance
QCI	Quality Control Inspection
QMA	Quartermaster Advisor
QMS	Quality Management System
RAAF	Royal Australian Air Force
RADHAZ	Radiation Hazards
RAN	Royal Australian Navy
RAP	Regimental Aid Post
RAP	Reduced Activity Period
RATEL	Radio telephone
RCD	Residual Current Device

ABBREVIATIONS	
Statement of Works	
RCGP	Regional Contract Governance Plan
RCGM	Regional Contracts Governance Manager
RCO	Range Control Officer
RCU	Regional Cadet Unit
RD	Regional Director
RDA	Range Danger Area
RDM	Remote Data Module
REMP	Regional Energy Management Plan
REPO	Region Estate Planning Officer
RFC	Regional Facilities Conference
RFS	Rural Fire Service
RI	Range Inspectors
RIM	Regional Information Manager
RLFTE	Range Live Fire Target Equipment
RLSSA	Royal Life Saving Society of Australia
RLU	Regional Logistic Unit
RM	Regional Manager
RMS	Rations Management System
RMS	Room Management System
RMS	Reservations Management System
RNE	Register of National Estate
ROE	Rate of Effort
ROHSCO	Regional Occupational Health and Safety Coordinating Officer
ROMAN	Resource and Output Management Accounting Network
SADFO	Senior Australian Defence Force Officer
SAFETYMAN	Defence Safety Manual
SAR	Search and Rescue
SAR	Senior Army Representative
SAS	Security Alarm Systems
SASR	Special Air Service Regiment
SaSS	Service and Sub Services
SATCO	Senior Air Traffic Control Officer
SATO	Senior Ammunition Technical Officer
SBS	Senior Base Support
SCA	Supply Customer Accounts
SCEC	Security Construction and Equipment Committee

ABBREVIATIONS	
Statement of Works	
SDS	Signals Dispatch Service
SDSR	Senior Defence Support Representative
SDSS	Standard Defence Supply System
SDU	Sanitary Disposal Units
SEA	Senior Environmental Advisor
SED	Single Entitlement Document
SEM	Senior Environment Manager
SME	Small and Medium Enterprises
SME	Subject Matter Expert
SMR	Static Mechanical Range
SNCO	Senior Non Commissioned Officer
SOP	Standard Operating Procedures
SOW	Statement of Work
SPA	Special Purpose Aircraft
SQL	Standard Query Language
SRFF	Structural Rescue and Fire Fighting
SRL	Shared Risk Liability
SRP	Strategic Reform Program
SSI	Site Security Instructions
STARSN	Standard Training Area Range Safety Net
STF	Special Training Facilities
TA	Training Area
TA-AVN	Training Advisor - Aviation
TAMA	Training Area Management Authority
TAR	Training Area and Ranges
TARM	Training Area and Ranges Manager
TAROP	Training Area and Range Operation Program
TASMIS	Training Area Safety and Management Information System
TDRs	Tender Deliverable Requirements
TFTA	Townsville Field Training Area
TIMS	Telephone Information Management System
TRAMM	Technical Regulation of Army Materiel Manual
TRF	Technical Regulatory Framework
TRG	Training
UFP	Urban Firing Point
UHF	Ultra High Frequency

ABBREVIATIONS	
Statement of Works	
ULP	Unleaded Petroleum
UOR	Urban Observation Range
USO	Unit Security Officer
USSO	Unit Security Standing Orders
UXB	Unexploded Bomb (a type of MEO)
UXO	Unexploded Explosive Ordnance
VFM	Value for money
VHF	Very High Frequency
VST	Vertical Storage Tank
WHS	Work, Health And Safety
WMP	Waste Management Program
WR	Works Request

3. DEFINITIONS

DEFINITIONS	
Statement of Works	
A'La Carte	A'La Carte provides the diner with a menu containing a number of choices, with the diner can order exactly what they want from the menu.
Ablution Areas	Ablution Areas are areas used for human sanitation and include, but are not limited to; toilets, urinals, hand basins, mirrors and/or shower/bath areas.
Access Control	Access Control is limiting access to Defence sites, units or locations to only those persons authorised to be there. Human, physical and electronic resources may be used.
Access Control Pass/Card	An Access Pass/Card is a document or card that authorises the bearer, on proof of identity, to enter, remain in and leave an area. A pass may be issued on a temporary or permanent basis. A Department of Defence Common Access Card (DCAC) may be issued to Defence civilians, contractors, dependants/family members and persons determined eligible for permanent, temporary or periodic access to a particular base/establishment. May incorporate or be combined with an electronic swipe or proximity card.
ADF Identity Card	The ADF Identity Card is issued to ADF members and is designed to meet the Geneva Convention requirements for members of armed forces to carry identity cards.
Adverse Software Event	Means any interruption to the operation of the Software or any damage to the Software or any deterioration in the operation of the Software.
Aerodrome Rescue and Fire Fighting	ARFF is the category of aerodrome-based rescue and fire-fighting services provided by the aerodrome operator. Factors such as aircraft type, size (length and fuselage width) and frequency of flight operations determine the ARFF category required. The principal objective of ARFF is to save lives in the event of an aircraft accident or incident. Aircraft accidents and incidents usually occur with little warning, demanding that ARFF vehicles, equipment and personnel be held in an appropriate state of readiness
Aero-medical Evacuation	AME is the movement of patients to and between medical treatment facilities by air transportation
Air Weapons Ranges (AWR)	An AWR is a designated area to provide a safe and realistic tactical environment for conducting air weapons practices. Air weapons practices are necessary to validate aircrew and ground crew training, tactics, weapons effectiveness, weapon logistics management processes and weapons serviceability and to enable the conduct of Operational Test and Evaluation activities.
Alarm Response	Alarm Response is the required reaction to an alarm. It is comprised of 2 parts:
	a) Monitoring Response - the initial response in the Control Room to notice that an alarm has been activated and despatch a Patrol. The monitoring response shall occur within five minutes; and
	b) Patrol Response - the actions of the Patrol in physically attending the alarm site. The patrol response shall occur within twenty-five minutes.
	Timings apply unless otherwise advised by the CA.
Alarm Response Instruction(s)	The Alarm Response Instructions advised by Defence to the Alarm Monitoring Agency/Centre for contacting specific Defence/Unit staff to respond to a Unit alarm.
Alarm Verification	Alarm Verification is a check to determine whether the alarm is genuine; either by physical or CCTV means.

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Allocated Rations	<p>For internal Army accounting purposes, rations are considered to be either mandatory or allocated. Units bid for and are allocated a specific dollar value of allocated rations per year to cater for personnel participating in training activities such as</p> <p>a) Exercises Joint/Field</p> <p>b) Range practices</p> <p>c) Regt/corps occasions</p> <p>d) AACC continuation training</p>
Approved Consultants' Agreement	An agreement, approved for use by the Contract Authority, entered into by the Contractor with a consultant on the terms required under the Contract.
Approved Subcontract Agreement	<p>An agreement, approved for use by the Contract Authority, entered into by the Contractor:</p> <p>a) With a subcontractor engaged in accordance with the procedure set out in the Statement of Work; and</p> <p>b) On the terms required under the Contract.</p>
Armoured Fighting Vehicle	AFV is the generic term applied to any armoured vehicle capable of being involved, as a component part of a manoeuvre group, in battle. AFVs are categorised according to role, capabilities and amount of armour protection. Current variants are M1A1 Abrams, ASLAV, M113 APC and PMVs.
Asset Protection Zone	An area between an asset and bushfire hazard where bushfire fuel has been reduced significantly to protect the asset.
Asset Register	A list of all assets and information held within DEIS including, but not limited to, the Asbestos register, structure data, equipment, etc.
Assignment Instructions	Assignment Instructions are the operational documents detailing the specific duties to be performed under the contract and are developed in accordance with the relevant SSL. Assignment Instructions are prepared by the Contractor and agreed by Defence.
Atmospheric Monitoring	Determining the concentration of lead, asbestos or other particulate in the air.
Australian Standard Material Issue and Movement Priority System (AUSMIMPS)	AUSMIMPS is a standard priority system for the supply and movement of materiel and is applicable to all service and civilian activities concerned with the demanding, issue and movement of materiel within the ADF supply and transport system. AUSMIMPS provides the means of expressing the relative importance and urgency of requirements for materiel by reference to sixteen (16) Priority Designators. In operations, the application of AUSMIMPS may be modified by the operational headquarters as necessary.
Authorised Personnel	<p>Authorised Personnel are those personnel who are authorised to access Defence Sporting and Recreation facilities which are subject to this SOW, Unit Standing Orders and the directions of the CA. Includes the following:</p> <p>a) ADF members, or members of visiting Defence Forces, posted to the Unit;</p> <p>b) Defence APS members IAW the DeCA; and</p> <p>c) Members of sporting teams competing in Unit sporting activities.</p>
Authorised Personnel and Vehicles	Authorised Personnel are those personnel with the required delegation and authority to conduct a transaction or access a specific area/information and who possess an approved access pass. Authorised Vehicles are those vehicles that have an approved vehicle access pass authorising them to be driven into a specific area.
Authorised Transport Task	An Authorised Transport Task is verified by a Transport Task Order (Webform ST001/ST16) signed by SGT (equivalent) or above.

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Authority/Authorities	Any Commonwealth, State, Territory or Local government department, body or instrumentality or any other authority or statutory body which has jurisdiction over the Establishments or the Contractor's Activities or with whose systems the Plant and Equipment are or will be connected.
Barbecue Meal	Barbecue Meals are be issued in bulk to requesting units as approved by the CA as an alternative to a Mess meal:
	a) Mixed meat selection (from steak, sausages, fresh mince hamburgers, lamb chops, marinated chicken, ham, steak, pork spare rib, satay sticks/kebabs). The bulk pack should include: 50% steak, 30% sausages, 20% fish/chicken. It should be noted that there is a variation in weight requirements depending on the cut of meat provided. Vegetarian alternatives may be required upon request e.g. Vegetable burgers).
	b) Salad selection as a guide: coleslaw, potato salad, sliced beetroot, sliced pineapple rings, sliced onion rings, tomato wedges, celery sticks, tossed garden salad – commensurate with number of diners.
	c) Two slices of fresh bread or one bread roll or one hamburger roll or one hot dog roll, with PCP butter or margarine (per person)
	d) One piece of seasonal fruit (per person) (see also next item)
	e) One dessert item: PCP cake or two cream biscuits (per person). Alternative: fresh fruit platter commensurate with number of diners
	f) PCP condiments: BBQ sauce, steak sauce, salt & pepper, mayonnaise, salad dressing, butter or margarine. Alternative: sauces in bottles at request of ordering unit/authority, dependent upon numbers of diners.
	g) PCP beverages: Tea, coffee, milk, sugar or tetra-pack juice or cold cordial
	h) Serviettes and disposable cutlery and plate or mess knife, fork & plate (latter for return) plus tongs & serving platters (for return)
Barbecue Packs	Barbecue Packs are meals in the form of a packaged meat tray (minimum of three of the following - kebab/satay stick, fresh mince hamburger, scotch fillet steak, sausage with salads), bread sliced or rolls, utensils, fruit, beverages, condiments and serviettes.
Bar Coding of Fixed Plant & Equipment	Application of a unique bar code to an item of FP&E with reference to the regional naming conventions and updating all information within the DEMS database to reflect current information such as make, model and serial number
Bar Meals	Bar Meals also known as Light Lunch/Light Bar meal. Informal meal service provided for members in the Bar or Ante Room areas of the mess. The Bar Meal Service is separate from the normal dining meal service. The cost of foodstuffs for bar meals is borne by the Mess Committee and the prices are set by the Mess Committee. The availability of bar meals is subject to surplus capacity of the contractor.
Bar Service	Bar Service includes the following:
	a) Taking bar meal orders
	b) Delivery of bar meals
	c) Preparation and service of beverages
	d) Stock rotation
	e) General cleanliness and hygiene of the bar and surrounding areas, including regular clearing of empty glasses
	f) Ordering stock and receipt of deliveries
	g) Money handling (bar floats and takings)

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	<p>h) Maintenance of beer reticulation and post mix systems</p> <p>i) Security of bar stock and cash on hand</p> <p>j) Responsible service of alcohol</p> <p>k) Provision of bar snacks on days and times designated by the mess committee</p> <p>l) Stocktaking (where stock owned by Mess Committee, this will usually be conducted with a Mess Committee member)</p> <p>m) Stock mark up and pricing – this will be set by the Mess Committee</p> <p>n) Payment of bar profit to Mess Committee</p> <p>o) Stock ownership varies from mess to mess. It may be owned entirely by the mess, by the Contractor, or jointly, e.g. wine owned by the mess, and general bar stock owned by the Contractor. The Mess Committee will determine local arrangements.</p> <p>Please note: some bars do not provide bar meals.</p>
Bar Snacks	Bar Snacks are hot and/or cold finger foods provided for members of the Mess, often at Happy Hours. Provisions are provided by the Mess Committee with members billed a nominal monthly fee. Cost of items/foodstuffs for bar snacks is borne by the Mess Committee.
Base Electrical System	Consists of the Defence owned LV and HV power generation and electrical reticulation systems at nominated Defence Properties
Base Support Area	A grouping of Defence properties for purposes of managing the delivery of Defence Support services, typically in a similar geographic area.
Berths Ships	A ship's allotted accommodation place at a wharf or dock
Bistro/Barbecue Service	A selection of grilling meats are available for the diner to select. Usually the grills are cooked for the diner; however, all items may be self-cooked. A salad bar and condiment counter are also available for diners to serve themselves
Blood Lead Level	The concentration of lead in whole blood expressed in micromoles per litre ($\mu\text{mol/L}$) or micrograms per decilitre ($\mu\text{g/dL}$)
Board of Survey	A survey of unrepairable/unserviceable unit equipment prior to disposal action.
Breakdown	Is when a service, system or item of FP&E ceases to function as to perform to its' designed intent or capability.
Breakfast	<p>Minimum requirement is a range of fruit juices (100%) and cordial, minimum of five cereals, including porridge in winter, standard and low fat milk (soy upon request), a range of yoghurt (standard and low fat), eggs cooked to order, grilled bacon, two other hot dishes – e.g. baked beans and mushrooms, a range of toast, crumpets, fruit loaf and muffins, a selection of fresh fruits, and tea and coffee (including decaffeinated), Milo, sugar and artificial sweetener.</p> <p>Note: in many messes, breakfast timings include a continental and hot breakfast period to enable diners to participate in physical training sessions.</p>
Buffet	A Buffet is either provided in lieu of a normal meal or for a function, and these will only be authorised by the CA. When such approval is given, the normal meal will be prepared as a buffet and the number of meals that would normally be shown as Mess Meals will then be shown as Buffet Meals (Special occasions only)
Buffet Service	A selection of hot and cold dishes are displayed on a central buffet, or table, for diners to serve themselves. This style of service can be used for informal and semi-formal occasions. Buffets may be presented as part of an international or any other theme.

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Building Agent	Person responsible for the works request for Defence and non Defence owned buildings and leased buildings. (Defence may or may not be responsible for WRs depending on lease agreements).
Building Code of Australia	The Building Code of Australia, as amended from time to time, produced by the Australian Uniform Building Regulations Co-ordinating Council on behalf of the Commonwealth, State and Territory Governments.
Bushfire	An uncontrolled fire burning in forest scrub or grassland vegetation, also referred to as a wildfire.
Bushfire-prone Area	An area that can support a bushfire or is likely to be subject to bushfire attack. For Defence purposes, a bushfire-prone area includes both the area of vegetation that has been identified as having potential to support a bushfire; as well as a 100m strip adjoining or, surrounding each area of such vegetation.
Bushfire Attack	Attack by burning debris, radiant heat or flame generated by a bushfire which might result in ignition and subsequent destruction of a building.
Bushfire Hazard	A fuel complex, defined by volume, type condition, arrangement, and location, that determines the degree of ease of ignition and of resistance to control. Bushfire hazards are variable in their severity, with severity levels usually measured in terms of the fire intensity (kW/m) arising from the hazard.
Bushfire Management	All activities directed to prevention, detection, damage mitigation, and suppression of bushfires and recovery after bushfire events. Includes bushfire policy, administration, law enforcement, community education, training of fire fighters, planning, communications systems, equipment, research, and the multitude of field operations undertaken by land managers and emergency services personnel relating to bushfire control and the use of fire to meet land management goals and objectives
Cafeteria Service	Usually a selection of meals are presented in bain maries at the food servery. The diner selects a menu choice and is either served the meal by a food attendant, or by themselves from the bain-marie. When meals are served to the diner portion size can be controlled. Cold dishes will be pre-positioned and displayed in a cold refrigeration unit.
Call	An attempt (including by telephone, facsimile, DEMS or email) to contact the Property Service Centre for the purposes of requesting Services in accordance with the Contract.
Camp Accommodation	The provision of tentage and demountables (including tents, flooring stretchers, showers toilets etc.) for deployment in the field.
Camp Earmark	Camp Earmark that part of the Regional Logistic Unit (RLU) holding Camp and Accommodation Equipment for loan.
Camp Equipment	Camp Equipment is general camping stores and equipment which is used to supplement a units' own equipment.
Camp Labour	Trained hospitality staff employed specifically to provide support to Army Reserve activities such as annual camps or courses camps. The staff may be required to travel to remote locations.
Cantonment	Cantonment the built up area of a military base or establishment.
Casual Meal	A Casual Meal is one provided to an individual who is not entitled to rations at public expense. It is provided on payment at point of service.
Classified Material/Information	Classified material/information relates to any official material/information that, if compromised, could have adverse consequences for the Commonwealth. Classified material/ information can be of a material or electronic nature.

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Clean / Cleaning	Clean means to be free of dirt, dust, lint, spots, marks and scraps of food, liquids, and excess dampness left after cleaning, gum, grease, smudges, streaks, splashes, deposits, odours, stickiness, foreign materials and debris. Cleaning is the process of making something clean. Various methods may be used and cleaning shall be continuous until the process is complete. Beginning a process and then leaving it partially completed in order to comply with other start or finish times is to be avoided.
	The following terms related to Clean are defined:
	a) Contaminated Items;
	b) Disinfection;
	c) Dry;
	d) Dry Clean;
	e) Finish;
	f) Launder;
	g) Post Clean;
	h) Pre-Clean; and
	i) Wash
Combat Ration Pack (CRP)	A Combat Ration Pack (CRP) is a package of rations provided for field consumption; essentially consisting of canned and non-perishable items.
Co-mingled waste	Mixed dry recyclable materials (glass, aluminium / steel cans, coloured paper, plastic, cardboard and other paper unsuitable for office paper recycling, etc).
Commander (for Stores Service)	The Commander is defined in accordance with the Defence Supply Chain Manual as the Base Commander/CO/OC or Civilian Equivalent who is responsible for all stores issued to the unit they command. Commanders achieve this management aspect by appointing SCA Managers and SCA Holders. At Naval Establishments, the term 'Commander' refers to the Commanding Officer of the Establishment.
Commercial Line Vehicles	These vehicles are usually generally available 'off the shelf' from high volume vehicle manufacturers. This group of vehicles is sometimes called the 'white fleet'.
Common Areas	Common Areas are facilities that are accessible by all personnel they include, but are not limited to:
	a) Hallways/passageways;
	b) TV rooms;
	c) Common rooms;
	d) BBQ areas; and
	e) laundry/ablution/kitchenette areas.
	Shared Areas are also defined in this document.
Commonwealth Defect Risk Item (CDRI)	Those items identified in the DEMS as a Commonwealth risk. No SRL is to apply to reactive costs.
Complete Equipment Schedules	An entitlement document listing individual items which, when combined, constitute a complete equipment item of supply
Compliance Indicators (CI)	Compliance Indicators are objective measures of compliance against a clear contractual requirement. Quality of service is not measured by a CI.

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	Recorded as either “Pass” or “Fail” CI are directly assessed and directly input into CAPMAN. Many CI will be utilised individually for reporting purposes at executive, Regional and Base level some relating to high risk services are utilised directly by the Risk Reward Remuneration Model.
Condiments	Condiments are used to complement meal services in the messes. Normally includes salt, pepper, sauces, dressings, spreads for bread etc.
Condition Appraisal	An inspection of all fixed plant and equipment maintained under the PBM of FP&E Service to determine its condition for the purposes of keeping the Maintenance Specification up to date and informing the CA of the condition of the FP&E within the estate
Consumables	Consumables are items that are consumed in the provision of the service. For CMS service lines, items that are routinely used in the performance of maintenance and repair such as greases, lubricants, rags, fasteners, fuses and those items used as attachments to Tools and GFE such as drill bits, hacksaw blades, grinding wheels, abrasive pads, filters, batteries which are sacrificed or consumed in the delivery of the Service.
Contaminated Items	Contaminated Items are those that have been contaminated by body fluids, tissue and/or chemicals.
Contingency Activities	Contingency Activities are highly specialised activities utilising ADF consequence management capabilities, including but not limited to:
	a) Chemical;
	b) Biological;
	c) Radiological; and
	d) Nuclear events.
Continuous Surveillance	Continuous Surveillance refers to the after-hours inspection by mobile patrols of either the assets themselves, or where this is not possible, the part of the building or site where the assets are located. Patrols are to be equipped with a two-way radio linked to a central control facility, backed up by a dedicated reaction element. Where assets are not wholly covered by an SAS, inspections are to be carried out at random intervals not exceeding one (1) hour. Where assets are wholly covered by an SAS, inspections are to be carried out at random intervals not exceeding four (4) hours. In both cases, the response time to alarm activation should be no more than five (5) minutes.
Contract Authority (CA)	The Contract Authority is the DSG Manager or the Manager’s representative in all matters relating to the management of the contract
Contract and Performance Management (CAPMAN)	CAPMAN is the DSG-mandated Performance management Tool
Contractor	The Contractor is the successful tenderer, whether a Commercial Prime Contractor or an In-House Option. The Contractor shall also be defined to include all Contractor staff and subcontractors.
Contractor Managed Commonwealth inventory	Contractor Managed Commonwealth Inventory is those Commonwealth inventory items for which the management has been contracted out. The Contractor assumes accountability and responsibility for the Commonwealth inventory.

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	<p>The inventory will remain the property of Defence, however in accepting responsibility for the safekeeping of inventory the Contractor is accountable for the security, control and management of the inventory items physically under their control. The Contractor is responsible to ensure that inventory items in the care of the Contractors designated custodians or delegated officials are managed IAW the Defence Supply Chain Manual. The Contractor may be allocated a number of Warehouse(s), Unit stores and Supply Customer Accounts (SCA) and will use mandated Defence systems to manage the inventory under their control.</p>
Contractor Personnel	Contractor Personnel are all personnel employed or engaged, either directly or indirectly, by the Contractor. Including but not limited to:
	a) Day labour;
	b) Contractors;
	c) Sub contractors;
	d) Consultants;
	e) Advisers;
	f) Auditors;
	g) Inspectors; and
	h) Visitors.
Corporate Services and Infrastructure Requirement (CSIR)	A CSIR is raised by a sponsor group, (e.g. Army, Navy Airforce, DSTO, DMO or CSIG) or the Contractor to identify a requirement for works associated with the upkeep of the estate (e.g. maintenance or minor capital works on an element of the Defence Estate).
Courier Service	A Courier Service is a system for carrying official correspondence and messages of any security classification and occasionally can be used for the carriage of personnel
CR5M (modified cereal supplement)	See Combat Ration Pack (CRP)
Critical Spares	Spare parts required where the lead time to supply the item exceeds the maintenance response requirements.
Critical System	A whole or part of an engineering system identified as providing critical safety or capability Services. Usually systems with no redundancy that requires recovery planning at failure.
Critical System Downtime Plan	Defence has a variety of systems that are defined as critical either through the nature of the customer's capabilities, or because they support life-sustaining infrastructure, maintain establishment or personnel security, or impact on Defence personnel wellbeing and morale. Critical Systems directly affect a Defence establishment's or Customer's core operational ability. Critical Systems shall be identified in consultation with the CA. All items that constitute a Critical System are to be identified in the Defence Estate Information System, and configuration of the system controlled.
	Critical Systems characteristics include:
	a) Failure of a Critical System generally has no redundancies and requires some degree of recovery planning to be in place;
	b) Failure of a Critical System directly affects safety resulting in severe injury or loss of life;
	c) Failure of a Critical System directly affects operational capability; and

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	<p>d) Recovery from a Critical System failure could require external assistance (AMSA, FESA, CALM, Water Corporation, etc...).</p> <p>In the case of sewerage systems, the assets would not normally be considered critical by Water Utilities operators because the systems' designs usually include redundancy in the capacity of pipe work and holding tanks to store incoming flows and redundancy in pumping in the rising mains systems. However, many of the current Defence reticulation installations do not have redundancy in pumping capabilities and have limited storage capacities. Therefore, the available response time to respond to a failure is significantly decreased and could result in raw sewage overflows or discharges into very sensitive environmental areas.</p>
Cultivation	Cultivation is the process whereby garden soil is spaded over and fertilised or compost forked prior to planting
Custodial Equipment	Custodial Equipment is Commonwealth Equipment not managed by the Contractor, but stored within Contractor stores and managed by Custodial Officer.
Custodial Mess Property	Custodial Mess Property is Mess Property that has been handed over to the contractor for care and guardianship
Custodial Officer	The Custodial Officer is the person who has nominal custody of public property (Custodial Equipment [e.g. Comsec equipment]) as per conditions of the FMA Act and Defence instructions.
Customer Pays	The customer is paying for a service requested under the Contract.
Cut lunches	L1: Sandwich Pack – consisting of two rounds of mixed sandwiches, piece of fruit, popper and P/C biscuit.
	L2: Salad and Sandwich Pack – consisting of Garden Salad, one round of sandwich, piece of fruit, popper and P/C biscuit.
Cyclic Menu	A Cyclic Menu ensures variety by offering a number of items over a six week cycle. See the DCM Chapter 3 Menu Planning. The cyclic menu should take into account local climate and customer preferences/satisfaction
Daily Ration Strength.	The entitlement of a kitchen to rations based on number of entitled diners, e.g. living in members who have paid LIM, personnel rationed in on duty or living out members purchasing a casual meal ticket.
Defect	A failure of any Plant or Equipment to perform in accordance with the Performance Requirements during the Term.
Defence Catering Manual	The Defence Catering Manual sets out policy guidance on Defence catering matters to ensure that Defence personnel receive the food and nutrition necessary for the effective performance of their duties. Key chapters for the Hospitality and Catering Contractors are Chapter 2 Nutrition and Healthy Eating, Chapter 3 Menu Planning and Chapter 6 Food Safety Management
Defect Correction Liability	The Shared Risk Liability (SRL) is the liability the Contractor has for costs incurred where the Contractor and the Commonwealth are sharing the risk (SRL Work). The Shared Risk Liability is that amount outlined in the tenderers proposal and agreed between Defence and the successful tenderer.
Defence Assistance to the Civil Community (DACC)	Defence Assistance to the Civil Community activities include the provision of emergency management and disaster relief support to Australian states and territories and also Commonwealth, State and Territory government agencies.
Defence Estate Information System (DEIS)	The information system(s) used by Defence on the internal Defence information networks for recording descriptions of the estate and records of activity on the estate, including workflows, business rules, documents, spatial data, geo-spatial data and assets.

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Defence Estate Management System (DEMS)	The Defence Estate Management System is a computer program running over the Defence Restricted Network which consists of a number of modules that encompass the major business processes used in this contract. The main purpose of DEMS is to provide a system to manage facilities maintenance activities. DEMS consist of individual modules that can be integrated to provide an overall management tool specific to the requirements of each user. DEMS is the DSG mandated Estate management Tool.
DEMS Maintenance Specification	The maintenance specification referred to in the Statement of Work as subsequently amended throughout the Term in accordance with the Contract.
Defence Industrial Security Program – (DISP)	The Defence Industrial Security Program is a protective security program run by the Department of Defence that ensures that industry requiring access to security classified information & material adopts & maintains standards of security acceptable to the Commonwealth.
Defence Practice Area	A Defence Practice Area (DPA) is an area of land, sea or air declared for the purpose of conducting Defence operations or practices. A DPA is declared under Regulation 49 of the Defence Force Regulations (DFR). DPA declarations protect public safety by giving notice of a practice, prohibiting entry to, and allowing the removal of unauthorised people, vehicles, vessels or aircraft from a DPA when an authorised Defence operation or practice is in progress.
Designated Social Events (Navy Only)	Designated Social Events are defined in DI(N) ADMIN 41-1 para 37 section b as informal receptions and luncheons, and those functions involving essentially, only the officers or sailors of a particular ship or establishment, with or without personal guests.
Direct Unit Funding (DUF)	Unit support items not stocked by Regional logistics Units", of general store or office requisites nature, commercial 'off the shelf', not manufactured to a military specification, normal commercial guarantee/warranty applies, commercial trade packaging is satisfactory, inspected at the receiving point, firm price or the price can be readily checked, installation (where required) is uncomplicated, and no special security conditions apply.
Disinfection	Disinfection is the process whereby pathogenic organisms in linen are reduced to levels which would be insufficient to cause human infection.
Domestic Transport	Domestic Transport tasking is both on a programmed and non-programmed basis and involves satisfying both driver tasking and self-drive vehicle requirements. It does not include the provision of or operation of transport required for actual or simulated military operational conditions
Dropout	A Call, which is not actioned in accordance with the procedure described in the SOW.
Dry Fire	Exercise with blank ammunition and exercise pyrotechnics only.
Duty Meals	Provided for personnel identified as being on duty for a 24-hour period that prevents them from partaking of a meal at their usual place of domicile. Duty meals are also provided to personnel who are working over their normal rostered shift and who would be entitled to a meal allowance.
Duty Personnel	Defence Personnel who are detailed to be constantly available for call during a specified period.
Duty Supplement	A snack provided in accordance with SUPMAN 4 authorised by Unit
Ecologically Sustainable	Ecologically Sustainable is the use of natural resources within their capacity to sustain natural processes while maintaining the life support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations and taking account of the entire range of costs attributable to the use of natural resources.

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Edging	Edging is the process of maintaining edges in a neat and trimmed condition by removing all overhanging or intrusive grass from kerbs, drains, pathways, paved areas, sign posts, monuments, graves and headstones, display items, fire hydrants, bases of trees/shrubs/palms, Telstra pits and any other objects that may be present.
Electrical Operating Authority	Defence, as owner and user of Base Electrical Systems on its Properties is responsible for their operation. Defence vests the responsibility for technical control and safety for the Base Electrical System with the Electrical Operating Authority.
	The Electrical Operating Authority is responsible for the configuration and operation of the Base Electrical System at all times to ensure the safety of personnel, the continuity of supply and the safety of plant and equipment.
	The Electrical Operating Authority shall manage and implement procedures which comply with the requirements of the Local Supply Authority, are in accordance with all relevant Federal and State codes and regulations.
Electronic Purchasing Unit (EPU)	Electronic Purchasing by or on behalf of a Unit - An electronic procurement tool utilised by units to purchase domestic stores at unit level.
EMEFIX / GM 153	Repair and Recovery Request
Emergency stand-by	ARFF vehicles are crewed and engines running. The vehicles have been moved onto the fire section apron and radio communications have been established with the air traffic control (ATC) tower. Vehicles are not to depart from the readiness location until directed to do so by the ATC Duty Tower Supervisor.
Engineering Operations Services	The services under Engineering Operations generally fall into three broad categories:
	a) Fixed Plant and Equipment which is not suitable for maintenance under the Performance Based Maintenance of FP&E service line. This is usually when the Commonwealth only requires a fixed schedule of maintenance to be performed on the equipment and thus it is inappropriate for the Commonwealth to be paying for the risk loading that would be attracted under the Performance Based Maintenance service line. Examples of this type of Engineering Operations service includes maintenance of room air-conditioners and domestic hot water heaters.
	b) General Estate Work items where Defence wants a periodic inspection and reporting regime to support development of its works program. The type of service can also include certification of the GEW item. Examples of this type of Engineering Operations service include nominated training facilities, nominated playground equipment and roadway pavement maintenance.
	c) Operational services which do not fit in other CMS service lines. Examples of this type of Engineering Operations service include operation of HV and LV reticulation systems, operation of sewerage treatment plants and operation of swimming pools.
Entitled Diners	A member who lives in and has paid LIM, a Defence member (uniformed or civilian) who has purchased a casual meal at Commonwealth expense, or a member rationed in for duty purposes.
Environment	The Environment includes:
	a) Heritage;
	b) Ecosystems and their constituent parts, including people and communities;
	c) Natural and physical resources;
	d) The qualities and characteristics of locations, places and areas;

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	e) Heritage values of places; and
	f) The social, economic and cultural aspects to a thing mentioned in a, b and/or c.
Environmental Clearance Certificate (ECC)	An Environmental Clearance Certificate is an internal Defence certificate which provides a record that the environmental impacts of a Defence action have been identified and are not likely to cause significant environmental impacts under the Environmental Protection and Biodiversity Conservation Act 1999.
Environmental Compliance Certificate	ECCs are undertaken to identify project/activity risks and applicable mitigation measures and environmental conditions for the proposed activity where no extant policies or procedures already exist to manage those risks. The Certificate is prepared by the project/activity owner in consultation with the Regional SEM and closed off with the submission of a Post-Activity Report.
Environmental Management System (EMS)	The concept and major components of an Environmental Management System are set out in the Australian/New Zealand Standard (AS/NZS) ISO14001. An EMS has several key components as set out below: organisation commitment, corporate environmental policy, environmental aspects register, objectives and performance indicators, environmental management program documentation often called an Environmental Management Plan (EMP), operational and emergency control procedures, responsibility and reporting structure, training and awareness program, environmental impact, regulatory and legal compliance and environmental review audits, performance monitoring and measurement.
Equipment	Equipment is all the technical or non-technical articles needed to outfit an individual or organisation.
Equipment	For purposes of this contract, equipment items are permanently fixed in place, hard wired or plumbed. There are some exceptions to this such as large portable generators; however, these exceptions will only be agreed on a case by case basis by the Technical Authority. The specification of maintenance on equipment is defined in the Statement of work and will be performance based, scheduled or responsive. The item was DSG procured or has been formally handed to DSG (with maintenance funding) by the procurement authority (e.g. DMO, Navy, etc). Equipment items may be grouped into Equipment Systems for purposes of common referencing, operation, maintenance and or capability. Equipment also includes ancillary equipment that directly supports equipment outcomes including all parts, components, controls, connections and connecting ductwork, gauges, frames or sub assemblies necessary for an item to operate and achieve the required Performance Statement in the Statement of Work.
Equipment System	A grouping of equipment items that together provide a common capability, maintenance or compliance outcome. For example an electrical service Equipment System in a building includes the LV equipment and reticulation in a building. Equipment Systems are defined in the ERIM.
Establishments	Establishments are the military bases, units and geographical sites described in the Statement of Work as varied in accordance with any Variation directed under the Contract.
Estate Appraisal	The process of assessing condition, compliance, safety and effectiveness of all elements on the Defence Estate. Outcomes of Estate Appraisal include updates to estate upkeep maintenance schedules, identified maintenance requirements for scoping of estate projects, recommendations for operational changes and inputs for Service Strategy Optimisation process. All technical consultancies are to use the Estate Appraisal process.

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Estate Elements	Items on Defence Properties such as land, buildings, infrastructure systems, infrastructure elements, equipment systems, equipment items, environment, hazards and described according to the Estate Register Information Model (ERIM).
Estate Register Data	The definitive listing of all Estate Elements in accordance with the Estate Register Information Model recorded in the Defence Estate Information System
Estate Register Information Model (ERIM)	The definitive information model that defines the requirements for describing Estate Elements.
Estate Upkeep	Maintenance and operation of buildings, infrastructure systems, infrastructure items, equipment systems, equipment items, land and environment to comply with legislation and to support the daily activities of Defence at various facilities and properties located across the country.
Estate Upkeep Maintenance Schedule	Estate Upkeep Maintenance Schedule (EUMS) set out the nature and timing of all proposed activities under Performance Based and Scheduled Maintenance / Operations (other than defect correction) that will be undertaken for the life of the Estate Element. The EUMS shall be sufficiently detailed to enable competent trades persons to understand what is required to be done and how often. The EUMS must describe the maintenance actions for every identified Estate Element. Forecast dates are to be provided. A schedule that simply describes activities in generic terms (such as 'Quarterly Service') without detailed instructions and dates for the service does not meet the requirement.
E-Waste	eWaste refers to discarded electrical and electronic devices and includes whitegoods, televisions, computers, power tools, lighting and game consoles.
Explosive Ordnance	All munitions containing explosives, nuclear fission or fusion materials and biological and chemical agents. This includes bombs and warheads; guided and ballistic missiles; artillery, mortar, rocket and small arms ammunition; all mines, torpedoes and depth charges, demolition charges; pyrotechnics; clusters and dispensers; cartridge and propellant actuated devices; electro-explosive devices; clandestine and improvised explosive devices; and all similar or related items or components explosive in nature.
External Areas	External Areas include, but are not limited to, building exteriors, steps, landing ramps, verandas, car parks and entrances.
Facilities Acquisition Strategy (FAS)	A control document to assist in the development of a Tender Evaluation Plan by defining the strategy to be used in a tendering process.
Fauna	Fauna are the animals of a given region, including but not limited to mammals, marsupials, birds, marine animals, reptiles and insects.
Feral	Feral is a species that was once tamed or domesticated and has since reverted to a free-roaming life in the wild.
Fertilising	Fertilising is a horticultural practice employed to ensure appropriate organic or inorganic material, either natural or synthetic is used to supply elements (such as nitrogen, phosphate and potash) essential for plant growth.
Fine Dining	Fine dining is the provision of a service that usually requires full table stewarding service, appropriate table settings and meals provided to the diner appropriately garnished.
Fire Fighting	Fire Fighting is the process of bringing under control and ultimately extinguishing a fire - includes 'direct' and 'indirect' fire fighting.
	Direct – e.g. Extinguishing the fire
	Indirect – e.g. Removing fuel through back burning and other methods
Firebreaks/ Fire trails / Fire Buffer	A Firebreak is an area or strip of land where vegetation has been removed or modified to reduce the risk of fires starting and reduce the intensity and rate of spread of fires that may occur.

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First Response Bushfire Fighting Services	Initial deployment of bush fire fighting appliances/assets to extinguish a fire shortly after ignition while the fire is relatively small. First response are required to assess their ability to extinguish the fire and identify what if any additional resources should be included in the second response to extinguish the fire.
Fiscal (Financial) Year	Fiscal Year - 01 July of one year to 30 June of the next. (Same as Training Year)
DSG Fleet Vehicle	Defence vehicles are grouped into the following categories:
	Category 1. Vehicles permanently allocated to individuals or units which are not available for general tasking;
	Category 2. Vehicles pooled for self drive general tasking; and
	Category 3. Vehicles for general and specialised transport tasks such as courtesy bus runs, taxi service, courier services and load carrying, including personnel and/or dangerous/hazardous cargo
Fixed Plant and Equipment	For purposes of this contract, the following general characteristics define Fixed Plant and Equipment (FP&E):
	The asset was permanently fixed in place, hard wired or plumbed. There are some exceptions to this such as large portable generators; however, these exceptions will only be approved as FP&E on a case by case basis by the Technical Authority. Whilst this definition can apply to both FP&E and GEW items, generally, FP&E items compose those system elements best described as plant or equipment (e.g. generators, switchboards, pumps, fire sprinkler systems, etc) whilst GEW items are those items considered building or structural elements or fittings (e.g. reticulation systems for sewerage, water and gas, roads, etc). Some reticulation items for the sewage, water and gas are normally considered to be FP&E items such as 'Large or flow control Valves' and all the fixed equipment for the sewage, water and gas are FP&E.
	The item was DSG procured or has been formally handed to DSG (with maintenance funding) by the procurement authority (e.g. DMO, Navy, etc).
	FP&E also includes any ancillary equipment that directly supports the operation of the piece of FP&E including all parts, components, controls, connections and connecting ductwork, gauges, frames or sub assemblies necessary for an item of plant or equipment to operate and achieve the required Performance Statement in the DEMS Maintenance Specification.
Food Handler	A Food Handler is any person employed in any capacity to handle food, drink, crockery and kitchen utensils in the Messes.
Foodstuffs	Foodstuffs are the commodities that make up the food inventories. The quality, quantity and variety of foodstuffs must not be less than that specified by the Supply Manual (SUPMAN 4) and Australian Defence Force Food Specifications (ADFFS).
Force Majeure	Event or course of events that could not have been reasonably foreseen by the operations or maintenance contractor giving rise to specific Contract processes.
Foreign Object Debris (FOD)	FOD is a control mechanism to prevent any objects entering the airfield that may cause damage to aircraft.
Formal Dinner/Dining-In Night	A Formal Dinner/Dining-In Night is a social function held in any of the Messes which follows a set procedure and observes strict regimental traditions which are expressed in local mess documents regarding customs and traditions.
Fostered Unit Accounts	Support provided to Air Training Corps, Naval Reserve Cadets and Australian Army Cadets. Fostered Units are generally Units that do not have a Q Store and rely on DS-NQ for support.

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Fresh Food Supplement	Fresh Food Supplements are bread or bread ingredients to supplement the content of a five man Combat Ration Pack. The unit as part of their annual Allocated Ration vote bids for the cost of this supplement.
Fresh Rations	Fresh Rations are either perishables or semi-perishable rations usually requiring preparation and/or cooking prior to consumption.
Fuel	Fuel includes but is not limited to AVTUR and AVGAS, AVCAT, MSP & diesel stored in dump tanks/drums including Drum Fabric Collapsible (DFC) and Tank Pump Assemblies (TPA)
Fuel Facility	Fuel Facility is a generic term used to cover all types of fuel facilities, including but not limited to POL points, installations, stores and fuel farms.
Functions	Functions are organised social activities including but not limited to formal dinners, balls, official hospitality and official entertainment and social events organised for mess or unit members and their families or guests.
	To minimise Defence processing overheads, it is expected that Units will pay for any requested functions using the Defence Purchasing Card.
	Official and Private Functions are also defined in this document.
Function Areas	Function Areas include but are not limited to: cinemas/projection rooms, Messes, chapels, auditoriums, conference rooms, food distribution areas etc.
Functions - Official	Official Functions are functions held in a mess, unit or base which are for an approved Defence purposes and for which it is appropriate that Official Hospitality is provided.
Functions - Private	Private Functions are any function held in a Mess, unit or base which are not open to all personnel who have access to that mess, unit or base on a first come/first served basis. Weddings and functions for sports clubs that are not controlled by the ADF are examples of private functions. A function at which members of the Mess, unit or base do not comprise the majority of attendees is also considered a private function unless the reason that the members are outnumbered is because the function is open to ADF families or the general public for Defence purposes (eg a family orientation or unit open day). The sponsor of a private function must have the approval of the relevant base, unit or Mess authority to hold the function. Quotation, invoicing and payment for private functions occur directly between the function sponsor and the contractor.
General Service Vehicles	General Service Vehicles are designed to military specifications to conduct tasks required in an area of operations. GS vehicles combine road mobility, including the ability to cross water obstacles with minimum preparation and assistance. Certain GS vehicles are designed for air portability in appropriate aircraft. GS vehicles normally have inherent durability and are designed to have a longer 'Life Of Type' than off-the-shelf Commercial Line vehicle. This group of vehicles is sometimes called the 'green fleet' or 'green skins'.
GE Works	Any:
	a) Planned and unplanned maintenance work (other than PBM of FP&E Services or Engineering Operations Service) whether task-based or trade-based; or
	b) Building works or procurements of plant and equipment at an Establishment which are to be undertaken under this Contract; or
	c) Any other services required in support of the maintenance of the Estate.
GEWM Services	a) GE Works; and
	b) All tasks or things which are necessary for the Contractor to do or provide to comply with its Contract obligations in respect of GE Works.

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Government Furnished Materiel	Government Furnished Materiel is resources provided by the Commonwealth to the Contractor for use in delivering the services required under this Contract. Government Furnished Materiel includes, but is not limited to: facilities, equipment, consumables, information, members required in uniform, access to systems etc
Grass Cutting - Airfield	An Airfield Cut is where the grass is cut such that the length shall not exceed 300mm and shall not be shorter than 80mm. Additionally the Contractor shall ensure that:
	a) An area of 2m radius around all Airfield Furniture is kept clear of grass or vegetation.
	b) An area of 7.5m radius around all windsocks is kept clear of grass or vegetation
	c) A 6 metre strip around all Aircraft Movement Areas is kept free from windrows/cut vegetation;
	d) The grass and vegetation in all drains is kept at a minimum height of 100 mm to a maximum height of 300 mm; and
	e) All culverts are to be free of grass and vegetation.
Grass Cutting - Domestic	A Domestic Cut is where the grass is cut such that the length shall not exceed 100mm and shall not be shorter than 50mm.
Grass Cutting - Manicure	A Manicure Cut is where the grass is cut such that the length shall not exceed 100mm and shall not be shorter than 50mm. Grass clippings removed.
Guardhouse	The Guardhouse is the building located at the main access control point of each site.
Hamper	Hamper meals are for take away purposes, as a substitute to the normal meal.
Health Surveillance	Health Surveillance is biological monitoring and medical examination.
Heavy Weapons Ranges	Heavy Weapons Ranges are permanent or purpose built to accommodate heavy (High) calibre weapons which could be used on the ground, vehicle mounted, or mounted to airframes such as: .30 & .50 Calibre Heavy machine Guns, Chain Guns, heavy Calibre Sniper Rifles, aircraft machine guns, etc.
High Explosive Ranges	High Explosive ranges are permanent or purpose built to accommodate the operation of weapons systems and platform designed to deliver HE munitions such as artillery, mortars, missiles, aircraft bombs, anti armour weapons systems, etc.
Hot Box Meals	Hot Box Meals are TV style meal served into individual food trays, which are then placed into insulated containers (referred to as hot boxes) for either delivery to the consumer or stored for later consumption or collection. The hot box may be hot or cold.
Hot Refuelling	Hot Refuelling is refuelling an aircraft whilst the aircraft's engines are running.
Hygiene Services	Hygiene Services are those activities associated with sanitation products including but not limited to nappies, incontinence product waste, and sanitary products including tampons and pads.
In-Flight Rations	In-Flight Rations are meals and refreshments provided to crews and passengers of (usually) military and visiting military aircraft in accordance with entitlement.
Infrastructure	Infrastructure items are those covered by Building Code of Australia (BCA) Class 10b. They are typically outside facilities as defined in the ERIM.
Infrastructure Appraisal (IA)	IA is an applied structured approach to providing buildings, structures, engineering services, systems and the like with a current rating as to allow a quantitative value of fit for current usage or purpose and soundness to perform that usage or purpose.

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Infrastructure System	A grouping of infrastructure items that together provide a common capability, maintenance or compliance outcome. For example a road network on a property is an Infrastructure System comprising all road elements. Infrastructure Systems are defined in the ERIM.
Inspector Foodstuffs (IFS)	An Inspector Foodstuffs is an ADF member who is trained in foodstuffs quality assurance. The IFS is authorised to inspect, in consultation with the CA, contractor's premises and the foodstuffs they provide.
Inventory	Inventory is a generic term indicating Commonwealth owned items held on charge on the accounting system in store (including loan pools).
Inventory Control	Logistic procedures which include managing, cataloguing, determining of requirements, procurement, distribution, overhaul and disposal of materiel. It is synonymous with material control, material management, inventory management, fleet management and supply management. ADFP 101 Definition: The phase of military logistics, which includes managing, cataloguing, requirements, determinations, procurement, distribution, overhaul and disposal of materiel. Synonymous with 'materiel control'; 'materiel management'; 'inventory management'; and supply management'.
Joint Fuels & Lubricants Agency (JFLA)	The group established within the ADF with the responsibility of supply and distribution for all ADF fuels and lubricants.
Key Performance Indicators (KPI)	The highest and broadest level output from the Service Quality Module. Expressed as a percentage, KPIs are calculated by the PMT by rolling up a number of Performance Indicators. They are used for higher level reporting such as Balanced Scorecard and CSA and are applied against Risk - Reward Model
Keys	Keys are defined as any entry control device and may include proximity cards, swipe cards and all forms of keys
Labelling of Estate Elements	The application of a unique bar code or other means (signage) to an element on the estate including buildings, infrastructure and equipment according to the naming conventions defined in the Estate Register Information Model.
Lawn Care	Lawn Care is the process of ensuring a lawn is maintained in a healthy condition though periodic fertilising, watering and top dressing IAW seasonal requirements and standard horticultural practice
Lead Biological Monitoring	Determining the amount of lead in a person's capillary or venous blood and the measurements incidental to that determination.
Legislation and Regulations	Commonwealth, State and Local Legislation, Regulations and Codes, Australian Standards, manufacturer's specifications and Defence Policy
Light Meals	A menu item similar to that offered at retail takeaway outlets, eg. Pizza, fish and chips, burgers, chiko rolls, toasted sandwiches etc
Linen	Any article (for example: a garment, bed linen, table linen, mats) that is normally laundered. For accommodation services, this includes, but is not limited to, sheets, blankets, quilts, doonas, quilt covers, pillow cases, mattress protectors, counterpanes, valances and any other bedding-specific items.
Live Fire	Exercise with live ammunition including Ball, High Explosive, Fragmentation, White Phosphorous, Riot Gas and illumination natures.
Living In Accommodation (LIA)	Living In Accommodation means a barracks or similar kind of residential accommodation that meets both these conditions.
	a) It is owned or controlled by the Commonwealth; and
	b) It is provided primarily for the use of members without dependants.
Living – In Meals (LIM)	Living–In personnel may elect to pay for the meal portions of Living–In charges.

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Living In Personnel	Defence Personnel (either military or approved civilians) who physically occupy live in accommodation and pay the relevant quarter's charges. Additionally, personnel who are attending a Unit/Base/Establishment for duty and are required to live in for the duration of the duty i.e. training courses or camps where the duration of the duty is in excess of 14 days.
Living-Out Personnel	Those members who do not occupy live-in accommodation. These personnel are not entitled to meals at Public expense, unless they are rationed in as on duty personnel.
Loan Pool	A regional based pool of equipment used to supplement units' own stores and equipment. Obtained on a 'first come first served basis'. Resources bid for six months in advance. Usually utilised by reserve formations and units.
Local Purchase Item	Low value domestic type items that are commercially available within Australia, require no control over their acquisition, distribution and/or disposal, are identified in SDSS by an IMC of LP, RL or AL, or are technical items available under Standing Offer Arrangements for which the Unit is nominated as an ordering authority. ADFP 101 Definition: The function of acquiring an item of supply from sources outside the Department of Defence.
Lunch and Dinner	Lunch and Dinner - Guidance is set out at DCM Chapter 3 Menu Planning.
Mail Service	The Mail Service is a system of delivering mail to units on and off base. This mail is both civilian and military and can be of any security classification
Maintenance	All services, tools, consumables, insurance, supervision and labour required to maintain or restore critical systems and/or equipment to their operating condition, including but not limited to activities such as preservation and painting, cleaning, condition monitoring, systemic inspections, replacement of components or parts, fabrication, replacement of the entire item of Equipment or System, calibration, and lubrication.
Maintenance Plan	The plan submitted by the Contractor and not rejected by the Contract Authority, as amended from time to time in accordance with the provisions of the Contract.
Management	Management of any element of the Statement of Work is to include administration, direction, monitoring, control, record keeping and reporting as required.
Mandatory Rations	Mandatory Rations are rations to meet statutory obligations. They include:
	a) all Defence living-in members paying LIM;
	b) living-out members rostered for duties which require them to live-in (e.g. Unit duty room personnel);
	c) living-out member commences an additional period of duty not less than three hours before or ceases an additional period of duty not less than three hours after his or her rostered time for commencing or ceasing duty;
	d) rations consumed at Training Command-Army approved courses listed in TCI-OPS for trainees and essential personnel;
	e) hospital patients;
	f) members undergoing detention;
	g) in-flight rations whilst on duty and flying over a meal period only; and
	h) non-forecast activity authorised by COMDAST for operations.
	GRES units can order Mandatory Rations for meals on repayment to be consumed in Mess Dining Rooms with approval of Unit Commanding Officer or equivalent. The money collected for meals on repayment are to be paid to Account Group 59 or Account Group 68.

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Marksmanship Training Range (MTR)	The Marksmanship Training Range (MTR) consists of a multiple lane target system with moving and stationery target banks. The system is controlled by a range-supervising computer, which controls the operation of the down range controller and the intelligent visual display units (IVDU). The fall of shot is interrogated telemetrically by a projectile locating system (PLS) and displayed on each firer IDVU as well as the central control module. Activation of target systems is by radio control with a visual display of fall of shot available by the IVDUs (detailed information available in operating manual). The MTR will also provide hard copy print outs of the firer's performance, for inclusion in individual shooter's logbooks.
Material Handling Equipment	MHE includes forklifts, mobile cranes and other MHE. The management of this equipment is as follows;
	Forklifts
	Telehandlers
	Mobile slewing cranes/Non slewing cranes
Meal and beverage supplement	Supplements are used to give additional energy/nutrition in a range of circumstances (e.g. duty supplements, training supplements). Details are set out in SUPMAN 4, Chapter 2.
Meal entitlement category	Meal entitlement category for a meal obtained from a base eating area include: a Duty Meal, a Living In Meal (i.e. the ADF Member has already paid Living-In Meals charges), a meal provided to a Member with Dependents Unaccompanied, a meal provided to an ADF Member in transit to a base in another region and is not in receipt of travelling allowance, a meal provided as part of a training course, a meal provided as part of a Unit, Formation, Cadet Exercise/Training activity, a meal provided to a Reservist on duty, a casual meal – Defence personnel, a casual meal – non-Defence personnel, a casual meal – Visiting Forces)
Meal pass and payment system	An electronic system for meals provided in a base eating area which:
	a) Provides Point-of-Sale functionality,
	b) Accepts a variety of cashless and cash payment methods;
	c) Records the Defence Identification Card barcode of each Defence diner and their meal entitlement category, and
Meal service standards	e) Allows the electronic provision of this data in the prescribed format to Defence
	The meal service standards are as follows:
	a) Other Ranks (ORs) eating areas – servery, no table set or clear. Where relevant, the queuing and serving arrangements are to enable large numbers of diners to obtain their meal quickly and efficiently;
	b) Senior Non-Commissioned Officers (SNCOs)/Senior Sailors/Sergeants eating area – servery (at most locations) with table set, clear and reset;
Mess Eating Area	c) Officers eating area – servery (at most locations) with table set, clear and reset.
	The area in a Mess where meals are served (also known as a dining room). It excludes common areas and bars.
Mess Membership	Mess Membership consists of three classifications:
	a) Ordinary Members (military personnel posted to the Unit);
	b) Affiliate Members (known as associate members by Navy) are military personnel temporarily attached to the Mess and civilians of equivalent rank status who choose to be affiliated; and

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	c) Honorary Members (personnel elected by the Mess).
Mess Premises	Mess Premises are the areas usually contained within a building or a number of buildings and their surrounds, for the purpose of eating, drinking, entertainment, recreation and relaxation. The supporting facilities of food preparation, bar service, storage and accommodation areas, where provided, are also included.
Mess Property	Mess Property is the property and fixtures owned and controlled by the Mess Committee for the use of Mess members.
Minor Workplace Adjustment	Low value new work (not maintenance) that includes moving items; for example partitions, workstations, power points, whiteboards, and installing additional items, for example power points, mounting picture rails and whiteboards, replacing locks with those with a specified function. Where Minor Workplace Adjustments are valued at \$10,000 or less and are approved in accordance with the Minor Workplace Adjustments business rule, these works are [specify either included in Fixed Fee or fully reimbursable].
Miscellaneous Services	The ad hoc support to Defence personnel, as authorised by the CA.
Mobile Patrols	Mobile Patrols are to be equipped with two-way radio linked to a central control facility, be mounted in vehicles or be on foot, depending on the environment and type of installation or asset being protected, and are to consist of either, or a combination of:
	a) A minimum of one guard equipped with a duress alarm; or
	b) At least two guards where duress alarms are not available.
	Patrols are to:
	a) Be contactable at all times;
	b) Communication is to be clear and concise; and
Monthly Report	c) Possess alternative reporting means if communication is "off air".
	A written status report, in the form agreed by the CA, submitted monthly by the Contractor to the CA detailing the performance of the Contractor in delivering the contracted services.
Morning and Afternoon Teas	Morning and afternoon teas consist of tea, coffee, milk, fruit juices with a selection of sandwiches, cakes and sweet biscuits as directed and paid for by the Mess Committee or unit.
National Security Information	Official information whose compromise could affect the security of the nation (for example, its defence or its international relations). National security information could be about security from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system or acts of foreign interference; defence plans and operations; international relations; and national interest (economic, scientific or technological matters vital to Australia's stability and integrity).
Network Controller	The Network Controller (NC) is the person responsible for exercising technical control over the Base Electrical System in accordance with Defence functional requirements. The operating authority is vested in the NC who must have qualifications and competence acceptable to the Local Supply Authority.
Night Supper Tray/ Living – In Night Cupboard	Assorted sandwiches or other suitable food that could be utilised for a snack in the evening for the Officers, Sergeants' and Cadets' Messes, put out at a time requested by the Mess PMC. Costs to be met by the Mess Committee.
Non Perishable Rations	Those food items which have an expected shelf life of three months or longer when stored at a temperature of 16 degrees C.

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Non-Scheduled Pest and Vermin services	'Non-scheduled' services are those eradication and control treatments that are normally conducted as a result of the discovery of an infestation and/or a request. Non-scheduled services are only to be provided upon approval by the CA.
Non-Scheduled Vehicle Support	Those services that are conducted outside of the scheduled service. Non-scheduled services are only to be provided upon approval by the CA.
Non-Suppression Activities	Activities taken to reduce bushfire risk which do not involve response action to control a fire. They include such things as mitigation awareness program activities and actions to warn, evacuate, shelter in response to a fire
Non-Technical Inspection	Non Technical Inspections involve a careful and critical scrutiny of materiel, conducted on a periodic basis by authorised, qualified (to operate the equipment) and competent operators, to ascertain the standards of maintenance, repairs and adjustments necessary, modification state, accuracy of equipment records and documents and that materiel is functional and meets technical integrity requirements. For example: Non Technical Inspections reveal materiel condition in relation to cleanliness, completeness, condition of paintwork and treated surfaces, damage, deterioration, functionality, requirements for maintenance tasks and adherence to servicing schedules and currency of servicing maintenance.
Normal Stand-by	ARFF vehicles are not manned, but the ARFF crews are capable of achieving emergency stand-by within 15 seconds of notification.
Normal Working Hours	The scheduled working hours, as set out in Unit Standing Orders, local agreements or like documentation, for Defence personnel at a Defence location.
Not fair wear	A fault that is considered by a proficient tradesperson to be caused by other than normal use of the materiel and/or facilities, IAW authorised procedures and current restrictions, is considered to be due to 'Not Fair Wear'. Accidental damage, misuse of equipment, failure of equipment to perform to specifications and failure to conform to authorised maintenance procedures may all cause Not Fair Wear.
Nut products for Cadets	All meals provided to Cadets and non-Defence organisations are to be free from peanuts and peanut-based foodstuffs.
Nutritional information	Meals served at base eating areas and meals provided to be consumed away from the base are to include nutritional information and allergy information. Nutritional information is provided to assist Defence personnel to make healthy eating choices. Guidance is set out in DCM chapter 2 Nutrition and Healthy Eating.
Objective Quality Evidence	Quantifiable evidence that a contract obligation has been achieved and is the authorised verification of the Contractor.
Official Entertainment	Official Entertainment is the meals and beverages, including morning and afternoon teas provided at Commonwealth expense to official guests and official hosts.
Official Guests	Official Guests are persons eligible for official hospitality in accordance with Chief Executive Instructions.22
Official Hospitality	Official Hospitality is meals provided at Commonwealth expense in accordance with Chief Executive Instructions 2.2 primarily to other than Commonwealth employees. Instructions for hospitality by Ministers are also included in this reference.

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Official Information	Official Information is any information developed, received or collected by or on behalf of the Australian Government. Note: There are five principal documents that govern the general protection and disclosure of official information: the Crimes Act 1914, the FOI Act, the Privacy Act 1988, the Archives Act 1983 and the Commonwealth Protective Security Manual (PSM).
Operating Hours	Operating Hours are the hours during which a gymnasium, swimming pool or court is scheduled to be open either for organised Unit events or for individual use.
Operation	Means any action by the Contractor to prepare, configure or operate a range, a system, service, or the like or to explain the functions of a range, a system, service, or the like as required by the CA.
Operator Maintenance	Operator Maintenance is maintenance that may be performed by authorised personnel who are appropriately trained and qualified but who need not be technical tradespersons. It includes routine servicing, functional tests, non-technical inspections, authorised operator repair tasks and operator tasks during scheduled services. Operator maintenance also includes the documentation and certification of non-technical inspections and the reporting of technical maintenance requirements IAW the Defence's Maintenance Management Plan. Operator Maintenance requirements are detailed in various Defence Instructions.
Organic Waste	Organic Waste is that component of the waste stream that is readily biodegradable.
Over Abundant Species	Over Abundant Species are those animal species not normally considered pests but present in large numbers constituting a risk to the local environment.
Passenger Shuttle	A scheduled passenger taxi service provided to all Defence personnel for official travel between nominated office buildings.
Performance Based Maintenance and Operations	Performance Based Maintenance is the maintenance regime employed to maintain systems or equipment that CSIG class as either critical services or they are higher value items, have mandatory requirements and their life or performance is improved through effective maintenance. Therefore, equipment to be included under PBM belong to critical services or are high value items, have mandatory requirements and their life or performance is improved through effective maintenance.
Performance Based Maintenance of Fixed Plant & Equipment	All tasks or things which are necessary for the Contractor to do or provide to comply with its Contract obligations in respect of Performance Based Maintenance of the Fixed Plant and Equipment including:
	a) Force Majeure Work and SRL Work; and
	b) The replacement of items of Fixed Plant and Equipment and parts, goods or materials incorporated in the Fixed Plant and Equipment.

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Performance Indicators (PI)	Performance Indicators can be either a subjective or an objective measure of a broad aspect service quality. It should be noted that “indicators” that record data for management purposes (by either Defence or Contractors) are not to be considered as PIs. Unless the purpose of an indicator is clearly to assist in the recording and reporting of Performance, (as opposed to rates of Effort) they do not form part of the Performance Management and Remuneration Framework and are not discussed in this paper. Recorded as a percentage, PI may reflect objective measures that may be directly assessed and input into CAPMAN. Subjective assessments on the other hand, need to be supported by a more detailed focus of the service in question. This is accomplished by the use of Supporting Criteria. PI’s are grouped into Sets that feed up into designated KPI. They may, however, also be used in isolation for Regional/Base Management Information Reporting.
Performance Management Framework	Includes all processes, forms, reporting and IT resources utilised in the management of a contract’s performance and comprises three modules covering Service Quality, Compliance and Strategic Direction.
Performance Requirements	The Commonwealth’s requirements for performance of the Plant and Equipment under the Performance Based Maintenance regime which are as specified in or to be inferred from the Maintenance Specification or otherwise notified by the Contract Authority to the Contractor under the Contract.
Performance Statement	Defined performance outcome to be achieved in the delivery of Estate Upkeep maintenance or operations of buildings, infrastructure systems, infrastructure elements, equipment systems, equipment elements and/or environmental elements, referenced in the Statement of Work as subsequently amended throughout the Term in accordance with the Contract.
Periodic Cleaning and Maintenance Operations	Periodic Cleaning and Maintenance Operations relates to those items or areas that do not require constant cleaning or maintenance. Cleaning standards and the quality of these items or areas is better achieved by cleaning on a monthly, quarterly, six-monthly or annual basis, unless otherwise pre-determined by the CA. Furthermore, the CA may determine that some specific items or areas shall only be cleaned or maintained on a ‘survey and quote’ basis when requested by the CA.
Periodic Surveillance	Periodic Surveillance refers to the after-hours inspection by mobile patrols of either the assets themselves, or where this is not possible, the part of the building or site where the assets are located. Patrols are to be equipped with a two-way radio linked to a central control facility, backed up by a dedicated reaction element. Where assets are not wholly covered by an SAS, inspections are to be carried out at random intervals not exceeding two (2) hours. Where assets are wholly covered by an SAS, inspections are to be carried out at random intervals not exceeding six (6) hours. In both cases, the response time to an alarm activation should be no more than five (5) minutes.
Permanent Accommodation	In general, permanent (long-term) accommodation is provided to ‘living in’ personnel who have been posted to the ADO Site.
Permit Control System	The chosen risk mitigation strategy to reduce site workplace hazards to As Low As Reasonably Practicable (ALARP).
Personal Protective Equipment	All safety equipment required to complete the Services inclusive of, portable fall arrest, harnesses, breathing apparatus, work wear, chemical handling wear, etc. Excluding fixed safety equipment such as fixed fall arrest lines, fixed ladders or GFM specialist application tools.

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Pest	Animals and insects that adversely impact on the environment, human life or property. This includes but is not limited to ants, termites and white ants, feral and uncontrolled dogs, feral cats, bees, birds (including airfields), ticks, snakes, spiders, wasps, snails, silverfish, moths, possums, stray domestic or farm animals, dingoes, feral pigs, feral goats, foxes, rabbits etc.
Pest Register	The Register is to contain records of investigation of incidents, all actions taken, including but not limited to the application of chemicals, and other related matters that need to be brought to the attention of the CA.
Petroleum, Oils & Lubricants (POL)	Petroleum, Oils and Lubricants (POL) is a generic term referring to fuels, lubricants, hydraulic and insulating oils, temporary protective, coolants, anti-freeze/anti-boil compounds etc.
Plated Meal	For meals supplied mainly to the Hospital and for Duty Personnel and detainees in the Guard Room, but may be supplied elsewhere as a special request. They consist of a normal Mess main course selection, plated and covered with microwave safe film suitable for re-heating, or a foil container with lid, plus bread, PCP butter/margarine, dessert, seasonal fruit, condiments and drink.
Plate Service	The food is plated in the kitchen and a steward serves the meal to the diner in the dining room. In this style of service the chef determines the portion size and presentation.
Pool Cleaning	The maintenance of water clarity, content and physical cleanliness of swimming pools
Portable Fire-fighting Equipment	Portable Fire-fighting Equipment includes Commonwealth vehicle fire extinguishers; relevant items on Contractor maintained Commonwealth inventory lists such as bush fire-fighting equipment – beaters, knapsacks and rakes.
Post Clean	Post Clean means to prepare accommodation after occupancy. Clean all surfaces, inspect all electrical appliances and furniture for serviceability, turn off refrigerators, return furniture, dispose of waste, turn off all electrical appliances and lights. Conduct stock take of accommodation.
Pre-Clean	Pre Clean means to prepare accommodation prior to occupancy. Clean all surfaces inspect all electrical appliances and furniture for serviceability, turn on refrigerators, install furniture and waste disposal facilities. Conduct stock take of accommodation.
Principal Item	Principal Items are equipment requiring intensive management due to operational importance, high cost or sensitive characteristics. They are managed at a national level.
Priority Aircraft Notifications (PAN)	PAN is declared by a pilot to indicate that 'I have an urgent message to transmit concerning the safety of my aircraft or other vehicle or of some person on board or within sight but I do not require immediate assistance.' On declaration of a PAN a military aerodrome would activate the Aerodrome Emergency Plan (AEP) to local standby. On base emergency services may be required to turn out to designated locations. Off base emergency services would not be called on to respond at this stage
Pro Active	The initiative in directing the course of events rather than waiting until things happen and then reacting. Within the context of the CMS contract the contractor is expected to be pro active in all aspects of the requirement. For example an inspection and report may be undertaken and supplied to Defence for replacement of street lighting before the contractor is tasked with this requirement
Procured Centrally	Items purchased centrally, usually by DMO and provided to units on demand.

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Procured Locally	Items procured locally, usually using DUF. The RLU provides PROC L items excluded from the DUF system.
Procurement	Procurement is the entire process by which requirements are satisfied. It includes planning, design, standards determination, specification writing, selection of suppliers, financing, purchasing and contract management, and disposal.
Program of Issue (POI)	The actual entitlement for each ration item issued for each day of the ration accounting period as laid down in the Basis of Issue. The Program of Issue is prepared jointly by the Senior Catering Representative and the supporting HQ Logistics Command unit for a designated region and shows:
	a) The number of issues of each item, including variations where possible;
	b) The day of consumption for which each issue will be made; and
	c) The amount of each item to be issued according to entitlement with the Basis of Issue.
Project Documents	Means:
	a) Any Asset and/or Condition and/or Infrastructure Appraisals prepared by the Contractor;
	b) The Approved Subcontract Agreements, the Approved Consultants Subcontracts and all design documents relating to GE Works;
	c) The documents which the Contractor must maintain under the Contract; and
Project Single Living Environment and Accommodation Precinct (LEAP)	d) Any other material, information or systems produced under or for the purposes of or in connection with this Contract.
	Project Single Living Environment and Accommodation Precinct (LEAP) was announced in the 2004/05 budget and was allocated \$113.2m over the next four years, with a further \$60m per annum thereafter. The purpose of the Project is to upgrade living in accommodation (LIA) for ADF single accommodation (or accommodation for Members With Out Dependant (MWOD)).
Proof and Experimental Ranges	A proof and experimental range is not a training area or range complex for general use by military units or personnel. P&E ranges are used by specialist qualified small arms personnel to test or proof ammunition types and quality before they are released for use to Defence personnel. These include small arms ammunition, artillery, rockets, grenades, pyrotechnics etc.
Properties	Individual properties that Defence owns, leases or otherwise has an interest in that are located within Australia.
Property Service Centre	Means:
	a) The physical premises from which the Contractor provides the Property Service Centre Services, including fittings and fixtures; and
	b) All infrastructure, cabling and products which the Contractor uses or provides in performing the Property Service Centre Services.
Property Service Centre Objectives	Means:
	a) Dropouts are to be avoided or minimised (to the maximum extent possible) throughout the Term;
	b) A suitably professional image of DSG is to be fostered amongst its customers by (without limitation) providing a high level of service to those customers consistent with the standard of care which the Contractor is required to exercise; and
	c) Calls are to be disposed of so as to ensure:
	d) Value for money for the Commonwealth (including by ensuring that PBM of FP & E or General Estate Works are not performed unnecessarily); and
	e) They are assigned an appropriate Response Time having regard (without limitation) to the matters set out in the relevant SOW

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Property Service Centre Services	Means:
	a) Those tasks and things which the Contractor is required to do or provide in accordance with the Statement of Work; and
	b) All other tasks and things which are necessary for the Contractor to do or provide to perform the Property Service Centre Services in accordance with the Contract, whether or not expressly mentioned in the Contract or Statement of Work.
Protected fauna	Protected Fauna is protected by legislation and requiring a permit to kill. Includes all fauna native to a region, including certain potential Pests such as snakes, possums, plovers, magpies etc. Alternative options such as relocation and/or deterrents need to be employed as preferential treatment for these species where they are considered pests
Quartermaster's Store	Quartermaster's or Q Store is the logistic centre within a unit that controls the movement and procurement of all stores and equipment utilised by a unit to carry out its role.
Quick-break detergents	A quick break detergent is one which, after forming an emulsion with the oils and greases it is removing, quickly de-emulsifies to allow the oils to be treated by an oil separator and the detergent to be removed with the water.
Range Control Officer	Range Control Officer (Military Member usually Warrant Officer)
Range Induction Briefings	Induction briefs are given by Range Control Staff to Unit OIC of practice which is then given to all personnel involved within the exercise or activity. This brief is also given in detail by the Range Control Staff to individual visitors, contractors or APS personnel visiting or working within the range or training area. This induction highlights the specific dangers within the training area or range, actions to be taken when an incident occurs, and reporting requirements which is all part of Defence's requirement to ensure the safety of all personnel to Defence Training Areas and ranges.
Range Live Fire Target Equipment	Range Live Fire Target Equipment is to train service personnel in realistic live firing of small arms. The equipment is a portable target system that consists of electro-mechanical target systems controlled by an operator by use of either radio transmitters and receivers or an electronic hand held control console.
Ranges Standing Orders	These are lawful 'General Orders' which apply to all formations, units, organisations, and personnel including contractors and non-Defence personnel authorised to enter the relevant Range or Training Area they apply to. The aim of RSO is to provide users with safety, coordinating and control orders and instructions required for the safe and efficient conduct of training.
Ration (s)	The daily entitlement of food per person (or forage per animal). The following types of rations are defined:
	a) Allocated Rations;
	b) Combat Ration Five Man (CR5M);
	c) Combat Ration One Man (CR1M);
	d) Combat Ration Packs (CRP);
	e) Fresh Rations;
	f) Non Perishable Rations;
	g) Supplementary Rations Allowance;
	h) Patrol Ration One man (PR1M); and
	i) VIP In-Flight.
Ration Scale	A scale showing the actual entitlements by commodities and quantities for individuals for a stated period.
Rationed Strength	Numbers of personnel entitled to receive a meal at Commonwealth expense.

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	<p>a) Necessary work(s) to overcome defects, breakdowns or faults of an asset, facility or service that, if left unattended, could lead to endangering the general public or government employees, further damage to Commonwealth assets or property, and/or the loss of essential services or Critical Systems; or</p> <p>b) Necessary work(s) to overcome defects, breakdowns or faults that, if left unattended, could lead to insecurity of Commonwealth employees and their assets, and/or Commonwealth assets and facilities; or</p> <p>c) Necessary work(s) to ensure the estate Complies with all relevant statutory requirements, remains in a condition consistent with the Contribution Factor Maintenance Standard identified for each facility in DEMS, and is otherwise fit for its intended purposes; or</p> <p>d) Necessary work(s) to overcome defects, breakdowns or faults that, if left unattended, could lead to failure to meet the Performance Requirements of that plant and equipment.</p>
Recycle / Recycling	Recycling is the process of recovering and treating components of the Waste Stream for reuse. Recycling is part of the Waste process and all Recycling terms are defined under Waste.
Reduced Activity Period	The Reduced Activity Period is a period determined by the relevant ADF authority when members would be expected to take annual leave such as the Christmas/New Year period commencing mid to late December and ceasing mid January. However, the determination and duration of any period of reduced activity will be dictated by operational requirements. These periods may also affect the availability of military staff where MRU are employed.
Regimental Dinner/Dining-In Night	A Regimental Dinner/Dining-In Night is a social function held in any of the Messes which follows a set procedure and observes strict regimental traditions which are expressed in local mess documents regarding customs and traditions.
Regional Logistic Unit	The local supporting supply unit. For example, JLU-NQ currently fills this role in North Queensland.
Register of Assets	A comprehensive and self-contained record of land, buildings, structures, area fixtures, engineering services, installations and the fixed contents of rooms which are not otherwise under the control of an authorised stores accounting system.
Regimental Dinner/Dining-In Night	A Regimental Dinner/Dining-In Night is a social function held in any of the Messes which follows a set procedure and observes strict regimental traditions which are expressed in local mess documents regarding customs and traditions.
Reimbursable PBM of FP&E Costs	Reimbursable PBM of FP&E cost is that cost incurred by the Contractor in the performance of work where the Contractor can demonstrate to the CA, in accordance with the Contract, a legitimate right to claim against the Commonwealth for restitution of expenses incurred in performing such works.
Reimbursable PBM of FP&E	Means:
	a) Force Majeure Work; and
	b) SRL Work.
Reimbursable GEWM Costs	The total of:
	a) The amounts properly and actually incurred and payable by the Contractor to subcontractors engaged under an Approved Consultant's Agreement or Approved Subcontract Agreement in respect of GE Works, from which will be deducted:
	b) The cost of:

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	<p>c) Any design work which was carried out to rectify any prior defective design work; or</p> <p>d) the removal, demolition, replacement or correction of any material or work which is not in accordance with this Contract;</p> <p>e) Any amounts (including damages) paid or payable by the Contractor to any such subcontractor by reason of any breach of contract or other wrongful (as between the Contractor and the subcontractor or as between the Contractor and the Commonwealth) act or omission by the Contractor except where that breach or wrongful act or omission was directly caused by any wrongful act or omission of the Commonwealth;</p> <p>f) Any other amount not properly incurred in respect of the execution of the Contractor's Activities or which this Contract provides is to be borne by the Contractor or is to be a debt due from the Contractor to the Commonwealth; and</p> <p>g) 50% of the liquidated damages (if any) which are due and payable by any such subcontractor to the Contractor; and</p> <p>h) When the Contractor performs design work in respect of GE Works;</p> <p>i) The amount agreed between the Contractor and the Contract Administrator; or</p> <p>j) Failing agreement, the reasonable amount determined by the Contract Administrator having regard to the rates and prices set out in the Schedule of Rates.</p>
Repetition of Meal Items	The Operator shall ensure that with the exception of staple items such as steak or roast meats, that no main meal item on the menu is to be repeated within a 96-hour period.
Reprographics	The process of reproducing, reprinting, or copying graphic material especially by mechanical, photographic, or electronic means
Requested Services	'Non-scheduled' services are normally conducted by request. Non- scheduled services are only to be provided upon approval by the CA.
Requested Vehicle Support	See 'Non-scheduled vehicle support'
Reserved	The term 'Reserved' will be used to indicate where a particular outcome is not required in a region.
Resource and Output Management Network (ROMAN)	Resource and Output Management Network (ROMAN) is the authorised financial management system for Defence. It encompasses corporate budgeting, accounting and reporting and, supports the Resource Management Framework.
Response Time	The period of time between notification of a defect, breakdown or fault to the [insert Call Centre designation] and the time the Contractor's staff or subcontractor is required to attend and rectify the problem.
	The Contractor is to ensure that work is actioned in accordance with the following defined Response Times:
	Emergency requirement: Initial response – attend within 30 minutes and make safe or secure. In some cases the distances between the Contractor and the problem may be greater than 30 minutes so a best effort approach will be required. Completion of work or notice of alternative proposal within 24 hours. An example of an Emergency requirement is a fallen electrical power line.
	Immediate requirement: Initial response – attend within 2 hours and make safe or secure. Completion of work or notice of alternative proposal within 24 hours. An example of an Immediate requirement is where there is a security or high risk safety hazard created as a result of the defect, breakdown or fault.

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	<p>Urgent requirement: Initial response – attend within one day and make safe or secure. Completion of work or notice of alternative proposal within 2 days. An example of an Urgent requirement is a broken window, blocked plumbing, or where there is an impact on business continuity.</p> <p>Routine requirement : Completion of work or notice of alternative proposal within 28 days of request. An example of a Routine requirement is carpentry repairs, light globe replacement not causing a direct impact on business continuity.</p> <p>Specified requirement: Completion of work or notice of alternative proposal within a specified period, as approved by the CA. An example of a Specified requirement is Minor Workplace Adjustments, bundled works, specific access required works.</p>
Responsive Maintenance and Operations	<p>Unplanned, reactive or corrective maintenance required to rectify defects in or repair damage to any part of the Estate; and</p> <p>Predictive or preventative maintenance required to any part of the Estate (other than Estate Elements maintained through the Performance Based Maintenance or Schedule Maintenance Services) where the cost estimated by the Contractor (acting reasonably) and demonstrated to the satisfaction of the CA on an open book basis as being less than \$10,000 in cost and necessary for the purposes of ensuring that the Estate:</p> <p>a) Complies with all relevant statutory requirements; and</p> <p>b) Achieves a condition consistent with the target performance standard (as defined in Estate Appraisal)</p> <p>The Contractor must determine the best Whole-of-Life method for correcting the defect or damage and implement that corrective action, unless directed otherwise by the CA.</p> <p>Individual maintenance tasks may be aggregated into larger work packages for more efficient delivery.</p>
Retail Outlets	Retail Outlets are those outlets which provide packaged POL products for immediate consumption by the DSG fostered customer units (e.g. kerbside refuelling facilities, small Q-store outlets etc). Retail outlets are reprovisioned to defined stock holding levels via the supporting Joint Logistics Unit (JLU) warehouse, using SDSS.
Revetment	A raised earthen structure covered with grass type vegetation to form a barrier to protect personnel and assets from Explosive and Dangerous Goods Stores.
Roads	<p>Roads: A designed and formed open way primarily for the passage of vehicles. Roads include hard and soft surface formations.</p> <p>Unless expressly excluded or identified as a separate maintainable item the term roads includes the following entities</p> <p>Road Segments, road markings, shoulders, curbs and verges or clear zones (road related areas).</p> <p>Fords and causeways</p> <p>Bridge, includes: bicycle bridge, covered bridge, draw bridge, foot bridge, lift bridge, overpass, pontoon bridge, suspension bridge, swing bridge, viaduct</p> <p>tunnel, includes: cattle underpass, pedestrian underpass, subway, underpass, and</p> <p>Associated drainage and erosion controls</p> <p>Associated signage</p> <p>Associated lighting</p> <p>Associated gates, safety and animal management systems (e.g. cattle grids)</p> <p>Traffic calming infrastructure</p>

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	Associated information, surveys and data
	See trails/tracks/ paths definition for tracks/trails paths
SAFEBASE	SAFEBASE is the Defence Security Alert System. The system determines the appropriate security alert state to be applied to Defence as a whole or selected sites/establishments. It enables Defence to implement coordinated, incremental protective security measures when required by a change in the assessed level of threat to personnel and assets within Australia.
Salad Pack	Salad meal provided that is not served in a mess environment (takeaway meal).
SCA - Supply Customer Account	Supply Customer Accounts (SCA) are authorised accounts representing Defence entities or its agents (contractor) within SDSS for requisitioning and managing stock items in use. They are a management tool for Q Stores to devolve the management and responsibility of unit stores and equipment down to the level of the main user.
	An SCA is an accounting construct for the management of Defence materiel, including Defence and Contractor entities. It records the allocation and movement of assets, the consumption of inventory, and provides the means to aggregate materiel holdings against the organisational defined hierarchy.
	The SCA is an examinable (subject to audit functions) account, which is to be maintained for all tracked items issued into use.
SCA Custodian/Holder	The SCA Custodian/Holder is a person appointed by the Unit Commander (E) for the control of all stores issued to an SCA. SCA holders are custodial officers in accordance with the Financial Management and Accountability Act (FMA) and are therefore financially liable for stores for which they have accepted custody.
SCA Manager	The SCA Manager is a person appointed by the Unit Commander (E) to manage, coordinate and control the accounting activities of all SCA's under their management control.
Scheduled Maintenance and Operations	Maintenance or operation of Estate Elements in accordance with Defence-prescribed tasks and applicable legislation and standards. The contractor assumes no repair or replacement risk provided the agreed schedule of maintenance actions is performed. Maintenance includes all Services, Tools, Consumables, Insurance, Supervision and Labour required to maintain or restore elements of the Defence Estate in their operating condition.
Scheduled Pest and Vermin Services	Scheduled Services are those eradication and control treatments that are conducted at regular defined intervals. The treatment strategies and frequencies are specifically targeted to the unique needs of a particular facility as identified and defined by the Contractor and agreed by the CA.
Scheduled Vehicle Support	Those services that cover predetermined routes and are conducted against:
	a) A set frequency and timetable (e.g. Mon –Fri Courier Service) or b) In support of a training programme that defines the frequency (e.g. 7 trips to the Range in support of programmed platoon range activities)
Seasonal Fruit	Seasonal Fruit is available for only limited periods of the year, e.g. (plum, nectarine, cherry, apricot, peach, watermelon, avocado etc).
Seasonal Variations	The Operator shall include seasonal variations to vegetables and salads in accordance with SUPMAN 4.
Security Alarm System (SAS)	A Security Alarm System (SAS, formerly known as an IAS) is an electronic device used to provide continuous electronic surveillance of an area, building or room, to detect attempted or actual entry of an intruder and to alert a reaction force.
Security Breaches	An accidental or unintentional failure to observe the requirements for handling official resources/information.

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Security Incident	A security breach, violation, contact or approach from those seeking unauthorised access to official resources, or any occurrence that results in negative consequences for the Commonwealth.
Security Keys	Security Keys are Keys that operate locks fitted to doors to secure rooms, buildings, areas, armouries, magazines, explosive ordnance warehouses and bulk weapon stores, doors to security locked rooms, security containers, boxes and Security Construction and Equipment Committee (SCEC) endorsed briefcases used to transfer classified documents, intrusion alarm systems, anything protecting major, important, sensitive or attractive assets, or containers protecting Security Keys.
Security Violation	A Security Violation is a deliberate action that leads, or could lead, to the loss, damage, corruption or disclosure of official resources.
Self Cook BBQ Meal	At some Mess eating areas, diners are offered a Self-Cook BBQ Meal as an option instead of the Grill choice. A cut of meat IAW SUPMAN4, that can be cooked by the member utilising the Fixed BBQ's in place at the respective Mess. In addition to the normal entitlements specified under the definitions for Lunch and Dinner, freshly diced onions and appropriate sauces are to be offered.
Self Drive Vehicle	A vehicle that is driven by the customer
Self Service Meals	Members file through a servery and select their own meal In accordance with the standard of service set out in the Hospitality and Catering Statement of Work Supplementary Information.
Senior Instructor (SI)	The Senior Instructor (SI) is the senior officer responsible to the Commanding Officer for the delivery of approved training courses. For example at ASTO the SI-ASTO is responsible at ASTO-MW.
Shared Areas (For Accommodation Services)	Shared Areas are accommodation facilities that are for the exclusive use of a limited number of personnel with access, e.g. a bathroom adjoining two accommodation.
	Common Areas are also defined in this document.
Shared Risk Liability (SRL)	The Shared Risk Liability (SRL) is the liability the Contractor has for costs incurred where the Contractor and the Commonwealth are sharing the risk (SRL Work). The Shared Risk Liability is that amount outlined in the tenderers proposal and agreed between Defence and the successful tenderer
Silver Service - FULL	The entire selection of food is presented on either a single platter or several platters/vegetable dishes in the kitchen. The chef determines the presentation and maximum portion size. The steward serves the food to the diner on to a previously placed plate, by use of a service spoon and fork. The steward should re-present the food to the diner by following the chef's original presentation and can give the maximum portion size or less, according to the diner's preference.
Silver Service -SEMI	The main item is plated as in plate service. The accompanying items are offered to the diner by silver service. The diner is offered a selection of vegetables which the steward serves using a silver platter and the spoon and fork technique.
Single Entitlement Document	A document issued to each unit detailing the authorised minimum and operational entitlement to personnel and equipment.
Site Security Instructions (SSI)	Site Security Instructions (SSI) provide unit/area policy on security matters and directives to Contractor personnel on specific security aspects. These Instructions may vary from site to site and from time to time. SSI are prepared by Defence.

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Small Arms Ranges	Small arms ranges are permanent or purpose built for use by small calibre weapons systems such as pistols, shot guns, rifles, light support machine guns, etc.
Software	Software used in connection with the operation of equipment, a system, or service and any additional or replacement software or any modification to the software.
Spare Parts	Spare parts are the parts required to maintain or repair pieces of plant and equipment to ensure the performance requirements are met. Sufficient spare parts must be made available by the Contractor to meet its obligations under the contract. These obligations include, but are not limited to, critical spare parts and spare parts with a long purchasing lead time. Spare parts are the responsibility of the Contractor to purchase, hold, store and account.
Standard Defence Supply System (SDSS)	SDSS is a joint service computerised inventory management system. It is based on modules, which interact to manage procurement, receipt and issue of stores, inventory control and associated accounting procedures
Static	Exercise, practice or activity conducted in a specific location with no movement of personnel within the requirement of the activity, including live fire practice.
Statutory Requirements	The requirements of:
	a) All Authorities;
	b) All laws, statutes and subordinate legislation (and regulations and other requirements made under them) applicable to the Contractor's Activities;
	c) All Commonwealth requirements applicable to the Establishments, including Defence requirements, Defence policy, the Manual of Fire Protection Engineering, Defence Security Manual and the Facilities Cabling Manual;
	d) Australian Standards; and
	e) The Building Code of Australia.
Steward Service - Dining	Steward Service is a Waiter Service provided to members at Defence Officers and Sergeants Messes (Not applicable in Senior Sailors Messes). Steward Service comprises serving of meals and drinks.
Stock	All articles, commodities, equipment, items and supplies held to support the armed services
Stock Control	The process of maintaining data on quantity, location and condition of supplies and equipment dues-in, on-hand and dues- out, to determine quantities of materiel and equipment available and/or required for issue.
Stores	A generic term of all articles, commodities, equipment," items and supplies demanded by the Services. Also see Materiel (ADFP 101).
Streamlined and Efficient queuing system	Where meals are provided on a self-service arrangement from a servery point, they must be presented in a manner so as to optimise the movement of diners through the point. The servery point should be refurbished at regular intervals throughout the meal period, and utilisation of separate points such as a salad bar and sandwich-making bar will streamline the queuing system. At the completion of meal, Defence members will take plates to a central location, placing scraps in waste containers. Plates and glasses/mugs are to be stacked appropriately with utensils placed in appropriate containers. The Contractor is responsible for removing condiments, bread etc. The Contractor is to clean and prepare tables for the next meal period as necessary.
Supper	A light refreshment between dinner and breakfast the next morning, which consists of hot/cold drink and biscuit or cake. Provided to hospital patients at designated locations.
Supplementary Rations Allowance	A ration allowance authorised to provide diet variation by the purchase of adjunct type items not available under SUPMAN 4.

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Supply Authority	Provider of power to various bases within the Region
Supply Agreement	The agreement detailing the terms, conditions and limitations for the provision of power by the Supply Authority.
Surveillance	Surveillance is a function performed by security guards and shall include:
	a) Maintaining a high awareness and attention to the problems and risks associated with windows and doors for buildings,
	b) Maintaining a high awareness of unlocked gates, damaged perimeter fences/security fences/gates and evidence of break-in, detailing:
	i) Time of incident;
	ii) Asset number;
	iii) Extent of damage;
	iv) Evidence to identify intruders; and
Tea and Coffee Service	v) Monitoring electronic devices to detect intrusion.
	Where a tea and coffee service is requested, this includes the provision of tea and coffee, including decaffeinated coffee, Milo or hot chocolate, sugar and an artificial sweetener, and full and reduced fat milk and soy milk upon request. Some Messes may request a range of normal and herbal teas to be provided, and/or percolated coffee.
Technical Inspection	Technical Inspections involve a careful and critical scrutiny of materiel, conducted on a systematic and periodic basis by authorised, qualified and competent technical personnel, to ascertain the service condition of the item (serviceable, repairable or unrepairable) standards of maintenance, repairs and adjustments necessary, modification state, storage condition (packaging correct and can continue or be repacked and/or damage (including rusting and chipping etc) has occurred, accuracy of equipment records / documents, and that the materiel is functional and meets technical integrity requirements.
Technical Maintenance	Technical Maintenance must be performed by authorised tradespersons. It includes technical inspections, testing, calibration and corrective maintenance actions.
Tender Evaluation Plan	A control document for the management of tender processes and conduct of tender evaluations detailing, as a minimum, a brief description of the relevant:
	a) Works;
	b) Persons from whom quotes or tenders are to be called;
	c) Reporting requirements as between the Contractor and the CA;
	d) Evaluation methodology; and
Threatened fauna	e) Other matters required by the CA.
	Threatened Fauna are those species listed under Commonwealth or State/Territory legislation for their critically endangered, endangered, vulnerable or rare status
Tools	Any object or device not specifically identified as GFM, which is hand or otherwise powered for the purpose of modifying construction materials (e.g. wood, metal, concrete, plastics, soil/rock etc) or maintenance of equipment and systems, and includes Protective Personal Equipment, welders, spanners, lifting devices, condition monitoring machines, measuring devices, ladders, etc.
Top Dressing	Top Dressing is the application of a layer of soil to an existing area with the objective of levelling the surface and promoting grass growth. All soil used for top-dressing shall be fit for purpose and IAW good environmental and horticultural practice. It shall be free of rubbish, metal residues, stones and living or dead vegetation and shall be obtained only from sources which present no possibility of the inadvertent introduction of weed species or insect pests.

DEFINITIONS	
Statement of Works	
Tracks and Pathways	All tracks and pathways are maintained in a clean condition, free of litter and weeds.
Training Area Safety and Management Information System (TASMIS)	Training Area Safety and Management Information System – a booking system, which provides tables and reports on current and future requirements of the range and range user(s).
Training Fleet	Defence owned vehicles utilised for driver training.
Training Year	Training Year - 01 July of one year to 30 June of the next. (Same as Fiscal Year)
Transaction	Transaction - the receipt or issue of inventory and equipment to/from a SCA. A voucher could contain one or 20 individual line item transactions in the form of issues, receipts, transfers etc.
Transit	Transit or visiting personnel who are not in receipt of full or partial Travelling Allowance (TA) are entitled to meals at Commonwealth expense. Transit personnel pay a small fee for the use of the facilities. The Transit fee amount is determined by the Mess Committee and paid into the Mess account.
Transit Accommodation	In general, Transit Accommodation is provided to transit personnel.
Transit Personnel	Transit Personnel are Defence Personnel (either military or approved civilians) occupying transit or living-in accommodation for a period of 14 days or less. These personnel may be on a short training course or on a short visit to the location.
Unexploded Explosive Ordnance	Explosive ordnance which has been primed, fused, armed or otherwise prepared for action, and which has been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel or material and remains unexploded either by malfunction or design of for any other cause
Unit Sporting Activities	Unit Sporting Activities are competitive sporting activities arranged by the Unit or specifically endorsed by the Unit Commander.
Variation	A Variation is a change to the Contractor's activities, whether by way of increase, decrease, omission or deletion of cost, scope, quality or timeliness of service delivery.
Vector Control	A Vector is an insect or other organism transmitting germs or other agents of disease. The vector borne group of diseases is made up of organisms that spend part of their life inside a mosquito, flea, tick or other arthropod, and the other part inside a vertebrate. The arthropod (or "Vector") picks up the disease agent when it bites a sick or infected host, and then carries it to one or more new hosts during its next blood meals.
Vermin	Vermin are disease carrying animals and insects that are potentially a threat to health. This includes but is not limited to bird lice, cockroaches, dust mites, fleas, flies, grain beetles, human lice, rodents, millipedes, mosquitoes etc.
VIP In-Flight	VIP In Flight rations are made to order and are delivered directly to the ordering authority. The following describes who is entitled to VIP In-Flights;
	a) Members of the Royal Family;
	b) Governor General;
	c) Prime Minister ,
	d) President of the Senate,
	e) Speaker of the House of Representatives,
	f) Ministers of the Commonwealth Government,
	g) Leader and Deputy leader of the Opposition;
	h) Leader of the Opposition in the Senate,
	i) Visiting Heads of State and Dignitaries;

DEFINITIONS	
Statement of Works	
	j) CDF, VCDF, Service Chiefs and equivalent APS staff of the Department of Defence, and
	k) Other positions/dignitaries identified and approval from Prime Minister or Minister for Defence
Visiting Defence Forces	Visiting Defence Forces are members of foreign defence forces visiting or on exchange with Australian forces
Warehouses	A Warehouse is a bulk storage facility to provision the retail outlets to defined stock holding levels.
Waste and Recycling	Waste is the left over and unwanted by product of an activity. Waste may have value in another activity and may be Recycled. The following Waste and Recycling terms are defined:
	a) Classified Waste
	b) Clinical and Related Waste
	c) Co-mingled Waste
	d) Commercial Waste
	e) Domestic Waste
	f) Hazardous Waste
	g) Hygiene Waste
	h) Industrial Waste
	i) Liquid Waste
	j) Office Paper Recyclables
	k) Organic Waste
	l) Plant and Equipment Waste
	m) Quarantine Waste
	n) Recyclable Waste
	o) Waste Reduction
	p) Waste Stream
	q) Waste Stream Analysis
Waste - Classified	Classified Waste is that component of the waste stream that contains any classified Material/Information. Classified waste can be of a material or electronic nature.
Waste - Clinical and Related	Clinical and Related Waste is that component of the waste stream which comprises the categories of animal waste, chemical waste, clinical waste, cytotoxic waste, hazardous waste, human tissue waste, laboratory waste, pharmaceutical waste, radioactive waste and sharps.
Waste - Co-mingled	Co-mingled Waste is mixed dry recyclable materials (glass, aluminium / steel cans, coloured paper, plastic, cardboard and other paper unsuitable for office paper recycling, etc).
Waste - Commercial	Commercial Waste relates to the component of the waste stream originating from wholesale, retail or service establishments
Waste - Domestic	Domestic Waste is that component of the waste stream arising from households/offices etc
Waste - Hazardous	Hazardous Waste is that component of the waste stream which by its characteristics poses a threat or risk to public health, safety or to the environment. e.g. dangerous goods, clinical, quarantine
Waste - Hygiene	Hygiene Waste is that component of the waste stream arising from human sanitation and includes but is not limited to nappies, incontinence product waste, and sanitary products including tampons and pads.
Waste - Industrial	Industrial Waste is that component of the waste stream arising from industrial processes and manufacturing operations

DEFINITIONS	
Statement of Works	
Waste - Liquid	Liquid Waste is that component of the waste stream, which is liquid in form. Liquid waste is primarily found in septic tanks, plaster traps, portaloos etc
Waste - Office Paper Recyclables	Office Paper Recyclables is the white office paper suitable for recycling to a high-grade paper product.
Waste - Organic	Organic Waste is that component of the waste stream that is readily biodegradable.
Waste - Plant and Equipment	Plant and Equipment Waste is that component of the waste stream that contains used consumables from Plant and Equipment e.g.: tyres, toner cartridges, computers, printers etc.
Waste - Quarantine	Quarantine Waste is all items of food, plant material or animal products prohibited by AQIS.
Waste - Recyclable	Recyclable Waste is that component of the Waste Stream which can be recovered, processed and reused for the manufacture of a useful new product. Recyclable Waste includes, but is not limited to Paper (including paper products e.g. cardboard), Glass, Plastic, Wood, Metals (e.g., aluminium, steel, lead, mercury etc), Rubber (including tyres), Petroleum products (oils and lubricants), Solvents, Solvent-based paints, Building materials (e.g. Concrete & Bitumen) and Electrical devices (e.g. Batteries, mobile phones and computer parts).
Waste Reduction	Waste Reduction is the limitation of waste through product design, material selection, policy and management
Waste Stream	The Waste Stream is the flow of materials from a point of generation to ultimate disposal.
Waste Stream Analysis	Waste Stream Analysis is analysing the quantities and qualities of individual components present in a waste stream, analysing trend data and assessing alternatives etc which contribute to reducing waste output.
Watering	Watering is conducted as required, taking into account seasonal conditions, ensuring not to over water or flood. Government water restrictions will apply in consultation with the CA.
Weed	A Weed is a plant growing where it is not wanted, often to the detriment of the environment or the disfigurement of a landscape design.
Whole of Life Costing	A procurement evaluation technique of estimating and assessing the total costs from inputs through development, to acquisition, operation, maintenance and disposal or recycling of the items acquired. Sometimes known as Life Cycle Costing. Typically used in comparing alternative equipment design or purchase options in order to select the most appropriate option.
WHS Management System	An overall WHS management system includes organisational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining WHS policy (or safe systems and places of work), and so managing WHS risks associated with the business of the organisation.
Window Coverings	Window Coverings include but aren't limited to internal Curtains, Blinds (all sorts) and Drapes.

4. CONTEXT GLOSSARY

WORDS	
Statement of Works	
Analyse	Solve by analysis (the process of observing and breaking down a complex topic or substance into smaller parts to gain a better understanding of it)
Annotate	Provide with comments; make a note while reading any form of text such as underlining or highlighting passages
Accept	To admit and agree to; accede or assent to; To take or receive (something offered); receive with approval or favour
Account for	To take responsibility for; to give an explanation of
Achieve	To bring to a successful end; carry through; accomplish; To bring about, as by effort; gain or obtain
Acknowledge	To admit to be real or true; recognise the existence, truth, or fact of; To admit or certify the receipt of; to acknowledge a letter
Acquire	To come into possession of; get as one's own; To gain for oneself through one's actions or efforts:
Address	To deal with (a problem, question, etc.); A formal speech or writing directed to a person or a group of persons
Adhere	To hold closely or firmly to; To be devoted to; be attached to as a follower or upholder
Administer	To manage (affairs, a government, etc.); have charge of the execution of; To bring into use or operation; dispense
Adopt	To choose for or take to oneself; make one's own by selection or assent; To vote to accept
Advise	To give counsel to; offer an opinion to, as worthy or expedient to be followed To give someone information or notice about something
Allocate	To set apart for a particular purpose; assign or allot; To fix the place of; locate
Amend	To change for the better; improve To remove or correct faults in; rectify: an amended spelling
Arrange	To come to an agreement or understanding regarding; To prepare or plan
Ascertain	Find out with certainty; To find out by trial, examination, or experiment, so as to know as certain; determine
Assess	To measure or evaluate; To fix or determine the amount of (damages, a tax, a fine, etc.)
Assign	To give or allocate; to appoint To bring forward, ascribe, attribute
Assist	To give support, help, or aid to in some undertaking or effort, or in time of distress; To give aid or help
Attend	Be present at; To give attention; pay regard or heed
Audit	Officially examine
Authorise	To give authority or legal power to; empower (to do something); To establish by authority or usage
Aware	Informed and up-to-date; Cognisant or conscious

WORDS	
Statement of Works	
	To accept or have as an obligation;
Bear	To possess as a quality, characteristic, etc.; have in or on
Build	Make by putting together
Calculate	Find out by computation
Capture	Inclusion as data, especially data entered into a computer for analysis
Carry out	To accomplish or complete (a plan, scheme, etc.)
Collect	To gather together; assemble
Commence	To begin; start
	Find out likeness or differences;
Compare	To represent as similar or analogous
	Thorough; consummate; perfect in kind or quality;
Complete	Finished; ended; concluded
	To act in accordance with (wishes, commands, requirements, conditions, etc.);
Comply	To do as required or requested
	Direction or management; execution: the conduct of a business;
Conduct	To direct in action or course; manage; carry on
	To make certain or sure; corroborate; verify: this confirmed my suspicions;
Confirm	To reaffirm by a notification to a person or organisation of one's intention to carry out one's original plans
Conform	To act in accord or harmony; comply
Consult	To seek counsel from; ask advice of
	Think about, to decide;
Consider	To contemplate mentally; meditate or reflect on
	Put together; build;
Construct	To form by putting together parts; build; frame; devise
Contribute	Give along with others
Control	Direct; regulate
	To place or arrange in due order or proper relative position;
Coordinate	To place or class in the same order, rank, division, etc
	Cause to be; make;
Create	To evolve from one's own thought or imagination
	To question (someone) after any kind of undertaking in order to assess performance, etc;
Debrief	To interrogate (a soldier, astronaut, diplomat, etc.) on return from a mission in order to assess the conduct and results of the mission
Define	Make clear; settle the limits
	To make evident by arguments or reasoning; prove;
Demonstrate	To manifest or exhibit
	Perform an original act;
Design	To prepare the preliminary sketch or the plans for (a work to be executed)
	Resolve; settle; decide;
Determine	To conclude or ascertain, as after reasoning, observation, etc
	Bring into being or activity;
Develop	To bring out the capabilities or possibilities of; bring to a more advanced or effective state
Differentiate	Make a distinction between
Dispose	To put in a particular or the proper order or arrangement; adjust by arranging the parts;

WORDS	
Statement of Works	
	To arrange or decide matters
Document	To record, give an account of;
	A written or printed paper furnishing information or evidence, a legal or official paper
Enhance	To raise to a higher degree; intensify; magnify;
	To raise the value or price of
Ensure	To make sure or certain to come, occur, etc;
	To make secure or safe, as from harm
Eradicate	To remove or destroy utterly; extirpate
Erect	Put together; set upright
Establish	Set up; settle; prove beyond dispute
Estimate	Approximate an opinion of;
	To form an approximate judgement or opinion regarding the value, amount, size, weight, etc., of; calculate approximately
Evaluate	Find or fix the value of;
	To ascertain the value or amount of; appraise carefully
Evolve	Develop gradually, work out
Examine	Look at closely; test quality of;
	To test the knowledge, reactions, or qualifications of (a pupil, candidate, etc.), as by questions or assigned tasks
Expect	To look forward to; regard as likely to happen; anticipate the occurrence or the coming of;
	To look for with reason or justification
Explore	Examine for discovery;
	To look into closely; scrutinise
Extract	Take out; deduce, select
Fabricate	Build; manufacture, invent;
	To fake; forge (a document)
Familiarise	To make (something) well known; bring into common knowledge or use;
	To make (a person) familiarly acquainted or conversant, as with something
Fold	A product which is folded, and requires no pressing or other finishing
Form	Give shape to; establish
Formulate	To put together, add, express;
	To express in precise form; state definitely or systematically
Forward	Directed towards a point in advance, moving ahead;
	Put forward: to propose
Gather	To learn or infer from observation;
	To get together from various places or sources; collect gradually
Generate	Produce, cause to be
Handle	To deal with or treat, as a matter or subject;
	To manage, direct, or control; to handle troops
Hanger	To present laundered items on a clothes hanger with protective wrapping
Identify	To show or to find
Implement	To carry out, put into practice
Include	To contain, embrace or comprise
Incorporate	To take in or include as a part or parts, as the body or a mass

WORDS	
Statement of Works	
Indemnify	To compensate for damage or loss sustained, expense incurred, etc. To guard or secure against anticipated loss; give security against
Indicate	To show, as by measuring or recording
Initiate	To propose (a measure) by initiative procedure
Input	Something that is put in. The act or process of putting in.
Inspect	Examine carefully or officially
Install	Place; put into position
Institute	Set up; establish, begin
Integrate	To add parts to make whole
Intend	To have in mind as something to be done or brought about
Interact	To act on or in close relation with each other
Introduce	To bring into notice, knowledge, use, vogue, etc
Interpret	Explain the meaning of
Inquire	Ask, make a search of
Issue	A point in question or a matter that is in dispute; something that is sent out or put forth in any form.
Investigate	Search into; examine closely
Involve	To include as a necessary circumstance, condition, or consequence; imply;
Judge	Decide; form an estimate of
Launder	To wash (including remove oil and grease marks) and dry
Liaise	To communicate and maintain contact (with)
Limit	To restrict by or as by fixing limits
Make	Cause to come into being
Maintain	To keep in an existing state, to continue in, carry on
Manage	To handle, direct, govern, or control in action or use
Manufacture	Fabricate from raw materials
Mapping	To translate information from one layer of organisation to another such as from an image stored in memory to an image displayed on a screen
Measure	An instrument, as a graduated rod or a container of standard capacity, for measuring.
Meet	To come upon; come into the presence of;
Native	Native are those species that occur naturally in the area and have not been introduced, accidentally or otherwise, by humans.
Negotiate	To arrange for or bring about by discussion and settlement of terms
Mobile	Exercise, practice or activity conducted that specifically requires the movement of personnel including live fire practices
Modify	To change, alter
Monitor	To watch or observe
Note	A brief written or printed statement giving particulars or information
Notice	Comment upon , review
Notify	To inform (someone) or give notice to
Observe	Inspect, watch
Obtain	To come into possession of; get, acquire, or procure, as through an effort or by a request
Occur	To come to pass, take place or happen
Offer	To present for acceptance or rejection; proffer To put forward for consideration

WORDS	
Statement of Works	
Operate	To perform some process of work or treatment
Organise	Integrate, arrange in a coherent unit
Originate	Initiate, to give rise to
Participate	To take or have a part or share, as with others; partake; share (usually followed by in)
Perform	Do, carry out, accomplish
Plan	Devise a scheme for doing, making, arranging activities to achieve objectives
Press	To press or iron the item and present the pressed item either folded or on a hanger as appropriate.
Prepare	To manufacture, compound, or compose
Prescribe	To lay down, in writing or otherwise, as a rule or a course of action to be followed; appoint, ordain, or enjoin
Prevent	To keep from occurring; hinder
Probe	Investigate thoroughly
Process	A systematic series of actions directed to some end
Procure	To obtain or get by care, effort, or the use of special means
Produce	Give birth or rise to
Propose	To offer or suggest (a matter, subject, case, etc.) for consideration, acceptance, or action
Protect	To defend or guard from attack, invasion, loss, annoyance, insult, etc.; cover or shield from injury or danger.
Provide	To make available; furnish To supply or equip
Provision	The providing or supplying of something, as food or other necessities
Purpose	An intended or desired result; end or aim
Pursue	Seek, obtain or accomplish
Qualify	To invest with proper or necessary qualities, skills, etc; make competent
Quality	Grade of excellence
Raise	To move to a higher position; lift up; elevate
Reason	Think, influence another's actions
Receipt	The act of receiving or the state of being received.
Recommend	Advise, attract favour of
Record	Set down in writing or act of electronic reproduction of communications
Reduce	To bring down to a smaller extent, size, amount, number, etc. To lower in degree, intensity, etc.
Refine	To bring to a finer state or form by purifying.
Reflect	Of an act or its result; to serve to cast or bring (credit, discredit, etc.) on its performer; To reproduce; show
Relocate	To move to a different place
Remove	To move from a place or position; take away or off
Repair	To restore or renew by any process of making good, strengthening, etc
Replace	To provide a substitute or equivalent in the place of; To restore; return; make good.
Report	To make a report; draw up or submit a formal report; To relate or tell
Request	A written statement; Something asked for
Require	To ask for authoritatively or imperatively; demand.
Resolve	Reduce by analysis, clear up

WORDS	
Statement of Works	
Respond	To reply or answer in words; To make a return by some action as if in answer.
Responsible	Involving accountability or responsibility
Restrict	To confine or keep within limits, as of space, action, choice, quantity, etc.
Retain	To keep possession of. To continue to use, practice, etc; To continue to hold or have
Review	Inspection, examination or evaluation
Revise	To correct, improve
Scan	Look through hastily, examine intently
Schedule	A plan of procedure, usually written, for a proposed objective, especially with reference to the sequence of and time allotted for each item or operation necessary to its completion; A series of things to be done or of events to occur at or during a particular time or period
Scope	Extent or range of view, outlook, application, operation, effectiveness, etc; Space for movement or activity; opportunity for operation
Screen	To separate, present, or shield
Search	Examine to find something
Seek	Try to discover; make an attempt
Select	To choose in preference to another or others; pick out.
Service	The providing or a provider of accommodation and activities required by the public, as maintenance, repair, etc
Solve	Find an answer
Specify	To name or state as a condition
Standard	Anything taken by general consent as a basis of comparison; an approved model A level of quality which is regarded as normal, adequate or acceptable
Study	Careful examination or analysis
Subject	To make liable, lay open, or expose
Submit	To present for the approval, consideration, or decision of another or others
Supply	To furnish or provide (a person, establishment, place, etc.) with what is lacking or requisite
Support	To maintain (a person, family, establishment, institution, etc.) by supplying with things necessary to existence; provide for
Test	Evaluate, examine
Timeframe	A period of time within which some event or process takes place
Trace	To copy or find by searching
Track	Observe or plot the path of
Transport	To carry or convey from one place to another
Treat	To subject to some agent in order to bring about a particular result
Undertake	To take upon oneself, as a task, performance, etc.; To promise, agree, or obligate oneself
Unscheduled	Not listed on a schedule
Update	Modernise, make current
Use	To operate or put into effect
Utilise	To put to use; turn to profitable account
Variance	A difference or discrepancy
Warrant	Something that serves to give reliable or formal assurance of something; guarantee,

WORDS	
Statement of Works	
	pledge, or security
Wash	Removal of soil from an article with soap or detergent which suspends the soil in solution.

ANNEX A

PERFORMANCE MANAGEMENT FRAMEWORK

¹²STRATEGIC INDICATORS

¹ CCP 2015-067, C-2015-00738 Word Changes, approved 4 April 2016

² CCP 2015-106, C-2015-00149 Minor word changes, approved 30 Nov 2015

1. STRATEGIC INDICATORS

Strategic Indicators			
	ID	Indicator	Description
Financial	FIN1	Corporate viability determined against a set criteria	Ensures the Contractor's ongoing financial viability. The Contractor will be required to provide relevant audited financial statements, or that of the controlling entity.
	FIN2	Maintenance of Value for Money	<p>The contractor should demonstrate that contract value has not eroded through changes in demand or the fixed scope of the contract.</p> <ul style="list-style-type: none"> The contractor may be required to provide 'open book' inspection by Defence of Contract Change Proposals including visibility of supply chain costs, income and expenses and profit. The contractor should demonstrate that where changes in demand, occur that optimal changes in contracting arrangements are proactively brought to the notice of Defence.
Behaviour	BEH1	Overall rating against the 7 desired behaviours meets target	<p>Desired behaviours will need to be demonstrated and can include the following instances:</p> <ul style="list-style-type: none"> Level of participation in each of the governance fora, particularly the BSCC. Number of negative assurance outcomes. Willingness and co-operation of the Contractor on meeting the open book policy. Number of times where the contract amendment process has not been completed within Defence Contract Change Process timeframes.
	BEH2	Health of the relationship survey/interviews	<p>Survey/interviews to gauge the health of the relationship between Defence and Contractors:</p> <ul style="list-style-type: none"> Defence to rate EMOS and Residual Contractors

Strategic Indicators			
	ID	Indicator	Description
		undertaken by Defence, EMOS Contractor and Residual Contractors	<ul style="list-style-type: none"> • EMOS and Residual Contractors to rate Defence • EMOS and Residual Contractors to rate each other <p>The questions and design of the survey/interviews will aim to provide a more scientific and objective view of the relationship and how each party has enabled the other to achieve the desired outcomes and less on personality misalignment.</p>
Customer	CUS1	Overall customer satisfaction from surveys conducted on the Contractor's service/s	Roll-up of customer surveys that have been conducted for services that have a customer survey component.
	CUS2	Number of substantiated complaints from the Contractor's services	<ul style="list-style-type: none"> • Number of complaints that have been substantiated as genuine service deficiencies that are within the control of the Contractor to resolve and within the requirements of the SOW. • % of substantiated complaints that are addressed by the Contractor within acceptable timeframes. This measures the Contractor's willingness to address substantiated complaints from customers within acceptable timeframes.
	CUS3	Notable compliments received regarding Contractor quality and service	Compliments captured through multiple informal channels on the Contractor's service and quality.
Learning and Growth	LG1	Year on year improvement in the contractor's total value proposition, with reference to	<ul style="list-style-type: none"> • Demonstrated increased value to Defence, with reference to the Business Improvement Plan and established contract commencement baseline. • Demonstration of ongoing service line optimisation by responding

Strategic Indicators			
	ID	Indicator	Description
		the Business Improvement Plan.	to changes of delivery variables (e.g. demand for services)
Corporate Performance	CP1	The number of red and amber operational traffic light states does not exceed a set annual target	<ul style="list-style-type: none"> Count of the number of red and amber traffic light states after a full reporting year against acceptable thresholds.
	CP2	Overall rating of performance under relevant legislation as well as policies of the Commonwealth that relate to procurement, and where specified, any other Government policy as well as Department of Defence policy.	<ul style="list-style-type: none"> The Commonwealth is committed to ensuring Contactors demonstrate performance against relevant State and Commonwealth legislation and Commonwealth and departmental policies. Corporate Performance will be assessed against applicable statutes, regulations, and relevant government and Defence policies.

ANNEX A

PERFORMANCE MANAGEMENT FRAMEWORK

¹²STRATEGIC INDICATORS

¹ CCP2015-066, C-2015-00737 Contract text changes, approved 4 Apr 2016

² CCP 2015-107, C-2015-00150 Minor word changes approved 30 Nov 2015

1. STRATEGIC INDICATORS

Strategic Indicators			
	ID	Indicator	Description
Financial	FIN1	Corporate viability determined against a set criteria	Ensures the Contractor's ongoing financial viability. The Contractor will be required to provide relevant audited financial statements, or that of the controlling entity.
	FIN2	Maintenance of Value for Money	<p>The contractor should demonstrate that contract value has not eroded through changes in demand or the fixed scope of the contract.</p> <ul style="list-style-type: none"> The contractor may be required to provide 'open book' inspection by Defence of Contract Change Proposals including visibility of supply chain costs, income and expenses and profit. The contractor should demonstrate that where changes in demand, occur that optimal changes in contracting arrangements are proactively brought to the notice of Defence.
Behaviour	BEH1	Overall rating against the 7 desired behaviours meets target	<p>Desired behaviours will need to be demonstrated and can include the following instances:</p> <ul style="list-style-type: none"> Level of participation in each of the governance fora, particularly the BSCC. Number of negative assurance outcomes. Willingness and co-operation of the Contractor on meeting the open book policy. Number of times where the contract amendment process has not been completed within Defence Contract Change Process timeframes.
	BEH2	Health of the relationship survey/interviews	<p>Survey/interviews to gauge the health of the relationship between Defence and Contractors:</p> <ul style="list-style-type: none"> Defence to rate EMOS and Residual Contractors

Strategic Indicators			
	ID	Indicator	Description
		undertaken by Defence, EMOS Contractor and Residual Contractors	<ul style="list-style-type: none"> • EMOS and Residual Contractors to rate Defence • EMOS and Residual Contractors to rate each other <p>The questions and design of the survey/interviews will aim to provide a more scientific and objective view of the relationship and how each party has enabled the other to achieve the desired outcomes and less on personality misalignment.</p>
Customer	CUS1	Overall customer satisfaction from surveys conducted on the Contractor's service/s	Roll-up of customer surveys that have been conducted for services that have a customer survey component.
	CUS2	Number of substantiated complaints from the Contractor's services	<ul style="list-style-type: none"> • Number of complaints that have been substantiated as genuine service deficiencies that are within the control of the Contractor to resolve and within the requirements of the SOW. • % of substantiated complaints that are addressed by the Contractor within acceptable timeframes. This measures the Contractor's willingness to address substantiated complaints from customers within acceptable timeframes.
	CUS3	Notable compliments received regarding Contractor quality and service	Compliments captured through multiple informal channels on the Contractor's service and quality.
Learning and Growth	LG1	Year on year improvement in the contractor's total value proposition, with reference to	<ul style="list-style-type: none"> • Demonstrated increased value to Defence, with reference to the Business Improvement Plan and established contract commencement baseline. • Demonstration of ongoing service line optimisation by responding

Strategic Indicators			
	ID	Indicator	Description
		the Business Improvement Plan.	to changes of delivery variables (e.g. demand for services)
Corporate Performance	CP1	The number of red and amber operational traffic light states does not exceed a set annual target	<ul style="list-style-type: none"> Count of the number of red and amber traffic light states after a full reporting year against acceptable thresholds.
	CP2	Overall rating of performance under relevant legislation as well as policies of the Commonwealth that relate to procurement, and where specified, any other Government policy as well as Department of Defence policy.	<ul style="list-style-type: none"> The Commonwealth is committed to ensuring Contactors demonstrate performance against relevant State and Commonwealth legislation and Commonwealth and departmental policies. Corporate Performance will be assessed against applicable statutes, regulations, and relevant government and Defence policies.

ANNEX B

PERFORMANCE MANAGEMENT FRAMEWORK

OPERATIONAL INDICATORS ¹

¹ CCP 2016-340, C-2016-00348 PDS & MIC Indicator Review – Approved 30 January 2017

1. OPERATIONAL INDICATORS

1.1 The tables below outline the indicators that will be specifically tracked for each service. The indicators outlined do not exclude the Contractor from delivering any element of the relevant Statement of Work, and will be tracked for Abatement and Business Intelligence purposes.

1.2 All Compliance failures are to be notified as soon as practical after they have been discovered.

Project Delivery Services							
ID	Indicator	Description	Tolerance or Target	Frequency	C or P	% of VAR PMO Fee	Service VAR(%) PMO Fee
PD01.1	Program Delivery Expenditure Achievement	Delivery of the approved program meets the DEWPO Agreed Budget for the applicable financial year.	+ / - 5%	Annual	P	60%	
PD01.2	Project Delivery Procurement Compliance	Contractor to confirm that all procurements managed by PDS are compliant with all Defence/Commonwealth procurement and contracting policy, processes and rules. Report by exception, default is 100%.	100%	Monthly	C	100%	
PD02.1	Scope and Feasibility Reports	Phase 1 Scope and Feasibility Reports are accepted by DEWPO. Data evidence extracted from EPMO.	95%	Quarterly – Calculated quarterly based on in-year program	P	20%	
PD03.1	Design Deliverables	Contractor to confirm that Phase 2 design deliverables are compliant and meet legislative and Defence policy requirements. Report by exception, default is 100%.	100%	Monthly	C	20%	
PD03.2	Project Variations	Contractor to ensure contracts are managed to minimise project scope variations, due to design errors and omissions.	100%	Monthly – Calculated monthly based on occurrences in last Month	P	10%	
PD04.1	Project Estimates	Accuracy of PDS project estimate as agreed at commencement of Phase 3 Delivery, measured as the average percentage difference between pre-tender estimate and the Contract Award result, across the PDS program. Data evidence extracted from EPMO.	Not more than + / - 10%	Monthly – Calculated monthly based upon a rolling 12 month average	P	20%	

Project Delivery Services							
ID	Indicator	Description	Tolerance or Target	Frequency	C or P	% of VAR PMO Fee	Service VAR(%) PMO Fee
* PD07.1	* Information Deliverables	* Project Information Deliverables (Annexure 1) for completed projects are compliant with data standards for upload to the Defence Estate Information Systems.	95%	Monthly – Calculated monthly based upon a rolling 12 month average	P	10%	
PD08.1	Sponsor Funded Works	DEWPO to confirm number of instances where funding availability has not been confirmed prior to projects proceeding to procurement and where SFW processes to assist Defence stakeholders have not been followed, including non provision of feedback to clients when scope, timeframes or cost changes affect the project. Contractor to report by exception, default is 100%.	0	Monthly – Calculated monthly on occurrence	P	10%	
PD08.2	Time Sensitive Project Delivery Timeframes	Contractor to confirm that time sensitive projects (seasonal-based, environmental and legislative requirements) are identified in project scheduling and delivered in the appropriate timeframe. Report by exception, default is 100%.	100%	Monthly	P	5%	

* PD07.1 – This item is on hold until 1 July 2017 pending review of Information Deliverables, monitoring will still occur in the interim.

1.2 Management, Integration and Coordination (MIC) Indicators

1.2.1 The tables below outline the indicators that will be specifically tracked for the Management, Integration and Coordination for miscellaneous service packages. The indicators outlined do not exclude the Contractor from delivering any element of the relevant Statement of Work, and will be tracked for Abatement and Business Intelligence purposes.

1.2.2

MIC Services for miscellaneous packages							
ID	Indicator	Description	Tolerance or Target	Frequency	C or P	% of VAR	Service VAR(%)
PDSM01	Legislation, Regulation, Australian Standard and Defence Policy Compliance	Contractor to confirm compliance with: Commonwealth, State and Local Legislation; Regulation, Australian Standards and Defence Policy	0	Monthly	C	100%	
PDSM02	Work Health and Safety	Contractor confirms that activities are undertaken in accordance with the requirements of Work Health and Safety Act, and with Defence's Work Health and Safety Policies, Procedures and Reporting requirements.	0	Monthly	C	100%	
PDSM03	Environment and Heritage	Contractor to confirm that its activities are compliant with Government and Defence environmental and heritage policies, procedures and reporting requirements.	0	Monthly	C	100%	
PDSM04	Security Policy	Contractor to confirm that its activities are compliant with Defence's Security Policies and Procedures.	0	Monthly	C	100%	
PDSM05	Qualification, Competencies and Proficiencies	Contractor to confirm that its staff and staff of its sub-contractors hold the qualifications, competencies and proficiencies that are specifically identified in legislation, regulation, Defence policies and/or the respective Base Services Contract for performance of the contract deliverables.	0	Monthly	C	100%	
PDSM06	Reporting and Information Management	1. Contractor to confirm reporting and data provision is accurate 2. Contractor to confirm reporting and data provision in a timely manner	1. 95% 2. 0	Monthly	P	50%	

MIC Services for miscellaneous packages							
ID	Indicator	Description	Tolerance or Target	Frequency	C or P	% of VAR	Service VAR(%)
PDSM07	Integration, Coordination and Cooperation Failures	Delivery failures that arise as a direct result of the MSP Contractor failing to integrate or co-operate internally or with one or more Base Services Contractors.	0	Monthly	P	50%	
PDSM08	Business Continuity Planning, Implementation and Testing	Contractor confirms business continuity planning, implementation and testing. Report by exception.	0	Monthly	P	50%	
PDSM09	Relationship Management	Failures in the delivery of Base Services that have arisen from unresolved or unmanaged relationship issues or inconsistent implementation of the principles of the Cooperation Deed.	0	Monthly	P	50%	
PDSM10	Meeting Attendance	Meeting attendance is in accordance with the contract requirements and reflects Defence's priorities.	95%	Monthly	P	50%	
PDSM11	Audit and Assurance	Contractor to provide audits and assurance activities in accordance with the Project Delivery Services contract and Quality Management Plans assurance schedules.	100%	Quarterly	P	10%	

ANNEX C ABATEMENT PROCESSING

Company	Service	Abatement Scope
Augility	Management, Integration and Coordination MSP	Whole of Scope
Augility	Project Delivery Services	Whole of Scope

Schedule 5 – GFM, GFF AND GFS
Annex A – Government Furnished Material

Annex A – Government Furnished Material

1.1 The following GFM shall be used in the provisions of the Services:

Item description	Quantity	Delivery date and location	Return date and location	Time period for inspection	Applicable IP rights/ limitations	Comments / intended purpose
GFE	None specified					
GFI	None specified					

Schedule 5 – GFM, GFF AND GFS
Annex B – Commonwealth Mandated Government Furnished

Annex B - Commonwealth Mandated Government Furnished Material

1.1 The following Commonwealth Mandated GFM shall be used in the provisions of the Services:

Item description	Quantity	Delivery date and location	Return date and location	Time period for inspection	Applicable IP rights/ limitations	Comments / intended purpose
GFE	None specified					
GFI	None specified					

Schedule 5 – GFM, GFF AND GFS
Annex C – Government Furnished Facilities – Not Used

Annex C – Government Furnished Facilities – Not Used

Schedule 5 – GFM, GFF AND GFS
Annex D– Government Furnished Services – Not Used

Annex D– Government Furnished Services – Not Used

This costing has been prepared by <INSERT Contractor Name> for < INSERT Service Package Name> services in accordance with the < INSERT Service Package Name> contract cost schedules and terms and conditions. This quote is for the full cost of this service which includes an agreed mark-up. Full funding and payment of this amount is a customer responsibility.

Service Provider Contact Information: <INSERT EMAIL ADDRESS >

Quotation ID	Quotation Open Period	Description of Requirement	Service Name
Timestamp of Request	Defence Estate Location		BSSC Service Request #

Requester Name	Requester Contact Phone	Customer Name	Customer Phone	Additional Point of Contact Name	Phone
Requester Contact Email		Customer Email	Additional Point of Contact Email		

Quotation Detail*

Activity ID	Fee Source~	Item Description	UoM	Qty	Unit Cost	GST	Total Cost

*Add rows as required

~Fee Source is either from a Rates Schedule (Rates) or Survey and Quote (S&Q)

Sub-total (ex GST)

GST Total

Total Quotation (incl GST)

The following information will be used by DSRG to recover the cost of this work:

<input type="checkbox"/> <u>Cost Centre</u>	Account Code	WBS Number	IO Number	Customer Type
---	--------------	------------	-----------	---------------

<input type="checkbox"/> Credit Card	Name on Card (Please use Capital Letters)	DPC or Credit Card – Last 4 digits^	Expiry Date:
<input type="checkbox"/> Defence Purchasing Card		_____	____ / ____

^ The Base Services Contractor will obtain the full credit card number and CCV at the time of processing payment but will not store on their systems.

Quotation Approval

Section 1

Is to be signed where an official has NOT exercised a delegation elsewhere. Where delegations have been exercised elsewhere, Section 2 must be completed.

Commitment Approver Delegate

(FINMAN 2 – Delegation 1 or Delegation Schedule DMO-03)

Signature	Printed Name	Position Title	Position Number	Employee ID
			Rank	Date

Section 23 Delegate

(FINMAN 2 – Delegation 2 or Delegation Schedule DMO-04)

Signature	Printed Name	Position Title	Position Number	Employee ID
			Rank	Date

Section 2

The Authority below is only required to be signed where delegations have NOT been exercised in Section 1 above and have been approved elsewhere.

I confirm that the required officials have sighted and approved the contents contained within this Quotation; and

I confirm that this Quotation is being accepted in accordance with the Commitment Approver and Section 23 Delegate approvals.

Purchase Order Requesting Officer

(to be signed by O-1/APS3 equivalent or higher)

Signature	Printed Name	Position Title	Position Number	Employee ID
			Rank	Date

Annex D – Purchase Order

1 PURCHASE ORDER

1.1.1 The Purchase Order shall be agreed between the Parties..

Annex F – Contract Change Proposal

CONTRACT CHANGE PROPOSAL (CCP) DEED

(CONTRACT NUMBER: [...INSERT CONTRACT NUMBER...])

Note to Contractors: A CCP shall identify separately the cost of preparation of the CCP and any proposed variation to the payments required under the Contract and, where Approved in accordance with clause 18.1, the reasonable cost of preparation shall be taken into account in calculating the varied payments under the Contract.

If this CCP relates to changes of an administrative nature which have no impact upon the payments required under the Contract or on the Statement of Work, the Contractor may provide minimal details of the change. Responses are only required for headings denoted as mandatory.

This Deed is made on [...INSERT DATE...]

Between

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

and

[...INSERT CONTRACTOR...ACN/ARBN AND ABN IF APPLICABLE...] having its registered office at [...INSERT DETAILS...] ('the Contractor')

RECITALS:

- A. The Commonwealth has entered into a contract [...INSERT CONTRACT NUMBER...] dated [...INSERT DATE...] ('the Contract') for the provision of [...INSERT BRIEF DESCRIPTION OF THE SERVICES...].
- B. The Contract provides that changes are to be dealt with by CCP on the basis of this Deed.
- C. The Commonwealth or the Contractor proposes a change to the Contract as set out in this Deed.

AGREED TERMS:

CCP number (Mandatory):

Date raised (Mandatory):

Validity period for CCP (Mandatory):

Originator (Mandatory):

Reference in Contract (Mandatory): [...INSERT CLAUSE NUMBER...]

- 1. **Details of Proposed Change (Mandatory):**
 - a. **Old Text:**
 - b. **New Text:**
- 2. **Justification for Proposed Change (Mandatory):**
- 3. **Effect of Proposed Change (If applicable):**
 - a. **Payments Required under the Contract:**
 - (i) **Pricing and Payment Schedule including payment method:**
 - (ii) **new or revised Performance Indicators:**
 - (iii) **cost of preparation of CCP:**
 - b. **Delivery:**
 - (i) **Location:**
 - (ii) **Date:**
 - c. **Scope of work:**

Contract for the provision of Project Delivery Services

Note to Contractors: This should include a description of the effect of the change on the scope of work, including where appropriate: quality, AIC, technical/functional specification, warranty, training, documentation and whether it is for S&Q Services.

Option: For when the parties intend this CCP to take effect on a date other than the date of signature:

4. **Date of effect of this Deed:**

5. **Warranty:**

5.1 In signing this CCP the Contractor warrants that the submitted cost of preparation of this CCP is true and correct.

6. **Approval:**

6.2 The CCP and its attachments are Approved. The Contract shall be deemed to be changed:

- a. if no date for taking effect is specified in this Deed, on the date it is executed by both Parties and if executed on different days, the date of the last execution; or
- b. on the date specified in this Deed, following its execution by both Parties.

SIGNED AND DELIVERED AS A DEED

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....
(signature) (print name and position of authorised signatory) (date)

In the presence of:

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

SIGNED ON BEHALF OF THE CONTRACTOR:

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

In the presence of:

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

ANNEX H – APPROVED SUBCONTRACTOR IP DEED

This DEED is made the (...) day of (...)

BETWEEN

(...) ACN/ARBN and ABN (...), if applicable, a company duly incorporated under the laws of (...) and having its registered office at (...) ("the Approved Subcontractor")

AND

(...) ACN/ARBN and ABN (...), if applicable, a company duly incorporated under the laws of (...) and having its registered office at (...) ("the Contractor")

AND THE

COMMONWEALTH OF AUSTRALIA acting through its Department of Defence ABN 68 706 814 312 ("the Commonwealth").

RECITALS

- A. The Commonwealth has entered into a Contract [...INSERT CONTRACT NUMBER...] dated [...INSERT DATE...] ("the Contract") with the Contractor for the provision of Base Services in accordance with the Contract.
- B. The Contractor has entered into a contract [...INSERT CONTRACT NUMBER...] dated [...INSERT DATE...] ("the Approved Subcontract") with the Approved Subcontractor for the provision of [...INSERT BRIEF DESCRIPTION...].
- C. The parties intend Foreground IP and Background IP to be licensed or assigned to the Commonwealth subject to the terms of this Deed.

AGREED TERMS

1 INTERPRETATION

1.1 Definitions

1.1.1 In the interpretation of this Deed, unless the contrary intention appears:

"Background IP" means IP, other than Third Party IP, that:

- a. is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Approved Subcontract; and
- b. is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.

"Commercial-in-Confidence Information" means information (whether or not provided by the Commonwealth) that:

- a. is by its nature confidential; or
- b. the receiving party knows or ought to know is confidential,

but does not include information that:

- c. is or becomes public knowledge other than by breach of this Deed;
- d. is in the possession of a party without restriction in relation to disclosure before the date of receipt; or
- e. has been independently developed or acquired by the receiving party.

"Commonwealth Representative" means the person holding or performing the office of Commonwealth Representative as identified in item 1 of the Contract Details or any other person appointed pursuant to this Deed as the Commonwealth Representative.

"Defence Purposes" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and purposes that are necessary or incidental to any of those purposes

"Deliverables" means any service, information, document (including report, manuals, designs, drawings and the like), hardware, software or other thing which is, or is required by the Approved Subcontract to be, delivered or provided by the Approved Subcontractor or its agents to the Commonwealth or its agents in the course of the performance of the Services.

"Effective Date" means the date on which this Deed is signed by the parties, or if signed on separate days, the date of the last signature.

"Foreground IP" means IP which is created under or otherwise in connection with the performance of the Approved Subcontract, other than Third Party IP.

"Intellectual Property" or "IP" means all intellectual property, including:

- a. all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; or
- b. any application or right to apply for registration of any of the rights referred to in paragraph (a).

"IP Plan" means the plan at Schedule 1 of this Deed.

"Licence" means a royalty-free, irrevocable, world-wide, perpetual and non-exclusive licence, including a right to sub-license.

"Moral Rights" means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the

right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

“Services” means goods and services including Deliverables and Intellectual Property required to be provided under the Approved Subcontract and includes items acquired in order to be incorporated in the Services.

“Subcontractor” means any person, other than the Commonwealth, that, for the purposes of the Contract, furnishes goods or services to the Contractor or indirectly to the Contractor through another person and includes Approved Subcontractors; and ‘Subcontract’ in all its forms has a corresponding meaning.

“Third Party IP” means that IP which is owned by a party other than the Commonwealth, Contractor or Approved Subcontractors and is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services, and is not limited to Commercial-Off-The-Shelf items.

“Working Day” in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

1.2 Interpretation

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate, trust, joint ventures, unincorporated body or a partnership;
- e. where a word or phrase is defined, its other grammatical terms have a correspondence in meaning;
- f. 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 next Working Day;
- g. a reference to Law is a reference to Law 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;
- h. a reference to a clause includes a reference to a subclause of that clause;
- i. a reference to a “dollar”, “\$”, “\$A” or “\$AUD” means the Australian dollar;
- j. 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, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- k. the word “includes” in any form is not a word of limitation;
- l. no rule of construction applies to the disadvantage of a party on the basis that such party put forward or drafted the Deed or any part of it;
- m. examples and use of the word ‘includes’ in any form is not a word of limitation;
- n. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- o. a reference to any clause, attachment and annexure are to those in the Deed, and a reference to the Deed includes any attachment and annexure;
- p. any property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;

- q. the term 'may' when used in the context of a right or remedy exercisable by the Commonwealth or a delegate of the Commonwealth means that the Commonwealth or its delegate can exercise that right or remedy in its sole and absolute discretion and the Commonwealth or its delegate has no obligation to the Confidant to do so unless expressly stated; and
 - r. subject to the Commonwealth's consent, 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.
- 1.2.2 The clauses of the Contract referred to in this Deed are contained at Schedule 3 of this Deed.

1.3 Precedence

- 1.3.1 The terms of this Deed prevail over the provisions of any Schedule to this Deed to the extent of any inconsistency.

1.4 Survival

- 1.4.1 The rights and obligations created under or in connection with this Deed survive the termination or expiry of the Contract or the Approved Subcontract.

2 FOREGROUND AND BACKGROUND IP

2.1 Background IP and Third Party IP - Ownership

- 2.1.1 Nothing in the Deed affects the ownership of Background IP or Third Party IP.

2.2 Intellectual Property – Ownership and Licensing

- 2.2.1 Despite any limitations set out in the IP Plan:
- a. ownership of all Foreground IP vests on its creation in the Commonwealth;
 - b. the Approved Subcontractor grants to the Commonwealth a Licence in respect of all Background IP that is owned by the Approved Subcontractor to exercise the Background IP for Defence Purposes; and
 - c. the Approved Subcontractor shall ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.
- 2.2.2 Despite any limitations set out in the IP Plan, the Approved Subcontractor acknowledges that the rights granted under clause 2.2.1 include the right of the Commonwealth, or a person on behalf of the Commonwealth, to exercise the Background IP with the Foreground IP to:
- a. properly use, and support the Services, including any Deliverables;
 - b. continue to provide or complete the provision of the Services if the Contract or Approved Subcontract is terminated (except under clause 50.1 of the Contract); and
 - c. remedy errors, omissions, non-conforming materials or work or other Non-Conformances in the Services, including Deliverables in accordance with the Contract.
- 2.2.3 The Licences granted under clause 2.2.1 do not permit the Commonwealth, or a person on behalf of the Commonwealth, to commercialise the licensed IP. However, the Licence under clause 2.2.1 permits the Commonwealth to sub-license the IP to a third party for the purpose of providing goods and services to the Commonwealth for Defence Purposes.
- 2.2.4 The Approved Subcontractor warrants that the only IP embodied in the Deliverables that has not been vested in the Commonwealth, or in respect of which the Commonwealth has not been granted a Licence under clause 2.2.1b, is Third Party IP.
- 2.2.5 The Commonwealth may, on request, grant the Approved Subcontractor a licence to exercise Foreground IP owned by the Commonwealth, on terms acceptable to the Commonwealth, including an appropriate licence fee.

2.3 Intellectual Property - Registration and Protection

- 2.3.1 For any Foreground IP that vests in the Commonwealth, the Commonwealth has the exclusive right to apply for registration of the Foreground IP in all countries of the world.
- 2.3.2 To facilitate the Commonwealth registering or protecting the Foreground IP, the Approved Subcontractor shall:
- a. give the Commonwealth access to all work carried out in the performance of the Approved Subcontract, and to all records of such work as are reasonably required by the Commonwealth;
 - b. provide all information, execute all documents and do all acts and things reasonably necessary to enable the Commonwealth to:
 - (i) secure the adequate and timely preparation of the applications for registration or other protection by the Commonwealth of Foreground IP; and
 - (ii) prosecute, maintain, enforce or defend such applications, registrations or other protection;
 - c. refrain from publication, dissemination or other communication of any Commercial-in-Confidence Information relating to the IP, and from any other action which might compromise the IP or threaten the subsistence, registration or exploitation of the IP; and
 - d. on request by the Commonwealth Representative, identify or mark relevant documents as copyright of the Commonwealth.
- 2.3.3 In this clause 2.3, 'Commonwealth', includes its patent attorney, other relevant advisers, and other persons acting for or on behalf of the Commonwealth.

2.4 Approved Subcontractor IP - Release to Third Parties by the Commonwealth

- 2.4.1 If the Commonwealth makes available to another person any Intellectual Property that is owned by the Approved Subcontractor and which is Background IP, the Commonwealth shall use its reasonable endeavours to obtain from that person a deed of confidentiality substantially in the form set out in Schedule 2 of this Deed.

2.5 Moral Rights

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

3 INTELLECTUAL PROPERTY INDEMNITY

3.1 Indemnity

- 3.1.1 The Approved Subcontractor shall indemnify the Commonwealth, its officers, employees, agents, licensees or sub-licensees against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by the Commonwealth which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:

- a. infringement or alleged infringement of that third party's IP rights or Moral Rights when the infringement or alleged infringement arises out of any activity permitted under any licence or assignment referred to this Deed; or
 - b. breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission on the part of the Approved Subcontractor or any of its subcontractors, officers, employees or agents whether or not such act or omission constitutes a breach of this Deed.
- 3.1.2 For the purposes of this clause 3.1, "infringement" includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990*, section 100 of the *Designs Act 2003*, section 183 of the *Copyright Act 1968*, and section 25 of the *Circuit Layouts Act 1989*, constitute an infringement.
- 3.1.3 The Commonwealth shall notify the Approved Subcontractor in writing as soon as practicable of any action, claim, dispute, suit or proceeding ("Proceedings") threatened or brought, against the Commonwealth arising from an infringement or alleged infringement referred to in clause 3.1.1.
- 3.1.4 If the Approved Subcontractor agrees to comply at all times with government policy relevant to the conduct of the Proceedings, including the Legal Services Directions in force from time to time issued in accordance with the *Judiciary Act 1903* ('the Legal Services Directions'), and the Commonwealth is granted leave to withdraw from the Proceedings:
 - a. the Commonwealth may withdraw from the Proceedings; and
 - b. the Approved Subcontractor shall, in its own name and at its own expense, conduct the Proceedings.
- 3.1.5 For Proceedings when the Commonwealth is not granted leave to withdraw, if the Approved Subcontractor admits its obligations under the indemnity in clause 3.1.1 and upon request lodges security in a reasonable amount with the Commonwealth, the Commonwealth shall:
 - a. continue to keep the Approved Subcontractor informed of all developments; and
 - b. defend, arbitrate, appeal, settle or otherwise conduct the Proceedings as the Approved Subcontractor may from time to time reasonably direct subject to government policy, including the Legal Services Directions.
- 3.1.6 If a final judgment or award is made against the Commonwealth in the Proceedings, or if a settlement is agreed with the plaintiff in a situation covered by the indemnity under clause 3.1.1, but without limiting the Approved Subcontractor's obligations under that indemnity, the Approved Subcontractor shall pay to the Commonwealth by bank cheque a sum equivalent to the sum that the Commonwealth is required to pay under that judgment, award or settlement:
 - a. at least seven days before the date on which the Commonwealth is required to pay; or
 - b. if no date for payment has been fixed under the judgment, award or settlement, within seven days of receipt of a notice from the Commonwealth that it intends to pay the amount referred to in the judgment, award or settlement.
- 3.1.7 The Commonwealth shall consult with the Approved Subcontractor prior to agreeing to a settlement referred to in clause 3.1.6.
- 3.1.8 If the Approved Subcontractor fails to comply with clause 3, the Commonwealth has the right without prejudice to any other right or remedy it may have to suspend any payment due to the Approved Subcontractor until such Proceedings have been finalised.

4 LAW

4.1 Goods and Services Tax

- 4.1.1 In this clause, "GST" means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* and the expressions "adjustment event", "taxable supply" and "tax invoice" have the meaning as in that Act.
- 4.1.2 If a party to this Deed (the "Supplier") makes a taxable supply under or in connection with this Deed or in connection with any matter or thing occurring under this Deed to another party to this Deed (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 4.1.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient shall pay the deficiency to the Supplier.
- 4.1.4 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

4.2 No Exclusion of Law or Equity

- 4.2.1 Subject to its terms, this Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Commercial-in-Confidence Information.

4.3 Waiver

- 4.3.1 Failure by either party to enforce a term of this Deed shall not be construed as in any way affecting the enforceability of that term or the Deed as a whole.

4.4 Remedies

- 4.4.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 4.4.2 Subject to the terms of this Deed, the rights and obligations of the parties under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

4.5 Variation

- 4.5.1 This Deed may only be varied by written agreement of the parties.

4.6 Applicable Law

- 4.6.1 The laws of the [...INSERT PRIMARY LOCATION OF PROVISION OF SERVICES...] apply to this Deed, and the courts of that State or Territory have non-exclusive jurisdiction to decide any matter relating to this Deed.

4.7 Notices

- 4.7.1 Unless the contrary intention appears, any notice or communication under this Deed shall be effective if it is in writing, signed and delivered to the relevant party as detailed below:
- [...INSERT COMMONWEALTH REPRESENTATIVE POSTAL ADDRESS AND FAX NUMBER...]
- [...INSERT CONTRACTOR'S REPRESENTATIVE POSTAL ADDRESS AND FAX NUMBER...]
- [...INSERT APPROVED SUBCONTRACTOR'S REPRESENTATIVE POSTAL ADDRESS AND FAX NUMBER...]

- 4.7.2 A notice or communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by facsimile, at the time recorded by the transmitting machine, unless within 1 Working Day the sender is informed that the transmission was received in incomplete or garbled form.

SIGNED AS A DEED

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:

[...INSERT APPROPRIATE CONTRACTOR'S EXECUTION CLAUSE...]

SIGNED for and on behalf of

THE APPROVED SUB-CONTRACTOR:

[...INSERT APPROPRIATE APPROVED SUBCONTRACTOR'S EXECUTION CLAUSE...]

SCHEDULE 1

IP PLAN

[...INSERT NEGOTIATED IP PLAN (INCLUDING THE IP SCHEDULE)...]

SCHEDULE 2

IP CONFIDENTIALITY DEED

[...INSERT NEGOTIATED FORM OF IP CONFIDENTIALITY DEED...]

SCHEDULE 3

CONTRACT CLAUSES

[...INSERT NEGOTIATED CLAUSES OF THE CONTRACT]

¹DEED OF CONFIDENTIALITY AND FIDELITY

This Deed of Confidentiality and Fidelity is made on (...INSERT DATE...)

between

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

and

(...INSERT NAME OF CONFIDANT AND ACN/ARBN AND ABN AS APPLICABLE...), having its registered office at (...INSERT DETAILS...) ('the Confidant').

RECITALS:

- A. The Commonwealth has entered into a contract (...INSERT CONTRACT NUMBER...) dated (...INSERT DATE...) with (...INSERT CONTRACTOR...) ('the Contractor') and dated (...INSERT DATE...) ('the Contract') for the provision of Base Services in accordance with the Contract.
- B. In order to assist the performance of the Contract, the Contractor and the Confidant have entered into a subcontract, employment or agency arrangement for the provision of (...INSERT PURPOSE OF AGREEMENT AND CONTRACT/ORDER NUMBER AS APPROPRIATE...) ('the Agreement').
- C. In performance of the Agreement, the Confidant may become aware of information belonging to the Commonwealth or a third party that is the subject matter of the Contract. The Confidant agrees to keep the information confidential pursuant to the following terms and conditions.

AGREED TERMS

¹ CCP2015-066, C-2015-00737 Contract text Change approved 4 Apr 2016

1. DEFINITIONS

1.1 In the interpretation of this Deed, unless the contrary intention appears:

'Commercial-in-Confidence Information' means information (whether or not owned by the Commonwealth) that:

- a. is by its nature confidential;
- b. the Confidant knows or ought to know is confidential,

but does not include information which:

- a. is or becomes public knowledge other than by breach of this Deed;
- b. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- c. has been independently developed or acquired by the receiving party.

'Documents' includes:

- a. any paper or other material on which there is writing marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- b. any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

'Permitted Purposes' mean the provision of the Base Services in accordance with the Contract.

'Working Day' in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

2. INTERPRETATION

2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed;
- b. the singular includes the plural and vice-versa;
- c. a reference to one gender includes the other;
- d. a reference to a person includes a body politic, body corporate or a partnership;
- e. where 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 unless otherwise stated;
- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document, in effect on the date of entering into this Deed, or alternatively, a reference to another version of the document if agreed in writing between the parties;
- j. the word 'includes' in any form is not a word of limitation; and
- k. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of the Deed.

3. CONFIDENTIALITY UNDERTAKINGS

3.1 The Confidant:

- a. acknowledges and agrees that improper use, or disclosure of any Commercial-in-Confidence Information provided to the Confidant pursuant to or in connection with the Agreement would be detrimental to the Commonwealth in the performance of its functions and would cause harm to any third parties with an interest in the Commercial-in-Confidence Information;
- b. shall take all reasonable steps to ensure that such Commercial-in-Confidence Information is kept confidential in accordance with this Deed;
- c. shall only use the Commercial-in-Confidence Information for the Permitted Purposes; and
- d. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose any of the Commercial-in-Confidence Information to any person other than to any of its officers, employees, agents, advisers or independent contractors who:
 - (i) have a need to know the Commercial-in-Confidence Information in order for the Confidant to carry out the Permitted Purposes; and
 - (ii) if required by the Commonwealth, have executed a similar undertaking to this Deed in favour of the Commonwealth,and the Commonwealth may grant or withhold its consent in its absolute and unfettered discretion.

4. CONFIDANT'S REPRESENTATIVES

- 4.1 The Confidant shall ensure that its officers, employees, agents, advisers and independent contractors (whether or not still employed or engaged in that capacity) do not do or omit to do anything which, if done or omitted to be done by the Confidant, would be a breach of the Confidant's obligations under this Deed.
- 4.2 The Confidant shall give the Commonwealth all assistance it reasonably requires to take any action or bring any proceedings for breach of the undertaking contained in clause 3.1.

5. RETURN OF COMMERCIAL-IN-CONFIDENCE INFORMATION

- 5.1 The Confidant agrees to deliver to the Commonwealth or the Contractor, as required by the Commonwealth, all Documents in its possession, power or control which contain or relate to any Commercial-in-Confidence Information on the earlier of:
 - a. demand by the Commonwealth, and
 - b. the time the Documents and other material are no longer required for the Permitted Purposes.
- 5.2 If the Commonwealth makes a demand under this clause 5, and the Confidant has placed or is aware that Documents containing the Commercial-in-Confidence Information are beyond its possession or control, then the Confidant must provide full particulars of the whereabouts of the Documents containing the Commercial-in-Confidence Information, and the identity of the person in whose custody or control they lie.
- 5.3 The Confidant, when directed by the Commonwealth in writing, agrees to destroy any Document in its possession, power or control which contain or relate to any Commercial-in-Confidence Information.
- 5.4 Return or destruction of the Documents referred to in this clause does not release the Confidant from its obligations under this Deed.

6. SURVIVAL

- 6.1 This Deed shall survive the termination or expiry of the Contract and the Agreement.

7. CONFLICT OF INTEREST

- 7.1 The Confidant warrants that before entering into this Deed it has disclosed to the Commonwealth all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing the obligations under this Deed for the Commonwealth fairly and independently.
- 7.2 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing the obligations under this Deed to the Commonwealth fairly and independently.

8. INDEMNITY

- 8.1 The Confidant indemnifies the Commonwealth, its officers, employees and agents against all liability or loss (including loss of profits) arising directly or indirectly from, and any costs, charges and expenses (including the cost of settling any action) arising or incurred in connection with:
- a. any breach by the Confidant of this Deed; or
 - b. any act or omission by any of the Confidant's officers, employees, agents, advisers or independent contractors which, if done or omitted to be done by the Confidant, would breach of the Confidant's obligations under this Deed.

9. INJUNCTIVE RELIEF

- 9.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth for any breach of this Deed and that the Commonwealth is entitled to injunctive relief (as appropriate) as a remedy for any breach or suspected or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

10. NO EXCLUSION OF LAW OR EQUITY

- 10.1 This Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Commercial-in-Confidence Information.

11. WAIVER

- 11.1 Failure by either party to enforce a provision of the Deed shall not be construed as in any way affecting the enforceability of that provision or the Deed as a whole.

12. REMEDIES CUMULATIVE

- 12.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

13. OTHER INSTRUMENTS

- 13.1 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

14. VARIATIONS AND AMENDMENTS

- 14.1 No term or provision of this Deed shall be amended or varied unless such amendment or variation is reduced to writing and signed by the parties hereto in the same manner as this instrument.

15. APPLICABLE LAW

- 15.1 The laws of the Australian Capital Territory shall apply to the Deed. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of the Deed.

16. GOODS AND SERVICES TAX

- 16.1 In this clause, 'GST' means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* and the expressions 'adjustment event', 'input tax credits', 'taxable supply' and 'tax invoice' have the meaning as in that Act.
- 16.2 If a party to this Deed (the 'Supplier') makes a taxable supply under or in connection with this Deed or in connection with any matter or thing occurring under this Deed to another party to this Deed (the 'Recipient') and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 16.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient shall pay the deficiency to the Supplier.
- 16.4 If a party to this Deed is entitled, under or in connection with this Deed or in connection with any matter or thing occurring under this Deed, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any input tax credits available in respect of those costs.
- 16.5 A party will not be obliged to pay any amount in respect of GST to the other party unless a valid tax invoice has been issued in respect of that GST.

17. NOTICES

- 17.1 Unless the contrary intention appears, any notice or other communication under this Deed shall be effective if it is in writing, signed and delivered to the party as the case may be, at the following address
- a. [...INSERT COMMONWEALTH REPRESENTATIVE'S POSTAL ADDRESS AND FAXSCIMILE NUMBER...]; or
 - b. (...INSERT CONFIDANT'S POSTAL ADDRESS AND FAX NUMBER...).
- 17.2 A notice or other communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by facsimile at the time recorded by the transmitting machine, unless within one Working Day the sender is informed that the transmission was received in incomplete or garbled form.

SIGNED AND DELIVERED AS A DEED

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....
(signature)	(print name and position of authorised signatory)	(date)

In the presence of:

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

SIGNED ON BEHALF OF THE CONFIDANT

(...INSERT EXECUTION CLAUSE OF THE CONFIDANT...)

In the presence of:

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

DEED OF GUARANTEE AND INDEMNITY (GUARANTEE)

THIS DEED OF GUARANTEE AND INDEMNITY is made on (...INSERT DATE...)

Between

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

And (...INSERT NAME OF GUARANTOR AND A.C.N./A.R.B.N. AND A.B.N. AS APPLICABLE...), having its registered office at (...INSERT DETAILS...) ('the Guarantor')

And (...A.C.N. and A.B.N. if applicable...), having its registered office at (...INSERT DETAILS...) ('the Contractor').

RECITALS

- A. The Commonwealth has entered into a contract (...INSERT CONTRACT NUMBER...) dated (...INSERT DATE...) ('the Contract') with (...INSERT NAME OF CONTRACTOR...), (...A.C.N. and A.B.N if applicable...) having its registered office at (...INSERT DETAILS...) (the 'Contractor') for, amongst other matters, the provision of Services in accordance with the Contract.
- B. The Guarantor has agreed to guarantee and to indemnify the Commonwealth on the default of the Contractor under the Contract.

AGREED TERMS

1 DEFINED TERMS AND INTERPRETATION

1.1 ¹Defined terms

1.1.1 In this document:

- a. 'Attorney' means an attorney appointed under a Project Document.
- b. 'Authorised Representative' means a director or company secretary, or a person it notifies to the other party as being authorised to act as its authorised representative for the purposes of the Project Documents.
- c. 'Avoidance' has the meaning given by clause 11.2.1.
- d. 'Contract' means the contract between the Contractor and the Commonwealth dated (...INSERT DATE...).
- e. 'Contractor' means (...INSERT NAME OF CONTRACTOR...).
- f. 'Corporations Act' means the Corporations Act 2001 (Cth).
- g. 'Default' means an event or circumstance specified as a breach or default (however described) in a Project Document (whether or not within the Guarantor's control).
- h. Dollars means (...TO BE INSERTED BASED ON SOURCE CURRENCY...).
- i. 'External Administrator' means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

¹ CCP2015-067, C-2015-00738 Word changes, approved 4 April 2016

- j. 'General Interest Charge' means the uniform interest charge imposed and published by the Australian Taxation Office where there is a late payment of a tax debt.
- k. 'Government Agency' means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.
- l. 'GST' has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- m. 'Guarantee' means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:
 - (i) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
 - (ii) to indemnify any person against the consequences of default in the payment of; or
 - (iii) to be responsible for,
an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.
- n. 'Guarantee and Indemnity' means the guarantee and indemnity contained in clause 3.
- o. 'Guaranteed Money' means all money and amounts (in any currency) that the Contractor is or may become liable at any time (presently, prospectively or contingently) to pay to or for the account of the Commonwealth (whether alone or not and in any capacity) under or in connection with a Project Document (including by way of principal, interest, fees, costs, charges, expenses, duties, indemnities, Guarantee obligations or damages and money which a person would be liable to pay but for an Insolvency Event in respect of that person).
- p. 'Insolvency Event' means, in respect of a person, any of the following occurring:
 - (i) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
 - (ii) except with the Commonwealth's consent:
 - 1) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - 2) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
 - (iii) an External Administrator is appointed to it or any of its assets or a step is taken to do so;
 - (iv) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
 - (v) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
 - (vi) it stops or suspends payment to creditors generally.

- q. 'Liquidation' means:
 - (i) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
 - (ii) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.
- r. 'Loss' means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.
- s. 'Notice' means a notice given in accordance with clause 10.
- t. 'Obligor' means the Contractor and the Guarantor.
- u. 'Potential Default' means any event, thing or circumstance which would become a Default with the giving of notice, the making of a determination under a Project Document or the passage of time (or any combination of those things).
- v. 'PPS Law' means:
 - (i) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
 - (ii) any amendments made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).
- w. 'PPS Regulations' means the *Personal Property Securities Regulations 2010 (Cth)*.
- x. 'PPSA' means the *Personal Property Securities Act 2009 (Cth)*.
- y. 'Project Document' means:
 - (i) this document;
 - (ii) the Contract;
 - (iii) any other contract or deeds that the Contractor enters into with the Commonwealth in connection with the Contract;
 - (iv) any other document that relates to the Guaranteed Money;
 - (v) a document that the Guarantor and the Commonwealth agree is a 'Project Document'; and
 - (vi) a document entered into or given under or in connection with, or for the purpose of amending or novating, any document referred to in a paragraph above.
- z. 'Security' means each other document or agreement created or entered into as a security (directly or indirectly) for the payment of any Guarantee Money or the performance of any obligation in favour of the Commonwealth under a Project Document.
- aa. 'Security Interest' means any:
 - (i) 'security interest' as defined by PPS Law;
 - (ii) security for payment of money, performance of obligations or projection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and

- (iii) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

- bb. 'Services' has the meaning given by the Contract.
- cc. 'Tax' means any tax, levy, duty, rate, impost or charge imposed, levied or assessed by a Government Agency, and any related penalty, fine, fee or interest. It includes stamp duty, GST and transaction taxes and duties.
- dd. 'Trust' means, in respect of the Guarantor, each trust of which the Guarantor is or becomes trustee.
- ee. 'Working Day' means in relation to the doing of an action in a place means any day other than a weekend (being Saturday and Sunday) or public holiday in that place.

2 INTERPRETATION

2.1 Interpretation

2.1.1 In this document:

- a. headings are for reference only and do not affect interpretation;
- b. unless stated otherwise, all interest, amounts in the nature of interest (including discount amounts) and fees are to be calculated on a daily basis and a year of 365 days;
- c. any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- d. the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- e. a Default or Potential Default subsists until either:
 - (i) remedied to the Commonwealth's satisfaction; or
 - (ii) waived by the Commonwealth in writing;
- f. unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Working Day, must be done on or by the next Working Day;
- g. no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
- h. examples and use of the word including and similar expressions do not limit what else may be included.

2.1.2 Unless the context requires otherwise, a reference in this document to:

- a. a party to any document includes that person's successors and permitted substitutes and assigns;
- b. an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;

- c. a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- d. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- e. clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- f. a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- g. time is to (...INSERT PRIMARY LOCATION OF PROVISION OF SERVICES...), Australia time unless stated otherwise;
- h. legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- i. an accounting term is to be interpreted according to the Accounting Standards; and
- j. property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.

3 GUARANTEE AND INDEMNITY

3.1 Consideration

- 3.1.1 The Guarantor acknowledges entering this document in return for the Commonwealth agreeing to the entry by the Commonwealth into the Project Documents and for other valuable consideration, and that the Commonwealth relies on the Guarantee and Indemnity.

3.2 Guarantee

- 3.2.1 The Guarantor irrevocably and unconditionally guarantees to the Commonwealth:
- a. the payment of the Guaranteed Money in accordance with the Project Documents; and
 - b. the performance by the Contractor of all its other obligations under the Project Documents.

3.3 Non-payment or non-performance

- 3.3.1 If the Contractor does not:
- a. pay any Guaranteed Money (or money which would be Guaranteed Money if its payment was enforceable, valid and not illegal) in accordance with the Project Documents, the Guarantor must pay that money on demand as if it was the principal obligor; or
 - b. perform any of its other obligations under a Project Document, the Guarantor must perform, or procure the performance of, those obligations (without the need for demand by the Commonwealth) in accordance with the Project Documents.

3.4 Indemnity

- 3.4.1 The Guarantor indemnifies the Commonwealth against, and must pay on demand amounts equal to, any Loss of the Commonwealth as a result of or in connection with:

- a. any obligation or liability of, or obligation or liability guaranteed by, a Guarantor under this clause 3 (or which would be such an obligation or liability if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
- b. the Contractor failing, or being unable, to pay any Guaranteed Money or to perform any of its other obligations in accordance with the Project Documents;
- c. any Guaranteed Money (or money which would be Guaranteed Money if it were recoverable) not being recoverable from the Contractor; or
- d. an Insolvency Event in respect of any Obligor,

in each case, for any reason and whether or not the Commonwealth knew or ought to have known anything about those matters.

3.5 Demands

- 3.5.1 A demand under this clause 3 may be made at any time and from time to time. A demand need only specify the amount owing, and need not specify how that amount is calculated.

4 EXTENT OF GUARANTEE AND INDEMNITY

4.1 Immediate recourse

- 4.1.1 The Guarantor waives any right it may have to require the Commonwealth to proceed against, or enforce any other rights or Security or claim payment from, any other person before claiming from the Guarantor under the Guarantee and Indemnity. This waiver applies irrespective of any law or any provision of a Project Document to the contrary.

4.2 Continuing obligations

- 4.2.1 The Guarantee and Indemnity:
- a. extends to the present and future balance of all the Guaranteed Money (including in respect of any contingent liability of the Contractor in connection with the Project Documents);
 - b. is not wholly or partially discharged by the payment of any Guaranteed Money, the settlement of any account or anything else; and
 - c. continues until, subject to clause 11.2, all Guaranteed Money has been paid in full.

4.3 Liability not affected

- 4.3.1 The Guarantor's liability under the Project Documents is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Obligor or the Commonwealth is aware of it or consents to it and despite any legal rule to the contrary), including:
- a. any time, waiver, concession or consent granted to, or composition with, any Obligor or other person;
 - b. any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Project Document), between the Commonwealth and another Obligor or another person;
 - c. an Insolvency Event in respect of an Obligor or another person;
 - d. any judgment or order being obtained or made against, or the conduct of any proceedings by, an Obligor or another person;

- e. an Obligor's obligation or a Project Document (or any provision of a Project Document), being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- f. the whole or partial discharge or release of, or the granting of, a Security (including the Guarantee and Indemnity);
- g. the Guaranteed Money not being recoverable or the liability of an Obligor or any other person to the Commonwealth ceasing or reducing (including due to a release or discharge by the Commonwealth or by law);
- h. any Project Document not being executed by, or binding against, any Obligor;
- i. any set-off, combination of accounts or counterclaim;
- j. any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Obligor) by the Commonwealth or any other person; or
- k. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person.

4.4 Principal and independent obligation

- 4.4.1 Each guarantee, indemnity and other obligation of the Guarantor in this document is:
- a. a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
 - b. in addition to, and not prejudiced by, any other Guarantee or Security now or later held by the Commonwealth.

4.5 Deferral of certain rights

- 4.5.1 Until all Guaranteed Money has been received and the Commonwealth is satisfied that it will not have to repay any money received by it, the Guarantor must not (either directly or indirectly) without the Commonwealth's prior written consent:
- a. claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:
 - (i) against an Obligor; or
 - (ii) which another Obligor may have against the Commonwealth,which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity;
 - b. claim or exercise a right of subrogation or contribution or otherwise claim the benefit of a Security or Guarantee, irrespective of whether or not that Security or Guarantee:
 - (i) relates to the Guaranteed Money;
 - (ii) is given by a Guarantor; or
 - (iii) is in favour or for the benefit of the Commonwealth,and any money a Guarantor receives in breach of this paragraph b will be held on trust for the Commonwealth and must be paid promptly to the Commonwealth; or
 - c. unless the Commonwealth has given a direction to do so (in which case the Guarantor must do so in accordance with the direction as trustee for the Commonwealth):

- (i) prove, claim or exercise voting rights in an Obligor's Liquidation, or otherwise claim or receive the benefit of any distribution, dividend or payment arising out of an Obligor's Liquidation on any account; or
- (ii) demand, or accept payment of, any money owed to the Guarantor by any Obligor,

and any such money it receives in excess of what may be or become Guaranteed Money will be held on trust for the Commonwealth and must be paid promptly to the Commonwealth.

4.6 Prove in Liquidation

- 4.6.1 The Guarantor irrevocably authorises the Commonwealth and each of its Authorised Representatives to prove in the Liquidation of any Obligor for all money that the Guarantor can claim against the Obligor on any account. The Commonwealth need only account to the Guarantor for dividends it receives in excess of the Guaranteed Money, without interest.

4.7 Suspense account

- 4.7.1 The Commonwealth may credit money received in or towards satisfaction of the Guaranteed Money (including dividends received in any Liquidation) to a suspense account, and keep the money in that account for as long as, and at whatever interest rate, the Commonwealth thinks fit. The Commonwealth may apply the money (including interest) to reduce the Guaranteed Money whenever it thinks fit.
- 4.7.2 If the Guaranteed Money has been fully and finally paid or discharged and the Commonwealth is satisfied that such payment or discharge is not liable to be set aside, avoided or reversed, then the balance standing to the credit of the suspense account and any accrued interest will be paid to or for the account of the Guarantor for distribution to the person entitled to it and the Commonwealth will have no further liability in relation to it.

5 REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

- 5.1.1 The Guarantor represents and warrants to the Commonwealth that:
- a. **(status)** it is:
 - (i) properly registered and incorporated as a corporation and validly exists in its jurisdiction of incorporation; and
 - (ii) not a trustee of any trust other than as specified in this document;
 - b. **(power and authority)** it has the power, right and necessary corporate authority to carry on its current and contemplated business, and to enter into, and exercise its rights and observe and perform its obligations under, each Project Document to which it is expressed to be a party;
 - c. **(no immunity)** neither it nor any of its assets is immune from suit or execution;
 - d. **(Project Documents)** each Project Document to which it is expressed to be a party is (subject to equitable principles generally affecting creditors' rights and applicable stamping and registration) valid, binding and enforceable against it in accordance with the terms of those documents, and the transactions contemplated by those documents are for its commercial benefit;
 - e. **(no conflicts)** its execution and performance of each Project Document to which it is expressed to be a party do not and will not:

- (i) conflict with or contravene any other law or a judgment, ruling, order, document or agreement applying to it or its assets or its constituent documents;
- (ii) result in a Security Interest (other than under a Security) being created on, or crystallising over, any of its assets; or
- (iii) result in a default under any agreement relating to any actual or contingent debt or other monetary liability in respect of money borrowed or raised or any financial accommodation;
- f. **(Securities)** each Security is an effective Security Interest and has the priority contemplated in it; and
- g. **(solvency)** it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable.

5.2 Repetition

- 5.2.1 The Guarantor repeats each representation and warranty in this clause 5 with reference to the facts and circumstances.

6 COSTS, TAXES AND GENERAL INDEMNITY

6.1 Costs and expenses

- 6.1.1 The Guarantor must pay or reimburse on demand all costs and expenses of the Commonwealth and an Attorney (and any of their respective officers, employees and agents) in connection with a Default or Potential Default.
- 6.1.2 This includes legal costs and expenses (on a full indemnity basis).

6.2 Taxes, fees and charges

- 6.2.1 The Guarantor must pay, or reimburse the Commonwealth on demand for, all:
- a. Taxes, fees and charges in connection with this document or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, this document, including Taxes passed onto the Commonwealth by another financial institution or supplier of goods and services; and
 - b. fines and penalties for late payment or non-payment of those amounts, except where the Guarantor places the Commonwealth in cleared funds to make the payment not less than five Working Days before the due date and the Commonwealth fails to make the payment.
- 6.2.2 The Guarantor must pay or reimburse the Commonwealth on demand for all such amounts which are payable or which the Commonwealth determines in good faith to be payable.

6.3 General indemnity

- 6.3.1 The Guarantor indemnifies the Commonwealth and any Attorney (and their respective officers, employees and agents) against, and must pay to the Commonwealth on demand amounts equal to, any Loss arising as a result of or in connection with:
- a. a Default;
 - b. any payment required under a Project Document not being made on its due date;
 - c. the exercise or attempted exercise of any right under any Project Document; and

- d. the Commonwealth acting or relying in good faith on any Notice or other communication from, or genuinely believed to be from, the Guarantor, including any legal costs and expenses (on a full indemnity basis).

7 INTEREST ON OVERDUE AMOUNTS

7.1 Accrual and calculation

- 7.1.1 The Guarantor must pay to the Commonwealth on demand interest on any of the Guaranteed Money which is due and payable by the Guarantor (including on unpaid interest under this clause) but unpaid:
 - a. from and including the due date (or, for an amount payable by reimbursement or indemnity, any earlier date the amount was incurred), up to but excluding the date of actual payment; and
 - b. subject to clause 7.3, at the General Interest Charge rate published by the Australian Taxation Office immediately before the due date (or if no such rate applied, to the Commonwealth's cost of funding the overdue amount).

7.2 Payment

- 7.2.1 The Guarantor must pay to the Commonwealth accrued interest under clause 7.1 on the last Working Day of each calendar month and on demand.

7.3 Judgment or order

- 7.3.1 If the Guarantor's liability under a Project Document is the subject of a judgment or order:
 - a. its obligation to pay interest under clause 7.1 is separate from, and continues despite, the judgment or order; and
 - b. the interest accrues both before and after judgment at the higher of the rate determined under clause 7.1 and the rate payable under that judgment or order.

8 PAYMENTS

8.1 Payment requirements

- 8.1.1 All payments by the Guarantor under this document must be made by 12.00 noon on the due date (or, if not a Working Day, on the next Working Day in the same calendar month or, if none, the preceding Working Day) to an account nominated by the Commonwealth. Payments must be made in Dollars, in immediately available funds and in full without set-off, counterclaim or, subject to clause 8.3, deduction or withholding.

8.2 Amounts payable on demand

- 8.2.1 Any amount which is not expressed by a Project Document to be payable on a specified date is payable immediately on demand.

8.3 Deduction or withholding required

- 8.3.1 If the Guarantor is required by law to deduct or withhold Taxes from a payment to the Commonwealth, it must:
 - a. make that deduction or withholding, pay to the appropriate Government Agency an amount equal to the full amount deducted and/or withheld as required by law and give the Commonwealth a receipt for the payment; and
 - b. pay additional amounts to the Commonwealth which will result in the Commonwealth receiving (after deduction or withholding of any Taxes in respect of any additional

amount) the full amount which the Commonwealth would have received if no deduction or withholding had been required.

8.4 GST

8.4.1 In this clause 8.4:

- a. terms defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* apply;
- b. reference to a person includes the representative member of any GST group of which the relevant person is a member;
- c. a **Finance Supply** means a supply made or to be made by the Commonwealth under or in connection with this document where the consideration for the supply is not stated to include an amount in respect of GST on the supply; and
- d. **GST Amount** means the amount of any GST payable on a Finance Supply.

8.4.2 All Finance Supply amounts have been calculated without regard to GST. If GST is or will be imposed on any Finance Supply, the payment to the supplier for that supply shall be increased by the GST Amount. Each recipient of a Finance Supply indemnifies the supplier against, and must pay to the supplier on demand amounts equal to, any Loss arising as a result of or in connection with the supplier failing to receive the increased payment amount.

8.4.3 If a party (Payer) is liable under this document to reimburse or indemnify the Commonwealth for any Loss, the reimbursement or indemnity amount will be for the full GST inclusive amount of that Loss less any input tax credit to which the Commonwealth determines it is entitled with respect to that Loss, plus any increase amount for GST payable under clause 8.4.2 To the extent that the Commonwealth is not entitled to an input tax credit for the GST payable on any supply acquired by or expenditure incurred by the Commonwealth directly or indirectly in connection with this document, the Guarantor must reimburse the Commonwealth for the amount of that unrecoverable GST.

8.4.4 The supplier of a Finance Supply that is a taxable supply must issue a tax invoice to the recipient no later than 14 days following payment of the GST Amount pursuant to this clause 8.4

8.4.5 If it is determined on reasonable grounds that the amount of GST paid or payable to the Commissioner of Taxation by the supplier in connection with a Finance Supply differs for any reason from the GST amount paid or payable to the supplier by the recipient pursuant to clause 8.4.2, the amount of the difference must be paid by, refunded to or credited to (as applicable), the recipient promptly, and the supplier must issue an adjustment note to the recipient.

8.5 Insufficient payments

8.5.1 The Commonwealth may apply all money received from the Guarantor under the Project Documents (even if insufficient to discharge all of the Guarantor's obligations at that time) to reduce the Guaranteed Money in the order, and to satisfy any part of the Guaranteed Money, as the Commonwealth sees fit. An application by the Commonwealth will override any appropriation made by the Guarantor.

9 ASSIGNMENT

9.1 By Guarantor

9.1.1 The Guarantor must not assign, transfer or otherwise deal with its rights, interests or obligations under this document without the Commonwealth's prior written consent.

9.2 By Commonwealth

- 9.2.1 The Commonwealth may assign, transfer, novate or otherwise deal with all or any of its rights and obligations under the Project Documents without the consent of any person.

10 NOTICES, DEMANDS AND COMMUNICATIONS

10.1 Service

- 10.1.1 A notice, demand, consent, approval or communication (**Notice**) given by a party in connection with a Project Document must be:
- a. in writing, in English and signed by an Authorised Representative of the party; and
 - b. hand delivered or sent by prepaid post (or airmail if applicable) or facsimile to the Commonwealth, the Guarantor or the Contractor, as the case may be, at the following address:
 - i. (...INSERT COMMONWEALTH'S POSTAL ADDRESS AND FACSIMILE NUMBER...);
 - ii. (...INSERT GUARANTOR'S POSTAL ADDRESS AND FAX NUMBER...); or
 - ii. (...INSERT CONTRACTOR'S POSTAL ADDRESS AND FAX NUMBER...).

10.2 Effective on receipt

- 10.2.1 A Notice given in accordance with clause 10 takes effect when received (or at a later time specified in it), and is taken to be received:
- a. if hand delivered, on delivery;
 - b. if sent by prepaid post, on the second Working Day after the date of posting (or on the seventh Working Day after the date of posting if posted to or from a place outside Australia); or
 - c. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission (being counted as hours from 9.00am to 5.00pm on a Working Day), the recipient informs the sender that it has not received the entire Notice,
- but if the delivery, receipt or transmission is not on a Working Day or is after 5.00pm (addressee's time) on a Working Day, the Notice is taken to be received at 9.00am (addressee's time) on the next Working Day.

11 PROTECTION OF COMMONWEALTH

11.1 Commonwealth may set off

- 11.1.1 At any time while a Default subsists, the Commonwealth may, without any demand or notice, set off and apply indebtedness it owes to the Guarantor (whatever the currency) against any money owing to it by the Guarantor under any Project Document, whether or not the amount owed by the Commonwealth or the Guarantor is immediately payable or is owed alone or with any other person. The Guarantor irrevocably authorises the Commonwealth to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

11.2 Reinstating avoided transaction

- 11.2.1 The Guarantor agrees that if a payment or other transaction relating to the Guaranteed Money is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an Avoidance), then even though the Commonwealth knew or should have known of the Avoidance:

- a. the Guarantor's liability under each Project Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
 - b. the Guarantor will immediately execute and do anything necessary or required by the Commonwealth to restore the Commonwealth to its position immediately before the Avoidance (including reinstating any Project Document).
- 11.2.2 This clause survives any termination or full or partial discharge or release of any Project Document.

11.3 Authorised Representatives

- 11.3.1 The Guarantor irrevocably authorises the Commonwealth to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Representatives, and to rely on any Notice or other document contemplated by any Project Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. The Guarantor warrants that those persons have been authorised to give notices and communications under or in connection with the Project Documents.

12 OTHER PROVISIONS

12.1 Term of obligations

- 12.1.1 The Guarantor agrees that its obligations in the Project Documents continue from the date of the relevant document until, subject to clause 11.2, the Guaranteed Money is fully and finally repaid.

12.2 Notification from Guarantor

- 12.2.1 If the Guarantor is required under a Project Document to notify the Commonwealth about anything, it must do so in writing.

12.3 Rights

- 12.3.1 Rights under the Project Documents are cumulative and do not limit or exclude rights under law. Full or partial exercise of a right does not prevent a further exercise of that or any other right.

12.4 Waivers

- 12.4.1 No failure or delay in exercising a right operates as a waiver or representation. A waiver by the Commonwealth in relation to a Project Document is effective only if in writing.

12.5 Indemnities and reimbursement obligations

- 12.5.1 The Commonwealth need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in a Project Document. Unless otherwise stated, each such indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of any Project Document or anything else.

12.6 Notices or demands

- 12.6.1 A notice or certificate from or demand by the Commonwealth stating that a Default has occurred, or that a specified sum of money is owing or payable under a Project Document or stating any other fact or determination relevant to the rights or obligations of the Commonwealth or an Obligor under a Project Document, is taken to be correct unless proved incorrect.

12.7 Law and legislation

12.7.1 To the extent permitted by law:

- a. each Project Document prevails to the extent of inconsistency with any law; and
- b. any present or future legislation operating to reduce the Guarantor's obligations under a Project Document or the effectiveness of a right under the Project Documents is excluded.

12.8 Severability

12.8.1 A provision of a Project Document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of that Project Document in any jurisdiction.

12.9 Variation

12.9.1 A variation of this document must be in writing and signed by or on behalf of each party to it.

12.10 Governing law, jurisdiction and service of process

12.10.1 This document is governed by the laws of the (...INSERT PRIMARY LOCATION OF PROVISION OF SERVICES...), Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

12.10.2 Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of Notices under this document.

12.11 Counterparts

12.11.1 This document may be executed in any number of counterparts.

SIGNED AND DELIVERED AS A DEED

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....
(signature) (print name and position of authorised signatory) (date)

In the presence of:

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

SIGNED ON BEHALF OF GUARANTOR:

(...INSERT EXECUTION CLAUSE OF GUARANTOR...)

SIGNED ON BEHALF OF CONTRACTOR

(...INSERT EXECUTION CLAUSE OF CONTRACTOR...)

COOPERATION DEED

This DEED is made the (...) day of (...)

BETWEEN

COMMONWEALTH OF AUSTRALIA acting through its Department of Defence ABN 68 706 814 312
(**Commonwealth**).

AND

Each entity named in Schedule 1 (each a **Contractor**)

RECITALS

- A. The Commonwealth has entered into contracts with each of the Contractors (as listed in Schedule 1), for, amongst other matters, the provision of Services (**Base Services Contracts**).
- B. The parties intend that the relationship between the Commonwealth and each of the Contractors, shall be subject to the terms of this Deed.

AGREED TERMS

1 INTERPRETATION

1.1 Definitions

1.1.1 In the interpretation of this Deed, unless the contrary intention appears:

"Accession Deed" means a deed in the form of Schedule 6.

"Adviser" means any of:

- a. the financial, technical, insurance or legal advisers of a party; and
- b. the respective officers and employees of those financial, technical, insurance or legal advisers.

"Annual Strategic Contract Review" means the annual strategic contract review conducted in accordance with clause 4 of the PMF at Schedule 4 to the relevant Base Services Contract.

"Approved Subcontractor" means each of the Approved Subcontractors listed at Schedule 3.

"Associated Parties" has the meaning given to that term by clause 3.1.1b.

"Background IP" means "Background IP", as defined by the relevant Base Services Contract.

"Base Services Contract" means one or more of the contracts entered into between the Commonwealth and the Contractors (as listed in Schedule 1), for amongst other matters, the provision of Services, as the context requires.

"Base Services Contractor Council" or "Council" means the body established under clause 5.1 and Schedule 4.

"Business Day" means:

- a. for receiving a notice under clause 7.8, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- b. for all other purposes, any day that is not a Saturday or Sunday or a national public holiday in the location where the Services are being performed, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.

"Charter" means the Council charter at Schedule 4.

"Claim" means any claim, demand, debt, allegation, liability or proceeding of any nature whatsoever however arising and whether present or future, fixed or unascertained, actual or contingent (including by way of contribution or indemnity) arising from or in connection with this Deed or a Base Services Contract, at law or in equity, including for payment of money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability, breach or for restitution.

"Commercial-in-Confidence Information" means information that:

- a. by its nature is confidential;
- b. is set out in item 13 of the 'Contract Details' at Schedule 1 to the Base Services Contracts;
- c. is produced in accordance with clause 6.3.5; or
- d. the receiving party knows or ought to know is confidential,

but does not include information that:

- e. is or becomes public knowledge other than by breach of:
 - (i) the Deed; or
 - (ii) any Base Services Contract;

- f. is in possession of a party without restriction in relation to disclosure before the date of receipt; or
- g. has been independently developed or acquired by the receiving party.

"Commonwealth Personnel" means all employees, officers, agents, contractors and subcontractors (and the employees, officers, agents and contractors of subcontractors) employed or engaged by the Commonwealth in connection with the Services or the Base Services Contract, other than any Contractor and any Contractor Personnel.

"Commonwealth Representative" means the person specified at clause 7.8.1b(i) as the Commonwealth Representative.

"Confidant" has the meaning given to that term by clause 2.4.1.

"Conflict" means any conflict of interest, any risk of conflict of interest and any apparent conflict of interest arising through the Contractor (or Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor (or Contractor Personnel) in performing the Services or its obligations pursuant to this Deed or any Base Services Contract fairly and independently.

"Continuous Improvement" has the meaning given to that term by the relevant Base Services Contract.

"Contractor" means one or more of the Contractors, as the context requires.

"Contractor's Activities" means, in respect of a Base Services Contract, all work or activities required to be undertaken in the performance of the Contractor's obligations under that contract including the provision of the Services. Contractor's Activities are limited to work and activities occurring in Australia.

"Contractor Personnel" means all employees, officers, agents, contractors and Subcontractors (and the employees, officers, agents and contractors of Subcontractors) employed or engaged by the relevant Contractor in connection with the relevant Services or the Base Services Contract.

"Contractor's Representative" means the relevant person for each Contractor specified at Schedule 1 as the Contractor's Representative in accordance with clause 7.8.1b(ii).

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Deed" means this Deed and any attachments, annexures or schedules to the Deed.

"Defence Purposes" means any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth and includes purposes that are necessary or incidental to that purpose.

"Dispute" has the meaning given to that term by clause 6.1.1.

"Effective Date" means the date on which this Deed is signed by the parties, or if signed on separate days, the date of the last signature.

"Foreground IP" means "Foreground IP" as defined by the relevant Base Services Contract.

"Government Agency" means any national, federal, republic, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body of any country and any other government organ and any subdivision or successor bodies of the foregoing which partially or fully take over the functions of any of the foregoing.

"Intellectual Property" or "IP" means all intellectual property rights, including:

- a. all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; or

- b. any application or right to apply for registration of any of the rights referred to in paragraph (a).

"IP Provider" has the meaning given to that term by clause 2.2.1.

"IP Recipient" has the meaning given to that term by clause 2.2.1.

"Law" any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a Government Agency, including the State, Territory, the Commonwealth or a local government, and includes the common law as applicable from time to time.

"Licence" means a royalty-free, irrevocable, world-wide, perpetual and non-exclusive licence, including a right to sub-licence.

"Loss" means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

"Other Capabilities" has the meaning given to that term by clause 3.1.1a.

"Other Contractors" means a contractor to the Commonwealth, not including the Contractor, with whom the Contractor may be required by the Commonwealth to interact and co-operate, as part of providing the Services.

"Performance Management Framework" or "PMF" has the meaning given to that term by the relevant Base Services Contract.

"Personnel" means all employees, officers, agents, contractors, and subcontractors (and the employees, officers, agents and contractors of each Subcontractor) employed or engaged by the Contractor in connection with the Services or the relevant Base Services Contract.

"Provider" has the meaning given to that term by clause 2.4.1.

"Secretariat" means the Commonwealth, as represented by persons appointed by the Commonwealth in accordance with clause 2.1.4 of Schedule 4.

"Services" means one or more of the Services, as defined by the relevant Base Services Contract, as the context requires.

"Shared Behaviours" has the meaning given to that term by the relevant Base Services Contract, as the context requires.

"Subcontractor" means, as the context requires, a "Subcontractor" as defined by each Base Services Contract and "Subcontract" has a corresponding meaning.

"Third Party" means any person other than the Commonwealth or a Contractor.

"Third Party IP" means "Third Party IP" as defined by one or more of the Base Services Contracts, as the context requires.

"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).

1.2 Interpretation

1.2.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of the Deed or affect the interpretation of the Deed;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. another grammatical form of a defined word or expression has a corresponding meaning;

- d. a reference to a person includes a natural person, body politic, body corporate, partnership, trust, joint venture unincorporated body, association, Government Agency or other entity;
- e. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, the Deed, and a reference to the Deed includes any schedule or annexure;
- f. a reference to A\$, \$A, dollar or \$ is to Australian currency;
- g. a reference to time is a reference to time at the location where the Services are being performed;
- h. a reference to a party or to a document includes the party's executors, administrators, successors and permitted assignees, including any person to whom that party is permitted to novate any part of the Deed;
- i. examples and use of the word 'includes' in any form is not a word of limitation;
- j. if the Contractor is a trustee, the Contractor, enters the Deed personally and in its capacity as trustee and warrants that it has the power to perform its obligations under the Deed;
- k. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- l. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- m. a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- n. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Deed or any part of it;
- o. any property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;
- p. where an obligation or liability is imposed on the Contractor under the Deed, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of the Deed, unless expressly stated;
- q. the term 'may' when used in the context of a right or remedy exercisable by the Commonwealth or a delegate of the Commonwealth means that the Commonwealth or its delegate can exercise that right or remedy in its sole and absolute discretion and the Commonwealth or its delegate has no obligation to the Contractor to do so unless expressly stated; and
- r. references to any agreement or document (including the Deed) are to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by the Deed or that other agreement or document.

1.3 Survival

- 1.3.1 The rights and obligations created under or in connection with this Deed survive the termination or expiry of any of the Base Services Contracts.

2 INTELLECTUAL PROPERTY LICENCES

2.1 Background IP and Third Party IP - Ownership

- 2.1.1 Nothing in the Deed affects the ownership of:
- a. Foreground IP;
 - b. Background IP; or

- c. Third Party IP.

2.2 Intellectual Property Licences granted by a Contractor to the IP Recipient

- 2.2.1 Each Contractor (**IP Provider**) grants to each other Contractor (**IP Recipient**) a Licence in respect of Background IP to exercise the Background IP for Defence Purposes.
- 2.2.2 If an Approved Subcontractor of an IP Provider provides any Approved Subcontractor owned IP to an IP Recipient, the IP Provider shall ensure that, at the time of provision, the IP Recipient is granted a Licence in respect of that IP from that Approved Subcontractor on the same terms as clause 2.2.1.
- 2.2.3 If an IP Provider provides any Third Party IP to an IP Recipient, then the relevant IP Provider shall ensure that, at the time of provision, the IP Recipient is granted a licence to exercise all such Third Party IP on the best available commercial terms.
- 2.2.4 The Licences granted under clauses 2.2.1 to 2.2.2 do not permit the IP Recipient, or a person on behalf of the IP Recipient, to commercialise the licensed IP. However, the Licence permits the IP Recipient to sub-license the IP to a third party for the purpose of providing goods and services to the Commonwealth for Defence Purposes.

2.3 Exchange of Data between Contractors

- 2.3.1 The IP Provider shall, in the Commonwealth's opinion, provide the IP Recipient with all data required by the IP Recipient to enable the IP Recipient to fully exercise its rights under clause 2.2.

2.4 Commercial-in-Confidence Information

- 2.4.1 Subject to clause 2.4.6, a party (**Provider**) must not, without the prior written consent of the other party (**Confidant**), disclose any Commercial-In-Confidence Information of the Provider to a third party.
- 2.4.2 In giving written consent to the disclosure of Commercial-In-Confidence Information, the Provider may impose such conditions as it thinks fit, and the Confidant agrees to comply with these conditions.
- 2.4.3 A Provider may, at any time, require the Confidant to arrange for:
- a. its Advisers; or
 - b. any other third party, other than a Commonwealth employee, to whom information may be disclosed pursuant to clause 2.4.6a or 2.4.6e,
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the Provider's Commercial-In-Confidence Information.
- 2.4.4 If the Confidant receives a request under clause 2.4.3, it must promptly arrange for all such undertakings to be given.
- 2.4.5 If in connection with the Deed and/or a Base Services Contract, Commercial-in-Confidence Information is provided or produced by any person, the relevant party must ensure that any person receiving or producing the information protects the confidential nature of the information
- 2.4.6 The obligations on the parties under clause 2.4.1 will not be taken to have been breached to the extent that:
- a. Commercial-in-Confidence Information is disclosed by a Confidant to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under the Deed and/or the Confidant's Base Services Contract;
 - b. Commercial-in-Confidence Information is disclosed to the Confidant's internal management personnel, solely to enable effective management or auditing of contract-related activities;
 - c. Commercial-in-Confidence Information is disclosed by the Commonwealth to the responsible Minister;

- d. Commercial-in-Confidence Information is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. Commercial-in-Confidence Information is shared by the Commonwealth within the Commonwealth's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - f. Commercial-in-Confidence Information is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed;
 - g. Commercial-in-Confidence Information is in the public domain otherwise than due to a breach of this clause 2.4;
 - h. Commercial-in-Confidence information, other than the information is set out in item 13 of the Contract Details, is disclosed by the Commonwealth to an Other Contractor; and
 - i. the Commonwealth would be prevented from exercising its IP rights under the Contract.
- 2.4.7 The Provider's rights and remedies for misuse of Commercial-in-Confidence Information or Intellectual Property rights by the Confidant are directly against the Confidant.
- 2.4.8 The Commonwealth is not liable for, and each Provider and Confidant release the Commonwealth from, any liability for Loss suffered or incurred by the Provider or rights which the Confidant has arising from in connection with the use and/or misuse of Commercial-in-Confidence Information or Intellectual Property rights by the Confidant.

3 RELATIONSHIP BETWEEN CONTRACTORS

3.1 The Contractors

- 3.1.1 Each Contractor acknowledges that the performance of its obligations under its Base Services Contract may require:
- a. interoperation and integration with capabilities and services that are provided and maintained by the Commonwealth and/or by third parties under separate contractual arrangements with the Commonwealth (**Other Capabilities**); and
 - b. coordination and cooperation with each other and other entities (including Other Contractors and Commonwealth organisations) performing activities related to the Services or otherwise having a connection with the activities being performed by the Contractor under each Base Services Contract (**Associated Parties**).
- 3.1.2 Each Contractor shall:
- a. cooperate with all Associated Parties, as may be necessary or required by the Commonwealth, to ensure the interoperation of the Services with Other Capabilities;
 - b. cooperate, as may be required by the Commonwealth, with all Associated Parties (including incoming and outgoing contractors) to ensure that the Services are provided in accordance with the requirements of each of the Base Services Contracts;
 - c. cooperate as may be necessary or required by the Commonwealth, with all Associated Parties (including outgoing contractors) to ensure that the Services do not impact on or interfere with the performance of Other Capabilities or the completion of activities by Associated Parties; and
 - d. bring any causes, or likely causes of interruption to the performance of the Services to the attention of the Commonwealth Representative as soon as practicable after becoming aware of those causes.
- 3.1.3 Without limiting clauses 3.1.2, 4 and 5:
- a. each Contractor shall agree with each other, the Commonwealth and any Other Contractors on procedures for dividing responsibilities in relation to the Services that may overlap between each Contractor and any Associated Parties;

- b. each Contractor and the Commonwealth shall meet with each other and any Associated Parties to discuss the Services and any other deliverables and services provided by Third Parties;
- c. each Contractor shall, at the Commonwealth's request, meet with any Associated Parties to engage in joint problem resolution; and
- d. if a Contractor reasonably considers that any information required to be disclosed to any Other Contractor under this clause 3 is Commercial-in-Confidence Information or information which contains Intellectual Property rights of the Contractor then, subject to the terms of this Deed, the Contractor may, prior to disclosure, require the Commonwealth to use its reasonable endeavours to ensure that the Other Contractor keeps that information and Intellectual Property confidential on to terms similar to those set out in clause 2.3

3.2 Security Requirements

- 3.2.1 If a Contractor (**Access Provider**) gives an other Contractor (**Access Recipient**) access to any supplies, equipment, facilities, documentation or infrastructure under this clause 3:
 - a. subject to clause 3.2.2, the Access Provider may require the Access Recipient to comply with the Access Provider's reasonable security requirements, licence agreements, policies or guidelines; and
 - b. the Access Recipient shall comply with such reasonable security requirements, licence agreements, policies or guidelines (if any) of the Access Provider.
- 3.2.2 The Access Provider shall:
 - a. give the Access Recipient reasonable prior notice of the applicable security requirements, licence agreements, policies or guidelines; and
 - b. ensure that those security requirements, licence agreements, policies or guidelines that are notified pursuant to clause 3.2.2a:
 - (i) are reasonably appropriate to the date on which access is required; and
 - (ii) are no more onerous than the security requirements, licence agreements, policies or guidelines that are generally applied by the Access Provider for access in the ordinary course of its ordinary business.
- 3.2.3 No Contractor shall make or submit a Claim to the Commonwealth for any additional charge, time or modification of its obligations for co-operating with an other Contractor, the Commonwealth or any Other Contractor in accordance with this clause 3 and each Contractor waives any such right or entitlement to do so.

3.3 The Commonwealth and Other Contractor costs

- 3.3.1 Without limiting its obligations under the Deed, each Contractor shall, within 30 Business Days after receipt of a notice from the Commonwealth, reimburse the Commonwealth for any amount which the Commonwealth is required to pay any Associated Party as a result of:
 - a. the Contractor providing inaccurate or incomplete information to another party or any Associated Party; or
 - b. any failure or delay by the Contractor in performing its obligations under this Deed or a Base Services Contract,other than if the Commonwealth recovers such payments from the Contractor pursuant to a Base Services Contract.

3.4 All Work

- 3.4.1 Each Contractor acknowledges and agrees that:
 - a. the obligation to provide the Services includes an obligation to do everything necessary and incidental to ensuring the Services are provided;

- b. the only circumstances in which a Contractor will be entitled to postponement of, waiver, relief from performance of, or modification of its obligations are those in which all of the criteria specified in the relevant Base Services Contract have been satisfied; and
- c. except where the relevant Base Services Contract expressly authorises the Contractor to submit a claim to the Commonwealth for a cost incurred by the Contractor, the Contractor is not entitled to submit a claim to the Commonwealth arising from or in connection with this Deed or any other contract with the Commonwealth and each Contractor waives any such right or entitlement to do so.

4 WHS LEGISLATION

4.1 Objectives

- 4.1.1 The objectives of the parties in entering into this deed include the following:
- a. establishing an overarching framework that supports the parties in their commitment to eliminate risks to health and safety, so far as is reasonably practicable and, if it is not reasonably practicable to eliminate those risks, to minimise those risks so far as is reasonably practicable;
 - b. identifying areas where the parties have concurrent duties in relation to the same matter under the WHS Legislation and to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with each other concerning concurrent duties;
 - c. establishing agreed procedures for the open, candid and secure exchange of relevant information to enable compliance with the WHS Legislation;
 - d. developing a common understanding of the parties' respective and mutual obligations under the WHS Legislation;
 - e. enabling the parties to demonstrate compliance with the WHS Legislation; and
 - f. otherwise meet the objectives of the WHS Legislation through the provision of safe workplaces, where a party owes a duty under the WHS Legislation.

4.2 WHS Legislation

- 4.2.1 The parties:
- a. must, where applicable, 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 and each Contractor (as the case may be) and any other person who, concurrently with the party, has a work health and safety duty under the WHS Legislation in relation to the same matter; and
 - b. acknowledge that they have a duty under the WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
 - (i) Commonwealth Personnel (including resident personnel and members required in uniform (where applicable));
 - (ii) Contractor Personnel; and
 - (iii) other persons,in connection with the Contractor's Activities.

5 GOVERNANCE

5.1 Base Services Contractor Council

- 5.1.1 The parties must, from the Effective Date, establish and maintain a council for the purpose of discussing (subject to Schedule 5) Contractor performance, the sharing of information and ideas and for the solving of problems (**Base Services Contractor Council or Council**).

- 5.1.2 The parties shall ensure that the Council operates in accordance with the Charter at Schedule 4.

5.2 Meetings between parties

- 5.2.1 Nothing in any document distributed by the Commonwealth or any Contractor, including any Council minutes, agenda or newsletter shall be construed as a change to any Base Services Contract or this Deed or as in any way limiting the rights or waiving the obligations of the parties under this Deed or a Base Services Contract, unless that document expressly provides to the contrary.
- 5.2.2 The establishment of, and participation in, the Council does not relieve any party of any of its obligations or liability arising from or in connection with the Deed or any Base Services Contract.

5.3 Acknowledgements

- 5.3.1 The parties acknowledge that none of their respective representatives, when attending or performing any role or function pursuant to this clause 4, have the power or authority to amend the Deed or any Base Services Contract, or legally bind their party or waive any rights of their party by expressed words, conduct or otherwise.

5.4 Conflict

- 5.4.1 Each Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the Effective Date, no Conflict exists or is likely to arise in the performance of its obligations under the Deed or the participation of any representative of the Contractor on the Council.
- 5.4.2 If a Conflict arises, or appears likely to arise, the Contractor must:
- a. notify the Commonwealth immediately in writing;
 - b. make full disclosure of all relevant information relating to the conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - c. take such steps as have been proposed by the Contractor, or at the discretion of the Commonwealth, the Commonwealth requires to resolve or otherwise deal with the Conflict, including:
 - (i) not participating in Council meeting; and
 - (ii) replacing the Contractor's Council representative.

5.5 Performance Assessment

- 5.5.1 Each Contractor acknowledges that the Commonwealth may take into consideration each Contractor's participation in the Council when undertaking an Annual Strategic Contract Review.

6 DISPUTES

6.1 Notice of Dispute

- 6.1.1 If a dispute or difference arises between any two or more of the parties in respect of any fact, matter or thing arising out of, or in any way connected with this Deed (**Dispute**), the Dispute shall be determined in accordance with the procedure in this clause 6.
- 6.1.2 Where such a Dispute arises and a party wishes to pursue that Dispute, the affected party shall give a notice in writing to the other affected parties, which shall include the Commonwealth, (**Notice of Dispute**) specifying:
- a. the Dispute;
 - b. particulars of the party's reasons for being dissatisfied; and
 - c. the position which the party believes is correct.

6.2 Resolution of Disputes

If a party gives one or more of the other parties a Notice of Dispute, the parties to that Dispute shall meet together within 10 Business Days of the date of the Notice of Dispute to consider and negotiate the Dispute.

- 6.2.1 If the parties have not resolved the Dispute within 20 Business Days of the date of the Notice of Dispute, and a party wishes to pursue that Dispute, that party may, by notice to the other parties to the Dispute, refer the Dispute for resolution by arbitration in accordance with clause 6.3.

6.3 Arbitration

- 6.3.1 If a Dispute is referred for final resolution by arbitration, it shall be resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration Rules (**ACICA Rules**) for the time being in force which rules are deemed to be incorporated by reference into this clause.
- 6.3.2 The tribunal shall consist of one arbitrator to be appointed by the President of the Australian Centre for International Commercial Arbitration. The language of the arbitration shall be English.
- 6.3.3 In making any provisional or final award, the arbitrator shall expressly deal with each issue in dispute so as to make findings as to liability, quantum and costs in relation to the Dispute. Hearings shall be held in Melbourne, Australia or such other place as the parties and the arbitrator may agree.
- 6.3.4 The arbitrator shall, without prejudice to the generality of the arbitrator's powers, have full power to open up, review and revise any opinion, decision, certificate, account, invoice, direction, valuation, instruction, determination, requirement or notice given pursuant to this Deed or any other document relating to the Dispute.
- 6.3.5 The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be Commercial-In-Confidence Information as between the parties and as between the arbitrator and the parties (and the parties shall ensure that the arbitrator has comparable confidentiality obligations), subject only to the need to disclose:
- a. any matters in proceedings to enforce any award made by the arbitrator;
 - b. information to any Third Party or any other Contractor which is required by any Law (including any court of competent jurisdiction) or the rules of any relevant recognised stock exchange; or
 - c. information to any professional advisers, Third Party or any Other Contractor as is necessary for the conduct of the arbitration proceedings, in which case the disclosing party shall enter into a confidentiality agreement with such professional advisers (other than its lawyers) and those third parties (prior to disclosing that information) which imposes the same obligations of confidentiality on such professional advisers, those Third Parties and Other Contractors as that which is imposed on the disclosing party under clause 6.3.5. The disclosing party shall be liable to the other parties to the Dispute for any failure of the disclosing party's professional advisers, those Third Parties and/or those Other Contractors to whom such information was disclosed to comply with such obligations of confidentiality or confidentiality agreement.
- 6.3.6 Each party agrees that without preventing any other mode of service, any document in any Dispute may be served on any party by being delivered to or left for that party at the address of the relevant Commonwealth or Contractor Representative for delivery of notices under clause 7.8.1 and each party undertakes to maintain at all times an address for service in Australia.
- 6.3.7 The costs of the arbitration shall be borne equally between the parties, except to the extent otherwise determined by the arbitrator.
- 6.3.8 A party shall not commence court proceedings to resolve any Dispute except where that party seeks urgent relief from or to pursue interlocutory proceedings in a court or to enforce

or facilitate the signing of any arbitral award rendered in the arbitration referred to in this clause 6.

- 6.3.9 The parties shall use all reasonable endeavours to resolve any Dispute without the use of arbitration.

6.4 Consolidation of disputes

- 6.4.1 If any one or more Dispute arises between the any two or more of the parties arising from or in connection with the Deed or the Base Services Contracts, each Contractor agrees that the Commonwealth may, at any time by notice to the parties, require any one or more of any Dispute to be determined or resolved concurrently, and on receipt of that notice those Disputes will be determined or resolved concurrently.

- 6.4.2 Each Contractor irrevocably consents to any notice or application by the Commonwealth for any Dispute to be consolidated or heard together with any other Dispute, including pursuant to any court procedure.

6.5 Continuation of work

- 6.5.1 Despite the existence of a Dispute between the parties, each Contractor shall:
- a. continue to carry out the work under this Deed and the Base Services Contract; and
 - b. otherwise comply with their obligations under the Deed and the Base Services Contracts.

6.6 Survive Termination

- 6.6.1 This clause 6 will survive the termination of each Base Services Contract.

7 LAW

7.1 Assignment and Novation

- 7.1.1 No Contractor shall, without the prior written consent of the Commonwealth, assign, novate or transfer any of its rights and/or liabilities (as applicable) under this Deed in whole or in part.

- 7.1.2 If a Contractor proposes to enter into any arrangement which will require the novation or transfer of the rights and/or obligations under the Deed, it shall notify and seek the consent of the Commonwealth within a reasonable period prior to the proposed novation or transfer.

- 7.1.3 Each Contractor shall ensure that any arrangement proposed under clause 7.1.2 is governed by an agreement in the form of a deed.

- 7.1.4 Notwithstanding each Contractor's compliance with clause 7.1.3, the Commonwealth may, in its sole and absolute discretion, refuse to consent to an arrangement proposed by a Contractor under clause 7.1.2.

7.1.5

7.2 Goods and Services Tax

- 7.2.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Deed other than GST shall be met by the relevant Contractor at no additional cost to the Commonwealth.

- 7.2.2 Subject to clause 7.2.4, the Commonwealth shall, in addition to the other payments to be made to the Contractor under this Deed (if any), pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under the Deed.

- 7.2.3 For the purposes of clause 7.2.2 the additional amount is the amount of GST payable on that part of the Contractor's entitlements to payment to which the taxable supply relates as if that part of those entitlements were the value of the taxable supply for the purpose of the GST Act.

- 7.2.4 The Contractor shall submit each claim for payment under clause 7.2 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.
- 7.2.5 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.
- 7.2.6 If the Commonwealth makes, or is assessed by the Australian Taxation Office (**ATO**) as having made, a taxable supply to the Contractor under or in connection with the Deed, 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.
- 7.2.7 Any amount of GST to be paid by the Contractor under clause 7.2.6 shall be a debt due to the Commonwealth and may be recovered by the Commonwealth pursuant to this Deed or clause 51 of the relevant Base Services Contract.
- 7.2.8 If the Contractor has a claim for an amount under the Deed, the claim is for the amount less any input tax credit to which the Contractor is entitled in respect of the claim. The Commonwealth may treat the Contractor as entitled to full input tax credits for GST included in an amount unless the Contractor satisfies the Commonwealth otherwise.
- 7.2.9 For the purposes of this clause 7.2, "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "GST", "adjustment note", "input tax credit", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

7.3 No exclusion of law or equity

- 7.3.1 Subject to its terms, this Deed shall not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Commercial-in-Confidence Information.

7.4 Waiver

- 7.4.1 Failure by either party to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or the Deed as a whole.

7.5 Remedies

- 7.5.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 7.5.2 Subject to the terms of this Deed, the rights and obligations of the parties under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

7.6 Variation

- 7.6.1 This Deed may only be varied by written agreement of the parties.

7.7 Applicable Law

- 7.7.1 The Deed is governed by the laws of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

7.8 Notices

- 7.8.1 Unless the contrary intention appears, any notice under the Deed will be effective if it is:
- in writing, in English and signed by a person duly authorised by the sender; and
 - sent by hand, prepaid post or facsimile to the recipient's address for notices specified below for each party:

(i) **Commonwealth Representative**

[...INSERT DETAILS OF COMMONWEALTH REPRESENTATIVE...]

(ii) **Contractor Representatives**

As listed in Schedule 1 of this Deed.

- 7.8.2 A notice or communication shall be deemed to have been delivered:
- a. by prepaid post, in three Business Days if sent within Australia and in eight Business Days if sent by air mail from one country to another; or
 - b. by facsimile at the time recorded by the transmitting machine, unless within 1 Business Day the sender is informed that the transmission was received in incomplete or garbled form; in which case a re-transmitted notice or other communication shall be received when it is effectively delivered in accordance with clause 7.8.2.

8 EXECUTION AND CHANGE IN CONTRACTORS

8.1 Counterparts

- 8.1.1 This Deed may be executed in any number of counterparts. each counterpart constitutes an original of the Deed, all of which together may constitute one instrument. A party who has executed a counterpart of the Deed may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of the Deed.

8.2 New Contractors

- 8.2.1 In addition to clause 8.1, a person may become a party to this Deed by executing the Accession Deed.
- 8.2.2 On execution of the Accession Deed:
- a. the relevant new party becomes bound as, and obtains benefits as a 'Contractor' under this Deed from the date it signs on the same basis as if it were a party to this Deed;
 - b. the relevant new party must deliver a copy of the Accession Deed to the Commonwealth and the Commonwealth must notify each Contractor of a person becoming a new 'Contractor' promptly after the relevant Accession Deed is received; and
 - c. each Contractor for valuable consideration irrevocably authorises the Commonwealth and the Commonwealth Representatives separately to execute on its behalf any Accession Deed contemplated to be entered into pursuant to this Deed, and to do anything else that the Commonwealth considers appropriate to effect the accession contemplated by the Accession Deed.

8.3 Removal of Contractor

- 8.3.1 The Commonwealth may, by notice to the Contractors, remove a Contractor with effect from the date specified in the notice upon the termination or expiration of the Contractor's Base Services Contract.
- 8.3.2 From the date specified in the notice by the Commonwealth pursuant to clause 8.3.1, the Contractor has no further rights or obligations as a Contractor under this Deed, other than accrued rights and obligations arising before it ceased to be a Contractor.

EXECUTED AS A DEED

EXECUTED for and on behalf of THE COMMONWEALTH OF AUSTRALIA:

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

In the presence of:

(signature) (print name) (date)

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature Printed name Position Title Date

In the presence of:

(signature) (print name) (date)

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature Printed name Position Title Date

In the presence of:

(signature) (print name) (date)

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature	Printed name	Position Title	Date
-----------	--------------	----------------	------

In the presence of:

(signature)	(print name)	(date)
-------------	--------------	--------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

----- Signature	----- Printed name	----- Position Title	----- Date
--------------------	-----------------------	-------------------------	---------------

In the presence of:

----- (signature)	----- (print name)	----- (date)
----------------------	-----------------------	-----------------

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

----- Signature	----- Printed name	----- Position Title	----- Date
--------------------	-----------------------	-------------------------	---------------

In the presence of:

----- (signature)	----- (print name)	----- (date)
----------------------	-----------------------	-----------------

SCHEDULE 1 – Contractors

Name	(...INSERT NAME OF CONTRACTOR...)
ACN / ABN	(...INSERT ACN / ABN...)
Service Package(s)	(...INSERT NAME OF EACH SERVICE PACKAGE...)
Base	(...INSERT EACH BASE...)
Region	(...INSERT EACH REGION...)
Contractor Representative	(...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details	Address: (...INSERT ADDRESS DETAILS...)
	Facsimile: (...INSERT FACSIMILE DETAILS...)
	Email: (...INSERT EMAIL DETAILS...)

Name	(...INSERT NAME OF CONTRACTOR...)
ACN / ABN	(...INSERT ACN / ABN...)
Service Package(s)	(...INSERT NAME OF EACH SERVICE PACKAGE...)
Base	(...INSERT EACH BASE...)
Region	(...INSERT EACH REGION...)
Contractor Representative	(...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details	Address: (...INSERT ADDRESS DETAILS...)
	Facsimile: (...INSERT FACSIMILE DETAILS...)
	Email: (...INSERT EMAIL DETAILS...)

Name	(...INSERT NAME OF CONTRACTOR...)
ACN / ABN	(...INSERT ACN / ABN...)
Service Package(s)	(...INSERT NAME OF EACH SERVICE PACKAGE...)
Base	(...INSERT EACH BASE...)
Region	(...INSERT EACH REGION...)
Contractor Representative	(...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details	Address: (...INSERT ADDRESS DETAILS...)
	Facsimile: (...INSERT FACSIMILE DETAILS...)
	Email: (...INSERT EMAIL DETAILS...)

Name	(...INSERT NAME OF CONTRACTOR...)
ACN / ABN	(...INSERT ACN / ABN...)
Service Package(s)	(...INSERT NAME OF EACH SERVICE PACKAGE...)
Base	(...INSERT EACH BASE...)
Region	(...INSERT EACH REGION...)
Contractor Representative	(...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details	Address: (...INSERT ADDRESS DETAILS...)
	Facsimile: (...INSERT FACSIMILE DETAILS...)
	Email: (...INSERT EMAIL DETAILS...)

Name	(...INSERT NAME OF CONTRACTOR...)
ACN / ABN	(...INSERT ACN / ABN...)
Service Package(s)	(...INSERT NAME OF EACH SERVICE PACKAGE...)
Base	(...INSERT EACH BASE...)

Region (...INSERT EACH REGION...)
Contractor Representative (...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details Address: (...INSERT ADDRESS DETAILS...)
Facsimile: (...INSERT FACSIMILE DETAILS...)
Email: (...INSERT EMAIL DETAILS...)

Name (...INSERT NAME OF CONTRACTOR...)
ACN / ABN (...INSERT ACN / ABN...)
Service Package(s) (...INSERT NAME OF EACH SERVICE PACKAGE...)
Base (...INSERT EACH BASE...)
Region (...INSERT EACH REGION...)
Contractor Representative (...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details Address: (...INSERT ADDRESS DETAILS...)
Facsimile: (...INSERT FACSIMILE DETAILS...)
Email: (...INSERT EMAIL DETAILS...)

Name (...INSERT NAME OF CONTRACTOR...)
ACN / ABN (...INSERT ACN / ABN...)
Service Package(s) (...INSERT NAME OF EACH SERVICE PACKAGE...)
Base (...INSERT EACH BASE...)
Region (...INSERT EACH REGION...)
Contractor Representative (...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details Address: (...INSERT ADDRESS DETAILS...)
Facsimile: (...INSERT FACSIMILE DETAILS...)
Email: (...INSERT EMAIL DETAILS...)

Name (...INSERT NAME OF CONTRACTOR...)
ACN / ABN (...INSERT ACN / ABN...)
Service Package(s) (...INSERT NAME OF EACH SERVICE PACKAGE...)
Base (...INSERT EACH BASE...)
Region (...INSERT EACH REGION...)
Contractor Representative (...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details Address: (...INSERT ADDRESS DETAILS...)
Facsimile: (...INSERT FACSIMILE DETAILS...)
Email: (...INSERT EMAIL DETAILS...)

Name (...INSERT NAME OF CONTRACTOR...)
ACN / ABN (...INSERT ACN / ABN...)
Service Package(s) (...INSERT NAME OF EACH SERVICE PACKAGE...)
Base (...INSERT EACH BASE...)
Region (...INSERT EACH REGION...)
Contractor Representative (...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details Address: (...INSERT ADDRESS DETAILS...)
Facsimile: (...INSERT FACSIMILE DETAILS...)
Email: (...INSERT EMAIL DETAILS...)

Name (...INSERT NAME OF CONTRACTOR...)
ACN / ABN (...INSERT ACN / ABN...)
Service Package(s) (...INSERT NAME OF EACH SERVICE PACKAGE...)

Base	(...INSERT EACH BASE...)
Region	(...INSERT EACH REGION...)
Contractor Representative	(...INSERT THE CONTRACTOR REPRESENTATIVE...)
Notice details	Address: (...INSERT ADDRESS DETAILS...)
	Facsimile: (...INSERT FACSIMILE DETAILS...)
	Email: (...INSERT EMAIL DETAILS...)

SCHEDULE 2 – Extract of Base Services Contracts

[INSERT NAME OF CONTRACTOR] [...A.C.N and A.B.N. if applicable]

Note to Tenderers: The defined terms of the applicable Base Services Contract will be included at this Schedule.

[Note to Drafters: Repeat the Schedule for each Contractor]

SCHEDULE 3 – Approved Subcontractors

Note to tenderers: A list of each Contractor's Approved Subcontractors (for the purposes of clause 2) will be inserted.

SCHEDULE 4 – Base Services Contractor Council

1 INTRODUCTION

1.1 Aims

- 1.1.1 The Council aims to bring the parties together to:
- a. have open, candid and two way discussions about performance;
 - b. share information and ideas; and
 - c. collectively solve common problems.

1.2 Purpose

- 1.2.1 The purpose of this Charter is to:
- a. promote high standards of governance;
 - b. clarify the role and responsibilities of the Council; and
 - c. enable the Council to provide strategic guidance to the parties and effective collaborative problem solving.

2 BASE SERVICES CONTRACTOR COUNCIL

2.1 Council composition

- 2.1.1 The Council is composed of:
- a. one or more representatives of the Commonwealth;
 - b. a representative of each Contractor; and
 - c. other persons invited by the Commonwealth from time to time.
- 2.1.2 Each Contractor shall ensure that its representative on the Council has, in the Contractor's reasonable opinion, appropriate experience and authority.
- 2.1.3 The chairperson of the Council shall be appointed by the Commonwealth.
- 2.1.4 The Commonwealth may establish and appoint Commonwealth representatives to a Secretariat to undertake such functions as determined by the Commonwealth in support of the Council.

2.2 Council responsibilities

- 2.2.1 The Council is responsible for the following:
- a. Undertaking performance related discussions as follows:
 - (i) The Council may undertake high level discussions regarding Contractor performance.
 - (ii) The Council may consider peaks and troughs in Contractor performance with a view to sharing knowledge to improve performance.
 - (iii) A Contractor may highlight issues with regard to the Commonwealth's compliance with the Shared Behaviours or the PMF. A Contractor must only raise such an issue if, in the Contractor's reasonable opinion, the Council's discussion will result in a stronger Commonwealth-Contractor relationship or increased performance for one or more Contractors.
 - b. Sharing lessons learned or Continuous Improvement initiatives as follows:
 - (i) A Contractor may raise:

- 1) process improvement initiatives or lessons learned which could be adopted by other Contractors.
 - 2) Latest industry developments which may be useful to the Commonwealth or other Contractors.
- (ii) The Commonwealth may raise items that require joint focus from each Contractor.
- (iii) Either party may raise common issues with a view to the Council members collectively working towards a solution.
- c. Awarding what it consider to be 'high performing' Contractor members for their contribution to the Council and to the Commonwealth.
- d. Presenting awards to Contractors in various categories, including:
 - (i) "Base Services Contractor of the Year";
 - (ii) "Outstanding Base Services Innovation";
 - (iii) "Base Services Consistent Achiever"; and
 - (iv) "Outstanding Base Services QMS Achievement".

2.3 Issues not to be discussed by the Council

- 2.3.1 Council members must not discuss the following issues at Council meetings:
- a. intellectual property sensitive information such as innovation initiatives or internal Contractor-specific data;
 - b. specific Commonwealth-Contractor issues that are inapplicable to other Contractors such as Base Services Contract related discussions; and
 - c. frustrations with regard to the Commonwealth or other Contractor(s), unless the Contractor has a genuine intention to productively work with the Council members to develop a solution.

2.4 Conduct of meetings

- 2.4.1 The Secretariat may prepare and circulate an agenda in the form of Schedule 5, at least 10 Business Days prior to each meeting of the Council, or as otherwise determined by the Commonwealth.
- 2.4.2 The Secretariat may:
- a. keep minutes of Council meetings; and
 - b. circulate the minutes to each Council member, unless the Commonwealth considers that a Conflict may have arisen and a member should not receive the minutes.

3 OTHER COMMITTEES

- 3.1.1 The Council may establish other committees from time to time to assist the Council.
- 3.1.2 The charter or terms of reference of each Council committee setting out matters relevant to the composition, responsibilities and administration of the committee must be approved by the Council. Each committee will review its charter from time to time as appropriate, as otherwise determined by the Commonwealth.

SCHEDULE 5 – Base Services Contractor Council Draft Agenda

BSCC draft agenda

Defence Support Group (DSG) - Base Services Contractor Council

DRAFT Agenda

Agenda for Council Meeting

Date: xx/xx/xxxx

Location: _____

Purpose of Meeting: _____

Start time: _____

1 REVIEW AND APPROVE MINUTES OF LAST MEETING

2 EXECUTIVE COUNCIL REPORT/DISCUSSION ON BSCC / COMMONWEALTH MATTERS

- a. Open items from last meeting
- b. Read description of open items

3 DECISION TO ACT OR TABLE OPEN ITEMS

- a. Discussion on open items if acted upon during this meeting
- b. Discussion on tabling for next meeting or retiring open items

4 NEW BUSINESS

- a. Contractor Feedback Forum
 - (i) Contractor issues with the Commonwealth or the PMF to be raised. Issues to be of a general nature only, anything specific to the contractors and their individual contracts is to be dealt with between the Contractor and Commonwealth Contract Authority
 - (ii) The Commonwealth to raise issues that require joint discussion from all contractors
- b. Lessons Learned or Continuous Improvement Initiatives
 - (i) Each Contractor to share process improvement initiatives or lessons learned which could be adopted by other Contractors
 - (ii) Latest industry developments to be discussed which may be useful to the Commonwealth
- c. Contractor Performance Updates
 - (i) Total Contractor average performance
 - (ii) High performing Contractor(s)
 - (iii) Low performing Contractor(s)

- (iv) Performance outliers
 - (v) Innovation/ Continuous Improvement Recognition (Awards given yearly, recognition given after implementation if Executive Council deems appropriate)
- d. Update on Subcommittees
 - (i) Decisions
 - (ii) Items reserved for future meeting
- e. Customer Feedback

Customer Representative can provide feedback to the BSCC on Contractor performance or changing Customer needs

5 ROUND TABLE

Contractors or the Commonwealth to raise any issue not yet addressed

6 REVIEW AND APPROVE ACTION ITEMS FROM MEETING

7 REVIEW AND APPROVE ITEMS TABLED FOR NEXT MEETING

8 CLOSE

SCHEDULE 6— Accession Deed

Accession deed

This DEED is made the (...) day of (...)

BETWEEN

COMMONWEALTH OF AUSTRALIA acting through its Department of Defence ABN 68 706 814 312
(**Commonwealth**).

(...INSERT NOTICE DETAILS...)

AND

(...INSERT CONTRACTOR DETAILS...) (**New Contractor**)

(...INSERT NOTICE DETAILS...)

RECITALS

- A. The Commonwealth has entered into contracts for, amongst other matters, the provision of Services (**Base Services Contracts**).
- B. The parties intend that the relationship between the Commonwealth and the Contractor, shall be subject to the terms of this Deed.

AGREED TERMS

1 DEFINED TERMS & INTERPRETATION

1.1 Definitions

- 1.1.1 In the interpretation of this Deed, unless the contrary intention appears:
- a. "Accession Date" means the date on which all parties have executed this Deed;
 - b. Cooperation Deed means the deed titled Cooperation Deed between the Commonwealth, each entity named in Schedule 1 to the Cooperation Deed and others dated [insert date];
 - c. terms defined in the Cooperation Deed have the same meanings when used in this Deed unless otherwise defined in this Deed; and
 - d. the provisions of clause 1 of the Cooperation Deed are incorporated in, and apply to, this Deed as if set out in full with any necessary amendments.

2 RELATIONSHIP BETWEEN THE PARTIES

- 2.1.1 On and from the Accession Date:
- a. the New Contractor agrees to become, and each other party to this Deed agrees with each other and with the New Contractor that the New Contractor will become a party to the Cooperation Deed as a Contractor;
 - b. the New Contractor acquires all rights and benefits of, and agrees to comply with and be bound by all present and future obligations of, a Contractor under the Cooperation Deed as a party to that document in that capacity; and
 - c. the New Contractor agrees to do all things that a Contractor is required under the Cooperation Deed to procure or ensure are to be done by the New Contractor in connection with it becoming a Contractor.

3 ACKNOWLEDGMENT

- 3.1.1 The New Contractor acknowledges having received a copy of (or is deemed to have received a copy), and approved, the Cooperation Deed, together with all other documents and information it requires in connection with this Deed, before signing this Deed.

4 NOTICES AND OTHER COMMUNICATIONS

- 4.1.1 The notice details of the New Contractor for the purposes of the Cooperation Deed are specified in the 'Parties' section of this Deed.

5 COUNTERPARTS

- 5.1.1 This Deed may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

6 GOVERNING LAW AND JURISDICTION

- 6.1.1 This Deed is governed by the laws of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Australian Capital Territory.

EXECUTED AS A DEED

EXECUTED for and on behalf of THE COMMONWEALTH OF AUSTRALIA:

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

In the presence of:

(signature) (print name) (date)

EXECUTED for and on behalf of [INSERT NAME OF CONTRACTOR]:

Signature Printed name Position Title Date

In the presence of:

(signature) (print name) (date)

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex C– Approved Subcontractors

Annex C– Approved Subcontractors

Approved Subcontractor	ABN/ACN (if applicable)	Work to be Subcontracted (including technical significance)	Deliverables / Services	Location of work to be performed (incl postcode)	Intellectual Property as referenced at 7.8.3(c)	Subcontract value \$A	Comments
Mace Australia							

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex D – Members Required in Uniform – Not Used

Annex D – Members Required in Uniform – Not Used

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex E - Taxes and Duties

Annex E - Taxes and Duties

1 TAXES AND DUTIES

1.1 Application

1.1.1 This Annex E to Schedule 7 applies subject to clause 22.1 of the conditions of Contract.

1.2 GST

1.2.1 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract other than GST shall be met by the Contractor at no additional cost to the Commonwealth.

1.2.2 Subject to clause 1.2.4 of this Annex E to Schedule 7, the Commonwealth shall, in addition to the other payments to be made to the Contractor under this Contract, pay the amount of GST imposed on any taxable supply made by the Contractor to the Commonwealth under the Contract.

1.2.3 For the purposes of clause 1.2.2 of this Annex E to Schedule 7, the additional amount is the amount of GST payable on that part of the Contractor's entitlements to payment to which the taxable supply relates as if that part of those entitlements were the value of the taxable supply for the purpose of the GST Act.

1.2.4 The Commonwealth shall issue to the Contractor a recipient created tax invoice in accordance with clause 1.3 of this Annex E to Schedule 7.

1.2.5 Any claim for payment or invoice submitted by the Contractor under clause 21 of the conditions of Contract shall not be in the form of a valid tax invoice and must expressly state, "This document does not constitute a tax invoice for GST purposes".

1.2.6 The claim for payment or invoice submitted by the Contractor under clause 21 of the conditions of Contract 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.

1.2.7 If the claim for payment incorrectly states the amount of GST payable, or an incorrect amount is paid by the Commonwealth under clause 1.2.2 of this Annex E to Schedule 7, the Commonwealth shall issue to the Contractor a valid recipient created adjustment note in accordance with the GST Act and clause 1.3.3 of this Annex E to Schedule 7. and if applicable, the Contractor shall refund the Commonwealth any overpaid amount under clause 1.2.2 of this Annex E to Schedule 7 within 7 Business Days of the adjustment note being issued.

1.2.8 If the Commonwealth makes, or is assessed by the Australian Taxation Office (**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.

1.2.9 Any amount of GST to be paid by the Contractor under clause 1.2.8 of this Annex E to Schedule 7 shall be a debt due to the Commonwealth and may be recovered under clause 51 of the conditions of Contract.

1.2.10 If the Contractor has a claim for an amount under the Contract, the claim is for the amount less any input tax credit to which the Contractor is entitled in respect of the claim. The Commonwealth may treat the Contractor as entitled to full input tax credits for GST included in an amount unless the Contractor satisfies the Commonwealth otherwise.

1.2.11 For the purposes of this clause 1.2 of this Annex E to Schedule 7, "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and associated taxation legislation. The expressions "GST", "adjustment note", "input tax credit", "recipient created tax invoice", "taxable supply" and "tax invoice" have the meanings given to those expressions in the GST Act.

1.3 Recipient Created Tax Invoice

1.3.1 In this clause 1.3 of this Annex E to Schedule 7, except where the contrary intention is expressed, the definitions set out below are used:

- a. "Recipient Created Tax Invoice" or "RCTI" means an invoice created by the Commonwealth in accordance with clause 1.3.3 of this Annex E to Schedule 7.

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex E - Taxes and Duties

- b. "RCTI Services" means the Services described in clause 1.3.2 of this Annex E to Schedule 7.
 - c. "Determination" means the "Determination" at Schedule 1 to the GST Tax Ruling 'GSTR 2000/10 Goods and services tax: recipient created tax invoices'.
- 1.3.2 The Commonwealth must issue RCTIs for all Services provided by the Contractor (**RCTI Services**) to the Commonwealth under the Contract.
- 1.3.3 The Commonwealth:
- a. may, via DIES, issue to the Contractor an original or a copy of the RCTI within 28 days of the making, or determining the value, of the taxable supply; and
 - b. may retain the original RCTI or a copy of the RCTI.
- 1.3.4 The Contractor:
- a. must reasonably comply with its obligations under the taxation laws;
 - b. must not issue tax invoices in respect of the RCTI Services;
 - c. acknowledges that it is registered for GST at the Effective Date; and
 - d. must immediately notify the Commonwealth if it ceases to be registered for GST.
- 1.3.5 The Commonwealth:
- a. acknowledges that it is registered for GST at the Effective Date; and
 - b. will advise the Contractor if it ceases to be registered for GST.
- 1.3.6 The Commonwealth will not issue a document that would otherwise be an RCTI, on or after the date when the Commonwealth or the Contractor have failed to comply with any of the requirements of the Determination.

Annex F - Transition-In Plan

1 TRANSITION-IN

1.1 Preparation of Transition-In Plan

- 1.1.1 The Contractor shall, in accordance with clause 6.1.3a of the conditions of Contract and this Annex, prepare and deliver to the Commonwealth a Transition-In Plan for Approval by the Commonwealth.
- 1.1.2 The Contractor shall ensure that the Transition-In Plan:
- a. is the primary document setting out all Transition-In activities to be undertaken by the Contractor; and
 - b. complies with the context, format, content and preparation instructions contained in clause 1 of this Annex.
- 1.1.3 The Contractor shall, as required by the Commonwealth, demonstrate its compliance with the directions contained within the Defence transition planning documents set out in clause 1.1.1.

1 TRANSITION-IN PLAN

1.1 Context

- 1.1.1 The Contractor must ensure that its Transition-In Plan is consistent with the following:
- a. the National Base Services Transition Plan (**NBST Plan**);
 - b. the applicable Service Package Transition Plans (**SPTP**);
 - c. transition instructions, including:
 - (i) stocktaking;
 - (ii) Government Furnished Materials;
 - (iii) security;
 - (iv) training;
 - (v) transition progress reporting; and
 - (vi) data retention, Intellectual Property, and information technology; and
 - d. the Contract Governance Plan.
- 1.1.2 The Contractor acknowledges that all activities generated from the above and the Transition-In Plan may be collated by the Commonwealth in the Integrated Activity Workbook (**IAW**) which may be available to the Contractor electronically via an established portal, or as otherwise specified by the Commonwealth. The Contractor may use the IAW to control the activities and facilitate progress reporting during the period between the Effective Date and the Operative Date (**Transition-In Period**).

1.2 Introduction

- a. **Purpose**
- b. **Scope**
- c. **Overview**
- d. **Assumptions**

1.3 Roles and Responsibilities

- 1.3.1 This section must identify and describe the Contractor's 'transition team', including identification of internal roles and responsibilities that have been appointed to manage and execute the Transition-In activities.
- 1.3.2 Provide and update an organisation structure for the Contractor's 'transition team' including roles and responsibilities.

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex F - Transition-In Plan

1.4 Risk Management

1.4.1 This section must:

- a. include a risk management plan detailing key strategic, management and service delivery risks in the performance of the Contract and proposed mitigation strategies for these risks.

1.5 Communication Protocols

1.5.1 This section must identify and describe:

- a. the protocols the Contractor will employ to communicate with designated DSRG operational staff any issues or risks identified during Transition-In that will affect service continuity or achievement of the deliverables as specified in Schedule 2 of the Contract; and
- b. what level of engagement the Contractor will expect with DSRG operational staff to conduct site inductions and site briefs for Contractor Personnel e.g. progress meetings.

1.6 Handover/Takeover Process:

1.6.1 This section must include the following:

- a. Details of:
 - (i) the handover/takeover (**HOTO**) process that will be used to ensure that an effective succession of information and assets will be obtained from the outgoing contractor;
 - (ii) the HOTO in which Contractor Personnel will assume control and ensure a smooth transition; and
 - (iii) the protocols that will be put in place to ensure that BAU will not be disrupted during this period.
- b. **The Schedule of Handover/Takeover and Key Milestones**
- c. **The Formal Handover/Takeover Arrangements**
- d. **The Measures to Confirm Acceptance of Responsibility:** This section must include specific measures that need to be taken to assess the readiness to assume final control.
- e. **Arrangements to assume control**
- f. **Incomplete tasks:** This section must include a description of the approach taken to identify, obtain information about and takeover incomplete tasks/works in progress from the outgoing contractor.
- g. **Working Hours** by location including after hours access and weekends.

1.7 Service Continuity

1.7.1 This section must include the following:

- a. Details of how the Contractor will ensure that service is maintained throughout the Transition-In Period and post transition.
- b. If applicable, how the Services will be maintained for other Defence contracts during the Transition-In Period and post transition.
- c. Details of the Contractor's standard operating procedures to be used throughout the Transition-In Period and post transition.

1.8 User Access & Security

1.8.1 This section must include the following:

- a. a description of the process the Contractor will take in order to arrange security access for Contractor Personnel, including, but not limited to:
 - (i) details confirming that DISP is in place;
 - (ii) obtaining Defence common access card (**DCAC**) passes;
 - (iii) list of Base/facility access requirements; and

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex F - Transition-In Plan

- (iv) how the Contractor will ensure that security clearance applications are completed and submitted in a timely manner; and
- (v) the number of Contractor personnel expected to require user access and security.

1.9 Safety

1.9.1 This section must include the following:

- a. Details of:
 - (i) specific internal roles and responsibilities to ensure the safety of employees and the general public;
 - (ii) safety representatives; and
 - (iii) the process for incident reporting and management.
- b. **Incident Reporting**
- c. **WHS Objectives & System Reviews**

1.10 Process for Transition Issue Resolution

1.10.1 This section must detail how the Contractor will ensure that transition issues are escalated in accordance with the process at clause 7.3 of Schedule 4.

1.11 Reporting and Meetings

1.11.1 This section must include the following:

- a. The frequency, the purpose and the location of the 'transition' meetings proposed by the Contractor maintained throughout the Transition-In Period.
- b. An explanation of how the progress of transition will be reported to the Regional Transition Manager, including various reporting mechanisms and needs.
- c. **Progress Reporting**
- d. **Safety Reporting**
- e. **All required plans due at the Operative Date**

1.12 Data Maintenance and Record Keeping

1.12.1 This section must include:

- a. information about how data and information will be collected and stored; and
- b. information regarding the maintenance and management of both hard copy and electronic records.

1.13 Property and Equipment

1.13.1 This section must include the following which must be consistent with the GFM to be provided by the Commonwealth:

- a. **Transfer of Property**
- b. **Maintenance Plans**

1.14 External Support Responsibilities

1.14.1 **Defence Involvement.** This section must provide information about the Contractor's requirements of Defence including resources and meetings.

1.15 Resources

1.15.1 This section must include the following:

- a. Service Delivery Organisational Structure including roles and responsibilities;
- b. The process for ensuring that each Approved Subcontractor will be available to commence work as required.
- c. Resourcing Plan; and

Schedule 7 – SUPPLEMENTARY CONDITIONS
Annex F - Transition-In Plan

	d. Management of Contract Intellectual Property.
1.16	Training
1.16.1	This section must provide information about how Contractor and Defence training requirements are going to be met prior to key milestone dates.
1.17	Financial Management
1.17.1	This section must include the following: <ul style="list-style-type: none"> a. Payment process b. Financial Security c. Guarantee d. Operating Expenses
1.18	General
1.18.1	This section must include the following: <ul style="list-style-type: none"> a. Passwords, Keys and Access Codes Requirements b. Regulatory Requirements c. Warranty d. Insurance e. Temporary Premises f. Regulatory Requirements: The section must include the process for ensuring required Authorisation are obtained. g. Warranty h. Service Package Specific (if required)
1.19	Conclusion
1.20	Annexes

GFF Licence

ANNEX G TO SCHEDULE 6

GOVERNMENT FURNISHED FACILITIES LICENCE

This Licence is made between the Commonwealth of Australia represented by the Department of Defence, Defence Support and Reform Group ABN 68 706 814 312 (the "Commonwealth") and (...INSERT COMPANY NAME, COMPANY ACN/ARBN AND ABN AS APPLICABLE...) and having its registered office at (...INSERT COMPANY'S REGISTERED OFFICE...) (the "Contractor").

RECITALS

- A. The Commonwealth and the Contractor have entered into (or will enter into) the Contract for, amongst other matters, the provision of Services in accordance with the Contract.
- B. To assist the Contractor in performing its obligations under the Contract, the Contractor has requested, and the Commonwealth has agreed to provide the Contractor with, access to and use of the Defence Estate assets on the terms of this Licence.

THE PARTIES AGREE AS FOLLOWS

ANNEX G TO SCHEDULE 6

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ANNEX G TO SCHEDULE 6

1. DEFINITIONS AND INTERPRETATION

1.1.1. Unless the contrary intention appears, words, abbreviations and acronyms used in this Licence:

- a. have the same meaning given to them in the Contract, and are incorporated into this Licence to the extent applicable; or
- b. in any other case, have the meaning given to them in the Glossary set out in clause 14.

1.1.2. In this Licence, except where the contrary intention is expressed:

- a. headings are for the purpose of convenient reference only and do not form part of the Licence or affect the interpretation of the Licence;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. another grammatical form of a defined word or expression has a corresponding meaning;
- d. a reference to a person includes a natural person, body politic, body corporate, partnership, trust, joint venture unincorporated body, association, Government Agency or other entity;
- e. a reference to a clause, paragraph, schedule attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to, the Licence, and a reference to the Licence includes any schedule or annexure;
- f. a reference to AUD, \$, \$A, dollar or \$ is to Australian currency;
- g. a reference to time is a reference to time at the relevant Base;
- h. a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assignees, including any person to whom that Party is permitted to novate any part of the Licence;
- i. examples and use of the word 'includes' in any form is not a word of limitation;
- j. if the Contractor is a trustee, the Contractor enters the Licence personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Licence;
- k. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- l. any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- m. a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- n. a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Licence or any part of it;
- o. any property or an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;
- p. where an obligation or liability is imposed on the Contractor under the Licence, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of the Contract, unless expressly stated;
- q. the term 'may' when used in the context of a right or remedy exercisable by the Commonwealth or a delegate of the Commonwealth means that the Commonwealth or its delegate can exercise that right or remedy in its sole and absolute discretion and the Commonwealth or its delegate has no obligation to the Contractor to do so unless expressly stated; and

ANNEX G TO SCHEDULE 6

- r. references to any agreement or document (including the Contract and this Licence) are to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by the Contract or the Licence or that other agreement or document.

2. GRANT OF LICENCE

2.1. Grant

- 2.1.1. In accordance with clause 19.3.1 of the Contract, upon payment of the Licence Fee, receipt of which is acknowledged upon the signing of this Licence, the Commonwealth grants to the Contractor a non-exclusive licence to use the Licensed Areas on the terms contained in this Licence together with the right in common with others of access to and use of the Contract Service Areas and the Common Areas as approved in writing by the Commonwealth from time to time and subject to any restrictions imposed by the Commonwealth.
- 2.1.2. The Contractor's rights under this Licence:
- a. are personal rights in contract;
 - b. do not create any interest or estate in the Licensed Areas, Contract Service Areas or the Common Areas;
 - c. do not create the relationship of landlord and tenant between the Contractor and the Commonwealth; and
 - d. do not confer exclusive possession on the Contractor.
- 2.1.3. The Commonwealth has the following rights relating to exclusion of the Contractor from the Licensed Areas:
- a. From time to time at any time and for any length of time the Commonwealth may exclude the Contractor from the Licensed Areas.
 - b. In exercising its rights under clause 2.1.3.a the Commonwealth shall endeavour to not deprive the Contractor of the whole or a significant part of the Licensed Areas unless it is necessary to do so for Defence Purposes or security purposes.
 - c. If the Commonwealth exercises its rights under clause 2.1.3.a the Contractor shall not be entitled to make any claim or seek compensation, costs, losses or expenses in any form whatsoever in respect of any exclusion from the Licensed Areas, unless that right is specifically contained in the Contract. The onus of proving that a right to make a claim or seek compensation is specifically contained in the Contract rests with the Contractor.
- 2.1.4. The parties acknowledge that as at the Commencement Date of this Licence, there are a number of Licensed Areas identified at Annexure A where the Contractor will not yet have commenced the provision of Services under the Contract. The Contractor may only access the relevant Licensed Areas on the date that the Services commence at the relevant Licensed Areas.
- #### 2.2. Term
- 2.2.1. The term of the Licence commences on the Commencement Date and, unless terminated earlier under clause 11.1 or 11.3, ends on the Expiry Date.
- 2.2.2. For the avoidance of doubt, if the Commonwealth exercises its rights under clause 5.2 of the Contract (Extension of Contract Period) the term of this Licence will be extended to be a corresponding term.

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2.3. Licensed Fittings and Contractor's own supplies

- 2.3.1. The Licensed Areas include the Licensed Fittings, any replacement of these during the continuation of this Licence and any other equipment or items made available by the Commonwealth in the Licensed Areas for the Contractor's use and benefit.
- 2.3.2. The Contractor shall supply and maintain all fittings, furniture, office machines and other equipment and all administrative consumables required by the Contractor in its use of the Licensed Areas.
- 2.3.3. Within 30 days of each anniversary of the Commencement Date the Contractor shall:
- a. undertake an audit of the Licensed Fittings;
 - b. prepare an inventory identifying any Licensed Fittings which have been removed or replaced, the replacement Licensed Fittings and any other equipment or items made available by the Commonwealth in the Licensed Areas for the Contractor's use and benefit; and
 - c. provide the inventory prepared under this clause 2.3.3 to the Commonwealth.

2.4. Shared Facilities

- 2.4.1. The Contractor acknowledges and agrees that those parts of the Licensed Areas identified as Shared Facilities may also be utilised by the Commonwealth and other Commonwealth contractors during the term of this Licence.
- 2.4.2. The Parties agree that:
- a. any conflicts that arise regarding the use of the Shared Facilities shall be referred to the Commonwealth which shall decide on the operational priority of the tasks requiring the use of the Shared Facilities; and
 - b. the Commonwealth shall be guided by the relative operational priority of tasks in deciding which party has priority of use of the Shared Facilities.
- 2.4.3. The Parties agree that the Commonwealth's decision on which Party has priority of use of Shared Facilities shall be final and binding. The Contractor further agrees that it shall not be entitled to make any claim or seek compensation, costs, losses or expenses in any form whatsoever arising from any decision of the Commonwealth regarding the priority of use of the Licensed Area.

2.5. Damage and Obstruction

- 2.5.1. The Contractor shall not cause any damage to;
- a. the Base;
 - b. any improvements on the Base;
 - c. the Contract Service Areas;
 - d. the Common Areas;
 - e. the Licensed Areas (including the Licensed Fittings and the Fixed Plant and Equipment);
 - f. GFE; or
 - g. any appurtenances, services, fittings, fixtures or other items on the above.
- 2.5.2. Without limiting its rights the Commonwealth may elect to make good at the cost of the Contractor any damage to the Base, improvements on the Base, any appurtenances, fittings, fixtures or other items on the Base, the Contract Service Areas, the Common Areas or the Licensed Areas caused by want of care, misuse or abuse, negligence, default or other act or omission of the Contractor.

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- 2.5.3. The Contractor shall not obstruct or permit the obstruction in any way of the Contract Service Areas, Common Areas, fire doors and escape doors of the Licensed Areas.

2.6. Commonwealth and Commonwealth Contractor Access

- 2.6.1. The Contractor acknowledges and agrees that, without limiting clause 46.2 of the Contract, the Commonwealth may access the Licensed Areas at any time for the purposes of:
- a. exercising its rights and powers under this Licence or under the Contract;
 - b. monitoring or inspecting the performance of the Contractor of its obligations under this Licence or the Contract; or
 - c. any other reasonable purpose.
- 2.6.2. The Contractor acknowledges and agrees that Commonwealth contractors may access the Licensed Areas in accordance with their contracts with the Commonwealth.

3. CONTRACTOR'S FINANCIAL OBLIGATIONS

3.1. Licence Fee

- 3.1.1. Subject to clause 3.2, the Contractor shall pay to the Commonwealth the Licence Fee (whether formally demanded or not and without deduction) on the Commencement Date and thereafter monthly in advance on the date for payment specified in Item 15 of the Schedule.
- 3.1.2. The Licence Fee comprises the consideration for the right to use the Licensed Areas and the other costs which are specified elsewhere in this Licence to be included in the Licence Fee.

3.2. Non Contract Work Licence Fee

- 3.2.1. Pursuant to clause 4.1.1, the Contractor shall not undertake any Non Contract Work on the Base (including in the Licensed Areas) unless it has obtained the prior written consent of the Commonwealth.
- 3.2.2. If the Contractor undertakes any Non Contract Work in the Licensed Areas in accordance with clause 3.2.1, the Contractor shall pay to the Commonwealth a Non Contract Work Licence Fee determined under clause 3.2.3.
- 3.2.3. If the Commonwealth, in its absolute discretion, consents to the Contractor undertaking Non Contract Work in the Licensed Areas, the Commonwealth shall, as a condition of its consent, notify the Contractor of the Non Contract Work Licence Fee payable by the Contractor to the Commonwealth and the method of review and payment of such Non Contract Work Licence Fee. The Commonwealth will determine (acting reasonably), the amount of the Non Contract Work Licence Fee including by having regard to the following factors:
- a. the consideration for the right to perform the Non Contract Work in the Licensed Area; and
 - b. the the amount of Operating Expenses and Utilities costs resulting from the Non Contract Work.

3.3. Interest for Late Payment

- 3.3.1. If the payment of an amount due under this Licence is unpaid or paid late, the Commonwealth may notify the Contractor that interest shall be payable to the Commonwealth in accordance with the formula set out in clause 21.6 (Early and Late Payment) of the Contract.

3.4. Adjustments

- 3.4.1. If the Commonwealth charges the Contractor any money calculated using a time period, and the Licence starts or ends during that period, the Commonwealth shall make any necessary proportional adjustment.

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- 3.4.2. Unless Item 9 of the Schedule states that this clause 3.4.2 is not applicable, the Licence Fee shall be reviewed on the dates specified in Item 9 to an amount which the Commonwealth considers reasonable and appropriate.

3.5. CPI Review (not used)

3.6. Market Licence Fee Review (not used)

3.7. Operating Expenses

- 3.7.1. The Commonwealth shall pay for the Operating Expenses associated with the Licensed Areas and the Contractor is not required to reimburse the Commonwealth for any Operating Expenses attributable to the Licensed Areas for the relevant Permitted Use, unless clause 3.7.2 applies.
- 3.7.2. The Contractor must pay or reimburse the Commonwealth for the Contractor's Share of the Operating Expenses attributable to any Non Contract Work, such amounts to be determined from time to time by the Commonwealth.

3.8. Utilities and Telecommunications Facilities

- 3.8.1. The Contractor may utilise the Utilities on the Licensed Areas:
- a. in order to duly and properly perform its obligations under the Contract; and
 - b. to perform Non-Contract Work only to the extent (if any) approved by the Commonwealth under clause 4.1.1.
- 3.8.2. The Commonwealth shall not be responsible for any inconvenience, damage or loss resulting from a disruption to any of the Utilities howsoever caused. The Contractor shall not be entitled to make any claim or seek compensation, costs, losses or expenses in any form whatsoever in respect of any inconvenience, damage or loss resulting from disruption to any of the Utilities howsoever caused, unless that right is specifically contained in the Contract. The onus of proving that a right to make a claim or seek compensation is specifically contained in the Contract rests with the Contractor.
- 3.8.3. The Commonwealth shall pay for the Utilities costs associated with the Licensed Areas, and the Contractor is not required to reimburse the Commonwealth for any Utilities costs payable in relation to the Licensed Areas unless clause 3.8.4 applies.
- 3.8.4. The Contractor must reimburse the Commonwealth for the Contractor's Share of the Utilities costs attributable to any Non Contract Work, such amounts to be determined from time to time by the Commonwealth.
- 3.8.5. For activities within the Licensed Area, the Commonwealth shall provide the Contractor with access to Telecommunications Facilities in order to perform its obligations under the Contract.
- 3.8.6. The Commonwealth shall not be responsible for any inconvenience, damage or loss resulting from disruption to the Telecommunications Facilities howsoever caused. The Contractor shall not be entitled to make any claim or seek compensation, costs, losses or expenses in any form whatsoever in respect of any inconvenience, damage or loss resulting from disruption to any of the Telecommunications Facilities howsoever caused, unless that right is specifically contained in the Contract. The onus of proving that a right to make a claim or seek compensation is specifically contained in the Contract rests with the Contractor.
- 3.8.7. Any alterations or additions required to Telecommunications Facilities and any related facilities will be subject to the approval of the Commonwealth and, if approved, will be made at the Contractor's expense.
- 3.8.8. The Contractor shall ensure that its use of the Utilities and Telecommunications Facilities does not interrupt, damage or diminish the use of the Telecommunications Facilities and Utilities to other users at the Licensed Area or the Base.

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- 3.8.9. The Contractor shall be responsible for the connection and disconnection of all equipment supplied by it and connected to the Utilities or Telecommunications Facilities. The Contractor shall ensure that all Contractor supplied equipment is approved for use by the relevant Authorities. All connection and disconnection shall comply with all Laws and requirements of relevant Authorities.
- 3.8.10. The Contractor shall use best commercial practices (which, to avoid doubt does not require the Contractor to incur any capital expenditure).to minimise its consumption and use of:
- a. the Utilities in connection with the Licensed Area including without limitation the formulation and implementation of a utility conservation plan, if required by the Commonwealth; and
 - b. Telecommunications Facilities in connection with the Licensed Area.
- 3.8.11. Without limiting the Contractor's obligations and the Commonwealth's other rights under this clause 3.8, if the Commonwealth considers that it incurs additional unreasonable costs or charges arising out of or in connection with the Contractor's consumption of Utilities, the Commonwealth may elect to seek reimbursement from the Contractor of any such additional costs or charges. The Commonwealth shall advise the Contractor of how it has calculated the additional costs or charges and the decision of the Commonwealth regarding the amount payable will be final and binding. The Contractor shall pay that amount within thirty (30) days of demand.

3.9. Airfield rights (not used)

3.10. GST

- 3.10.1. Unless otherwise stated, all amounts payable by one Party to another Party in this Licence are exclusive of GST.
- 3.10.2. A recipient of a taxable supply made under this Licence must pay to the supplier an amount equivalent to any GST paid or payable by the supplier in respect of a taxable supply subject to the supplier issuing a valid tax invoice in accordance with the GST Legislation to the recipient.
- 3.10.3. A Party's obligation to reimburse the other Party for an amount paid or payable to a third party includes GST on the amount paid or payable to the third party except to the extent that the Party being reimbursed is entitled to claim an input tax credit for that GST.
- 3.10.4. Each Party must issue an adjustment note to the other Party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this Licence.

3.11. Legal and Other Costs

- 3.11.1. The Contractor shall:
- a. bear its own costs; and
 - b. within thirty (30) days of demand pay the Commonwealth's costs, including legal costs, arising out of the preparation, negotiation, settling and execution of this Licence.
- 3.11.2. The Contractor shall pay:
- a. within thirty (30) days of demand, the Commonwealth's legal and other costs:
 - (i) arising out of any other dealing at the request of the Contractor relating to the Licence after the Commencement Date; or
 - (ii) associated with enforcement, preservation of any rights or other action relating to the Licence;
 - b. on time, any stamp duty on the Licence or any other document arising out of the Licence; and

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- c. within thirty (30) days of demand, the Commonwealth's costs (including legal and any other costs) of considering the Contractor's request for the Commonwealth's approval or consent.

3.12. Amounts owing under the Licence

- 3.12.1. The Contractor acknowledges and agrees that amounts payable to or recoverable by the Commonwealth under this Licence (whether as a debt due and owing to the Commonwealth or otherwise) shall be paid upon demand.

3.13. Financial Security Deed

- 3.13.1. Without limiting the Commonwealth's rights under:

- a. this Licence; or
- b. the financial security provided by the Contractor to the Commonwealth in accordance with clause 29 of the Contract,

the Contractor agrees that the Commonwealth may exercise the financial security in respect of any losses, costs or expenses incurred by the Commonwealth due to the Contractor's breach of this Licence .

4. CONTRACTOR'S OBLIGATIONS

4.1. Occupation and Use of the Licensed Areas

- 4.1.1. The Contractor shall only use the Licensed Areas for the relevant Permitted Use and Non Contract Work approved in writing by the Commonwealth.

- 4.1.2. The Contractor shall:

- a. keep the Sole Use Facilities clean and tidy;
- b. for those parts of the Licensed Areas that are Shared Facilities, keep the Shared Facilities clean and tidy to the extent to which the Contractor caused or contributed to the un-cleanliness or untidiness
- c. keep all Hazardous Substances and other environmentally deleterious material under proper control and safekeeping, and shall ensure that all such substances and materials are properly and clearly labelled and managed and used in accordance with the instructions and/or recommendations of the supplier and/or manufacturer, and all relevant Laws and any environmental management plan in force from time to time for the Base (including any plan in force from time to time for the Licensed Areas);
- d. not do anything that is, or may be, dangerous, annoying, or offensive, or that may interfere with the Commonwealth or other people using the Base (including the Licensed Areas) or adjoining owners; and
- e. comply with the requirements of the Commonwealth concerning the storage and removal of waste and debris.

- 4.1.3. The Contractor shall maintain in good condition and repair its equipment and any other equipment or material provided to the Contractor under the terms of this Licence or the Contract (including the Licensed Fittings) and which is stored or used in the Licensed Areas.

4.2. When the Licence Ends

- 4.2.1. When the Licence ends, the Contractor:

- a. shall vacate the Licensed Areas and give the Licensed Areas, the Licensed Fittings and any other Commonwealth property or items on the Licensed Areas back to the Commonwealth in a clean and tidy condition and otherwise in the same condition as they were in at the Commencement Date (as evidenced by the Facilities Condition

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Appraisal), or in the case of things brought onto the Licensed Areas after the Commencement Date in the condition they were in at the time they were first brought onto the Licensed Areas, except for fair wear and tear; and

- b. shall make sure all the Contractor's property is removed and that all damage caused by that removal is repaired immediately. Anything left on the Licensed Areas becomes the Commonwealth's property and the Commonwealth may keep it or dispose of it. Any costs of removing, storing or disposing of the Contractor's property shall be paid by the Contractor within thirty (30) days of demand.

4.3. Contractor Damage

- 4.3.1. Without in any way limiting or derogating from its other obligations under this Licence or the Contract, the Contractor shall promptly repair, replace or make good any breakage, defect, damage or loss, of or to:

- a. the Base;
- b. the improvements on the Base
- c. the Licensed Areas;
- d. the Licensed Fittings (including Fixed Plant and Equipment);
- e. the Contract Service Areas;
- f. the Common Areas;
- g. GFE; or
- h. any other Commonwealth property or equipment,

caused or arising from or as a consequence of any act or omission (whether involving a breach of the Contract or not) of the Contractor, its subcontractors, employees or agents.

- 4.3.2. The Contractor's obligations under clause 4.3.1 shall be undertaken in a good and workmanlike manner, in accordance with all Laws and requirements of an Authority and by tradespersons nominated by the Commonwealth or, if the Commonwealth approves, by suitably qualified tradespersons and to the Commonwealth's reasonable satisfaction.

- 4.3.3. If the Contractor fails to discharge its obligations in accordance with this clause 4.3, the Commonwealth may undertake such repairs, replacement or making good which the Commonwealth in its absolute discretion considers necessary and the cost of such repairs, replacement or making good shall be a debt due and owing by the Contractor to the Commonwealth payable on demand.

4.4. Waste Disposal

- 4.4.1. Except to the extent (if any) that waste disposal is provided as GFS under the Contract, the Contractor shall dispose of all debris and waste (hazardous and non-hazardous) arising out the activities performed by the Contractor pursuant to the Contract in a safe and effective manner, in accordance with all Laws and in compliance with any requirements of applicable Authorities.

4.5. Contractor's Use of Sewerage System (not used)

4.6. Environmental Compliance

- 4.6.1. Throughout the continuation of this Licence, the Contractor shall maintain the Environment of the Licensed Areas in accordance with all obligations imposed on it by Laws and relevant Authorities which from time to time apply or have jurisdiction in respect of the Environment of the Licensed Areas and at the expiration or earlier termination of the Licence, the Contractor

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shall yield up and hand over the environment of the Licensed Areas in a condition that complies with such obligations.

- 4.6.2. The Contractor shall comply with any Environmental Management Plan in force from time to time for the Base.
- 4.6.3. This clause does not impose any obligation on the Contractor in relation to pollution to the extent that the pollution was caused or contributed to by the Commonwealth, its employees, agents or contractors (other than the Contractor).
- 4.6.4. Without limiting clause 4.6.7 the Commonwealth has no liability to the Contractor in the event that the Contractor is required to expend monies on remedial action to have the Environment of the Licensed Areas comply with all obligations imposed on it by Laws or relevant Authorities except to the extent that the pollution is caused or contributed to by the Commonwealth, its employees agents or contractors (other than the Contractor).
- 4.6.5. At intervals reasonably required by the Commonwealth, and immediately before the Expiry Date the Contractor shall arrange for environmental audits of the Licensed Areas to be carried out and shall carry out any work recommended in the audits for remediation of the Licensed Areas.
- 4.6.6. Without limiting any other obligations the Contractor shall comply with the requirements of the EPBC Act and shall provide all necessary assistance to enable the Commonwealth to comply with its obligations under the EPBC Act.
- 4.6.7. The Contractor shall not do or omit to do anything which may cause the Commonwealth to be in breach of its obligations under the EPBC Act.
- 4.6.8. The Contractor indemnifies the Commonwealth against any claims, actions, costs, expenses or liability incurred or sustained by the Commonwealth as a result of a breach by the Contractor of its obligations under clause 4.6.1 to clause 4.6.7 inclusive.

4.7. Heritage

- 4.7.1. Throughout the continuation of this Licence, the Contractor shall maintain the heritage of the Licensed Areas in accordance with all obligations imposed on it by Laws and relevant Authorities which from time to time apply or have jurisdiction in respect of the heritage of the Licensed Areas and at the expiration or earlier termination of the Licence, the Contractor shall yield up and hand over the heritage of the Licensed Areas in a condition that complies with such obligations.
- 4.7.2. The Contractor shall comply with any Heritage Management Plan in force from time to time for the Base.
- 4.7.3. Without limiting any of its other obligations, the Contractor shall comply with the requirements of the EPBC Act and shall provide all necessary assistance to enable the Commonwealth to comply with its obligations under the EPBC Act.
- 4.7.4. The Contractor shall not do or omit to do anything which may cause the Commonwealth to be in breach of its obligations under the EPBC Act.

5. THE COMMONWEALTH'S RIGHTS AND OBLIGATIONS

5.1. Consent or Approval

- 5.1.1. Subject to clause 5.1.2, if the Contractor requests the Commonwealth's consent or approval under this Licence, the Commonwealth shall consider the request in a reasonable time. The Commonwealth may also require the Contractor to obey any reasonable terms before it gives its consent or approval or may give consent subject to the conditions notified. The Contractor shall comply with all terms and conditions imposed by the Commonwealth.
- 5.1.2. The Commonwealth may refuse to give its consent for any reason if the request for consent concerns structural, building, excavation or other redevelopment work to the Licensed Areas

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or if the giving of the consent may result in interference with any of the Commonwealth's activities or proposed activities on the relevant Base or may cause a security or operational risk to the Commonwealth which it believes, in its absolute sole opinion, is unacceptable.

5.2. Suitability of Licensed Areas

5.2.1. The Commonwealth has not made, and the Contractor acknowledges and agrees that the Commonwealth has not made, any promise, representation or warranty as to the suitability of the relevant Base for the relevant Permitted Use or any other use.

5.2.2. Without prejudice to the generality of clause 5.2.1, unless the Contract expressly provides otherwise, if the relevant Base or part of that Base is found not to be suitable for the relevant Permitted Use or any other use (including due to a failure in the maintenance of it), that unsuitability:

a. does not permit any delay or postponement in the performance by the Contractor of this Licence or the Contract or relieve the Contractor from (or suspend the performance of) any obligation under this Licence or the Contract; and

b. is not to be taken into account under this Licence or the Contract when assessing liability as an act or omission by the Commonwealth or an event or loss caused by the Commonwealth,

unless and to extent that the Commonwealth caused the unsuitability by a negligent act or omission.

6. MAINTENANCE AND BUILDING WORK

6.1. Maintenance

6.1.1. Subject to clause 6.1.2, the Contractor shall undertake such maintenance as is necessary and use best commercial practices to minimise the maintenance services required to keep the Licensed Areas and Licensed Fittings (including Fixed Plant and Equipment) in good and functional repair; having regard to their condition at the Commencement Date (as evidenced in the relevant Facilities Condition Appraisal) or provided in the Facilities Condition Appraisal.

6.1.2. Any loss or damage (including those of a structural nature) to the Licensed Areas, Licensed Fittings (including Fixed Plant and Equipment), Contract Service Areas, Common Areas and other areas of the relevant Base arising from any act, omission, neglect or default of the Contractor, its employees, agents or subcontractors must be made good immediately by the Contractor at the Contractor's expense in accordance with clause 4.3.

6.1.3. Subject to clause 6.1.1 and clause 6.1.2, the Commonwealth shall undertake such maintenance as is necessary to keep the Licensed Areas, the Licensed Fittings (including Fixed Plant and Equipment) used by the Contractor for the purpose of performing its obligations under the Contract in good and functional repair and condition having regard to their condition as at the Commencement Date (as evidenced in the Facilities Condition Appraisal) or provided in the Facilities Condition Appraisal.

6.1.4. The Commonwealth shall not be responsible for any inconvenience, damage or loss resulting from disruption to the maintenance services howsoever caused. The Contractor shall not be entitled to make any claim or seek compensation, costs, losses or expenses in any form whatsoever in respect of any inconvenience, damage or loss resulting from disruption to the maintenance services howsoever caused, unless that right is specifically contained in the Contract. The onus of proving that a right to make a claim or seek compensation is specifically contained in the Contract rests with the Contractor.

6.1.5. The Contractor must report all requirements for maintenance to:

a. the Base;

b. any improvements on the Base;

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- c. the Contract Service Areas;
 - d. the Common Areas;
 - e. the Licensed Areas (including the Licensed Fittings and the Fixed Plant and Equipment);
 - f. GFE;
 - g. any appurtenances, services, fittings, fixtures or other items on the above; or
 - h. any other Commonwealth property or equipment, of which the Contractor is aware or ought reasonably to be aware to the Commonwealth as soon as reasonably possible and in any event:
 - i. for Immediate Maintenance, within 24 hours; and
 - j. for all other maintenance, within 5 days,
- of becoming aware (or when it ought to have become reasonably aware) of such requirement.
- 6.1.6. Without limiting the Contractor's obligations under the Contract and this Licence, the Contractor must also promptly notify the Commonwealth of any issues (including in relation to issues that a reasonable licensor for the relevant Base would be concerned about) arising in relation to the condition of:
- a. the Base;
 - b. any improvements on the Base;
 - c. the Contract Service Areas;
 - d. the Common Areas;
 - e. the Licensed Areas (including the Licensed Fittings and the Fixed Plant and Equipment);
 - f. GFE;
 - g. any appurtenances, services, fittings, fixtures or other items on the above, or
 - h. any other Commonwealth property or equipment,
- 6.1.7. The Commonwealth is not responsible for conducting any structural repairs for which the Contractor is responsible under clause 6.1.1 or clause 6.1.2.
- 6.2. Altering the Licensed Areas**
- 6.2.1. The Contractor shall not carry out any alteration, improvement or other works to the Licensed Areas without the prior written approval of the Commonwealth. Any alteration, improvement or other works approved by the Commonwealth shall be carried out by the Commonwealth's nominated tradesperson or, if the Commonwealth agrees in writing in advance of the works, by suitably qualified and licensed trades persons and in accordance with all Laws and requirements of Authorities to the satisfaction of the Commonwealth. All costs associated with the work, including the costs to the Commonwealth of obtaining professional advice relevant to the approval sought, shall be met by the Contractor and shall be payable on demand.
- 6.3. Moving to Alternative Licensed Areas**
- 6.3.1. Subject to clause 11.1.1, the Commonwealth may require the Contractor to move out of one or more Licensed Areas and to other areas on the relevant Base. The Commonwealth shall give the Contractor at least one (1) month's notice that the Contractor is required to move (**Relocation Notice**).
- 6.3.2. In the Relocation Notice, the Commonwealth shall:
- a. specify the date by which the Contractor must move; and

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- b. offer the Contractor a licence of the alternative area with terms similar to this Licence, including the same Expiry Date, and the same Licence Fee.
- 6.3.3. The Licence will terminate in respect of the relevant Licensed Area on the date specified in the Relocation Notice in accordance with clause 6.3.2.a.
- 6.3.4. The Contractor shall:
 - a. yield up the relevant Licensed Area on the date specified by the Commonwealth in the Relocation Notice; and
 - b. enter into a new licence of the alternative area commencing on the day after the date specified in the Relocation Notice in accordance with clause 6.3.2.a, on the terms offered under clause 6.3.2.b.
- 6.3.5. The Contractor shall not be entitled to make any claim or seek compensation, costs or expenses from the Commonwealth (including but not limited to costs of such relocation and loss of profit) as a result of or in connection with the Commonwealth exercising its rights under clause 6.3.1 to clause 6.3.4 inclusive.

7. DAMAGE OR DESTRUCTION OF THE LICENSED AREAS

7.1. Damage or Destruction

- 7.1.1. If the Licensed Areas or a Base or both are damaged or destroyed, and as a result the Contractor cannot use or access the Licensed Areas, the Commonwealth may re-build either or both of them. Meanwhile the Contractor shall continue to use any part of the Licensed Areas that are useable, safe and accessible.
- 7.1.2. If the Commonwealth does not re-build the relevant Base or the relevant Licensed Area(s) or relocate the Contractor to alternative accommodation that is suitable for the purpose of the Licence within a reasonable time, or if the Commonwealth decides not to re-build the relevant Base or the relevant Licensed Area(s), as the case may be, either the Commonwealth or, subject to clause 7.1.3, the Contractor, may end the Licence by no less than seven (7) days' notice to the other (but without prejudice to any antecedent claim or remedy which the Commonwealth may have against the Contractor).
- 7.1.3. The Contractor cannot end the Licence and shall continue to pay the Licence Fee and all other money up to the end of the Term if the Contractor caused or contributed to the damage or destruction referred to in clause 7.1.1.
- 7.1.4. The Commonwealth is not liable to pay the Contractor compensation under this clause 7.1, but the Commonwealth may reduce the Licence Fee and any other money by a reasonable amount depending on the type and extent of the damage or destruction, until the relevant Licensed Area(s) are again fit for use or the Licence is ended.

8. RISKS AND INSURANCE

8.1. Contractor's Insurance

- 8.1.1. The Contractor shall maintain and provide evidence of the following insurances:
 - a. the insurances required under clause 28 of the Contract and the Contractor shall ensure that such insurance is extended to cover the risks and obligations under this Licence as well as the Contract;
 - b. the Contractor must take out and maintain, noting the interest of the Commonwealth, public liability insurance written on an occurrence basis covering all risks in respect of injury, loss or damage to any person or property however sustained arising out of this Licence, the relevant Permitted Use or any activity or circumstance on the Licensed Areas for not less than \$25,000,000 in respect of any one occurrence and

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\$50,000,000 in one 12 month period or such greater amount as the Commonwealth or the Contractor may from time to time reasonably require;

- c. the Contractor must take out and maintain, noting the interest of, noting the interest of the Commonwealth property damage insurance of a type approved by the Commonwealth for the Licensed Fittings for full replacement or reinstatement value (including cover for Commonwealth property which is in the care, custody or control of the Contractor). The Contractor must also effect property insurance for all its property, plant and equipment on the relevant Base(s) for replacement or reinstatement value.
 - d. and any other insurances which the Commonwealth may require in respect of the Licensed Areas, the relevant Permitted Use or the Contractor's activities (including Non Contract Works carried out on the Licensed Areas).
- 8.1.2. The Contractor shall not do or permit anything or omit to do anything whereby any insurance effected pursuant to the Licence or the Contract may become vitiated or otherwise non-effective.
- 8.1.3. Upon request by the Commonwealth the Contractor must produce to the Commonwealth reasonable proof of the currency of any of the insurances required by clause 8.1.1.

8.2. Release and Indemnity

- 8.2.1. The Contractor enters on the relevant Base and occupies the Licensed Areas and carries out any work or activities on the relevant Base at its own risk.
- 8.2.2. The Contractor releases the Commonwealth from all claims or liability arising from any damage, loss, injury or death, occurring in the Licensed Areas, Contract Services Areas, Common Areas and any other area of the relevant Base, except to the extent that the Commonwealth caused the damage, loss, injury or death by a negligent act or omission.
- 8.2.3. In addition to the obligations to indemnify set out in clause 26 of the Contract, the Contractor indemnifies the Commonwealth its officers, employees and agents against all losses, liabilities, costs and expenses incurred and any claim, action or demand made against the Commonwealth by any person due to any damage, loss, injury or death by reason of any act, omission, default or neglect of the Contractor, its officers, employees, agents, contractors, sub contractors and invitees in connection with the Contractor's use or occupation of the Licensed Areas, Contract Service Areas, Common Areas and any other areas of the relevant Base except to the extent that the Commonwealth caused the damage, loss, injury or death by a negligent act or omission.

9. LEGISLATION, LICENCES AND STATUTORY POWERS

9.1. Compliance with Laws and Notices

- 9.1.1. Without limiting any other provision in this Licence, the Contractor at its own expense shall comply with, and procure that its personnel, and subcontractors comply with:
 - a. all Laws relating to:
 - (i) the Licensed Areas, the relevant Base and the structures on or attached to the Licensed Areas;
 - (ii) the use, occupation of and any activities on the Licensed Areas, the relevant Base and the structures on or attached to the Licensed Areas and the relevant Base; and
 - (iii) any matter arising from this Licence;
 - b. the Security Rules, orders, directions and requirements made by the Commonwealth and notified to the Contractor; and

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- c. all requirements in notices and orders given or made (whether issued to either the Contractor or the Commonwealth) by an Authority and notified to the Contractor.
- 9.1.2. If a Law does not apply to the Licensee or the Licensed Areas which would apply if the Licenser was not the Commonwealth or if the Licensed Areas was not located on Commonwealth land, then the Licensee must, unless otherwise notified by the Commonwealth, comply with that Law as if the Commonwealth was not the Licenser and if the land was not Commonwealth land.
- 9.2. Licences and approvals**
- 9.2.1. At its own expense the Contractor shall, obtain and maintain (or cause to be obtained and maintained) at all times, all licences and approvals required in relation to the Licensed Areas and structures on and attached to the Licensed Areas and the activities of the Contractor on the Licensed Areas and shall produce proof of compliance by the Contractor with its obligations under this clause immediately upon being required to do so by the Commonwealth.
- 9.2.2. Nothing in this clause 9 limits or otherwise derogates from the Contractor's obligations under the Contract or otherwise.

10. LICENCE MANAGEMENT

10.1. Regional Director Defence Support and Reform Group

- 10.1.1. The Regional Director DSRG is the authorised representative of the Commonwealth in discharging each of the functions of the Commonwealth under the Licence.
- 10.1.2. The Contractor shall perform the Contractor's activities in the Licensed Area in accordance with:
- a. the Licence and the Contract; and
 - b. unless inconsistent with the Contract, any directions of the Regional Director DSRG.
- 10.1.3. Any direction which may be or is given to the Contractor by the Regional Director DSRG under the Licence may, unless the Licence expressly provides otherwise, be given either orally or in writing. If a direction is initially given orally, the Regional Director DSRG shall as soon as practicable after it is given confirm it by notice in writing to the Contractor. Any failure on the part of the Regional Director DSRG to confirm the direction in writing does not in any way affect the validity or enforceability of the direction but the Contractor is not liable for failure to carry out any direction if it has not been confirmed in writing within a reasonable time.
- 10.1.4. For the purposes of this clause, a "direction" is any agreement, approval, explanation, instruction, notice or requirement which the Regional Director DSRG may make, give or issue under the provisions of this Licence.

10.2. Regional Director Defence Support and Reform Group's Representatives

- 10.2.1. The Regional Director DSRG may:
- a. by written notice to the Contractor appoint persons to exercise any of the Regional Director's functions under the Licence; and
 - b. revoke any appointment under clause 10.2.1.a by notice in writing to the Contractor.
- 10.2.2. All references in the Licence to Regional Director DSRG include a reference to a representative appointed under clause 10.2.1.

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11. TERMINATION AND EXPIRATION

11.1. Termination when the Contract is terminated for convenience

- 11.1.1. If the Commonwealth terminates the Contract in whole or in part under clause 50.1 of the Contract, the Commonwealth may, without prejudice to any of its other rights under this Licence, by notice also terminate this Licence in whole or reduce the Licensed Areas or the hours that the Licensed Areas can be accessed correspondingly, and the Contractor will have no claim (including no claim for compensation or loss of prospective profits or any other losses, costs or expenses) against the Commonwealth for termination or amendment of the Licence other than as provided for in the Contract.

11.2. Expiration when the Contract is terminated other than for convenience

- 11.2.1. If the Contract is terminated other than under clause 50.1 of the Contract, this Licence is, without prejudice the Commonwealth's other rights under the Licence, deemed to end on the date that the notice of termination issued under the Contract takes effect as if that date was the Expiry Date. Notwithstanding any claim which the Contractor may have as a consequence of the termination of the Contract, the Contractor has no claim against the Commonwealth under the Licence or the Contract for expiration of the Licence.

11.3. Termination for convenience

- 11.3.1. In addition to its rights under clause 11.1, the Commonwealth may, without prejudice to any of its other rights under this Licence, terminate the Licence or reduce the Licensed Areas or the hours that the Licensed Areas can be accessed by notifying the Contractor in writing and the Contractor shall have no claim (including no claim for compensation or loss of prospective profits or any other losses, costs or expenses) against the Commonwealth for termination or amendment of the Licence other than as provided for in the Contract.

11.4. Termination for breach of the Licence

- 11.4.1. The Contractor acknowledges that a breach of this Licence is a 'default' for the purposes of clause 50.2 of the Contract and that the Commonwealth may therefore issue a written notice under that clause in respect of a breach of this Licence.
- 11.4.2. In addition to any other right or remedy the Commonwealth may have, the Commonwealth may by notice in writing to the Contractor, immediately terminate this Licence if:
- a. the Contractor breaches this Licence and fails to rectify that breach within thirty (30) days of written notice from the Commonwealth requiring the Contractor to rectify the breach;
 - b. the Commonwealth is entitled to terminate the Contract for default pursuant to clause 6.1.4 (Transition In) of the Contract;
 - c. in the case of the Contractor being a company, a winding-up order is made in respect of it, or a resolution for voluntary winding up is passed by the Contractor or a provisional liquidator, a receiver and manager or a receiver of the Contractor or of a company which the Contractor is a subsidiary is appointed; or
 - d. an assignment or composition is made by the Contractor for the benefit of the Contractor's creditors; or
 - e. a change occurs in the business assets or financial condition of the Contractor or of the Contractor and its subsidiaries taken as a whole, which in the reasonable opinion of the Commonwealth may have a material adverse effect on the ability of the Contractor to observe its obligations under this Licence; or
 - f. a person is appointed under any legislation to investigate or manage any part of the affairs of the Contractor or any of its subsidiaries; or

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- g. the Contractor engages in any conduct which in the opinion of the Commonwealth may pose a danger to any person or property; or
- h. the Contractor fails to comply with all Laws, requirements, notices, orders or directions relating to the relevant Permitted Use, the use or operation of the relevant Base (including the Licensed Area) or security; or
- i. any other agreement to which the Commonwealth and the Contractor are parties is terminated;
- j. a representation or warranty made or taken to be made by or on behalf of the Contractor in connection with this Agreement is found or notified by the Contractor to be incorrect or misleading when made or taken to be made; or
- k. the Contractor repudiates this Licence,
and this Licence will terminate on the date specified in the notice but without prejudice to any claim, right of action or remedy which the Commonwealth may have against the Contractor in respect of any breach of this Licence.

11.5. Vacation of Licensed Area by the Contractor

- 11.5.1. Upon expiration or earlier termination of this Licence, the Contractor shall vacate the Licensed Areas. By the date of the expiration or earlier termination of this Licence or within such further time as may be approved in writing by the Commonwealth, the Contractor shall take down, remove and carry away, without causing any damage to Licensed Areas or the relevant Base, all removable items or equipment which the Contractor has fixed or brought on to Licensed Areas during the term of the Licence and the Contract. If the Contractor causes any damage it shall immediately make good that damage at its own expense. Within seven (7) days of the completion of the removal by the Contractor of all removable items or equipment which the Contractor has fixed or brought on to Licensed Areas during the term of the Licence and the Contract, the Commonwealth shall in the presence of the Contractor examine each part of the Licensed Areas to assess the condition of the Licensed Areas.
- 11.5.2. If upon the examination referred to in clause 11.5.1, any part of one or more of the Licensed Areas are found not to be in the condition in which it was at the Commencement Date, as described in the Facilities Condition Appraisal (including as a result of environmental contamination) or as otherwise required by this Licence, the Contractor shall be liable for the cost of its restoration to that condition, except to the extent the difference in condition is due to:
 - a. fair wear and tear; or
 - b. any alterations, improvements or other works made in accordance with clause 6.2.
- 11.5.3. If the Contractor incurs any liability under clause 11.5.2, the Commonwealth may, at its absolute discretion, require the Contractor to:
 - a. make good any damage to the relevant Licensed Area(s); or
 - b. pay to the Commonwealth an amount estimated by the Commonwealth as equal to the reasonable cost of restoration of the relevant Licensed Area(s) to the condition required by this Licence in which case that amount shall be a debt due from the Contractor to the Commonwealth and payable on demand.
- 11.5.4. The Contractor's liability under clause 11.5.2 and any amount due under clause 11.5.3.b shall not be affected by any decision by the Commonwealth as to the future use or disposal of the Licensed Areas, regardless of whether that part of the relevant Licensed Area which is the subject of the liability is restored, continued in use unrestored, retained unused, or sold by the Commonwealth.
- 11.5.5. If the Contractor fails to remove all removable items or equipment which the Contractor has fixed or brought on to the Licensed Areas, as required by clause 11.5.2, those items or

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equipment will be deemed to be abandoned and may be removed by the Commonwealth and disposed of by the Commonwealth at the Contractor's cost and expense.

12. NOTICES

12.1. Notices

- 12.1.1. A notice to be given or served under or arising out of the Licence shall be in writing and delivered by hand or sent by prepaid post or facsimile, as the case may be, in accordance with this clause.
- 12.1.2. For the avoidance of doubt, any notice or communication under the Licence is not effective if it is delivered via electronic mail.

12.2. Address for Notice

- 12.2.1. If a notice is given to the Commonwealth, it shall be addressed and forwarded to the Contract Representative in accordance with clause 54 using the address or facsimile number as notified in writing from time to time by the Commonwealth to the Contractor in accordance with clause 54 of the Contract.
- 12.2.2. If a notice is given by the Commonwealth, it shall be signed for and on behalf of the Commonwealth by an officer of the Department of Defence, the Regional Director DSRG or the Commonwealth's solicitors and forwarded to the Contractor at the address or facsimile number notified under the Contract or such other address or facsimile number as notified in writing from time to time by the Contractor to the Commonwealth.

12.3. Deemed Receipt

- 12.3.1. A notice or communication shall be deemed to have been delivered:
- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another; or
 - b. by facsimile, at the time recorded by the transmitting machine, unless within one Working Day the sender is informed that the transmission was received in incomplete or garbled form in which case a re-transmitted notice or other communication shall be received when it is effectively delivered in accordance with this clause 12.3.

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13. GENERAL

13.1. Governing Law

- 13.1.1. The Licence is subject to and to be construed in accordance with the laws for the time being in force in **To be confirmed and to align with the Contract**.

13.2. Incorporation of Certain Terms from the Contract

- 13.2.1. The following clauses of the Contract apply to this Licence, as if those clauses were reproduced in full into this Licence and references to 'the Contract' in the clause were read as references to 'this Licence':
- a. Clause 55.11 (Waiver);
 - b. Clause 30.1 (Commercial-in-Confidence Information);
 - c. Clause 55.4 (Assignment and Novation);
 - d. Clause 55.10 (Severability); and
 - e. Clause 53 (Survival);

13.3. Right to Sub-Licence and Assignment of the Contract

- 13.3.1. Subject to clause 13.3.3, the Contractor shall not sub-license, part with possession, mortgage, charge or encumber any part or any right or obligation under this Licence without the prior written consent of the Commonwealth, which consent may be withheld or granted subject to conditions, in the absolute discretion of the Commonwealth
- 13.3.2. The Contractor agrees to pay the Commonwealth's legal costs and other expenses reasonably incurred in respect of any sub-licence whether or not the Commonwealth gives its consent pursuant to clause 13.3.1.
- 13.3.3. The consent of the Commonwealth is not required for a sub-licence by the Contractor to any of the Approved Sub-Contractors under the Contract provided that:
- a. the Contractor enters into a written binding sub-licence with the Approved Subcontractor that is on the same terms as this Licence;
 - b. the Contractor indemnifies the Commonwealth for any costs, damages, losses or claims incurred or sustained by the Commonwealth as a result of or in connection with any sub-licence;
 - c. the Contractor shall require the Approved Subcontractors in the sub licence to not make any claim against the Commonwealth as a result of the Commonwealth exercising its rights and powers under this Licence or the Contract; and
 - d. the Contractor shall not charge the Approved Subcontractor a licence fee or any other amount for the grant of the sub licence.
- 13.3.4. If the Contract is assigned or novated by the Contractor this Licence will be deemed to be assigned or novated (as applicable) simultaneously with the Contract to the assignee or novatee of the Contract.

13.4. Commonwealth may Step-In

- 13.4.1. The Commonwealth may, either itself or by a third party, perform a Licence obligation which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by the Commonwealth in so performing such a Licence obligation will be a debt due from the Contractor to the Commonwealth and may at the Commonwealth's option be deducted by the Commonwealth from any moneys payable to the Contractor by the Commonwealth pursuant to the Contract.

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13.5. Non Reliance

13.5.1. The Contractor acknowledges that it did not in any way rely upon any information, representation, statement or documentation whether forming part of this Licence or not which has been made by or provided to the Contractor by:

- a. the Commonwealth;
 - b. anyone on behalf of the Commonwealth; or
 - c. any of the consultants engaged by the Commonwealth,
- for the purposes of entering into this Licence.

13.6. Reliance Upon Own Investigations

13.6.1. The Contractor:

- a. warrants that it enters into this Licence based on its own investigations, interpretations, deductions, information and determinations; and
- b. acknowledges that the Commonwealth has entered into the Licence relying upon the warranty in clause 13.6.1.a.

13.7. Entire Agreement

13.7.1. The Licence and the Contract constitute the entire agreement between the Parties and supersede all other communications, negotiations, arrangements and agreements, either oral or written, made or entered into prior to the date of the Licence between the Parties with respect to the subject matter of the Licence.

13.7.2. If there is any inconsistency between the terms of this Licence and the terms of the Contract, to the extent of the inconsistency, the terms of the Contract will prevail.

13.8. No Partnership or Joint Venture

13.8.1. Nothing in this Licence is to be treated as creating a partnership or joint venture between the Commonwealth and the Contractor.

13.9. Payments

13.9.1. Unless otherwise provided in this Licence all payments to be made by the Contractor under this Licence shall be paid within thirty (30) days of demand (except in the case of the Licence Fee when no demand is necessary and which shall be paid on the due date). Amounts payable under this Licence will be deemed to be payable under the Contract for the purpose of the terms of clause 21.6 of the Contract (Early and Late Payments).

13.10. Disputes

13.10.1. If any dispute or difference between the parties is not capable of being resolved in accordance with the terms of this Licence, the procedures set out in clause 49 of the Contract will apply to that dispute or difference.

13.11. Variation to the Licensed Areas

13.11.1. The parties agreed that if there is a change to the list of Licensed Areas the parties will amend Annexure A by:

- a. signing a form of Licensed Area Change Proposal Deed substantially in the form at Annexure C; and
- b. ensuring that the list at Annexure A is entirely deleted and replaced with the updated list of Licensed Areas.

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14. GLOSSARY OF TERMS

14.1.1. In this Licence, unless the contrary intention appears, the words in the first column of the table below have the meanings set out in the second column:

Approved Subcontractor	An Approved Subcontractor under the Contract.
Authority	The Commonwealth, or any federal, state or local government administrative body, department or agency or any body exercising regulatory powers or other powers under Laws in respect of each Base, services, heritage, environment, aviation or other activities, uses or transactions contemplated by this Licence and where the context requires means an Authority which has jurisdiction or powers in the context of the relevant clause of this Licence.
Base	Each Base listed in the Annexures to this Licence, within which the Licensed Areas are located.
Commencement Date	The date determined in accordance with Item 3 of the Schedule.
Common Areas	Those areas of the Base available for common use which the Commonwealth designates in writing from time to time including for example car parking areas, footpaths, access ways, entrances, stairs, toilets and loading docks and access through which is required in order to perform the relevant Permitted Use or approved Non Contract Works.
Contract	The Contract for (..INSERT DETAILS OF CONTRACT..) between the Commonwealth and the Contractor dated (..INSERT DATE OF CONTRACT..).
Contract Service Area	means those parts of the relevant Base, whether they are Licensed Areas or not, where the Contractor performs the Services under the Contract.
Contractor	The Contractor referred to in the Contract.
Contractor's Activities	Includes all things or tasks which are necessary for the Contractor to do to comply with its Licence obligations.
Contractor's Share	as determined by the Commonwealth from time to time having regard to the Contractor's use of the Licensed Areas at the relevant Base as a proportion of the total Operating Expenses for the relevant Base.
Defence Purposes	Such purposes deemed necessary by the Department of Defence as necessary for the carrying out of its functions and includes functions performed by the Australian Defence Forces.
DSRG	Defence Support and Reform Group or any other administrative group which replaces the Defence Support and Reform Group or is assigned its jurisdiction.

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Environment	Includes the things specified in paragraphs a to g below and the social, economic, aesthetic and cultural aspects of those things: <ol style="list-style-type: none"> land, air and water; soils and sub-soils; a layer of the atmosphere; organic or inorganic matter and living organisms; natural and physical resources; qualities and characteristics of locations and places; ecosystems and the parts making up ecosystems; and people and communities forming part of ecosystems.
Environmental Management Plan	(..INSERT DESCRIPTION OF THE PLAN APPLICABLE TO THE RELEVANT SERVICE PACKAGE..) or any plan relating to or affecting the Environment of the Licensed Area from time to time.
EPBC Act	The <i>Environmental Protection and Biodiversity and Conservation Act</i> 1999 (Cth) and the regulations made under that Act.
Expiry Date	The date determined in accordance with Item 4 of the Schedule.
Facilities Condition Appraisal	The non-technical Facilities Condition Appraisal as updated from time to time for the relevant Licensed Areas.
Financial Year	The period 1 July to 30 June.
Fixed Plant and Equipment	<p>The following items:</p> <ol style="list-style-type: none"> the cabling and connection points of any installed telecommunication systems; the lines, conduits, connections, taps, outlets, controls and regulatory and safety devices of any reticulated electricity, gas or water supply; any fire sprinkler systems; any heating and air-conditioning fittings; any installed warning or alarm systems; air hoses and compressor units; any other fixed plant and equipment; and any other fixed plant and equipment as detailed in Annexure B not being part of the GFE as defined in the Contract, <p>in the condition in which they were immediately prior to the Commencement Date and includes any replacement of these during the continuation of this Licence and any other equipment or items made available by the Commonwealth in the Licensed Areas for the Contractor's use and benefit.</p>
GST	The tax payable on taxable supplies under GST Legislation.
GST Legislation	The <i>A New Tax System (Goods and Services Tax) Act</i> 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
Government Furnished Services or GFS	means the services listed in Schedule 5 (if any) under the heading 'Government Furnished Services' in the Contract.

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Hazardous Disease	Includes any disease, bacteria, virus or foreign matter which may create a risk to the health or safety of a person.
Immediate Maintenance	Maintenance required to rectify, remedy or repair a fault, defect or damage in the Licensed Area (including for the avoidance of doubt the Licensed Fittings) which if not rectified, remedied or repaired: <ul style="list-style-type: none"> a. constitutes a significant health or safety hazard risk; b. prevents the Contractor from securing the Licensed Area; or c. may cause loss or damage to the Licensed Areas, the Contract Service Areas, the Common Areas, the relevant Base or loss or damage to other property.
Laws:	means a statute, regulation, rule, by-law, ordinance, proclamation, enactment, statutory instrument or delegated or subordinate legislation (whether federal, state, municipal or of any Authority) and the common law.
Licence	This Licence and all schedules, annexures and attachments to this Licence.
Licence Fee	The amount specified in item 6 of the Schedule.
Licence Fee Review Date	The dates (if any) in Item 7 of the Schedule.
Licensed Areas	The meaning given at Item 5 of the Schedule.
Licensed Fittings	The following items: <ul style="list-style-type: none"> a. all fixed internal partitioning and panelling; b. floor coverings, window blinds and awnings; c. any sinks and basins, d. any light, heating and air-conditioning fittings or associated equipment thereof including consumable items; e. any signage supporting the function or the intended function of the facility; <p>in the condition in which they were immediately prior to the Commencement Date and includes any replacement of these during the continuation of this Licence and any other equipment or items made available by the Commonwealth in the Licensed Area for the Contractor's use and benefit.</p> <p>=</p>
Market Date	Review The date (if any) in Item 8 of the Schedule.
month	Calendar month.
monthly	Calendar monthly.
Non Contract Work	Work not required to be performed under the Contract.
Non Contract Work Licence Fee	The fee payable by the Contractor under clause 3.1.
Operating Expenses	The total of all costs, charges, fees, expenses and other outgoings paid or payable, charged or chargeable, assessed or assessable upon or otherwise incurred by the Commonwealth in respect of the relevant Base or in managing, supervising, operating, cleaning, painting, maintaining and keeping secure the relevant Base and not recouped by the Commonwealth pursuant to any other provision of this Licence and include but are not limited to:

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- a. all Rates, Taxes, charges, assessments, duties, impositions and fees at any time or from time to time paid or payable to or charged or chargeable assessed or assessable by any Authority in respect of the Base (except where the Licensed Area has been separately assessed and payments have been made by the Contractor under clause 3.7 the Commonwealth may waive the right to require payment by the Contractor of amounts under this paragraph);
- b. all insurance premiums payable in respect of the insurances effected from time to time by the Commonwealth in respect of the relevant Base against such risks (referable to the relevant Base or to the Commonwealth in relation to the Commonwealth's ownership or interest in the relevant Base) as the Commonwealth may consider necessary or desirable;
- c. cleaning, lighting, maintaining and servicing the Common Areas of the relevant Base;
- d. caretaking, security and other expenses associated with facilities provided on or from the relevant Base;
- e. maintenance, operation, renovation, repair, upgrade and upkeep of the relevant Base (other than those parts of the Base to which there is no benefit derived from right of access or use by the public or the Contractor);
- f. the costs of all services or services supplied to the relevant Base (excluding any costs which are the responsibility of a particular tenant, licensee or occupier of the relevant Base) and excluding any costs for which the Tenant is liable under clause 3.8 (Utilities and Telecommunications Facilities) including the fees and/or premiums payable to specialist contractors and/or the wages paid to permanent staff employed and the cost of materials used by the Commonwealth in or about the maintenance and service of the Services or services;
- g. the cost of IT services to the relevant Base;
- h. maintenance, repair and testing of all fire fighting and protection equipment including sprinkler installations, hydrants, fire extinguishers, smoke detectors and fire fighting equipment installed by the Landlord throughout the relevant Base including charges imposed or claimed by any Authority in the supply maintenance servicing and monitoring of fire alarms;
- i. control and security (including any fees payable to the Commonwealth's security contractors, car parking attendants and traffic supervisors in connection with the base including but not limited to salaries, wages, superannuation, pension payments and accident compensation insurance premiums;
- j. costs the Commonwealth incurs in the management and supervision of the relevant Base and any arrangements for use, occupation or access to the relevant Base;
- k. complying with requirements from time to time made by any Authority in relation to the relevant Base (other than those parts of the Base to which there is no access or use by the public or the Contractor) but excluding any requirements which are the responsibility of a particular tenant, licensee or occupier of the Base; and
- l. any other expenditure reasonably and properly incurred by the Commonwealth in the operation and maintenance of the relevant

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	Base; but excluding
	<ul style="list-style-type: none"> m. costs of capital repairs (provided these are not needed due to an act or omission of the Contractor); n. any expenses which the Commonwealth is not permitted by law to recover from the Contractor; o. any amounts of GST pursuant to clause 3.10; p. any costs referred to in clause 3.11; and q. any other amounts or costs payable or to be borne by the Contractor under this Licence.
Permitted Use	in relation to a Licensed Area, means performing the Contractor's obligations under the Contract but excluding Non-Contract Work and specifically excludes all other uses.
Rates	All rates and levies imposed by an Authority on land or on owners or occupiers of land in relation to their ownership, use or occupation of that land.
Regional Director DSRG	The person holding or performing the office of Regional Director Defence Support and Reform Group or the person for the time being holding or performing the duties of that position or of any position that may replace it. The address for Regional Director Defence Support and Reform Group is in Item 14 of the Schedule or as otherwise notified to the Contractor.
Review Notice	A notice from the Commonwealth under clause 3.6 specifying the reviewed Licence Fee.
Shared Facilities	Those parts of the Licensed Areas utilised by the Commonwealth and other Commonwealth contractors during the term of this Licence in accordance with clause 2.4 and identified as Shared Facilities in the list of Licensed Areas at Annexure A .
Security Rules	<p>Those requirements established from time to time by the Commonwealth as being essential to the security and safety of the Base, or any part of the Base or persons on the Base and notified to the Contractor including, without limitation, in relation to:</p> <ul style="list-style-type: none"> a. emergency procedures; b. staff security clearances; c. security screening (personnel and goods); d. security identification cards; and e. the payment of fees as set by the Commonwealth from time to time to cover such security.
Sole Use Facilities	Those parts of the Licensed Areas utilised on a day to day basis by the Contractor only during the term of this Licence and identified as Sole Use Facilities in the list of Licensed Areas at Annexure A .
Taxes	All taxes (including stamp duty), costs, charges, expenses, duties, impositions, fees and penalties of whatever nature levied or imposed by an Authority in respect of instruments, transactions, activities, ownership, use or occupation.
Telecommunications Facilities	Defence internal and external telephone and facsimile facilities and internal data link facilities.

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Term	The period determined under clause 2.2 of this Licence.
Utilities	Electricity, gas, water supplies, sewerage and drainage services.
Working Day	In relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

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SCHEDULE

1. Licensor: Commonwealth of Australia represented by the Department of Defence, Defence Support and Reform Group.
2. Contractor: (...INSERT NAME AND ADDRESS...).
3. Commencement Date: The date on which the Licence is signed by the Parties, or if signed on separate days, the date of the last signature.
4. Expiry Date: Subject to clause 11, the date on which the Contract comes to an end whether by lapsing, effluxion of time or termination or otherwise ending pursuant to the terms of the Contract or this Licence or the exercise by a party of its rights under the Contract or this Licence.
5. Licensed Area: Those parts of the relevant Base identified in the table set out in Annexure A to this Licence, being the whole or part of the building/s on the relevant Base including those areas classified as Sole Use Facilities or Shared Facilities and the Licensed Fittings.
6. Licence Fee: \$1 (excluding GST) per annum, as reviewed from time to time in accordance with the provisions of this Licence.
7. Licence Fee Review Dates: Not applicable.
8. Market Review Date: Not applicable.
9. Licence Fee Review by the Commonwealth: Not applicable.
10. Right of renewal/extension: Clause 2.2. Refer to Contract clause 5.2.
11. Not Used: Not Used.
12. Airfield Rights: Not used.
13. Contractor's Use of sewerage system: Not used.
14. Address of Contract Representative: As specified in accordance with clause 54 of the Contract.
15. Date for payment: Not applicable.

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EXECUTED as a deed on the date on page 1

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA:)
)
)
) (Signature of Delegate)
)

.....
(Name of Witness in Full) (Name of Delegate)

.....
(Signature of Witness) (Position of Delegate)

THE COMMON SEAL of)
.....)
ABN)
was affixed in accordance with its)
Constitution in the presence of:)

.....
(Name of Secretary/Director) (Name of Director)

.....
(Signature of Secretary/Director) (Signature of Director)

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ANNEXURE A

[insert the relevant lists for the Service Package – the list of Licensed Areas must identify the Sole Use Facilities and the Shared Facilities and the relevant Contractor Service Areas.]

ANNEX G TO SCHEDULE 6

ANNEXURE B

Attach List of Licensed Fittings (equipment, chattels etc)

ANNEX G TO SCHEDULE 6

ANNEXURE C

LICENSED AREA CHANGE PROPOSAL DEED

(CONTRACT NUMBER: [...INSERT CONTRACT NUMBER...])

This Deed is made on [...INSERT DATE...])

Between

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

and

[...INSERT CONTRACTOR...ACN/ARBN AND ABN IF APPLICABLE..] having its registered office at [...INSERT DETAILS...]) ('the Contractor')

RECITALS:

- A. The Commonwealth has entered into a contract [...INSERT CONTRACT NUMBER...]) dated [...INSERT DATE...]) ('the **Contract**') for the provision of [...INSERT BRIEF DESCRIPTION OF THE SERVICES...]) ('the **Services**'). In accordance with the Contract, the Commonwealth also granted the Contractor a licence to certain Licensed Areas at certain Bases in accordance with a Government Furnished Facilities Licence between the Commonwealth and the Contractor dated [...INSERT DATE...]) ('the **Licence**').
- B. The Commonwealth or the Contractor propose to update the list of Licensed Areas under the Licence.

AGREED TERMS:

The parties agree that the content at Annexure A of the Licence is deleted and replaced with the content at Annexure A to this Licensed Area Change Proposal on and from:

- (a) the date that this Licensed Area Change Proposal Deed is signed by the last party to do so; or
- (b) if the changes arise as a result of a change to the Contract under a CCP, the date of CCP **[insert relevant CCP number]**, being **[insert date of CCP]**.

SIGNED AND DELIVERED AS A DEED

SIGNED ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA

By:

.....
(signature)	(print name and position of authorised signatory)	(date)

In the presence of:

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

ANNEX G TO SCHEDULE 6

SIGNED ON BEHALF OF THE CONTRACTOR:

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

In the presence of:

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