

CUSTOMER CONTRACT REQUIREMENTS**Joint Project (JP) 9102 Australian Defense Satellite Communications (SATCOM) System (ADSS)****CUSTOMER CONTRACT JSD/RFT/12477/1**

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for Commercial Off the Shelf Items (COTS) or Military Off the Shelf Items (MOTS), only clause 5, Defect Notification and Rectification and clause 9, Policy Requirements, apply to the Contract.

1. Language and Measurement

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

2. Authorizations

- a. Contractor shall, and shall ensure that its Subcontractors:
 - i. obtain and maintain in full force all Authorizations (including Export Approvals) required to meet the requirements of the Subcontract;
 - ii. provide a copy of any Authorizations to Commonwealth within five (5) Working Days of request by the Buyer; and
 - iii. ensure that all work under the Contract is performed and the Services are provided in accordance with all Authorizations.
- b. Nothing in this clause 2 shall release Seller from responsibility to take all reasonable steps to secure any export license or other approval required for the provision of the Supplies.

3. Customer Property

Contractor shall treat all customer property, which includes Commonwealth Funded Property, Commonwealth Property, Defence Property and Commonwealth Provided Property, as if it were Buyer's property in accordance with the "Buyer's Property" article of the General Provisions.

4. Technical Data, Software, and Contract Material

- a. Ownership of Intellectual Property
 - i. Nothing in the Contract affects the ownership of IP, except as expressly provided for in this clause 4.
 - ii. The parties agree that all IP created under the Contract or a Subcontract in respect of:
 1. TD or Software;
 2. Commonwealth TD or Commonwealth Software;
 3. Contract Material; and
 4. GFM or a Product Being Supported,that is delivered or required to be delivered to the Commonwealth or any other person under the Contract is assigned to the Commonwealth immediately upon its creation.
- b. Highly Sensitive TD and Highly Sensitive Software
 - i. This clause 4.b. applies to all Highly Sensitive TD or Highly Sensitive Software delivered or required to be delivered to the Commonwealth or any other person under this Contract.
 - ii. The Contractor grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all TD and all Software to which this clause 4.b applies, to:
 1. Use the TD or Software for any Defence Purpose; and
 2. grant a Sublicence in accordance with clause 4.i. to Use the TD or Software, and to further sublicense the TD or Software, for any Defence Purpose.

Subject to the restrictions specified in Annex A to the TDSR Schedule.

- c. TD and Software
 - i. This clause 4.c. applies to all TD and Software delivered or required to be delivered to the Commonwealth or any other person under the Contract, other than:
 - 1. TD or Software assigned by the Commonwealth;
 - 2. Highly Sensitive TD or Highly Sensitive Software to which clause 4.b. applies;
 - 3. Commercial TD or Commercial Software to which clause 4.d. applies;
 - 4. Commonwealth TD or Commonwealth Software to the extent that clause 4.e. applies to that TD or Software; and
 - 5. TD or Software provided as, or as a part of, GFM or Products Being Supported where clause 4.f. applies to that GFM or those Products Being Supported.
- d. Commercial TD and Commercial Software
 - i. This clause 4.d. applies to all Commercial TD and Commercial Software delivered or required to be delivered to the Commonwealth or any other person under the Contract.
 - ii. The Contractor shall ensure that the Commonwealth is granted a Licence in respect of all Commercial TD and all Commercial Software to which this clause 4.d. applies to:
 - 1. Use the TD or Software for any Defence Purpose; and
 - 2. Sublicence any person to Use the TD or Software in accordance with clause 4.i., including a right to further sublicense the Use of the TD or Software, for any Defence Purpose.
 - iii. The Contractor acknowledges and agrees that it shall only use Commercial TD or Commercial Software (or both) in the performance of the Contract (including by incorporating Commercial TD or Commercial Software (or both) in the Services or Deliverables) if:
 - 1. the use of the Commercial TD or Commercial Software (or both) would not limit or affect the Commonwealth's ownership of IP pursuant to clause 4.a.ii. or the Commonwealth's Licence to TD or Software under clause 4.d.ii.; or
 - 2. prior to the use of the Commercial TD or Commercial Software (or both), the Contractor:
 - a. has obtained the Commonwealth Representative's prior approval of:
 - i. the Contractor's use of the Commercial TD or Commercial Software (or both); and
 - ii. all limitations and other restrictions that the use of the Commercial TD or Commercial Software will or might have on the Commonwealth's ownership of IP pursuant to clause 4.a.ii. or the Commonwealth's Licence to TD or Software under clause 4.d.ii.; and
 - b. has obtained the Commonwealth's approval of a CCP to the Contract to list all limitations and other restrictions referred to in Annex C to the TDSR Schedule.
 - iv. The Contractor shall ensure that any licence granted to the Commonwealth in respect of Commercial TD and Commercial Software under this clause 4.d. does not require the Commonwealth to pay a Royalty or other fee (not otherwise included in the Contract Price) unless the Commonwealth has agreed in writing to the payment.
- e. Commonwealth TD and Commonwealth Software
 - i. This clause 4.e. applies to all Commonwealth TD and Commonwealth Software delivered or required to be delivered to the Commonwealth or any other person under this Contract, to the extent that the IP in that TD or Software is assigned to the Commonwealth under clause 4.a.ii.
 - ii. The Commonwealth grants to the Contractor a non-exclusive, Royalty-free licence in respect of the Commonwealth TD and Commonwealth Software to the extent that this clause 4.e. applies to:
 - 1. Use the TD and Software for the purpose of enabling the Contractor to perform its obligations under the Contract;
 - 2. grant a sublicense to a Subcontractor to Use the TD and Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
 - 3. grant a sublicense to a person for a purpose referred to in clause 8.a.iii.,

subject to any restrictions specified in Annex D to the TDSR Schedule or as otherwise notified by the Commonwealth in writing to the Contractor.

- iii. The Contractor shall ensure that any IP in Commonwealth TD or Commonwealth Software not assigned to the Commonwealth under clause 4.a.ii. is specified in Annex D to the TDSR Schedule or the relevant S&Q Order and capable of being clearly distinguished from the IP assigned to the Commonwealth.
- f. GFM and Products Being Supported
 - i. This clause 4.f. applies to all TD or Software that is:
 - 1. provided as, or as a part of, GFM or the Products Being Supported; or
 - 2. created under the Contract or a Subcontract in respect of GFM or the Products Being Supported.
 - ii. The Commonwealth grants to the Contractor (or shall ensure the Contractor is granted), a non-exclusive, Royalty-free licence in respect of the TD or Software to the extent that this clause 5.6 applies to:
 - 1. Use the TD or Software for the purpose of enabling the Contractor to perform its obligations under the Contract;
 - 2. grant a sublicense to a Subcontractor to Use the TD or Software for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
 - 3. grant a sublicense to a person for a purpose referred to in clause 8.a.iii., subject to any restrictions specified in Attachment E or the GFM section of an S&Q Order (for GFM), Attachment S (for Products Being Supported) or as otherwise notified by the Commonwealth.
 - iii. Without limiting any restrictions specified in Attachment E or the GFM section of an S&Q Order (for GFM), Attachment S (for Products Being Supported) or as notified by the Commonwealth under clause 4.f.ii., the Contractor's right to grant a sublicense under clause 4.f.ii. is subject to the following conditions:
 - 1. the sublicense shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to the Contractor;
 - 2. the rights granted under the sublicense shall be limited to the rights that are reasonably necessary to enable the sublicensee to Use the TD or Software to efficiently perform its obligations, functions or duties to the Contractor;
 - 3. the rights granted under the sublicense shall expire when no longer required for the purposes referred to in clause 4.f.ii.; and
 - 4. any right of the sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 4.f.iii.
 - iv. The licence under clause 4.f.ii. (and any sublicense granted under clause 4.f.ii.) expires upon the expiry or termination (whichever is the earlier) of the Contract or the relevant Subcontract.
- g. Contract Material
 - i. The Commonwealth grants to the Contractor a non-exclusive, Royalty-free licence in respect of Contract Material to the extent that this clause 4.g. applies to:
 - 1. Use the Contract Material for the purpose of enabling the Contractor to perform its obligations under the Contract or the Contract (Acquisition);
 - 2. grant a sublicense to a Subcontractor to Use the Contract Material for the purpose of enabling the Subcontractor to perform its obligations under the Subcontract; and
 - 3. grant a sublicense to a person for a purpose referred to in clause 8.a.iii., subject to any restrictions as notified to the Contractor by the Commonwealth.
- h. Contractor Sublicences
 - i. Without limiting any restrictions specified in Annex D to the TDSR Schedule, Attachment E or notified by the Commonwealth under clauses 4.e., 4.f., or 4.g., the Contractor's right to grant a sublicense under clauses 4.e.ii., 4.f.ii., and 4.g. is subject to the following conditions:

1. the sublicense shall include (as a minimum) the same restrictions on Use and sublicensing as are applicable to the Contractor;
 2. the rights granted under the sublicense shall be limited to the rights that are reasonably necessary to enable the sublicensee to Use the TD, Software or Contract Material to efficiently perform its obligations, functions or duties to the Contractor;
 3. the rights granted under the sublicense shall expire when no longer required for the purposes referred to in clauses 4.e. and 4.f.; and
 4. any right of the sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 4.h.
- i. Commonwealth Sublicences
- i. The Commonwealth's right to grant a Sublicence to a person ('Sublicensee') is subject to the following conditions:
 1. the rights granted under the Sublicence shall be limited to the rights that are reasonably necessary to enable the Sublicensee to Use the TD, Software and Contract Material (as applicable) to efficiently perform its obligations, functions or duties to the Commonwealth or a Commonwealth Contractor;
 2. the rights granted under the Sublicence shall expire when no longer required for the purposes referred to in clause 4.i.1.; and
 3. any right of the Sublicensee to grant a further sublicense shall be subject to the same conditions as set out in this clause 4.i.
 - j. No Commercialisation
 - i. A Licence or Sublicence granted in accordance with this clause 4 does not permit the Commonwealth or its sublicensee to Commercialise any IP in the TD, Software or Contract Material.
 - ii. For the avoidance of doubt, clause 4.j. does not prevent the Commonwealth from granting a sublicense in accordance with the rights granted in this clause 4 to a person for the purpose of the person providing goods or services to the Commonwealth for a Defence Purpose.
- k. Failure to Obtain IP Rights
- i. The Contractor shall promptly notify the Commonwealth if the Contractor considers it will be unable to comply with any of its obligations under this clause 4 in respect of IP (an "IP Issue"), including if the Contractor is not able to ensure that the Commonwealth is:
 1. assigned any IP as required under clause 4.a.ii.;
 2. granted rights to TD, Software or Contract Material as required by this clause 4; or
 3. provided with an Approved Subcontractor Deed as required under clause 8.b.xi.
 - ii. The Contractor shall ensure that a notice under clause 4.k.i. includes details of:
 1. the relevant IP Issue, including the steps taken by the Contractor to ensure compliance with this clause 4 or to mitigate the effects of the IP Issue;
 2. the Deliverable (and related TD, Software or Contract Material) to which the IP Issue relates;
 3. the rights that the Contractor is able to ensure are granted to the Commonwealth in respect of the relevant TD, Software or Contract Material; and
 4. options available to remedy, or mitigate the effects of, the IP Issue.
 - iii. If the Contractor gives a notice of an IP Issue, or the Commonwealth considers that an IP Issue has occurred, the Commonwealth may by notice to the Contractor, without limiting any of its other rights under the Contract, do any one or more of the following:
 1. require that the Contractor:
 - a. use alternative goods or services, or obtain the goods or services from another supplier, to ensure that the Contractor complies with the requirements of this clause 4; or
 - b. modify the Deliverable or Services to the extent necessary to ensure that the Contractor complies with the requirements of this clause 4;

2. agree to waive a requirement of this clause 4 on such conditions as the Commonwealth may determine;
 3. reduce the scope of the Contract to exclude the Deliverable or Services to which the IP Issue relates;
 4. terminate the Contract; or
 5. require the Contractor to submit a CCP to amend the Contract to implement any of the actions required under this clause 4.k.iii. or any other option to remedy the IP Issue or mitigate the effects of the IP Issue.
- iv. The Contractor shall comply with a notice issued by the Commonwealth under clause 4.k.iii.
 - v. The Contractor acknowledges and agrees that a notice issued by the Commonwealth under clause 4.k.iii. is not an event or circumstance beyond the reasonable control of the Contractor.
- I. TDSR Schedule
- i. Subject to clauses 4.l.ii. and 4.l.iii., the Contractor shall ensure (including by submitting a CCP) the TDSR Schedule is up to date and contains an accurate and complete description of all restrictions and limitations applicable to the Commonwealth's rights in respect of Highly Sensitive TD and Highly Sensitive Software, or Commercial TD and Commercial Software, delivered, or required to be delivered, under the Contract, including an S&Q Order, Approved by the Commonwealth in accordance with clauses 4.b. and 4.d.
 - ii. The parties agree that:
 1. during the period from the Effective Date until the achievement of the Final Materiel Release Milestone under the Contract (Acquisition), the Contractor is required to produce and maintain a separate TDSR Schedule under each of the Contract and the Contract (Acquisition);
 2. during the period from the Effective Date until the achievement of the Final Materiel Release Milestone, it would be more efficient for the Contractor to produce a single TDSR Schedule which meets the requirements of the Contract and the Contract (Acquisition);
 3. from the Effective Date until the achievement of the Final Materiel Release Milestone under the Contract (Acquisition), the Commonwealth will treat the Contractor's obligations to create and maintain a TDSR Schedule under the Contract as having been discharged, provided that the Contractor:
 - a. includes all information required to be contained in the TDSR Schedule under the Contract in Attachment G to the Contract (Acquisition);
 - b. submits a CCP to amend Attachment G to the Contract (Acquisition) in all circumstances where it would otherwise be required to update the TDSR Schedule under the Contract in accordance with the SOW and this clause 4;
 - c. ensures that the information and updates referred to in clauses 4.l.a. and 4.l.b. are consistent, and comply, with the requirements of the Contract;
 - d. ensures that Attachment G to the Contract (Acquisition) clearly delineates between TD and Software relevant to the performance of the Contract and the Contract (Acquisition); and
 - e. otherwise complies with the directions of the Commonwealth Representative in relation to the content, and management, of the TDSR Schedule and Attachment G to the Contract (Acquisition).
 - iii. The Commonwealth may, at any time by written notice to the Contractor, require the Contractor to recommence maintaining and updating the TDSR Schedule under the Contract in accordance with the SOW and this clause 4, in addition to, and separate from, its obligations under the Contract (Acquisition).
- m. TD and Software required to be delivered

- i. The Contractor shall deliver all TD and Software required to be delivered under the Contract to the recipients at the times and locations, and in the manner, specified in the Contract or as otherwise required to enable the provision of the Services.
 - ii. Without limiting the Contractor's obligation under clause 4.m.i. (and subject to clause 4.m.iv.), if the Commonwealth is not specified as a recipient of any item of TD or Software required to be delivered under the Contract, the Commonwealth may by notice to the Contractor require the delivery of the item to the Commonwealth.
 - iii. The Contractor shall comply with a notice given under clause 4.m.ii.
 - iv. If the time, location or manner of delivery of any item of TD or Software required to be delivered under the Contract is not specified in the Contract, the Contractor shall deliver the relevant item in accordance with a notice given by the Commonwealth.
 - v. If the Contract is terminated, the Contractor shall, within the period set out in the notice of termination (which shall be a reasonable period), deliver to the Commonwealth all TD and Software required to be delivered under the Contract, each in its then current state of development.
 - vi. An obligation under this clause 4.m. or any other provision of the Contract that requires the Contractor to deliver TD or Software (other than under clause 4.m.v.), includes an obligation to create, develop or acquire the TD or Software to enable the TD or Software to be delivered at the times and in the manner required under the Contract.
 - vii. The Approved TDL does not operate to restrict the rights of the Commonwealth in respect of IP in any TD under this clause 4 or otherwise under the Contract.
 - viii. For the purposes of this clause 4, an item of TD, Software or Contract Material is not taken to have been delivered under the Contract if, at the time it is provided:
 1. the Contractor identifies that the item is provided for the information of the Commonwealth only; and
 2. the item is not otherwise required to be delivered under the Contract.
- n. Electronic Delivery of TD, Software and Contract Material
- i. If an item of TD, Software or Contract Material is permitted by the Contract to be delivered in electronic form to the Commonwealth, the item is deemed to have been delivered:
 1. if the item is to be delivered by access to an information system of the Contractor – when all of the following requirements are met:
 - a. the item is present in the information system;
 - b. the Commonwealth has been notified that the item is present in the information system; and
 - c. the item is accessible for use by the Commonwealth in accordance with the SOW; or
 2. if the item is to be delivered by an electronic communication, or by transfer into an information system nominated by the Commonwealth, when all of the following requirements are met:
 - a. the electronic communication or transferred item enters the information system, unless the Contractor receives notification within one Working Day that the electronic communication or transfer has not been successful; and
 - b. the Commonwealth has been notified that the item has been successfully sent or transferred to the information system.
- o. Markings
- i. Where markings are used by the Contractor or a Subcontractor in relation to TD, Software or Contract Material, the Contractor:
 1. shall ensure that those markings accurately reflect the rights and obligations of the Commonwealth, the Contractor or any other person;
 2. acknowledges that the markings are not determinative as to the rights and obligations of the parties; and

3. without limiting clause 4.o.i.1. shall, on request by the Commonwealth and at no cost to the Commonwealth, amend markings where the Commonwealth considers that they are inconsistent with the requirements of the Contract.
- p. TD and Software Warranties
- i. The Contractor warrants and shall ensure that:
 1. the rights granted to the Commonwealth in accordance with this clause 4 (including in relation to Commercial TD and Commercial Software), will not prevent the Products Being Supported from being used and supported by or on behalf of the Commonwealth as contemplated under the Contract and the Contract (Acquisition), and otherwise for any Defence Purpose;
 2. the Approved TDL lists all of the TD used or required to be delivered under the Contract;
 3. all of the TD and Software delivered under clause 4.m. is complete and accurate;
 4. all Software delivered or required to be delivered to the Commonwealth under the Contract or a Subcontract is free from Malware, at the time of delivery to the Commonwealth; and
 5. no Malware will be installed on the Products Being Supported or any other Commonwealth system as a result of an act or omission of any of the Contractor Personnel.
- q. Intellectual Property Warranties
- i. The Contractor warrants and shall ensure that, in respect of any IP assigned or licensed to the Commonwealth under or in connection with this Contract, at all times:
 1. the relevant assignor or licensor (as applicable) has the right, title or authority to assign or license, and has been made aware of, the rights granted in respect of IP under this clause 4 or under an Approved Subcontractor Deed;
 2. ownership of the IP referred to under this clause 4 has vested in the Commonwealth (or its nominee) immediately upon its creation; and
 3. the Contractor shall notify the Commonwealth if the Contractor becomes aware of any challenge, claim or proceeding referred to in clause 4.q.iii. arising in respect of any IP after the relevant TD, Software or Contract Material is delivered to the Commonwealth.
 - ii. If the Commonwealth, Commonwealth Personnel or a sublicensee of the Commonwealth infringes the IP or any Moral Rights of any third party as a consequence of:
 1. an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in the Contract (including in this clause 4); or
 2. a failure by the Contractor to grant (or ensure the grant) of a licence or assign (or ensure the assignment) of IP rights under or referred to in the Contract (including in this clause 4),the Contractor shall, without limiting the Contractor's obligations under this clause 4, use its best endeavours to:
 3. modify the item in order to avoid continuing infringement and so that the Deliverable meet the requirements of the Contract with the modified item;
 4. procure at its own cost the rights or additional rights necessary to ensure that the Commonwealth, Commonwealth Personnel and sublicensees are entitled to exercise the rights under this clause 4 or an Approved Subcontractor Deed in respect of the item; or
 5. remove the item from the Deliverable and modify the Deliverable or the Services to the extent necessary to ensure that the Deliverable or Services meet the requirements of the Contract without the item.
 - iii. The Contractor warrants and shall ensure that, in respect of any IP in any TD, Software or Contract Material delivered or required to be delivered under the Contract, and as at the time of delivery to the Commonwealth of the relevant TD, Software or Contract Material and after making diligent inquiries:

1. the IP is licenced to, or owned by, the Commonwealth as required by this clause 4;
 2. the Contractor has no notice of any challenge to the validity or enforceability of any of the IP and has no knowledge of any actual or threatened claim or proceeding in relation to any of the IP;
 3. none of the Contractor, any Approved Subcontractor or any Approved Subcontractor (Acquisition) is engaged in litigation, arbitration or other proceedings in relation to any of the IP; and
 4. there are no proceedings threatened by or against the Contractor, any Approved Subcontractor or any Approved Subcontractor (Acquisition) in relation to any of the IP, and there is nothing that is likely to give rise to any such proceedings.
- iv. The warranty under clause 4.q.i. and the obligations under clause 4.q.ii. do not apply to the extent that the infringement arises from a failure by the Commonwealth, Commonwealth Personnel or a sublicensee of the Commonwealth to comply with any limitations specified in this clause 4 or otherwise agreed to in writing by the Commonwealth Representative in accordance with this clause 4.
- r. Patents, Registrable Designs and Circuit Layouts
- i. Without limiting the Commonwealth's rights to ownership of TD, Software and Contract Material under this clause 4, the Contractor warrants and shall ensure that a licence is granted or obtained under the Contract for the Commonwealth to exercise any Patent, Registrable Design or Circuit Layout that is included in, or related to, a Deliverable and necessary to use the Deliverable for the purposes provided for under the Contract.
- s. Export Approvals
- i. Nothing in this clause 4 affects the obligations of either party to comply with the terms of any Export Approval that is binding on it.
- t. Existing IP Licenses
- i. The licences, rights and obligations under this clause 4 are in addition to, and do not:
 1. affect, any other licences, rights or obligations relating to IP under any other contracts between the parties entered into before the date of this Contract; or
 2. limit the IP rights granted or assigned to the Commonwealth under the Contract (Acquisition),unless expressly stated otherwise for the purposes of this clause 4.

5. Defect Notification and Rectification

- a. Notification of Defects
- i. If during the Defect Notification Period specified in the Details Schedule, the Contractor becomes aware of any Defect in the Services which adversely affects, or is likely to adversely affect:
 1. the safety of a Product or a Deliverable or the safety of persons, the Contractor shall notify the Commonwealth Representative of the Defect within one Working Day; or
 2. the operation or capability of a Product or a Deliverable, the Contractor shall notify the Commonwealth Representative of the Defect within five Working Days.
 - ii. The Contractor shall, within 30 days after a notification under clause 5.a.i., provide the Commonwealth with a report, including supporting evidence on:
 1. the nature of the Defect;
 2. its cause;
 3. its effects; and
 4. proposed rectification action.
 - iii. For the purposes of clause 5.a.ii.2., the Contractor will be taken to have caused the Defect unless the Contractor can demonstrate, to the satisfaction of the Commonwealth Representative, that the Defect arose from an act or omission of:
 1. the Commonwealth;
 2. an Unrelated Party under another contract; or

3. the Contractor under another contract other than the Contract (Acquisition).
- b. Defect Rectification and Assistance Obligations
- i. If the Commonwealth Representative notifies the Contractor of a Defect in the Services, or the Contractor notifies the Commonwealth under clause 5.a. (or otherwise), during the relevant Defect Rectification Period (specified in the Details Schedule), the Contractor shall, within 30 Working Days after the notification, or a longer period agreed in writing by the Commonwealth, by repair, replacement or modification:
 1. rectify the Defect and Defects of a similar nature; and
 2. rectify any adverse effect of the Defect or the rectification on other Products or Deliverables,whether or not the Defect arises out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default.
 - ii. The Contractor shall be entitled to claim for an additional amount (calculated in accordance with Attachment B as an S&Q Service) for any rectification work performed under clause 5.b.i. but only to the extent that the Defect arose out of or as a consequence of any of the following:
 1. a Commonwealth Default;
 2. a Commonwealth (Acquisition) Default;
 3. an act or omission of a Commonwealth Contractor under a previous acquisition, support or other contract with the Commonwealth, provided that the requirements at clause 5.a.ii. have been met;
 4. the Commonwealth wilfully damaging a Product Being Supported or Deliverable; or
 5. damage to a Product Being Supported or Deliverable caused by any of the following:
 - a. the Product Being Supported or Deliverable being stored, installed, configured, used, maintained or modified by the Commonwealth or a Commonwealth Contractor in a way that deviates from any specifications, instructions or manuals provided by the Contractor, unless such deviation is necessary to enable the Services to be fit for purpose;
 - b. an Excepted Risk occurring after the Product Being Supported or Deliverable were delivered to the Commonwealth; and
 - c. a breach of a general law duty or an applicable law by an Unrelated Party, except to the extent that the Contractor is liable for such damage under clause 7.h.ii. or the Contractor is liable for such damage under the Contract (Acquisition).
 - iii. To the extent that any identified Defect in the Services arose as a consequence of work performed or deliverables provided under a contract referred to in 5.b.ii.3., the Contractor shall assist the Commonwealth in the gathering of evidence to support a claim under that other contract.
 - iv. The Contractor's obligations under clause 5.b.i. do not require the Contractor to rectify a Defect in GFM provided under this Contract except to the extent that the Defect resulted from a Contractor Default or a Contractor (Acquisition) Default.
 - v. Subject to clauses 5.b.ii. and 5.b.ix., the Contractor shall bear all costs of, and incidental to, rectifying Defects as required by the Contract, including the costs of any removal, disassembly, packing, freight relevant testing, re-assembly and reinstallation, except to the extent that the Commonwealth Representative otherwise reasonably agrees.
 - vi. If the Contractor fails to rectify a Defect within the period specified in clause 5.b.i., the Commonwealth may rectify the Defect itself or by a third party. If the Commonwealth engages a third party to rectify the Defect, the Contractor's warranties and obligations will be reduced to the extent of the warranty given by the third party in relation to the rectification work. The Commonwealth may elect to recover from the Contractor the amount of the Commonwealth's costs of rectifying the Defect including any amount incurred under the Contract (Acquisition) in rectifying the Defect. No amount shall be owing to the Commonwealth under this clause 5.b.vi. until the Commonwealth elects to recover the amount.

- vii. If a Defect (other than a Latent Defect) in any Services is rectified in accordance with clause 5.b.i., the Defect Rectification Period for those Services shall expire on the later of:
 - 1. the end of the original Defect Rectification Period; or
 - 2. the date that is half the original Defect Rectification Period after the rectified Products or Deliverables are returned to the Commonwealth.
 - viii. If the Contractor has performed rectification work on Products as required by this clause 5.b. and the Commonwealth is not satisfied that the Defect has been rectified, the Contractor shall perform any additional tests that are required by the Commonwealth to determine whether the Defect has been rectified.
 - ix. If tests conducted under clause 5.b.viii. show that the Defect has been rectified, the cost of the tests shall be borne by the Commonwealth. If the tests show that the Defect has not been rectified:
 - 1. the Contractor shall rectify the Defect as soon as practicable; and
 - 2. the costs of the rectification work and the tests shall be borne by the Contractor.
 - x. If the Commonwealth considers that a Defect in the Services may have arisen out of the performance of the Contract (Acquisition) (including a Defect in the Supplies as delivered under the Contract (Acquisition)), the Commonwealth may require:
 - 1. the Contractor to rectify the Defect under this clause 5, and the Contractor shall rectify the Defect in accordance with this clause 5; or
 - 2. the Contractor to rectify the Defect under clause 5 of the Contract (Acquisition), and the Contractor shall rectify the Defect in accordance with clause 5 of the Contract (Acquisition),and the Contractor shall not be entitled to any additional amount in respect of the rectification of such Defects except to the extent that clause 5.b.ii. applies.
 - xi. The exercise by the Commonwealth of its rights, or any action required of the Contractor, under this clause 5.b. shall not entitle the Contractor to claim for relief or relieve the Contractor from performing any of its obligations under the Contract or the Contract (Acquisition).
- c. Manufacturer and Other Warranties
- i. The Contractor shall ensure that the Commonwealth obtains the benefit of any manufacturer, supplier or other third party warranty applicable to the Services (including after the expiry of the Defect Rectification Period for the relevant Services), including by taking all reasonable action to enforce such a warranty, until the expiry of the warranty or clause 5.c.ii. applies.
 - ii. Following the termination or expiry of the Contract, the Contractor shall:
 - 1. assign the benefit of any remaining third party warranties for those Services to the Commonwealth; or
 - 2. if the Contractor is not permitted to assign those third party warranties, otherwise ensure that the Commonwealth obtains the benefit of any remaining third party warranties for those Services, including by taking all reasonable action to enforce such a third party warranty until the expiry of the warranty.

6. Insurance

This article applies in lieu of the article titled "Indemnification, Insurance, and Protection of Property" found in The Boeing Company General Provisions (GP) applicable to and referenced in this Contract.

a. Insurance

- i. The Contractor shall effect and maintain the insurances (which, for the purposes of this clause 6 will be satisfied where the Contractor causes such insurances to be effected and maintained or where the Contractor is insured under such insurances) for the times and in the manner specified in this clause 6, without requiring insurance to be effected to the extent that a particular risk:
 - 1. is insured against under other insurance effected in compliance with this clause 6; or

2. has been expressly retained by the Commonwealth, except to the extent that such retention by the Commonwealth is dependent on the Contractor being liable only to the extent that it is insured for the liability.

For the avoidance of doubt, the terms of this clause 6 do not alter the allocation of risk or liability between the parties as provided for under any other clause of the Contract.

- ii. The Contractor shall use its reasonable endeavours to ensure that Subcontractors and their employees, officers and agents are insured as required by this clause 6, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Contractor.
- b. Workers Compensation
- i. The Contractor shall effect and maintain workers compensation insurance or registrations as required by law, in respect of the Contractor's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract. Where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance or registrations shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Contractor. However, the requirements of this clause 6.b.i. do not apply to the extent and for such time as the Contractor is a licensed self-insurer or exempt employer in the relevant jurisdiction.
 - ii. Where workers engaged by the Contractor will be performing work outside of Australia:
 1. Workers compensation insurance or registrations as required by law, in respect of the Contractor's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Contract. Where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance or registrations shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Contractor. However, the requirements of this clause 6.b.ii.1. do not apply to the extent and for such time as the Contractor is a licensed self-insurer or exempt employer in the relevant jurisdiction; and
 2. in each jurisdiction where common law claims can be brought outside of the statutory workers compensation or accident compensation scheme referred to in clause 6.b.ii.1., employer's liability insurance with a limit of indemnity of not less than the amount customarily effected by prudent insureds for this risk in each relevant jurisdiction, covering any work-related injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Contractor in the work under the Contract (or their dependants). Such insurance shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Contractor.
- c. Public and Products Liability
- i. The Contractor shall effect and maintain public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than:
 1. the amount specified in the Details Schedule each and every occurrence for public liability claims; and
 2. the amount specified in the Details Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period for products liability claims,which covers:
 3. the Contractor, its employees, officers and agents (including for liability to each other); and
 4. the Commonwealth and the Commonwealth Representative for their vicarious liability for the acts or omissions of the Contractor, its employees, officers and agents,for their respective liabilities for any:
 5. loss of, damage to, or loss of use of, any tangible property (including GFE and any other Commonwealth Property in the care, custody or control of the Contractor or its Subcontractors for a sublimit of not less than the amount specified in the Details

Schedule each occurrence and in the aggregate for all occurrences in any 12 month policy period, unless that property is insured against the risks of loss and damage under the insurance referred to in clause 6.e.); and

6. the bodily injury, disease, illness or death of any person, caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Contract, including in respect of the manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product. This insurance shall have a worldwide territorial limit.

d. Professional Indemnity

i. The Contractor shall effect and maintain professional indemnity insurance with a limit of indemnity of not less than the amount specified in the Details Schedule per claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the Contractor at general law arising from a negligent breach of duty owed in a professional capacity, by reason of any act or omission of the Contractor or Contractor Personnel. Such insurance shall:

1. have a definition of professional services broad enough to include all professional services, activities and duties to be provided or performed by the Contractor and Contractor Personnel under the Contract;
2. extend to cover claims related to software and IT risks;
3. extend to cover claims for unintentional breaches of IP rights;
4. extend to cover claims for unintentional breaches of trade practices laws;
5. have a retroactive date of no later than the earlier of the commencement of the work under the Contract or any preparatory work by the Contractor and Contractor Personnel; and
6. have worldwide territorial and jurisdictional limits.

e. Property

i. The Contractor shall effect and maintain all risks property insurance covering:

1. the tangible Services, unless and to the extent that the liability of the Contractor for the loss or damage of that property is insured under the insurance referred to in clause 6.c.;
2. GFE and any other property of the Commonwealth in the care, custody or control of the Contractor or its Subcontractors unless and to the extent that the liability of the Contractor for the loss or damage of that property is insured under the insurance referred to in clause 6.c.; and
3. all other property, plant and equipment in the care, custody or control of the Contractor or its agents, material to the Contractor's ability to perform its obligations under the Contract,

against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage and resulting loss or damage arising from faulty material, workmanship or design), for the full replacement or reinstatement value of such insured property and including cover for professional fees, extra costs of reinstatement, and removal of debris. The insurance shall insure the respective interests of the Contractor and the Commonwealth in the property insured.

f. Cyber

i. The Contractor shall effect and maintain cyber insurance which covers the Contractor for:

1. liability incurred from alleged or actual theft, dissemination, use of, or unauthorised access to personal, confidential or other proprietary information;
2. network security liability arising from the unauthorised access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorised third party to gain access to services, including denial of service, unless caused by a mechanical or electrical failure;

3. liability arising from the introduction of malicious software or equipment into, or otherwise causing damage to, the Contractor's or a third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon;
 4. associated costs and expenses of government investigations resulting from the events described in subparagraphs 1. to 3. above;
 5. associated fines and penalties resulting from the events described in subclauses 1. to 3. above;
 6. associated mitigation (including web clean up) costs, crisis management costs and investigation (including forensic) costs resulting from the events described in subparagraphs 1. to 3. above;
 7. cyber ransom and extortion;
 8. data recovery costs; and
 9. non-physical business interruption,
- ii. written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule for any one occurrence and in the aggregate for all occurrences in any 12 month policy period. The insurance shall:
 1. cover the liability of the Contractor by reason of any act or omission of the Contractor, its employees, officers and agents;
 2. cover the Commonwealth for its vicarious liability for the acts or omissions of the Contractor;
 3. have a retroactive date of no later than 24 months before the commencement of the work under the Contract; and
 4. have worldwide territorial and jurisdictional limits.
- g. Transit
- i. The Contractor shall effect and maintain insurance covering any tangible property referred to in clause 6.e., against the risks of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit, where such transits are at the risk of the Contractor. The insurance shall insure the respective interests of the Contractor and the Commonwealth in the property insured.
- h. Motor Vehicle
- i. The Contractor shall effect and maintain:
 1. compulsory third party insurance as required by law in respect of all registered plant and motor vehicles used by the Contractor, its employees, officers and agents in connection with the work under the Contract; and
 2. motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than the amount specified in the Details Schedule each and every occurrence covering:
 - a. third party property loss or damage arising out of the use by the Contractor, its employees, officers and agents of any registered or unregistered plant or vehicles; and
 3. third party bodily injury, disease, illness or death arising out of the use by the Contractor, its employees, officers and agents of any unregistered plant or vehicles and, any registered vehicles not required to be insured under compulsory third party insurance in a foreign jurisdiction,in connection with the work under the Contract.
- i. Contract Works
- i. The Contractor shall effect and maintain: all risks insurance covering the whole of the construction works to be performed as part of the Services (including any temporary works), plant

and equipment and any other property on any construction site in connection with the Contract (including while in storage off site and while in transit to or from the site) for use in performing or incorporation into the construction works against the risks of loss, damage or destruction by all commercially insurable risks (including earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage and resulting loss or damage arising from faulty material, workmanship or design), for the full replacement or reinstatement value of such insured property and including cover for professional fees, extra costs of reinstatement, and removal of debris and insuring the respective interests of the Contractor, its employees, officers and agents and the Commonwealth in the property insured.

j. Compliance

i. The insurances and registrations referred to in:

1. the following clauses shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed (and all applicable defects rectification periods in respect of any works have expired):
 - a. clause 6.b. (workers compensation);
 - b. clause 6.e. (property); and
 - c. clause 6.f. (cyber);
 - d. clause 6.c. (public and products liability) shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until all work under the Contract is completed and, in respect of products liability for seven years following completion of the work under the Contract;
 - e. clause 6.d. (professional indemnity) shall be effected before the Contractor commences work under the Contract, and thereafter be maintained until the earlier of:
 - i. seven years following completion of the work under the Contract; or
 - ii. seven years following an earlier termination of the Contract;
 - f. clause 6.g. (transit) shall be effected on or before the start of each conveyance and maintained until the end of each conveyance by delivery at the site;
 - g. clauses 6.h. (motor vehicle) shall be effected on or before the date the plant or vehicle is used in connection with the work under the Contract and maintained until such plant or vehicle ceases to be so used; and
 - h. clause 6.i. (contract works) shall be effected on or before any construction works required under the Contract commence and maintained until the expiry of any defects rectification period in relation to those construction works to which the insurance relates.
- ii. To the extent that the Contractor's insurances and registrations required by clause 6.a. of this Contract are in fact written on a claims made basis (notwithstanding any requirements of this Contract for such insurances to be written on an occurrence basis) then the Contractor shall maintain those insurances and registrations until the earlier of:
 1. seven years following completion of the work under the Contract; or
 2. seven years following an earlier termination of the Contract.
- iii. With the exception of statutory insurances, the insurances referred to in this clause 6 shall:
 1. be effected with an insurer with a financial security rating of 'A-' or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Commonwealth, acting reasonably; and
 2. provide that the insurer agrees:
 - a. to provide at least 30 days written notice of cancellation to the policyholder;
 - b. that the policy operates (with the exception of limits of indemnity) as if there was a separate policy of insurance covering each party comprising the insured;

- c. that a failure by any insured to observe and fulfil the terms of the policy or to comply with the pre-contractual duty of disclosure does not prejudice the insurance of any other insured;
 - d. that the state of mind and knowledge of one insured will not be imputed to any other insured for the purposes of determining the availability of cover under the policy;
 - e. to waive all rights of salvage in respect of property of the Commonwealth which the Commonwealth notifies to the Contractor at or before the time of loss is of a sensitive nature from a national security perspective. Where the Commonwealth obtains proceeds from the salvage sale from any such property of the Commonwealth insured under the Contractor's insurance, the insurer may deduct the actual payment of such salvage sale proceeds obtained by the Commonwealth from the amount of claim payment. Where the Commonwealth does not sell but instead reuses such property, the insurer may deduct a reasonable amount from the amount of the claim payment to reflect the value the Commonwealth has obtained from the reuse of the property. However this clause 6.j.iii.2.e. only applies to the insurances referred to in the following clauses:
 - i. clause 6.c. (public and products liability);
 - ii. clause 6.e. (property);
 - iii. clause 6.f. (cyber); and
 - iv. clause 6.g. (transit);
 - f. that a notice of a claim by any insured will be accepted as notice by all insureds; and
 - g. that in respect of liability insurances required by this clause 6 (except statutory insurances), the policies will cover the Contractor for liabilities assumed by it under the provisions of clause 7.l.
- iv. The Contractor shall, on request, produce evidence satisfactory to the Commonwealth Representative of the currency and terms of the insurances referred to in this clause 6, including:
- 1. certificates of currency issued by the insurer or by the Contractor's insurance broker which contains sufficient detail to enable the Commonwealth to ascertain whether the insurances are in compliance with this clause 6;
 - 2. copies of all policies (except for statutory insurances and provided that, in relation to commercially sensitive policies only, for the purpose of complying with this clause 6.j.iv.2., such policies may be made available for inspection by the Commonwealth or the Commonwealth's advisers, at a place and time reasonably convenient to the Commonwealth or the Commonwealth's advisers); and
 - 3. other evidence of the insurances which the Commonwealth reasonably requires.
- v. If the Contractor fails to comply with clause 6.j.iv., the Commonwealth may, but is not obliged to, effect and maintain the relevant insurances and may:
- 1. elect to recover from the Contractor the cost of effecting and maintaining the insurance;
 - or
 - 2. deduct the premiums payable for the relevant insurances from amounts payable to the Contractor under the Contract.
- No amount shall be owing to the Commonwealth under this clause 6.j.v. until the Commonwealth elects to recover the amount.
- vi. In the event the Commonwealth elects to exercise its rights under clause 6.j.v., the Contractor shall provide the Commonwealth with all reasonable assistance to allow the Commonwealth to exercise those rights, including by executing documents and providing insurance proposal information to the Commonwealth's insurance broker and proposed insurers.
- vii. In respect of each insurance referred to in this clause 6, the Contractor shall:

1. pay (or cause to be paid) all premiums and deductibles as and when they are due;
 2. not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
 3. if necessary, rectify anything which might prejudice any insurance;
 4. reinstate an insurance policy if it lapses;
 5. not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;
 6. promptly notify the Commonwealth of any event (including the issue of a notice of intention to cancel by the insurer to the policyholder) which may result in an insurance policy lapsing or being cancelled;
 7. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by the Commonwealth;
 8. give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of any claims under the insurance; and
 9. do everything reasonably required by the Commonwealth in order to allow the Commonwealth or any other person for whose benefit the policy is effected to claim and to collect or recover monies due under any insurance policy.
- viii. The Contractor shall not do anything which has been notified to the Contractor by the Commonwealth that may invalidate or prejudice any insurance policy held by the Commonwealth or any indemnity to which the Commonwealth may be entitled.
- ix. The Commonwealth may increase or decrease the limits of indemnity required for the insurances referred to in, or change the types of insurances required by, this clause 6 at each renewal date of the relevant insurance by providing three months prior written notice to the Contractor. The Commonwealth shall only increase the limits of indemnity required for the insurances referred to in, or require additional insurances under, this clause 6 where it has obtained an opinion from a reputable insurance broker or otherwise appropriately qualified consultant that an increase is required in order to conform with current prudent insurance practice for a company with a risk profile comparable to the Contractor. The Contractor shall, within 30 days after receipt of a notice from the Commonwealth to increase or decrease the limits of indemnity required for the insurances referred to in, or change the types of insurances required by, this clause 6, submit a CCP to effect a change to the Contract.
- x. If the Contractor becomes aware that a risk to be covered by an insurance policy referred to in this clause 6 has or is to become Uninsurable then:
1. the Contractor shall promptly notify the Commonwealth together with all details available to the Contractor as to the reason why the risk is Uninsurable, steps taken by the Contractor to obtain insurance for the risk, the date on which the risk became or will become Uninsurable, and details as to what the Contractor suggests is appropriate to mitigate, manage or control the risk while it remains Uninsurable;
 2. the parties shall meet as soon as reasonably practicable, but (unless otherwise agreed in writing between the parties) no later than five Working Days after the notification in clause 6.j.x.1. to discuss all practical means by which the risk shall be managed (including, if the risk is material, the option of the Commonwealth providing an indemnity to the Contractor covering substantially the risks which have become Uninsurable or varying the Contract);
 3. if the parties cannot agree as to how an Uninsurable risk is to be managed then, if the Uninsurable risk is material, either party (provided that the party is adversely affected

- by the Uninsurable risk), acting reasonably and in good faith, may terminate the Contract by notice with the exception that the Contractor shall not terminate the Contract if the Commonwealth offers an indemnity in substitution for insurance for the Uninsurable risk and that indemnity is no less broad than the insurance held by the Contractor for that risk immediately before the risk became Uninsurable. For the avoidance of doubt, termination pursuant to this clause is not to be treated under any circumstances as the exercise of a termination right under any other provision of this Contract, even if such a right may otherwise exist;
4. the Contractor shall, in respect of any risk that has become Uninsurable:
 - a. monitor the insurance industry on a regular basis (and not less than twice a year) and attempt to obtain insurance for the risk which is Uninsurable;
 - b. provide the Commonwealth with details of attempts made by the Contractor to obtain insurance for the Uninsurable risk; and
 - c. as soon as it is able to do so, obtain insurance for the Uninsurable risk;
 5. the Contractor acknowledges that the Commonwealth may undertake its own enquiries as to the availability of insurance for Uninsurable risks and as to the terms and conditions, including price, on which it is available. If the Commonwealth's own enquiries show that the insurance for Uninsurable risks is available on terms and conditions that are commercially reasonable in all of the circumstances, the Contractor shall obtain that insurance without unreasonable delay; and
 6. the Contractor is relieved of its obligations under clause 6 to effect insurance for any risk that is Uninsurable for the period that the risk remains Uninsurable.
- xi. For the purposes of clause 6.j.x., 'Uninsurable' means, in relation to a risk, either that:
1. insurance required pursuant to this clause 6 is not available in the international insurance markets with insurers with a financial security rating of 'A-' or better by Standard & Poors (or the equivalent rating with another reputable rating agency); or
 2. the insurance premium for insuring that risk is at such a level or the terms and conditions are such that the risk is not generally being insured against in the international insurance market with reputable insurers by prudent corporates with a risk profile comparable to the Contractor.
- xii. The Contractor shall be:
1. deemed compliant with the requirements of the following clauses:
 - a. clause 6.a.i.;
 - b. clause 6.b. (workers compensation);
 - c. clause 6.c. (public and products liability);
 - d. clause 6.d. (professional indemnity);
 - e. clause 6.e. (property);
 - f. clause 6.f. (cyber);
 - g. clause 6.g. (transit);
 - h. clause 6.h. (motor vehicle);
 - i. clause 6.i. (contract works); and
 - j. clauses 6.i., 6.j.ii., and 6.j.iii.; and
 2. relieved of its obligations under clauses 6.j.iv. and 6.j.vii., in respect of a particular insurance listed in clause 6.j.xii.1. for any period during which the Contractor's insurance program holds Approved Contractor Insurance Program (ACIP) status under CASG's centralised process for monitoring the compliance of contractors with contractual insurance requirements, subject to any limitations on or conditions of that approval (including whether the Contractor's ACIP status extends to that type of insurance). The Contractor shall advise the Commonwealth Representative within five Working Days if its ACIP status is withdrawn or suspended by the Commonwealth.

7. Indemnities, Damages, Risk and Liability

- a. Contractor's Employees and Officers
 - i. The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with the death, personal injury, disease or illness of any employee or officer of the Contractor in relation to the Contract.
 - ii. The liability of the Contractor under clause 7.a.i. shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default or a Commonwealth (Acquisition) Default.
 - iii. The Contractor shall release the Commonwealth and Commonwealth Officers in respect of any liability for Loss referred to in clause 7.a.i., except to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default or a Commonwealth (Acquisition) Default.
- b. Intellectual Property and Confidentiality
 - i. The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party in respect of the following:
 1. an infringement or alleged infringement of the third party's IP rights (including Moral Rights) arising out of or as a consequence of:
 - a. an activity permitted or purportedly permitted by or under a licence or assignment of IP rights under or referred to in the Contract (including in clause 4); and
 - b. a failure by the Contractor to grant (or ensure the grant of) a licence or assign (or ensure the assignment of) IP rights under or referred to in the Contract (including in clause 4); and
 2. breach or alleged breach of any obligation of confidentiality owed to that third party arising out of or as a consequence of any act or omission of the Contractor, Contractor Personnel or Contractor (Acquisition) Personnel.
 - ii. The liability of the Contractor under clause 7.b.i. shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of a Commonwealth Default or a Commonwealth (Acquisition) Default.
 - iii. In this clause 7.b.:
'infringement' of a right includes an act or omission that 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, or section 25 of the Circuit Layouts Act 1989, constitute an infringement of the right.
- c. Other Third Party Claims
 - i. The Contractor shall indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim by a third party arising out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default, including a Claim in respect of:
 1. the death, personal injury, disease or illness of any person; or
 2. loss of or damage to any third party property.
 - ii. The liability of the Contractor under clause 7.c.i. shall be reduced to the extent that the Contractor demonstrates that the Loss arose out of or as a consequence of:
 1. a Commonwealth Default;
 2. a Commonwealth (Acquisition) Default;
 3. an Excepted Risk; or
 4. a breach of a general law duty or an applicable law by an Unrelated Party.
- d. Proceedings Relating to Indemnities
 - i. If:
 1. a Claim is brought or threatened against the Commonwealth; and
 2. the Claim is one that is or may be the subject of an indemnity given by the Contractor under the Contract,

the Commonwealth shall give the Contractor notice of the Claim, which shall include particulars of the Claim so far as known to the Commonwealth Representative.

- ii. The Commonwealth shall, for any proceedings relating to a Claim of the type referred to in clause 7.d.i.:
 - 1. keep the Contractor informed of all developments in relation to the proceedings;
 - 2. conduct the proceedings in accordance with any reasonable directions of the Contractor, subject to the Legal Services Directions 2017 and other relevant Commonwealth policies; and
 - 3. not agree to a settlement in relation to the Claim without the prior consent of the Contractor, unless a failure to agree the settlement would be contrary to the Legal Services Directions 2017 and other relevant Commonwealth policies.
 - iii. The Commonwealth may, following a request from the Contractor, agree to apply for leave to withdraw from proceedings relating to a Claim. If the Commonwealth is granted leave to withdraw from the proceedings:
 - 1. the Commonwealth shall withdraw from the proceedings;
 - 2. the Contractor shall comply with any conditions imposed by the court in relation to the grant of such leave; and
 - 3. the Contractor shall, in its own name and at its own expense, conduct the proceedings.
- e. Other Provisions Relating to Indemnities
- i. The Commonwealth holds the benefit of each indemnity given in favour of a Commonwealth Officer (each a 'protected person') under clauses 7.a., 7.b. or 7.c. on trust for the protected person.
 - ii. The Commonwealth may recover from the Contractor an amount under an indemnity given by the Contractor under the Contract before the Commonwealth makes a payment in respect of such amount.
 - iii. The Commonwealth may not recover from the Contractor an amount under an indemnity given by the Contractor under clause 7.a., 7.b. or 7.c. of this Contract to the extent the Commonwealth has recovered from the Contractor that same amount under an indemnity under clause 7.a., 7.b. or 7.c. of the Contract (Acquisition) in respect of the same Loss.
- f. Liquidated Damages and Other Compensation
- i. The parties acknowledge that, if the Contractor does not achieve a Key Requirement in accordance with Attachment D:
 - 1. the Commonwealth will suffer loss and damage; and
 - 2. such loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the defence of Australia, be impossible, complex or expensive to quantify accurately in financial terms,and therefore, the parties agree that the applicable LD Amount is:
 - 3. a genuine pre-estimate of the Loss that would be suffered by the Commonwealth in respect of the types of Loss specified in column (d) of Table D-1 in Attachment D and resulting from a Contractor delay in achievement of the Key Requirement; and
 - 4. an appropriate protection of the Commonwealth's legitimate interests in relation to the performance of the Contract.
 - ii. The Contractor acknowledges and agrees that:
 - 1. the LD Amount specified in Attachment D has been calculated, and is intended to compensate the Commonwealth, only in respect of the specific types of Loss expressly set out in column (d) of Table D-1 in Attachment D;
 - 2. the Commonwealth may suffer Loss resulting from Contractor delay in achievement of a Key Requirement that is different from, and in addition to, the types of Loss expressly set out in column (d) of Table D-1 in Attachment D; and
 - 3. nothing in this clause 7.f. is intended to preclude, or otherwise limit or affect, the Commonwealth's entitlement to exercise its rights under the Contract or otherwise at

- law or in equity to recover any Loss of a type that is not expressly set out in column (d) of Table D-1 in Attachment D.
- iii. If a Key Requirement is not achieved in accordance with Attachment D, the Commonwealth shall be entitled to recover from the Contractor, as liquidated damages and not as a penalty, the LD Amount for the Key Requirement.
 - iv. No amount shall be owing to the Commonwealth under this clause 7.f. until the Commonwealth elects, in accordance with this clause 7.f., to recover the amount.
 - v. The Commonwealth may elect:
 - 1. to recover an LD Amount in one amount;
 - 2. to recover an LD Amount in two or more amounts;
 - 3. to accept compensation (instead of the LD Amount) as agreed in writing between the parties; or
 - 4. to accept compensation as agreed between the parties and to recover part of the LD Amount as agreed in writing between the parties in one or more amounts.
 - vi. If the Commonwealth makes an election under clause 7.f.v.2. or 7.f.v.4. in respect of a failure to achieve a Key Requirement, the Commonwealth may make one or more further elections in relation to the failure (up to any applicable cap on the LD Amount).
 - vii. An election by the Commonwealth under this clause 7.f. in respect of a failure to achieve a Key Requirement shall, unless otherwise agreed in writing between the parties, be made and notified to the Contractor no later than:
 - 1. if an applicable cap on the LD Amount is reached before the Key Requirement is achieved, the end of four months after the Commonwealth receives notice from the Contractor that the cap has been reached; or
 - 2. if the Key Requirement is achieved before the Commonwealth receives a notice under clause 7.f.vii.1., the end of four months after the Key Requirement is achieved.
 - viii. If the Commonwealth does not elect before the end of the period determined in accordance with clause 7.f.vii. in respect of all or some of the LD Amount for a Key Requirement listed in Attachment D, the Commonwealth will be taken to have elected and notified the Contractor at that time to recover the whole or the balance of the LD Amount (as relevant).
 - ix. Unless the Commonwealth expressly agrees otherwise, a change to a Key Requirement effected by a CCP does not affect the Commonwealth's entitlement to liquidated damages already accrued in respect of that Key Requirement up to the date when the CCP takes effect to change the Key Requirement.
 - x. If the Commonwealth elects to accept compensation instead of liquidated damages (whether in the form of further supplies or services or otherwise), the Contractor shall prepare a CCP to effect a change to the Contract and any other contract between the Commonwealth and the Contractor that may be affected.
 - xi. Subject to clause 7.f.ii., the Commonwealth's rights under this clause 7.f. in respect of a delay in the achievement of a Key Requirement are the Commonwealth's only entitlement to recover compensation or damages in respect of the types of Loss specified in column (d) of Table D-1 in Attachment D resulting from that delay. To avoid doubt, no other Commonwealth rights (for example, termination rights or rights in respect of a misrepresentation) are affected.
- g. Loss of or Damage to the Deliverables and Products Being Supported
- i. Risk in relation to any loss of, or damage to, Deliverables and Products Being Supported which are not yet owned by the Commonwealth resides with the Contractor:
 - 1. until the Deliverables and Products Being Supported are delivered or returned to the Commonwealth in accordance with the Contract; and
 - 2. at any time after delivery or return (but prior to Acceptance of the Deliverables and Products Being Supported) where the Contractor retakes possession of the Deliverables and Products Being Supported in accordance with the Contract.

- ii. The Contractor shall replace or reinstate any Deliverables and Products Being Supported that are lost and repair any Deliverables and Products Being Supported that are damaged while the risk resides with the Contractor under clause 7.g.i., except to the extent that the loss or damage to the Deliverables or Products Being Supported arose out of or as a consequence of a Commonwealth Default or a Commonwealth (Acquisition) Default.
 - iii. The Commonwealth shall take reasonable care to prevent loss of or damage to Deliverables and Products Being Supported that have been delivered or returned to it in accordance with the Contract but which have not yet been Accepted.
 - h. Loss of or Damage to Commonwealth Property
 - i. The Contractor shall (and shall ensure that all Contractor Personnel) take reasonable care, to prevent loss of, or damage to, Commonwealth Property in connection with the work under the Contract.
 - ii. The Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to:
 - 1. any Commonwealth Property while it is:
 - a. on any Contractor Premises; or
 - b. being stored or transported by or on behalf of the Contractor, a Related Body Corporate of the Contractor, a Subcontractor or a Subcontractor (Acquisition); in connection with the Contract, whether or not the loss or damage arises out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default.
 - iii. The liability of the Contractor under clause 7.h.ii. shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of:
 - 1. a Commonwealth Default;
 - 2. a Commonwealth (Acquisition) Default; or
 - 3. an Excepted Risk,except to the extent that the loss or damage could have been prevented or mitigated by reasonable care on the part of the Contractor or Contractor Personnel.
 - iv. Without limiting clause 7.h.ii., the Contractor shall be liable for any Loss incurred by the Commonwealth in connection with any loss of, or damage to, Commonwealth Property arising out of or as a consequence of a Contractor Default or a Contractor (Acquisition) Default.
 - v. The liability of the Contractor under clause 7.h.iv. shall be reduced to the extent that the Contractor demonstrates that the loss or damage arose out of or as a consequence of:
 - 1. a Commonwealth Default;
 - 2. a Commonwealth (Acquisition) Default;
 - 3. an Excepted Risk; or
 - 4. a breach of a general law duty or an applicable law by an Unrelated Party.
 - vi. This clause 7.h. operates in addition to, and does not limit or affect, clause 7.g.
 - i. Exclusions of Certain Losses
 - i. Subject to clause 7.j.iii., the Contractor is not liable to:
 - 1. pay compensation or damages under or in relation to this Contract; and
 - 2. make a payment under an indemnity in this Contract, for Loss incurred by the Commonwealth resulting from:
 - 3. damage to reputation or exemplary or punitive damages incurred by the Commonwealth; or
 - 4. diminished revenue, profits or business opportunity suffered by the Commonwealth.
 - ii. The Commonwealth is not liable to pay compensation or damages under or in relation to this Contract for Loss resulting from damage to reputation or for exemplary or punitive damages incurred by the Contractor.
 - j. Liability Caps

- i. The liability of the Contractor to the Commonwealth in connection with the Contract (including at general law, in negligence or in equity) in respect of the following is limited (in each case) in aggregate to the relevant Limitation Amount specified in the Details Schedule:
 1. loss of or damage to Defence Property (other than Products Being Supported or Deliverables),
 2. liquidated damages (including the value of any agreed compensation provided by the Contractor instead of an LD Amount that would otherwise be payable); and
 3. loss of or damage to Deliverables or Products Being Supported.
- ii. Each of the liability caps referred to in clause 7.j.i. is mutually exclusive and is to be applied separately.
- iii. The liability caps in this clause 7.j. and exclusions of liability under clause 7.i. do not apply to a liability of the Contractor under or arising out of the Contract in relation to:
 1. (third party claims) a Claim by a third party in respect of:
 - a. the death, personal injury, disease or illness of any person; or
 - b. loss of or damage to property of a third party;
 2. (IP) an infringement of an intellectual property right (including a Moral Right) of any person;
 3. (confidentiality) a breach of an obligation of confidence;
 4. (death of or personal injury to Commonwealth Officers) the death, personal injury, disease or illness of a Commonwealth Officer;
 5. (non-Defence Commonwealth Property) the loss of, or damage to, Commonwealth Property (other than Defence Property);
 6. (Defence security) a breach of the Contractor's obligations in relation to Defence security including cyber security;
 7. (privacy) a breach of a written law with respect to privacy;
 8. (criminal offences) an act or omission of the Contractor or Contractor Personnel, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
 9. (Wilful Default) a Wilful Default of the Contractor, Contractor Personnel or Contractor (Acquisition) Personnel;
 10. (repudiation) a repudiation of the Contract by the Contractor where the Contractor has intentionally abandoned the Contract;
 11. (restitution) restitution of amounts paid under a mistake of fact or law in relation to the Contract;
 12. (loss of use) any Loss incurred by the Commonwealth in connection with the loss of use of the Deliverables or Products Being Supported arising out of or in connection with a Contractor Default or Contractor (Acquisition) Default; or
 13. (insurance) events or circumstances in respect of which the liability of the Contractor is insured under an insurance policy required to be maintained pursuant to clause 6 or is deemed insured under those policies of insurance pursuant to clause 6.j.xii. (unless the insurer is unable to or does not make good its obligation to indemnify due to its insolvency or, without limiting the application of clause 6.j.xii., other reasons beyond the Contractor's reasonable control). In this circumstance, the liability of the Contractor is limited to the higher of the amount of the cap in clause 7.a.i. and the amount actually recovered.
- iv. Each paragraph of clause 7.j.iii. is independent of, and its application is not affected by, any of the other paragraphs.
- v. The amount of a liability cap in clause 7.j.i. shall be adjusted in accordance with the formula:

$$\text{amount} = \frac{\text{most recent CPI}}{\text{Base Date CPI}}$$

where:

1. 'Base Date CPI' means the CPI most recently published before the Base Date;
 2. 'CPI' means the Consumer Price Index, All Groups, Weighted Average of Eight Capital Cities published by the ABS in Catalogue number 6401.0, Table 7, Series ID A2325846C or, if that Index is no longer published by the ABS, the index published by the ABS that most closely corresponds to that Index; and
 3. 'most recent CPI' means the CPI most recently published before the question whether a liability cap has been reached is determined.
- vi. The Contractor agrees that if a Loss is incurred under or in connection with the Contract and the Commonwealth is satisfied that the Loss may reasonably be determined to be a Loss for the purposes of each of:
1. clause 7 of this Contract; and
 2. clause 7 of the Contract (Acquisition),
- the Commonwealth may determine that the Loss, or part of the Loss, is a Loss for the purposes of this Contract.
- vii. For the purposes of clause 7.j.iii.13., the Contractor shall be deemed insured for a liability under the insurance policies required to be maintained pursuant to clause 6 and an amount will be deemed to have actually been recovered for the purposes of clause 7.j.iii.13. from the insurer where the liability of the Contractor would have been insured under those insurance policies but for:
1. a failure of the Contractor to obtain or maintain the insurances (for which it is responsible) in accordance with clause 6;
 2. a failure by the Contractor to claim under the relevant insurance, comply with the claim procedures under the relevant insurances, or diligently pursue the claim;
 3. the Contractor not complying with any provision, obligation or duty owed under the relevant insurance policy (including the Contractor's pre-contractual duty to disclose); or
 4. the application of any deductible, excess, self-insured retention or co-insurance imposed by the terms of the insurance policy.
- viii. Clauses 7.j.iii.13. and 7.j.vii. do not operate to the extent that an insurer of an insurance policy required by clause 6 seeks to rely on them to deny or reduce its liability for a claim under the relevant insurance policy.
- ix. The exclusions of liability under clauses 7.i.i.3. and 7.i.i.4. do not apply to a liability of the Contractor under or arising out of the Contract (including amounts payable by the Contractor under an indemnity in the Contract) in relation to clauses 7.j.iii.8., 7.j.iii.9., 7.j.iii.10. and 7.j.iii.13.
- k. Renegotiation of Liquidated Damage and Liability Cap Amounts
- i. If:
 1. a party proposes a change to the Contract by a CCP; and
 2. that change, together with other changes to the Contract since this clause 7.k. was last applied, increases or decreases the Contractor's payment entitlements (other than for S&Q Services) by more than the Renegotiation Threshold specified in the Details Schedule,the parties shall negotiate in good faith, taking into account any increased risk relating to the Contract, to make amendments to the liability caps; and to the LD Amounts.
- l. Proportionate Liability Laws
- i. The parties agree that, to the extent permitted by law, the provisions of the Contract:
 1. are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
 2. exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

8. Contract Management

- a. Confidential Information

- i. Each party shall ensure that Confidential Information provided by the other party under or in connection with the Contract or identified in Attachment N is not disclosed, except to the extent that:
 1. the disclosure is permitted under clause 8.a.iii.;
 2. the Confidential Information is in TD or Software and the disclosure is in connection with the exercise of the rights provided for in clause 4; or
 3. the other party provides its prior written consent to the disclosure (and such consent may be subject to conditions).
- ii. Each party shall ensure that, before disclosing Confidential Information under clause 8.a.i.2. or 8.a.i.3., the recipient:
 1. executes a confidentiality deed poll substantially in the form of Annex B of Attachment I;
 2. has executed an appropriate confidentiality deed poll if required under the Contract (Acquisition); or
 3. is otherwise subject to an obligation not to disclose the Confidential Information to any other person on terms substantially equivalent to those in Annex B of Attachment I.
- iii. Clause 8.a.i. does not apply to a disclosure of Confidential Information to the extent that the disclosure is for any of the following purposes:
 1. as required or authorised by law;
 2. as necessary for the conduct of any legal proceedings arising in connection with the Contract or the Contract (Acquisition);
 3. as necessary for a party to fulfil its obligations under the Contract or for a party to the Contract (Acquisition) to fulfil its obligations under the Contract (Acquisition);
 4. is made by the Commonwealth, a Minister or Parliament in accordance with statutory or portfolio duties or functions, or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
 5. is to any of the following persons:
 - a. a legal adviser, insurer, financier, auditor or accountant of a party, to the extent required to enable them to perform those roles;
 - b. a Related Body Corporate for internal management purposes;
 - c. any Commonwealth Personnel who needs to know the information in order to undertake their duties or functions; and
 - d. an employee, officer or agent of the Contractor who needs to know the information to enable the Contractor to perform its obligations under the Contract.
- iv. The Contractor shall not, in marking information supplied to the Commonwealth, misuse the term 'Confidential Information' or equivalent terms.
- v. Subject to clause 8.a.vi., the Contractor shall deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
 1. the date specified in a notice given by the Commonwealth (acting reasonably); and
 2. the time the documents and other material are no longer required for the purposes of the Contract.
- vi. The Contractor may retain, and will not be required to return or destroy, any documents containing or relating to Confidential Information of the Commonwealth, where such documents are:
 1. retained in order to comply with any legal, professional or insurance obligations; or
 2. stored in electronic backups or records that are produced in the normal course where it is not reasonably practicable to destroy such backups or records.
- vii. If the Commonwealth gives a notice under clause 8.a.v.1., and the Contractor has placed or is aware that documents containing the Confidential Information of the Commonwealth are beyond its possession or control, the Contractor shall provide full particulars of the whereabouts of the

documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.

- viii. The Contractor, when directed by the Commonwealth in writing, agrees to destroy any document in its possession, power or control, which contain or relate to any Confidential Information of the Commonwealth.
- ix. Return or destruction of the documents referred to in this clause 8.a. does not release the Contractor from its obligations under the Contract.

b. Subcontracts

- i. The Contractor shall not Subcontract the whole of the work under the Contract. The Contractor shall ensure that each Subcontractor that it engages in connection with the Contract is a professional, expert and reputable supplier in its relevant industry sector, with a history of duly and promptly performing contractual obligations
- ii. The Contractor may, but shall not be required to, Subcontract with one or more of the Approved Subcontractors. Prior to engaging an entity required under clause 8.b.iii. to be an Approved Subcontractor, the Contractor shall notify the Commonwealth in writing and shall provide such information regarding the proposed Approved Subcontractor as the Commonwealth reasonably requires. The Commonwealth may, in its absolute discretion, require the Contractor not to engage a particular entity as an Approved Subcontractor under the Contract. Any action of the Commonwealth under this clause 8.b.ii. shall not entitle the Contractor to claim Performance Relief or Postponement.
- iii. The Contractor shall not Subcontract work under the Contract to a Subcontractor if:
 - 1. the total value of all work with the Subcontractor is expected to exceed the Approved Subcontractor Threshold specified in the Details Schedule; or
 - 2. 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 Capability; or
 - 3. the work involves:
 - a. design and development activities;
 - b. modification of systems or equipment, such as Deviations;
 - c. systems installation or integration;
 - d. software development or modification; or
 - e. the provision of Spacecraft operators; or
 - f. the Subcontractor will be located, on an on-going basis, on Commonwealth Premises; or
 - g. the Subcontractor will host, on an on-going basis, Commonwealth Personnel on their premises,unless that Subcontractor is an Approved Subcontractor.
- iv. The Contractor may request the inclusion of additional Approved Subcontractors in Attachment H by submitting a CCP. The CCP shall 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.
- v. The Commonwealth Representative shall Approve or reject the CCP. The Commonwealth Representative's Approval shall not be unreasonably withheld.
- vi. None of the following reduce or limit the Contractor's obligations or liabilities under or in relation to the Contract:
 - 1. the Contractor's subcontracting any part of the work under the Contract;
 - 2. the Commonwealth's Approval of a Subcontractor or a Subcontract; or
 - 3. an act or omission of Contractor Personnel,and the Contractor shall be responsible for all Subcontractors.

- vii. The Contractor shall not enter into a Subcontract if the terms of the Subcontract will result in the Contractor not complying with a requirement in clause 4, unless the Contractor has obtained a waiver of the requirement in accordance with clause 4.k.iii.2.
 - viii. If a Subcontract is terminated, repudiated or rescinded, whether in relation to its terms or as a result of any legislation relating to bankruptcy, liquidation or official management, the Contractor shall promptly notify the Commonwealth Representative and shall complete the work under the Contract either itself or by engaging another Subcontractor.
 - ix. The Contractor acknowledges and shall inform its Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractor's participation in the performance of the Contract. If requested by the Commonwealth Representative, the Contractor shall provide the Commonwealth Representative with names of Subcontractors and copies of Subcontracts (which need not contain prices) for this purpose.
 - x. The Contractor shall not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the Workplace Gender Equality Act 2012 (Cth).
 - xi. The Contractor shall obtain and provide to the Commonwealth an Approved Subcontractor Deed duly executed by a relevant Approved Subcontractor before any goods or services are provided by that Approved Subcontractor and no later than 20 Working Days after executing the relevant Subcontract.
 - xii. For the purposes of this clause 8.b.xi, 'a relevant Approved Subcontractor' includes:
 - 1. an AIC Subcontractor; and
 - 2. an Approved Subcontractor identified in Attachment H as being required to provide an Approved Subcontractor Deed to the Commonwealth.
- c. Defence Security
- i. If the Contractor or Contractor Personnel require access to any Commonwealth Premises under the control or responsibility of Defence, the Contractor shall:
 - 1. comply with any security requirements (including those contained in the DSPF) notified to the Contractor by the Commonwealth Representative from time to time; and
 - 2. ensure that Contractor Personnel are aware of and comply with the Commonwealth's security requirements.
 - ii. The Contractor shall:
 - 1. ensure that Contractor Personnel undertake any security checks, clearances or accreditations as required by the Commonwealth;
 - 2. promptly 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
 - 3. provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.
 - iii. The security classification of the information and assets accessible to the Contractor and work to be performed under the Contract will be up to and including the level specified in the Details Schedule. The Contractor shall obtain and maintain all elements of DISP membership at the levels specified in the Details Schedule (or an equivalent international agreement or arrangement) in accordance with Principle 16 of the DSPF.
 - iv. Where work under the Contract is performed overseas, the Contractor shall hold a Facility Security Clearance at the relevant level verified by DS&VS through a bilateral security instrument in accordance with Principle 16 of the DSPF.
 - v. The Contractor shall classify all information in its possession relating to the performance of the Contract according to the Security Classification and Categorisation Guide at Attachment J and shall ensure that such information is safeguarded and protected according to its level of security classification.
 - vi. With respect to security classified information, the Contractor shall:

1. ensure that no security classified information furnished or generated under the Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through the Commonwealth Representative;
 2. promptly report to the Commonwealth Representative any security incident, as defined by the DSPF, including instances in which it is known or suspected that security classified information furnished or generated under the Contract has been lost or disclosed to unauthorised parties, including a representative of another country; and
 3. ensure that all security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Principle 71 of the DSPF.
- vii. Where COMSEC material is transmitted in Australia, the Contractor shall ensure that:
1. without limiting clause 8.c.vi., all COMSEC material transmitted between the parties or a party and a Subcontractor in Australia shall be subject to the special security provisions of Principle 13 of the DSPF; and
 2. 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.
- viii. Where COMSEC material is transmitted overseas, the Contractor shall ensure that:
1. all COMSEC material transmitted between the parties or a party and a Subcontractor located overseas shall be subject to approval in the first instance by the Director ASD in respect of Australian COMSEC material and by the respective COMSEC authorities in other countries in respect of COMSEC material originating from those countries; and
 2. once approved for release, the material shall be subject to the laws of the overseas country regarding the custody and protection of COMSEC material as determined by the Director ASD and to any bilateral security instrument between Australia and the overseas country.
- ix. If there has been a breach by the Contractor or Contractor Personnel of this clause 8.c., the Commonwealth Representative may give the Contractor a notice of termination for default.
- x. The Contractor shall ensure the requirements of clause 8.c. are included in all Subcontracts where the Subcontractor requires access to any Commonwealth Premises, or to any security classified information or assets, in order to perform the obligations of the Subcontract.

9. Policy Requirements

a. Work Health and Safety

i. The Commonwealth and the Contractor:

1. 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
2. acknowledge that they have a duty under the applicable WHS Legislation to ensure, so far as is reasonably practicable, the health and safety of:
 - a. Commonwealth Personnel;
 - b. Contractor Personnel; and
 - c. other persons,in connection with the Services.

- ii. Without limiting the application of the WHS Legislation, the Contractor acknowledges that to the extent that any Commonwealth Personnel:
 - 1. are located on the Contractor Premises in relation to the Contract; and
 - 2. 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 applicable WHS Legislation.
- b. Environmental Obligations
 - i. The Contractor shall perform its obligations under the Contract in such a way that:
 - 1. the Commonwealth is not placed in breach of; and
 - 2. 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 including the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

The following documents are attached:

Annexes:

- A) Approved Subcontractor Deed
- B) Deed of Confidentiality and Fidelity
- C) Progress Certificate
- D) Final Acceptance Certificate

Attachments:

- M) Glossary