



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications, Sport and the Arts

Execution Version

Strategic Fleet: Pilot Program

Deed of Standing Offer

SON4144327

Parties

**The Commonwealth of Australia, as represented by the Department of
Infrastructure, Transport, Regional Development, Communications, Sport
and the Arts**

(ABN 86 267 354 017)

and

DEED DETAILS SCHEDULE

Item	Description	Details	
1.	Deed Effective Date (clause 1.4)	1 June 2026	
2.	Transition-In Period	The Transition-In Period for each Vessel is specified in the relevant Fleet and Training Order.	
3.	Commonwealth Representative (clause 2.1)	Assistant Secretary Strategic Fleet Surface Transport Emissions and Policy Division	
4.	Supplier Representative (clause 2.2)		
5.	Notice Details (clause 2.5)	Commonwealth Representative Name: Assistant Secretary Strategic Fleet Surface Transport Emissions and Policy Division Address: GPO Box 594 Canberra, ACT 2601 Email: sfpp@infrastructure.gov.au Supplier Representative Name: Phone No. - business hours: Phone No. - out of business hours:	
6.	Key Persons (clause 3.14)		
7.	Deed of Guarantee and Indemnity (clause 5.4(a))	☐ Yes / ☐ No Guarantor: N/A	
8.	Management Representatives (clause 11.1)	Commonwealth:	First Assistant Secretary, Surface Transport Emissions and Policy Division
		Supplier:	
9.	Senior Representatives (clause 11.1)	Commonwealth:	Deputy Secretary Transport
		Supplier:	

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Between the parties:

The Commonwealth	the Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (ABN 86 267 354 017) (Commonwealth)
Supplier	[... <i>Company Name</i> ...] (ABN XX XXX XXX XXX) whose registered office is at [... <i>Company Address</i> ...] (Supplier)

RECITALS

- A The Australian Government recognises the critical role that shipping plays in Australia's economic and social wellbeing, and is seeking to strengthen Australia's sovereign maritime capability by creating a strategic fleet of Australian flagged and crewed vessels.
- B The Department has established a standing offer panel arrangement to facilitate the formation, operation and administration of the Strategic Fleet, which will allow the Commonwealth to requisition Strategic Fleet vessels in times of need, crisis or national emergency.
- C The Commonwealth and the Supplier have entered into this Deed, whereby the Supplier has agreed to provide the Services on the terms set out in this Deed and any Official Order formed under this Deed.
- D The Supplier acknowledges that the Department will administer this Deed for the benefit of other Commonwealth Agencies who may order Requisition Services from the Supplier in accordance with the terms of this Deed.

CONDITIONS OF DEED

1 DEED FRAMEWORK

1.1 Definitions

In this Deed and each Official Order, unless the contrary intention appears, words, abbreviations and acronyms have the meanings given to them in the Deed Details Schedule, or in the Glossary.

1.2 Interpretation

- (a) In this Deed and in each Official Order, unless the contrary intention appears:
- (i) headings and notes (including guidance notes) are for the purpose of convenient reference only and do not form part of this Deed or an Official Order;
 - (ii) the singular includes the plural and vice-versa;
 - (iii) a reference to a gender includes any other;
 - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of the word or phrase has a corresponding meaning;
 - (v) a reference to a person includes a body politic, body corporate and a partnership;
 - (vi) if the last day of a period prescribed for the doing of an action falls on a day which is not a Working Day, the action is to be done no later than the end of the next Working Day;
 - (vii) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act, as amended from time to time;
 - (viii) a reference to a clause includes a reference to a subclause of that clause;
 - (ix) a reference to a 'dollar', '\$', '\$A' or 'AUD' is a reference to the Australian dollar;
 - (x) a reference to a publication or Commonwealth policy is a reference to that publication or Commonwealth policy as in effect on the Deed Effective Date, but as updated or replaced from time to time;
 - (xi) a reference to a specification or other document is a reference to that specification or document as in effect on the Deed Effective Date or, alternatively, a reference to another version of the document if agreed in writing between the parties and, where applicable, Approved by the Commonwealth;

- (xii) the word 'includes' and its cognates in any form are not words of limitation;
- (xiii) a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Deed or any Official Order;
- (xiv) a provision stating that a party 'may' agree or consent to something, approve or reject something, or take or decline to take an action, means that the party may exercise its absolute discretion in deciding whether or not to do so, and may impose conditions on any such agreement, consent or approval; and
- (xv) a requirement to comply with an Official Order includes a requirement to comply with the applicable terms of this Deed.

1.3 Strategic Fleet Objectives

- (a) The objectives of the parties in entering into this Deed and each Official Order are:
 - (i) to establish a Strategic Fleet of Australian flagged and crewed vessels;
 - (ii) to provide the Commonwealth with certainty of access to the Strategic Fleet for requisition to move cargo in times of need, crisis or emergency;
 - (iii) to make the Strategic Fleet available to other Commonwealth Agencies, including for the purpose of assisting Australian Defence activities, and to provide an alternative capability for the deployment of Defence resources in the context of civil emergencies;
 - (iv) to support a training and workforce environment that encourages and grows maritime skills;
 - (v) to work within a framework that ensures the safety of persons and the protection of the Environment, and complies with, and enables the Commonwealth to comply with, all Laws, Commonwealth policies and any other relevant regulatory requirements;
 - (vi) to achieve these joint objectives through a culture of mutual respect and cooperation, and in an environment that fosters innovation, continuous improvement, cost efficiency, corporate social responsibility and transparency; and
 - (vii) for each party to perform their respective obligations under this Deed and each Official Order with full commitment to fostering trust, cooperation and collaboration.
- (b) Without in any way affecting or overriding the other terms of this Deed or an Official Order, each party must perform its obligations and enforce its rights under this Deed and each Official Order having regard to, and with the aim of, achieving the Strategic Fleet Objectives.

1.4 Deed Term

- (a) This Deed commences on the Deed Effective Date. Subject to clauses 1.4(b) to 1.4(e), this Deed expires on the earlier of:
 - (i) the date falling five years after the Deed Effective Date; and
 - (ii) the date of any earlier termination of this Deed,**(Initial Deed Term).**
- (b) The Commonwealth may propose an extension of the Initial Deed Term for:
 - (i) an initial period of two years by giving the Supplier notice not less than six calendar months before the date on which this Deed would otherwise expire; and
 - (ii) a second period of two years by giving the Supplier notice not less than six calendar months before the date on which this Deed would otherwise expire.
- (c) Where the Commonwealth has notified the Supplier of a proposed extension of the Initial Deed Term under clause 1.4(b), the Supplier must either accept or reject the proposed extension by written notice to the Commonwealth within 20 Working Days of the Commonwealth's notice under clause 1.4(b). Nothing in this clause 1.4 shall be construed as obliging the Commonwealth to offer to extend the Initial Deed Term.
- (d) Where the Initial Deed Term has been extended in accordance with clauses 1.4(b) and 1.4(c), the parties must negotiate in good faith:
 - (i) a DCP to give effect to the agreed extension to the Initial Deed Term; and
 - (ii) a CCP to Orders for Fleet and Training Services as required to extend the term of the Official Orders for the duration of the extension of the Initial Deed Term.
- (e) The expiry of this Deed does not, of itself, affect the validity or the ongoing force and effect of any Official Orders under this Deed.

1.5 Deed Documents

- (a) The following documents form part of this Deed:
 - (i) the Conditions of Deed (**COD**), the Deed Details Schedule and the Glossary;
 - (ii) the other Attachments to the COD; and
 - (iii) any document expressly incorporated by reference in this Deed.

1.6 Precedence of Deed Documents

- (a) If there is an inconsistency between the provisions of two or more documents that form part of this Deed, a descending order of precedence is to be accorded to:
 - (i) the provisions of the COD (including the Deed Details Schedule) and the Glossary (other than documents incorporated by reference);
 - (ii) the Additional Charter Terms contained in Attachment E to the COD;
 - (iii) the remaining Attachments to the COD; and
 - (iv) any document incorporated by express reference as part of this Deed,so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

1.7 Standing Offer and Panel

- (a) The Supplier acknowledges and agrees that:
 - (i) the Commonwealth has established the Panel for the provision of Strategic Fleet services (including the Services); and
 - (ii) it is one of a number of suppliers that are part of the Panel who may be requested to provide services.
- (b) The Supplier makes an irrevocable standing offer to supply the Services to the Commonwealth, and on the terms and conditions of this Deed and each Official Order.

1.8 Strategic Fleet Services

- (a) On and from the Deed Effective Date, the Supplier is required to perform the Services set out in each Official Order entered into pursuant to this Deed, which include:
 - (i) the Fleet and Training Services under an Order for Fleet and Training Services, comprising the:
 - (A) Transition-In Services;
 - (B) Term Services;
 - (C) Seafarer Training Services; and
 - (ii) the Requisition Services under any Requisition Order,as further described in this Deed (including the Statement of Work) and the relevant Official Order.
- (b) Subject to the terms of this Deed and any Official Order, the Supplier must, in return for the amounts payable under the Orders for Fleet and Training Services, make

each Vessel available to the Commonwealth as required throughout the Deed Term for the performance of Requisition Services.

- (c) The parties acknowledge and agree that:
 - (i) one or more Official Orders for the performance of Fleet and Training Services have been agreed by the parties and entered into in accordance with clause 1.9; and
 - (ii) the Commonwealth may require the performance of Requisition Services, which shall be performed by the Supplier under separate Requisition Orders entered into in accordance with clause 1.10.

1.9 Fleet and Training Services

Ordering of Fleet and Training Services

- (a) The parties acknowledge and agree that:
 - (i) on or about the date of this Deed, the parties have entered into one or more Fleet and Training Orders for the performance of Fleet and Training Services; and
 - (ii) the parties may negotiate and enter into such additional Fleet and Training Orders throughout the Deed Term as may be required by the Commonwealth, including to support the Strategic Fleet Objectives.
- (b) The Fleet and Training Orders entered into by the parties will be substantially in the form set out in Attachment C to the COD, or in such other form as may be specified by the Commonwealth.

1.10 Requisition Services

Ordering of Requisition Services

- (a) The Commonwealth may require quotations from one or more suppliers on the Panel for the provision of Requisition Services by issuing a Tasking Statement in the form set out in Attachment D to the COD (or in such other form as may be specified by the Commonwealth).
- (b) Upon receipt of a Tasking Statement, the Supplier must:
 - (i) immediately notify the Commonwealth Representative that the Supplier has received the Tasking Statement;
 - (ii) as soon as is reasonably practicable, confirm the availability of the Vessel (or otherwise) to perform the Requisition Services specified in the Tasking Statement; and
 - (iii) where the Vessel is available, within 72 hours (or such other period specified by the Commonwealth) complete all information required to be provided in response to the Tasking Statement, and submit a Quotation to the Commonwealth in the form set out in Attachment D to the COD (or in such other form as may be specified by the Commonwealth).

- (c) Without limiting the Supplier's other obligations, and the Commonwealth's rights, under this Deed, it is acknowledged that a Vessel may not be available to perform Requisition Services where:
 - (i) the Vessel is damaged and out of service;
 - (ii) the Vessel is non-compliant with legislative or regulatory requirements;
 - (iii) the Vessel has been detained;
 - (iv) the Vessel is undertaking scheduled or unscheduled drydocking or maintenance, servicing or repairs for an extended period of time (more than four weeks);
 - (v) the Vessel is out of range and is not able to perform the Requisition Services within the timeframes required by the Commonwealth;
 - (vi) the Vessel is in a loaded condition at the time of the Commonwealth's request, and the time required to discharge or tranship the cargo would exceed the timeframes required by the Commonwealth for the performance of the Requisition Services;
 - (vii) the Vessel is delivering cargo of national importance at the time of the Commonwealth's request, and the Commonwealth Representative agrees in writing that any delays in delivering that cargo would have significant detriment to the national interest; or
 - (viii) the Vessel is not of a suitable type to move the specified Cargo.
- (d) Where the Vessel is unavailable to perform the Requisition Services specified in a Tasking Statement, the Supplier must:
 - (i) provide the Commonwealth with details and supporting evidence as to the circumstances referenced in clause 1.10(c) which have resulted in the Vessel being unavailable to perform the Requisition Services; and
 - (ii) where practicable, provide an alternative proposal to the Commonwealth for the use of a substitute or supplementary vessel in accordance with clause 3.10.
- (e) All Quotations submitted by the Supplier must be in accordance with the requirements of this Deed.
- (f) The Commonwealth will evaluate Quotations on the basis of:
 - (i) any evaluation criteria specified in the relevant Tasking Statement;
 - (ii) the other requirements of the Tasking Statement, including the suitability of the Vessel to complete the Requisition Services, and the ability of the Supplier to meet the urgency of the task; and
 - (iii) the cost of the Quotation, including value for money consistent with Commonwealth procurement policies, and having regard to the Strategic Fleet Objectives.

- (g) Neither the lowest priced Quotation nor any Quotation will necessarily be accepted by the Commonwealth.
- (h) If the Commonwealth accepts the Quotation submitted by the Supplier, the parties will execute a Requisition Order in the form set out in Attachment D to the COD (or in such other form as may be specified by the Commonwealth) on the terms of the Tasking Statement and Quotation.

1.11 Formation of Official Orders

- (a) The parties acknowledge and agree that, once executed by the parties, each:
 - (i) Order for Fleet and Training Services entered into in accordance with clause 1.9; and
 - (ii) Requisition Order entered into in accordance with clause 1.10,comprises a separate contract between the Commonwealth and the Supplier and incorporates the terms of this Deed.
- (b) No Services shall be performed by the Supplier, and no amount shall become payable to the Supplier in respect of such Services unless and until an Official Order for those Services is entered into in accordance with this Deed.

1.12 Term of Official Orders

- (a) Each Official Order commences on the applicable Effective Date and, unless terminated earlier or extended in accordance with this Deed, expires on the applicable End Date (**Official Order Term**).
- (b) The Commonwealth may extend the term of a Requisition Order by giving notice to the Supplier at any time prior to the expiry of the relevant Official Order Term.
- (c) The Official Order Term for a Fleet and Training Order may be extended in accordance with clause 1.4(d).

1.13 Terms and Precedence of Official Orders

- (a) Unless agreed otherwise in an Official Order, the terms of each Official Order will be those set out in the following documents, in a descending order of precedence:
 - (i) the COD and the Glossary;
 - (ii) the Additional Charter Terms (as applicable to a Requisition Order);
 - (iii) the Official Order;
 - (iv) the remaining Attachments to the COD; and
 - (v) any other documents incorporated by reference in the Official Order or the Deed,so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

1.14 Non-exclusivity and No Assurance

- (a) Notwithstanding any other provision of this Deed or any Official Order, the Supplier acknowledges and agrees that:
 - (i) the Commonwealth does not guarantee a minimum level of Services (whether quantified in volume of Services or monetary value) from the Supplier during the Deed Term;
 - (ii) the Commonwealth may obtain services similar to the Services from any source or by any method it chooses, including through the engagement of Other Suppliers;
 - (iii) the Commonwealth does not make any representation or bind itself to accepting any Quotation, or entering into any Official Order for Services, during the Deed Term; and
 - (iv) nothing in this Deed or any Official Order requires the Commonwealth to enter into any Official Order or to engage the Supplier to provide any Services.

1.15 Services to Other Commonwealth Agencies

- (a) The Supplier acknowledges and agrees that:
 - (i) the Department administers this Deed for the benefit of other Commonwealth Agencies and, accordingly:
 - (A) the Department may enter into a Requisition Order for and on behalf of other Commonwealth Agencies; and
 - (B) other Commonwealth Agencies may issue Tasking Statements and enter into Requisition Orders directly with the Supplier in accordance with the ordering process set out in clause 1.10 of this Deed; and
 - (ii) where a Requisition Order is entered into by the Department on behalf of, or directly by, another Commonwealth Agency:
 - (A) the Commonwealth Agency may include such additional terms within the Requisition Order as it considers to be necessary or appropriate for the performance of the Requisition Services; and
 - (B) the Supplier must ensure that all correspondence, documentation and notices issued by the Supplier in relation to that Requisition Order is copied in writing (email is acceptable) to the Commonwealth Representative.

2 GOVERNANCE

2.1 Commonwealth Representative

- (a) The Commonwealth Representative is responsible for administering this Deed and each Official Order on behalf of the Commonwealth.
- (b) The Supplier must comply with the reasonable directions of the Commonwealth Representative made within the scope of the administration of this Deed or an Official Order.
- (c) If given verbally, a direction given by the Commonwealth Representative must be confirmed in writing by the Commonwealth Representative within 10 Working Days.
- (d) Unless otherwise specified in this Deed, the Commonwealth Representative has no authority to waive any provision of, or release the Supplier from its obligations under, this Deed or any Official Order except in accordance with clause 9.1 and clause 9.2 (respectively).
- (e) Unless authorised by this Deed or an Official Order, any work performed or cost incurred by the Supplier in response to a communication from the Commonwealth Representative is at the Supplier's sole risk.

2.2 Supplier Representative

- (a) The Supplier agrees and must ensure that the Supplier Representative is a point of contact for the Commonwealth, and will have the full authority to act on behalf of the Supplier for the purposes of this Deed and any Official Order.
- (b) Any communication passed by the Commonwealth to the Supplier Representative in accordance with clause 2.5 is taken to be delivered to the Supplier.
- (c) Anything done in relation to this Deed or an Official Order by the Supplier Representative is taken to have been done by the Supplier.
- (d) The Supplier must:
 - (i) ensure that the Notice Details, including the contact numbers, for the Supplier Representative specified in the Deed Details Schedule are at all times correct and up-to-date for the duration of the Deed Term; and
 - (ii) immediately notify the Commonwealth in writing in accordance with clause 2.5 of this Deed of any changes to the Notice Details (including contact phone numbers) for the Supplier Representative.

2.3 Replacement of Representatives

- (a) The Commonwealth may appoint another person to replace the Commonwealth Representative by giving a notice to the Supplier (including updated Notice Details, and the scope of the delegation or authorisation, as applicable).
- (b) The Supplier may request a replacement of the Supplier Representative by giving notice to the Commonwealth (including updated Notice Details). If the Commonwealth consents to such a replacement (and such consent will not be

unreasonably withheld by the Commonwealth), the appointment of the person named in the notice as the replacement Supplier Representative will be effective from the date that the Commonwealth provides notice of consent.

- (c) The Commonwealth may, at any time and acting reasonably, direct that the Supplier replaces the Supplier Representative with a person acceptable to the Commonwealth, and the Supplier must promptly comply with such direction.

2.4 Delegation of Representative Functions

- (a) Each Representative may:
 - (i) delegate its respective functions under this Deed to a specified person or to the person for the time being holding a specified office; or
 - (ii) authorise such specified functions to be carried out on its behalf by a specified person or by the person for the time being holding a specified office.
- (b) A delegation or authorisation:
 - (i) must be in writing; and
 - (ii) may be limited or conditional, as set out in the instrument of delegation or authorisation.
- (c) The exercise of a delegated or authorised function by a delegate or Authorised Person of a party is not effective unless notice has been given to the other party of the identity of the delegate or Authorised Person and of the scope of the delegation or authorisation.
- (d) Unless stated expressly to the contrary in this Deed or an Official Order, where a Representative has delegated a power or function to a person or authorised a person to exercise or perform a power or function, all of the following apply:
 - (i) the Authorised Person may not subdelegate the power or function, or authorise another person to exercise or perform it;
 - (ii) if the power or function may be exercised or performed in the relevant Representative's discretion, it may be exercised or performed in the Authorised Person's discretion;
 - (iii) if the power or function may be exercised only if the relevant Representative is satisfied of something, or has a particular opinion, it may be exercised or performed if the Authorised Person is so satisfied or has that opinion; and
 - (iv) the power or function, when exercised or performed by the Authorised Person, is taken to have been exercised or performed by the relevant Representative.
- (e) The Supplier must comply with the reasonable directions of an Authorised Person of the Commonwealth, made within the scope of their delegation or authorisation. If such a direction is given orally, it must be confirmed in writing within 10 Working Days.

2.5 Notices

- (a) Unless the contrary intention appears, any notice or communication under this Deed or an Official Order will be effective if it is in writing and sent from and delivered to the Representative (as the case requires) in accordance with the Notice Details specified in the Deed Details Schedule.
- (b) A notice or communication given in accordance with this clause 2.5 is taken to be delivered:
 - (i) if hand delivered, when received at the address;
 - (ii) if sent by pre-paid post, in three Working Days when sent within Australia and in eight Working Days when sent by air mail from one country to another; or
 - (iii) if sent as an email, when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,

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

2.6 Panel Refresh

- (a) The Supplier acknowledges that:
 - (i) the Commonwealth may, in the future, wish to grow the capacity, capability and size of the Strategic Fleet to support Australia's sovereign maritime capability and domestic maritime skills base; and
 - (ii) the Commonwealth may require a refresh of the Panel from time to time in order to ensure that the Strategic Fleet continues to meet the Commonwealth's ongoing and evolving requirements and strategic needs.
- (b) The Supplier agrees that the Commonwealth may make changes to the structure, terms, operation and other aspects of the Panel from time to time (including for the purposes referred to in clause 2.6(a)) by:
 - (i) modifying, expanding or restricting the Services offered under the Panel arrangements;
 - (ii) adding new services to the Panel arrangements;
 - (iii) adding one or more existing Services to the scope of an Other Supplier's Panel arrangement;
 - (iv) adding or removing Strategic Fleet vessels from the scope of the Panel arrangements;
 - (v) adding additional suppliers to the Panel;

- (vi) removing one or more Services from the scope of the Panel arrangements; and
- (vii) novating this Deed to an alternate panel arrangement.
- (c) The Commonwealth's activities for implementing changes to the Panel arrangements (and subsequently, this Deed) may include issuing a DCP, issuing a CCP, undertaking an approach to the market or any combination of the foregoing.

2.7 Collaboration and Cooperation

- (a) Each party must cooperate and collaborate with the other party, and with Subcontractors and (in the case of the Supplier) with Other Suppliers, including in order to achieve the Strategic Fleet Objectives.

3 PROVISION OF SERVICES

3.1 Obligation to Perform the Services

- (a) The Supplier must, for the payments provided under this Deed and any Official Order, provide the Services in accordance with this Deed and any Official Order, and perform all of its other obligations under this Deed and each Official Order.
- (b) The Supplier acknowledges and agrees that:
 - (i) the description of the Services to be provided by the Supplier in this Deed may not be a complete list of the services and associated deliverables required to properly facilitate provision of the Services; and
 - (ii) the obligation to provide Services includes an obligation to do everything necessary and incidental to ensuring the Services are provided, including functions and responsibilities that are reasonably related to or required for the proper provision of the Services, even if they are not otherwise expressly mentioned in this Deed or an Official Order.
- (c) Except to the extent that this Deed or any Official Order otherwise provides, the Supplier shall supply everything necessary for the proper performance of the Services under this Deed and any Official Order, including:
 - (i) the supply of all bunkers for a Requisition Order;
 - (ii) the provision of all port handling services for a Requisition Order, including the provision of all necessary equipment and personnel for safely loading and unloading Cargo, and for securing Cargo for transport, including (as applicable) warehousing, stevedoring, Cargo loading, discharging facilities and services, and Cargo stowage in accordance with Flag State requirements;
 - (iii) obtaining all necessary Authorisations to perform the required Services under any Official Order, including biosecurity and border clearances; and
 - (iv) procuring all towage, pilotage and mooring arrangements for a Requisition Order.

- (d) The Supplier must:
 - (i) proactively ensure that the Commonwealth is kept informed of matters relevant to the performance of the Services including:
 - (A) the progress of the Services under any Official Order, including by providing situation reports in relation to a Requisition Order in accordance with the Statement of Work;
 - (B) risks to the timely provision of the Services; and
 - (C) any material non-compliances with this Deed or any Official Order; and
 - (ii) comply with any directions by the Commonwealth or the exercise of any other Commonwealth powers under or in relation to this Deed or any Official Order in dealing with such matters, including by providing any additional information or knowledge that the Commonwealth requires.
- (e) If any Services have not been performed in accordance with this Deed or any Official Order then, without limiting any other rights or remedies of the Commonwealth, the Commonwealth may direct the Supplier to take any measures that the Commonwealth considers reasonably necessary to remedy the failure to meet the requirements of this Deed or the Official Order at no additional cost to the Commonwealth.

3.2 Standards of Work and Conformity

- (a) The Supplier must ensure that:
 - (i) it carries out its work under this Deed and any Official Order (including the provision of the Services):
 - (A) in accordance with the standards specified in this Deed and the Official Order and all applicable Laws;
 - (B) otherwise in accordance with International Standards; and
 - (C) to the reasonable satisfaction of the Commonwealth Representative;
 - (ii) it prosecutes all voyages with the utmost despatch, and in accordance with any directions of the Commonwealth; and
 - (iii) the Services conform to the requirements of this Deed and any Official Order.

3.3 Fitness for Purpose

- (a) The Supplier must ensure that:
 - (i) the Services provided under this Deed and any Official Order; and

- (ii) each Vessel and any equipment, plant, consumables and materials used in the provision of the Services,

are fit for such purposes as may be specified or reasonably inferred from the terms of this Deed or any Official Order.

3.4 **Registration on the AGSR and Requirement for Australian Crewing of Vessels**

- (a) The Supplier must:
 - (i) comply with the Approved Transition-In Plan and perform the Transition-In Services specified in Attachment A to the COD and the relevant Fleet and Training Order; and
 - (ii) by no later than the expiry of the relevant Transition-In Period, and throughout the duration of the Deed Term:
 - (A) ensure that each Vessel is registered under the Flag State on the Australian General Shipping Register (**AGSR**); and
 - (B) ensure that each Vessel is fully crewed by officers and crew who are Australian citizens or permanent residents.
- (b) For so long as any Vessel has not been registered on the AGSR during the relevant Transition-In Period, the Supplier must:
 - (i) submit and prosecute applications for the registration of each Vessel, so as to achieve registration on the AGSR as soon as is reasonably practicable after the Deed Effective Date;
 - (ii) keep the Commonwealth fully informed on the status of, and (where requested) provide a copy of, each applicable application for registration; and
 - (iii) notify the Commonwealth within five Working Days of receiving any:
 - (A) request from AMSA for additional information, or for further action (e.g. for a Vessel be resurveyed), in connection with the registration of a Vessel; or
 - (B) notification that an application for registration has been refused, revoked or qualified.
- (c) A Vessel may be crewed (in whole, or in part) by international crew members employed under the same arrangements as if they were Australian seafarers onboard the Vessel if:
 - (i) the Supplier has demonstrated to the Commonwealth's satisfaction that the Supplier has exhausted all reasonable steps to source Australian officers and crew to operate the Vessel, including by consulting with the Australian maritime unions;
 - (ii) the Commonwealth has Approved a Crewing Transition Plan provided by the Supplier in accordance with the Statement of Work and the relevant

Fleet and Training Order detailing the steps that the Supplier will take to source and transition to a full Australian crew and officers (including consultation with the Australian maritime unions); and

- (iii) the Supplier complies with the Approved Crewing Transition Plan.

3.5 Vessel and Seaworthiness Requirements

- (a) The Supplier must ensure that each Vessel used in the performance of the Services:
 - (i) is tight, staunch, strong, in good order and condition, and in every way seaworthy and fit to perform the Services with its machinery, boilers, hull, cargo storage system, shaft generators and other equipment in a good and efficient state;
 - (ii) has a full and efficient complement of a Master, officers and crew for a vessel of its type and tonnage, who shall in any event be not less than the number required under the Minimum Safe Manning Certificate issued by the Flag State and who shall be adequately trained to operate the Vessel and its equipment competently and safely and in accordance with International Standards;
 - (iii) is capable of operating in compliance with all International Standards to the extent that such International Standards are required and applicable to the loading and discharge terminals to which the Vessel trades and to ships of the Vessel's design and age;
 - (iv) is classed by the Classification Society and complies with all applicable Laws of the Flag State, the Classification Society and the countries to which the Vessel trades; and
 - (v) is only operated in accordance with any conditions or limitations under applicable Laws of the Flag State and the countries to which the Vessel trades from time to time.

3.6 Vessel Operation, Master Schedule and Planned Vessel Maintenance

- (a) The Supplier must ensure that each Vessel is operational for a minimum of 335 days of service each Financial Year.
- (b) For the purpose of clause 3.6(a), drydocking, survey, inspection, or repair periods of 20 Working Days or fewer in each Financial Year will be treated as operating days. Days in excess of 20 Working Days in each Financial Year in which the Vessel is drydocked or undergoing survey, inspection, or repair will not be treated as operating days.
- (c) The Supplier must, on or before the Deed Effective Date, provide to the Commonwealth for Approval, a Master Schedule which includes:
 - (i) to the extent known or reasonably able to be determined by the Supplier, the current, or planned, commercial service routes for each Vessel during ordinary times of service and the likely utilisation rate for those routes; and

- (ii) the programme of any planned maintenance and inspection activities for each Vessel (including maintenance lay-ups, drydocking, required surveys and special surveys for maintenance) which require a Vessel to be out of service, including:
 - (A) the nature of the maintenance to be undertaken;
 - (B) the estimated duration of the planned maintenance, and the number of days a Vessel is expected to be out of service;
 - (C) the location that the maintenance is being undertaken; and
 - (D) details of plans and methods to be undertaken by the Supplier to acquire a substitute vessel(s) which can be made available to the Commonwealth throughout the planned maintenance period for the purpose of performing Requisition Services should the need arise.
- (d) The Supplier must:
 - (i) at all times maintain the accuracy, completeness and currency of the Master Schedule;
 - (ii) prepare and submit updated versions of the Master Schedule to the Commonwealth on each 6-month anniversary of the Deed Effective Date; and
 - (iii) notify the Commonwealth as soon as practicable of any significant changes to the Master Schedule (including changes to the dates for any planned Vessel maintenance).

3.7 Requirement to Maintain Vessels

- (a) For the duration of the Deed Term, whenever the passage of time, wear and tear or any event so requires, the Supplier must exercise due diligence in order to maintain or restore each Vessel so as to comply with the requirements of this Deed, including as specified in this clause 3 and the Additional Charter Terms.
- (b) The Supplier must:
 - (i) to the extent practicable, undertake planned and unplanned maintenance concurrently, so as to minimise the overall time that a Vessel is out of service;
 - (ii) keep the Commonwealth fully informed on the progress of any maintenance undertaken on each Vessel taken out of service; and
 - (iii) advise the Commonwealth once maintenance that requires a Vessel to be taken out of service has been completed, and the Vessel has been returned to service.

3.8 Unplanned Vessel Maintenance

- (a) The Supplier must notify the Commonwealth of any significant unplanned Vessel maintenance that requires a Vessel to be taken out of service for a period of 10

Working Days or longer. The Supplier's notice must be given as soon as is reasonably practicable (and in any event within 10 Working Days) after the Supplier becomes aware of the need for the unplanned maintenance, and must include the following details:

- (i) the cause and nature of the unplanned maintenance to be undertaken;
- (ii) the expected duration of the unplanned maintenance, and when the Vessel is expected to return to service;
- (iii) the location that the maintenance is being undertaken; and
- (iv) information and specifications of any substitute vessel(s) that the Supplier is able to make available to the Commonwealth throughout the unplanned maintenance period for the purpose of performing Requisition Services should the need arise.

3.9 Rejection of Vessels for Requisition Services

- (a) If, at any time, a Vessel does not comply with the requirements of this Deed or any applicable Official Order, the Commonwealth:
 - (i) may reject the Vessel for the purpose of performing a Requisition Order; and
 - (ii) will not be liable to pay compensation and damages under or in connection with this Deed or any Requisition Order for Loss arising out of or in connection with such rejection.
- (b) If the Commonwealth rejects a Vessel under clause 3.9(a)(i), the Supplier must work with the Commonwealth in good faith to arrange for the provision of an appropriate substitute or supplementary vessel in accordance with clause 3.10.
- (c) No inspection, survey, Approval or rejection of a Vessel by the Commonwealth will relieve the Supplier of its obligations or liabilities under this Deed, any Official Order or otherwise at law.

3.10 Substitute and Supplementary Vessels

- (a) The Supplier acknowledges that the Commonwealth's preference is for Strategic Fleet Vessels to be utilised for the performance of Requisition Services wherever practicable.
- (b) The Commonwealth may request (or the Supplier may propose) the provision of vessels which do not form part of the Strategic Fleet in order to substitute or supplement the performance of the Services and the Vessel(s) under this Deed or a Requisition Order.
- (c) Without limitation, the Supplier may propose a substitute or supplementary vessel:
 - (i) in order to meet its obligations in relation to the Seafarer Training Services and to provide the Minimum Number of Training Berths; and

- (ii) to perform Requisition Services where the Strategic Fleet Vessel is either not reasonably available, or where the cost of requisitioning the Strategic Fleet Vessel would exceed the anticipated costs of using another vessel.
- (d) The deployment of any substitute or supplementary vessels by the Supplier under this Deed:
 - (i) will be subject to the Commonwealth's Approval, and any additional conditions stipulated by the Commonwealth at its sole discretion;
 - (ii) will be subject to the Commonwealth and the Supplier working together in good faith to arrange for the provision of the relevant substitute or replacement vessel; and
 - (iii) must comply with the terms of this Deed, except where and to the extent that the Commonwealth has expressly confirmed in the relevant Official Order or Deed Change Proposal that the Supplier will not be required to comply with specified provisions of this Deed for the performance of Services with a substitute or supplementary vessel.

3.11 Minimising Requisition Costs

- (a) Without limiting the Supplier's other obligations under this Deed or any Requisition Order, the Supplier must take such steps as may be reasonable in the circumstances to reduce and minimise the cost to the Commonwealth of performing any Requisition Services, including by (as appropriate):
 - (i) transshipping displaced cargo onto alternate vessels to minimise impact on cargo owners;
 - (ii) offering the Commonwealth the option of the Supplier providing a substitute vessel where the cost of requisitioning the Strategic Fleet Vessel would exceed the anticipated costs of using another vessel;
 - (iii) returning Strategic Fleet Vessels to commercial operations as soon as is practicable following the conclusion of a requisition; and
 - (iv) seeking out additional commercial cargo to fill remaining capacity if the Requisition Services do not require the full capacity of the Strategic Fleet Vessel; provided that the delivery of any Cargo under a Requisition Order is not materially delayed.

3.12 Delay in the Provision of Services

- (a) Except where and to the extent that a Requisition Order makes express provision for the payment of Demurrage (or other delay-related costs), the Commonwealth will have no liability for any Loss arising out of or in connection with any delay to the performance of any Services under or in connection with this Deed or any Official Order.

3.13 Government Furnished Material

- (a) If an Official Order specifies that Government Furnished Material (**GFM**) is to be provided by the Commonwealth:

- (i) the Commonwealth must deliver or provide access to the GFM at the place and times specified in the Official Order (or as the Commonwealth otherwise notifies the Supplier); and
 - (ii) the Supplier must manage the GFM in accordance with this Deed and the Official Order.
- (b) The Supplier must, on receipt of GFM:
 - (i) inspect the GFM for physical damage, or any defects or deficiencies which impact on, or are likely to impact on, the intended use of the GFM; and
 - (ii) notify the Commonwealth whether it is satisfied with the GFM or not.
- (c) The Supplier must:
 - (i) take all reasonable care of GFM in its care, custody or control; and
 - (ii) utilise the GFM in performing the Services with a high degree of professional skill and care and in accordance with the Official Order.
- (d) The Supplier must return GFM (other than consumable items of GFM) to the Commonwealth as specified in the relevant Official Order or as directed by the Commonwealth Representative.
- (e) Except as expressly provided under an Official Order:
 - (i) GFM is not provided to the Supplier for the purpose of directing or guiding the Supplier's work under this Deed or an Official Order;
 - (ii) the Commonwealth does not warrant the suitability of GFM for any particular use or application, nor the accuracy or precision of the GFM;
 - (iii) the Supplier is responsible for the application and use of GFM and all conclusions, assumptions or interpretations made by it on the basis of the GFM, or of its application or use of GFM; and
 - (iv) the Supplier's obligations under and in relation to this Deed and any Official Orders are not reduced by the selection of, or its use of, GFM.

3.14 Key Persons

- (a) Without limiting the Supplier's other obligations under this Deed or any Official Order, the Supplier shall ensure that the Services are performed by Supplier Personnel who:
 - (i) are suitably qualified, with appropriate skills and experience; and
 - (ii) hold an appropriate current certificate, authorisation or accreditation at all times during the provision of the Services.
- (b) The Supplier must ensure that each Key Person identified in the Deed Details Schedule or within an Official Order is appointed to the Key Position nominated for

that person, unless the Commonwealth Approves the replacement of the relevant Key Person.

- (c) If the Supplier becomes aware that a Key Person will or may become unavailable to perform the duties of a Key Position for this Deed or an Official Order, the Supplier must:
 - (i) promptly notify the Commonwealth of the impending unavailability; and
 - (ii) nominate, at its earliest opportunity, a suitable replacement for the Commonwealth's consideration.
- (d) The Commonwealth may, at any time, give notice in writing, including reasons, directing the Supplier to remove a Key Person or other Supplier Personnel from work in respect of the Services. The Supplier must arrange for their replacement at the earliest opportunity with Supplier Personnel of appropriate skills and experience.
- (e) If the Supplier is required to replace any Key Person under this clause 3.14 and a replacement person satisfactory to the Commonwealth is not Approved within three months after the Commonwealth first receives or provides notice under clause 3.14(c) or 3.14(d), the Commonwealth may give the Supplier a Default Notice in accordance with clause 11.3.

3.15 General Representations and Warranties

- (a) The Supplier acknowledges and agrees that the Commonwealth has entered into this Deed (and enters into each Official Order) in reliance on the Supplier's obligations and warranties in this Deed and in each Official Order, and the Supplier's skill and judgement in providing the Services.
- (b) The Supplier warrants and represents that:
 - (i) it is a body corporate duly established under the Laws of Australia;
 - (ii) it has full legal capacity and authority to enter into and perform this Deed and each Official Order, and to carry out the transactions that they contemplate;
 - (iii) except as disclosed in writing to the Commonwealth, and unless the Commonwealth has otherwise Approved, it is not entering into this Deed and will not enter into an Official Order as a trustee of any trust;
 - (iv) it has each Authorisation necessary and desirable to lawfully provide the Services and is complying with all conditions to which they are subject;
 - (v) it is, and will at all times during the Deed Term and each Official Order Term be, solvent and able to meet its financial obligations as they fall due; and
 - (vi) except as disclosed in writing to the Commonwealth, there is no litigation, arbitration, mediation, conciliation or administrative proceedings taking place which, if adversely decided, could have a material adverse effect on its ability to comply with this Deed or any Official Order.

- (c) The representations and warranties in clause 3.15(b) are made and given on the Deed Effective Date and the Effective Date for each Official Order (as the case requires) and are taken to be repeated on each anniversary of these dates.
- (d) Each representation and warranty in this Deed or under any Official Order is separate and independent, and is not to be read down because of any other representation, warranty or provision of this Deed or an Official Order.
- (e) None of the warranties, undertakings or representations given or made by the Supplier in connection with this Deed or an Official Order is modified, qualified or discharged:
 - (i) merely because the Commonwealth has made inquiries or investigations, or sought advice, about the matter concerned; or
 - (ii) by the cooperative and collaborative approach to the work under this Deed and any Official Order.
- (f) If the Supplier becomes aware of an event or circumstance that leads or may lead to a representation or warranty in connection with this Deed or an Official Order, being or becoming in any respect untrue, it must notify the Commonwealth of the matter without delay (and in any case, within two Working Days).

3.16 Negation of Employment and Agency

- (a) The Supplier must not represent itself, and must ensure that Supplier Personnel do not represent themselves, as being employees, partners or agents of the Commonwealth.
- (b) Without limiting clause 3.16(a), the Supplier must clearly identify itself, and must ensure that Supplier Personnel clearly identify themselves, as a contractor to the Commonwealth when communicating through telephone, email or any other communication tool in the course of performing the Services.
- (c) Each party acknowledges and agrees that nothing in this Deed or any Official Order creates or implies a partnership, a joint venture or a fiduciary relationship between the Supplier and the Commonwealth.

3.17 Language and Measurement

- (a) All information provided as part of the Services under this Deed and any Official Order must be written in English.
- (b) Measurements of physical quantity must be in Australian legal units of measurement as defined in under the *National Measurement Act 1960* (Cth) or, if Services are imported, units of measurement as agreed by the Commonwealth.

4 INTELLECTUAL PROPERTY

- (a) Nothing in this Deed affects the ownership of Intellectual Property, except as expressly provided for in this clause 4 or an Official Order.

- (b) Intellectual Property created under this Deed or any Official Order in respect of Contract Material is assigned to the Supplier (or its nominee) immediately upon its creation.
- (c) The Supplier grants to the Commonwealth (or shall ensure the Commonwealth is granted) a Licence in respect of all Contract Material (other than Commercial Material) to Use the Contract Material for any purpose, including to grant a sublicense to any other person to Use the Contract Material, or to grant a further sublicense to Use the Contract Material.
- (d) The Supplier shall ensure that the Commonwealth is granted a licence in respect of all Commercial Material on the best commercial terms.
- (e) The Supplier warrants that the provision of the Services (and the Commonwealth's Use of any Contract Material) will not infringe the Intellectual Property or Moral Rights of any person.

5 PRICE AND PAYMENT

5.1 Price Basis

- (a) Subject to the terms of this Deed and the relevant Official Order, the Commonwealth will pay the Supplier:
 - (i) in respect of the proper performance of the Fleet and Training Services:
 - (A) the Transition-In Payment;
 - (B) the Term Service Payments; and
 - (C) the Transition-Out Costs; and
 - (ii) in respect of the proper performance of any Requisition Services, the Requisition Payments.
- (b) Unless otherwise specified in this Deed or an Official Order, the payments to the Supplier pursuant to this Deed or any Official Order comprises the total consideration payable by the Commonwealth to the Supplier for the provision of the Services under this Deed or an Official Order, and the Supplier will not otherwise make any Claim in respect of payment for the provision of the Services in respect of this Deed or any Official Order.

5.2 Entitlement to Payment

- (a) Subject to this Deed, where the Supplier provides the Services in accordance with this Deed and any Official Order, and otherwise complies with this Deed and each Official Order, the Supplier is entitled to:
 - (i) payment calculated in accordance with Attachment B and the relevant Official Order; and
 - (ii) payment of any other amount that the Supplier is expressly entitled to under this Deed or an Official Order.

- (b) The Supplier's entitlement to payment under this Deed and each Official Order is subject to the Commonwealth's right to reduce or withhold payment in accordance with clauses 5.5 and 11.8.
- (c) Except where this Deed or an Official Order permits the Supplier to make a claim to the Commonwealth for a cost incurred by the Supplier, the Supplier is not entitled to payment of any cost incurred in connection with this Deed or an Official Order.

5.3 **Payment Claims**

- (a) Where and to the extent that the Supplier is entitled to payment in accordance with clauses 5.1 and 5.2, the Supplier shall be entitled to submit a Payment Claim in accordance with this clause 5.3 and Attachment B.
- (b) The Supplier must ensure that each Payment Claim:
 - (i) is fully itemised and calculated in accordance with this clause 5.3 and Attachment B;
 - (ii) is in the form of a valid Tax Invoice;
 - (iii) contains the following information;
 - (A) the type of Services that the Payment Claim relates to, and the name of the Supplier Representative;
 - (B) the name and phone number of the Commonwealth Representative;
 - (C) the Commonwealth's reference number (or numbers) for the Official Order (or Official Orders) to which it relates; and
 - (D) the amount of the claim;
 - (iv) includes or is accompanied by supporting evidence satisfactory to the Commonwealth (acting reasonably), including:
 - (A) details evidencing that the amounts claimed were necessarily and properly incurred by the Supplier as a result of the proper performance of the Services in accordance with this Deed and any Official Order; and
 - (B) evidence that the Services included in the Payment Claim have been completed in accordance with this Deed and the relevant Official Order; and
 - (v) contains a declaration by the Supplier that:
 - (A) the Payment Claim, including the calculation of the amount, is in accordance with the requirements of this Deed and any Official Order;
 - (B) the Supplier has complied with its payment obligations in relation to Supplier Personnel up to the date of the Payment Claim; and

- (C) the information in the Payment Claim and the accompanying Tax Invoice is complete and accurate.
- (c) A Payment Claim may be in respect of amounts payable under one or more Official Orders.
- (d) The Supplier must comply with any Commonwealth request for further information to enable the Commonwealth to determine whether to Approve a Payment Claim.
- (e) If the Commonwealth is satisfied that:
 - (i) the Supplier is entitled to make a claim for payment under clause 5.2;
 - (ii) the Supplier's Payment Claim meets the requirements of clause 5.3(b); and
 - (iii) the Supplier has complied with any other provisions of this Deed or the relevant Official Order applicable to the Payment Claim,then the Commonwealth shall Approve the Payment Claim.
- (f) If a Payment Claim is not Approved, the Commonwealth will reject the Payment Claim and notify the Supplier of the rejection within 10 Working Days after receipt of the Payment Claim, setting out reasons. The Supplier may then amend and resubmit the Payment Claim.
- (g) A resubmitted Payment Claim is subject to the same requirements and processes as if it were the original Payment Claim.
- (h) The Commonwealth must pay the Supplier the amount Approved for a Payment Claim within:
 - (i) 20 days; or
 - (ii) where an Official Order specifies that the Pan-European Public Procurement On-Line (PEPPOL) framework applies, and the Payment Claim is lodged electronically through the PEPPOL framework, five days after Approval of the Payment Claim.
- (i) If an Official Order is terminated or expires, a final Payment Claim in respect of amounts payable under the Official Order must be submitted no later than 20 Working Days after expiry or termination.
- (j) If this Deed is terminated or expires, a final Payment Claim in respect of amounts payable under this Deed must be submitted no later than 10 Working Days after expiry or termination.

5.4 Deed of Guarantee and Indemnity

- (a) If the Deed Details Schedule specifies that a Deed of Guarantee and Indemnity is to be provided, the Supplier must, on or before the Deed Effective Date, provide the Commonwealth with a Deed of Guarantee and Indemnity.
- (b) If the Commonwealth reasonably considers that there has been, or that it is likely that there will be, a material deterioration in the Supplier's financial standing, the

Commonwealth may, from time to time, notify the Supplier that it requires the Supplier to provide a Deed of Guarantee and Indemnity (or such other financial security agreed between the parties).

- (c) If the Commonwealth issues a notice under clause 5.4(b), the Supplier must provide the Commonwealth with a Deed of Guarantee and Indemnity (or such other agreed financial security) within 10 Working Days (or such longer period specified in the notice).
- (d) Where the Commonwealth requires a Deed of Guarantee and Indemnity under clause 5.4(b), the Supplier must obtain the Commonwealth's prior Approval of the identity of the Guarantor, which must not be unreasonably withheld having regard to the financial standing of the Supplier and its obligations and liabilities in connection with this Deed and any Official Orders, the financial standing of the proposed Guarantor and any security, legal or policy requirements of the Commonwealth.
- (e) For the purpose of assessing the Supplier's financial standing under clause 5.4(b) and assessing the identity of any proposed Guarantor under clause 5.4(d), the Supplier must provide the Commonwealth with such details and documentation as the Commonwealth may reasonably require, including:
 - (i) financial statements of the Supplier and any proposed Guarantor, including (if available) its latest audited financial statements; and
 - (ii) a verification certificate from a director or certified accountant of the Supplier or proposed Guarantor confirming the solvency of the Supplier or the proposed Guarantor (as the case may be) and that the director or certified accountant is not aware of any reason why the entity would not continue to remain solvent for the foreseeable future, and any other authorisation, document, opinion or assurance which the Commonwealth reasonably considers to be necessary or desirable.
- (f) A Deed of Guarantee and Indemnity must be properly executed (and duly stamped if required by law) by the Guarantor specified in the Deed Details Schedule or Approved by the Commonwealth in accordance with clause 5.4(d) (as the case requires).

5.5 Reduction in Payments

- (a) The Supplier acknowledges and agrees that it receives payments under this Deed and each Official Order to assist the Commonwealth to meet the Strategic Fleet Objectives, and to otherwise provide the Services in accordance with the Supplier's obligations under this Deed and any Official Order.
- (b) Where the Supplier is in breach of one or more of the following obligations under or in connection with this Deed or any Official Order to:
 - (i) complete the Transition-In Services by the Transition-In Period End Date;
 - (ii) obtain and maintain registration of the Vessel(s) on the AGSR in accordance with clause 3.4 of this Deed;

- (iii) comply with its obligations to maintain the contracted availability for each Vessel in accordance with clause 3.6(a) of this Deed;
- (iv) comply with its obligations to provide the Seafarer Training Services and the Minimum Number of Training Berths;
- (v) maintain each Vessel in accordance with clause 3.7;
- (vi) comply with its obligations to maintain insurances in accordance with clause 7;
- (vii) comply with its obligations under clause 9.8 in relation to the provision of Annual Performance Reports;
- (viii) comply with its obligations under clauses 9.3 (Conflict of Interest), 10.19 (Notification of Significant Events) and 10.20 (Commonwealth Supplier Code of Conduct); or
- (ix) perform Requisition Services in accordance with the relevant Requisition Order,

then the Commonwealth may provide the Supplier with not less than 20 Working Days' written notice of:

- (x) the Commonwealth's intention to make a reduction in the payments to which the Supplier would otherwise be entitled under this Deed or any Official Order;
- (xi) the reasons for the reduction, and any amounts that the Commonwealth is proposing to deduct (whether in respect of past or future payments to the Supplier); and
- (xii) any steps that the Commonwealth requires the Supplier to take to remedy any breaches of this Deed or any Official Order,

(Payment Reduction Notice).

- (c) The amount specified by the Commonwealth in a Payment Reduction Notice will be a reasonable assessment of a pro-rata reduction in payment for each day that the Supplier is in breach of its obligations, having regard to the nature of those obligations, the materiality of the breach, and any Services that have not been provided in accordance with this Deed or any Official Order.
- (d) If the Supplier does not agree with the contents of a Payment Reduction Notice, then the Supplier may, within 10 Working Days of receipt of the Payment Reduction Notice, provide a written response to the Commonwealth:
 - (i) notifying the Commonwealth of the Supplier's objection to the Payment Reduction Notice, and providing reasons demonstrating the Supplier's compliance with this Deed and any applicable Official Order; and
 - (ii) requesting that a meeting take place within a further 10 Working Days to enable consultations between the Commonwealth Representative and the Supplier Representative in relation to the Payment Reduction Notice.

- (e) Within 20 Working Days of the later of:
 - (i) receipt by the Supplier of the Payment Reduction Notice; and
 - (ii) where applicable, receipt by the Commonwealth of the Supplier's notice under clause 5.5(d),

the Commonwealth must issue a final Payment Reduction Notice having regard to any further consultations between the parties.
- (f) If the Commonwealth elects to make a reduction in accordance with this clause 5.5 then:
 - (i) the amount of the reduction will be recoverable by the Commonwealth under clause 11.8; and
 - (ii) the Commonwealth will be entitled to continue to apply reductions to future payments that would be otherwise be due to the Supplier, until such time as the Commonwealth is satisfied that the Supplier is complying with its obligations under this Deed and any Official Order.
- (g) For clarity:
 - (i) any decision of the Commonwealth under this clause 5.5 is subject to the dispute resolution provisions under clause 11.1; and
 - (ii) the rights given to the Commonwealth under this clause 5.5 are in addition to, and do not limit, any other rights or remedies of the Commonwealth arising out of or in connection with the Supplier's performance (or non-performance) of this Deed or any Official Order.

5.6 Interest on Late Payments

- (a) If payment of an amount due to the Supplier under this Deed or an Official Order is made late, interest will be payable by the Commonwealth to the Supplier in accordance with the formula at clause 5.6(c).
- (b) Any failure to make payment within 60 days after the date it is to be made under this Deed or the relevant Official Order will be a breach of this Deed.
- (c) Interest payments will be calculated in accordance with the following formula:

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

where:

- I% means the ATO sourced General Interest Charge rate current at the due date of payment expressed as a percentage;
- P means the amount due; and
- n means the number of days after the due date for payment that the payment is made.

- (d) If the interest payment is not offset or paid as part of the subject claim, the Commonwealth will adjust the next Approved payment under this Deed or an Official Order. If there are no further payments, the Commonwealth must pay the interest payment within:
 - (i) 20 days after being provided with a notice; or
 - (ii) where an Official Order specifies that the PEPPOL framework applies, and the Payment Claim is lodged electronically through the PEPPOL framework, five days after being provided with a notice.

5.7 Taxes and Duties

- (a) All Taxes (except for GST) imposed or levied in Australia or overseas in connection with this Deed and any Official Order must be met by the Supplier and the Supplier agrees that they are included within the payments under the Official Order.
- (b) The amounts set out in or determined in accordance with an Official Order (including Attachment B) include GST for Services which are taxable supplies within the meaning of the GST Act.
- (c) Each Tax Invoice provided under clause 5.3(b) must include the amount and method of calculation of any GST payable by the Supplier in relation to that Payment Claim as a separate item.
- (d) If the Supplier incorrectly states the amount of GST payable, or paid, by the Commonwealth on an otherwise valid Tax Invoice, the Supplier must issue to the Commonwealth a valid Adjustment Note in accordance with the GST Act.
- (e) If the Commonwealth makes, or is assessed by the Commissioner of Taxation as having made, a taxable supply to the Supplier under or in connection with this Deed or an Official Order, the Commonwealth will be entitled to recover from the Supplier, upon presentation of a valid Tax Invoice, the amount of GST paid or payable by the Commonwealth.
- (f) The Commonwealth may elect to recover from the Supplier under clause 11.8(a) any amount of GST to be paid by the Supplier under clause 5.7(e). No amount will be owing to the Commonwealth under this clause 5.7(f) until the Commonwealth elects to recover the amount.
- (g) If the Supplier has a claim for an amount under this Deed or any Official Order, the claim is for the amount less any input tax credit to which the Supplier is entitled in respect of the claim. The Commonwealth may treat the Supplier as entitled to full input tax credits for GST included in an amount unless the Supplier satisfies the Commonwealth otherwise.

5.8 Benchmarking

- (a) The Commonwealth may, at any time from 12 months after the Deed Effective Date, undertake Benchmarking to determine whether any amounts paid or payable by the Commonwealth for Services provided by the Supplier are competitive with the then current market for services that are similar to the Services.

- (b) The Commonwealth must not undertake a subsequent Benchmarking of the Services until the expiry of 12 months after the previous Benchmarking of the Services unless the Supplier so approves, with such approval not to be unreasonably withheld or delayed.
- (c) If the Commonwealth undertakes Benchmarking, it must give the Supplier notice containing details of:
 - (i) the Services that will undergo Benchmarking;
 - (ii) the Benchmarking the Commonwealth proposes to use to undertake the Benchmarking; and
 - (iii) the date on which the Benchmarking will commence (which must be at least 20 Working Days after the date of the notice).

Engaging a Benchmarking

- (d) The Benchmarking must:
 - (i) be an independent person;
 - (ii) not be a direct competitor of the Supplier;
 - (iii) have the necessary skill, expertise and experience to undertake the Benchmarking; and
 - (iv) be agreed to by the Supplier (and such agreement must not be unreasonably withheld or delayed).
- (e) If, within 10 Working Days after notice is given under clause 5.8(c), the parties are unable to agree on a Benchmarking, the Commonwealth, acting reasonably, will determine the Benchmarking, having regard to any concerns of the Supplier in relation to the suitability of the Benchmarking.
- (f) The Commonwealth will bear the cost of engaging the Benchmarking.
- (g) Prior to undertaking any Benchmarking, the Benchmarking must execute a confidentiality deed poll (in a form Approved by the Commonwealth) for the benefit of the Commonwealth and the Supplier.

Undertaking Benchmarking

- (h) During any Benchmarking, the Supplier must provide the Benchmarking with access to its premises and all materials and such other assistance as is reasonably required by the Benchmarking.
- (i) The Benchmarking must compare the then current Hire Rate, applicable Freight rates, and other amounts paid or payable for Services under this Deed and any Official Order, against the amounts paid for similar services received by any other organisation or body.
- (j) When conducting Benchmarking, the Benchmarking may take into consideration any matters that it considers relevant, which may include:

- (i) the size of the comparison group of comparable organisations;
- (ii) the scope of services in a relevant agreement;
- (iii) the service delivery location for a relevant agreement; and
- (iv) the terms and conditions applying to a relevant agreement.

Benchmarking Results

- (k) The Commonwealth may release Benchmarking results to:
 - (i) Ministers;
 - (ii) Parliament or parliamentary committees;
 - (iii) any Commonwealth Agency; and
 - (iv) advisers to the Commonwealth who:
 - (A) have executed an appropriate confidentiality undertaking; and
 - (B) are not direct competitors of the Supplier in respect of the Services.
- (l) If the Supplier requests a copy of the Benchmarking results determined under this clause 5.8, the Commonwealth will provide, or direct the Benchmarking results to the Supplier.
- (m) If the Benchmarking results determine that the current Hire Rate, applicable Freight rates, or any other amounts paid or payable for Services are greater than the corresponding Benchmark Value, the parties must use reasonable endeavours to agree to make appropriate adjustments to align such amounts with the relevant Benchmark Value.
- (n) If, within 10 Working Days, the parties cannot agree to make adjustments under clause 5.8(m), the Commonwealth may determine the appropriate adjustments acting reasonably.
- (o) Any adjustments will take effect from the date of agreement or the Commonwealth's determination under clause 5.8(n) (or such later date as notified by the Commonwealth). Adjustments will not apply retrospectively to payments already made by the Commonwealth to the Supplier in accordance with an Official Order.

6 TITLE AND RISK

6.1 Title and Risk in the Cargo

- (a) The Supplier acknowledges and agrees that, at all times, any Cargo to be transported by the Supplier remains the property of the Commonwealth (or other legal owner of the Cargo) as evidenced by the relevant Bill of Lading.

- (b) The Supplier is responsible for risk in, and the care of, the Cargo from the time that the Cargo is delivered to the Supplier (or its Subcontractor or agent) at the relevant loading port, or other agreed place for delivery, until such time that the Commonwealth (or other legal owner of the Cargo) takes delivery of the Cargo from the Supplier (or its Subcontractor or agent) at the relevant discharging port, or other agreed place for delivery.
- (c) The Supplier shall be liable to and must compensate and reimburse the Commonwealth in respect of any loss of, or damage to, any Cargo, while the risk resides with the Supplier under clause 6.1(b); provided that, for such purposes, the Supplier's liability will be subject to the rules contained in the Hague-Visby Rules as they apply to a Bill of Lading under applicable Law.

6.2 Title and Risk in Government Furnished Material

- (a) The Supplier acknowledges and agrees that any GFM provided to or used by the Supplier or a Subcontractor for the purposes of this Deed, or any Official Order, remains the property of the Commonwealth.
- (b) The Supplier must not:
 - (i) without the prior written approval of the Commonwealth:
 - (A) use GFM other than for the purposes of the relevant Official Order;
 - (B) modify GFM;
 - (C) transfer possession or control of GFM to any other party; or
 - (D) communicate or divulge GFM to any other party; or
 - (ii) use GFM other than for a purpose for which the GFM was designed, manufactured or constructed.
- (c) The Supplier is responsible for risk in, and the care of, any GFM made available by the Commonwealth to the Supplier from the time that the Supplier (or its Subcontractor or agent) receives (or is provided access to) the GFM until such time that the GFM is returned to the Commonwealth in accordance with the relevant Official Order.
- (d) Subject to clause 6.2(e), the Supplier shall be liable to, and must compensate and reimburse the Commonwealth in respect of any loss of, or damage to, any GFM, while the risk resides with the Supplier under clause 6.2(c).
- (e) The parties acknowledge and agree that, where and to the extent that GFM is specified in a Requisition Order to be transported by the Supplier as Cargo on a Vessel, then the relevant GFM will be treated as Cargo for the purposes of this Deed, and the Supplier's liability under clause 6.2(d) will be subject to the rules contained in the Hague-Visby Rules as they apply to a Bill of Lading under applicable Law.

6.3 Security Interest in the Cargo, GFM and Other Commonwealth Property

- (a) The Supplier must not, without prior Approval, use, modify, transfer, create or allow to be created any Security Interest over any Cargo, GFM or other Commonwealth Property. For clarity, the foregoing does not apply to a third-party's legal right to a valid lien for general average or salvage costs.
- (b) The Supplier irrevocably waives and renounces and must cause each of the Subcontractors to irrevocably waive and renounce any carriers or possessory liens arising by operation of law or otherwise in favour of the Supplier or a Subcontractor over any Cargo, GFM or other Commonwealth Property.

6.4 Loss of a Vessel and Missing Vessels

- (a) If, at any time during an Official Order Term, or otherwise during the Deed Term, a Vessel is lost, or is a constructive total loss or is missing, then:
 - (i) any Official Orders applicable to the Vessel will terminate in accordance with clause 11.4, and this clause 6.4; and
 - (ii) the Commonwealth may terminate this Deed under clause 11.4.
- (b) Where an Official Order is terminated under clause 6.4(a)(i), the date and time of termination will be:
 - (i) in relation to a Vessel which is lost, noon (UTC) on the day that the Vessel is lost;
 - (ii) in relation to a Vessel which is a constructive total loss, noon (UTC) on the day on which the Vessel's underwriters agree that the Vessel is a constructive total loss; and
 - (iii) in relation to a Vessel which is missing, noon (UTC) on the day on which the Vessel was last heard of.
- (c) Where an Official Order is terminated under clause 6.4(a)(i):
 - (i) the Commonwealth will not be liable for any payments to the Supplier (including Hire and Freight) in respect of an Official Order on and from the applicable date and time of termination specified in clause 6.4(b);
 - (ii) any payments that have been made to the Supplier in advance (including Hire and Freight) in respect of the relevant period specified in clause 6.4(b) shall be returned to the Commonwealth; and
 - (iii) where applicable in relation to a Requisition Order, the Supplier shall reimburse the Commonwealth for the value of the estimated quantity of bunkers on board at the time of the termination of the relevant Requisition Order at the Fuel Price paid by the Commonwealth or its designee at the last bunkering port.

7 INSURANCE

7.1 Obligation to Effect and Maintain Insurance

- (a) The Supplier must effect and maintain (or otherwise have the benefit of) the insurances required by this clause 7, including any additional insurances specified in an Official Order.
- (b) The Supplier is not required to effect and maintain an insurance required under this clause 7.1 to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 7.
- (c) The Supplier shall use its reasonable endeavours to ensure that Subcontractors and their employees, officers and agents are also insured as required by this clause 7, as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of any services to be performed by them, as if they were the Supplier.
- (d) For the avoidance of doubt, the terms of this clause 7 do not alter the allocation of risk or liability between the parties as provided for under any other provision of this Deed or any Official Order.

7.2 Workers Compensation

The Supplier shall effect and maintain:

- (a) workers compensation insurance or registrations as required by Law, in respect of the Supplier's liability to its employees engaged in the performance of any obligation or the exercise of any right under this Deed or any Official Order. 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 Supplier. However, the requirements of this clause 7.2(a) do not apply to the extent and for such time as the Supplier is a licensed self-insurer or exempt employer in the relevant jurisdiction; and
- (b) in each jurisdiction where common law claims can be brought outside of the statutory workers compensation or accident compensation scheme referred to in clause 7.2(a), 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 Supplier in the performance of the Services under this Deed or an Official Order (or their dependants). Such insurance shall extend to cover the vicarious liability of the Commonwealth for the acts or omissions of the Supplier.

7.3 Marine Hull

The Supplier shall effect and maintain marine hull insurance for the full replacement value (or, where it is the practice for such property to be insured for its market or agreed value by prudent insureds in accordance with insurance market practice for this type of risk, then for such market or agreed value) of each Vessel to be used in the performance of the Services against the risks of loss, damage or destruction by all commercially insurable risks

(including war risks) whilst each Vessel is at the risk of the Supplier and which insures the interests of the Supplier in the property insured.

7.4 Marine Liability

The Supplier must ensure that each Vessel is entered into a P&I Club which is a member of the International Group of P&I Clubs for protection and indemnity insurance cover for the maximum amount of cover available, and as would be procured by a first class operator of a vessel of a type and size which is the same or substantially similar to the Vessel, including cover for pollution and oil spill risks for the maximum amount available, which presently is capped at US \$1,000,000,000.

7.5 General Liability Insurance

- (a) The Supplier shall effect and maintain General Liability (Public and Products Liability) insurance to cover its liability to third parties for loss of or damage to property (including loss of use), death or injury to any person, sudden and accidental pollution and contractual liability arising out of the performance of any obligation or the exercise of any right under this Deed or any Official Order.
- (b) The insurance under clause 7.5(a) must:
 - (i) be for an amount not less than AUD \$50,000,000, per occurrence and in the annual aggregate in respect of Products Liability, and unlimited in the annual aggregate with respect to Public Liability;
 - (ii) name the Commonwealth as an additional insured in respect of its vicarious liability;
 - (iii) extend to cover the use of unregistered motor vehicles or mobile plant and equipment used in connection with the Services, registered vehicles used as a tool of trade in the carrying out of the Services and the property of the Commonwealth in the care, custody or control of the Supplier or any of its Subcontractors; and
 - (iv) contain a provision to the effect that such insurance will operate as primary insurance to any insurance held by the Commonwealth so that the Commonwealth's insurances in respect of any such loss or liability shall operate only in excess of the Supplier's insurances.

7.6 Cyber Insurance

The Supplier shall effect and maintain cyber insurance written on an occurrence basis with a limit of indemnity of not less than AUD \$20,000,000 any one occurrence which covers the Supplier for:

- (a) liability arising from the alleged or actual theft or unauthorised dissemination, or unauthorised use of, or unauthorised access to personal, confidential, security classified or proprietary information;
- (b) "network security liability" being a liability arising from unauthorised access to, unauthorised use of, or unauthorised modification of computer systems or applications, including hacker attacks, the inability of an authorised party to access, use or modify the systems or applications including because of "denial of service"

attacks, except to the extent caused by a mechanical or electrical failure not in the direct operational control of the insured;

- (c) liability arising from Malware included in the Services, or introduced into equipment, networks or existing applications or systems, or data relating thereto, belonging to or used by the Commonwealth, the Supplier, a Subcontractor, another contractor of the Commonwealth or a third party;
- (d) costs and expenses of government investigations into events of the kind described in clauses 7.6(a) to 7.6(c);
- (e) fines and penalties imposed in relation to events of the kind described in clauses 7.6(a) to 7.6(c);
- (f) mitigation (including web clean-up) costs, crisis management costs and investigation (including forensic) costs in relation to events of the kind described in clauses 7.6(a) to 7.6(c);
- (g) cyber ransom and extortion; and
- (h) data recovery costs incurred in relation to events of the kind described in clauses 7.6(a) to 7.6(c).

7.7 Property

The Supplier shall effect and maintain all risks property insurance covering:

- (a) any Government Furnished Material and any other property of the Commonwealth in the care, custody or control of the Supplier or its Subcontractors; and
- (b) all other property, plant and equipment (other than Cargo) in the care, custody or control of the Supplier or its agents, material to the Supplier's ability to perform its obligations under this Deed or any Official Order, unless and to the extent that the liability of the Supplier for the loss or damage of that property is insured under another insurance referred to in this clause 7,

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 Supplier and the Commonwealth in the property insured.

7.8 Motor Vehicle

The Supplier shall effect and maintain:

- (a) compulsory third party insurance as required by Law in respect of all registered plant and motor vehicles used by the Supplier, its employees, officers and agents in connection with the performance of the Services; and
- (b) motor vehicle liability insurance written on an occurrence basis with a limit of indemnity of not less than AUD \$50,000,000 each and every occurrence covering:

- (i) third party property loss or damage arising out of the use by the Supplier, its employees, officers and agents of any registered or unregistered plant or vehicles; and
- (ii) third party bodily injury, disease, illness or death arising out of the use by the Supplier, 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 performance of the Services by the Supplier or Supplier Personnel.

7.9 Insurance Policy Requirements

- (a) Except for statutory insurances, each insurance referred to in this clause 7 shall:
 - (i) be effected with an insurer with a financial security rating of 'A-' or better by Standard & Poor's (or the equivalent rating with another recognised rating agency), or an insurer Approved by the Commonwealth, acting reasonably; and
 - (ii) provide that the insurer agrees:
 - (A) to give the policyholder at least 30 days' notice of any proposed cancellation of the relevant policy;
 - (B) that the relevant policy operates (except for limits of indemnity) as if there were a separate policy of insurance covering each party comprising the insured;
 - (C) that a failure by an insured to comply with a provision of the policy or the pre-contractual duty of disclosure does not prejudice the insurance of any other insured;
 - (D) that a state of mind, knowledge or intention of an insured will not be attributed to any other insured in connection with the relevant policy;
 - (E) to waive all rights of salvage in respect of property of the Commonwealth which the Commonwealth notifies to the Supplier 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 Supplier'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 7.9(a)(ii)(E) only applies to property insurance and marine hull insurance;
 - (F) that a notice of a claim by any insured will be accepted as notice by all insureds; and

- (G) in the case of an insurance that is a liability insurance (except statutory insurances) — that the relevant policy covers the Supplier for liabilities assumed by it because of clause 8.9 (Proportionate Liability Laws).
- (b) With respect to any insurance policy pertaining to a Vessel, the Supplier must, to the extent permissible under the applicable policy terms or the rules of any applicable P&I Club:
 - (i) include the Commonwealth as an additional insured;
 - (ii) waive any subrogated rights of an insurer against the Commonwealth in respect of any claims by the Supplier under its insurance; and
 - (iii) recognise, to the Commonwealth's reasonable satisfaction, the Commonwealth's interests in such Vessel.

7.10 Evidence of Insurance

- (a) The Supplier must comply with any requirement by the Commonwealth to give the Commonwealth evidence which is satisfactory to the Commonwealth of the currency and terms of any insurance required by this clause 7.
- (b) The evidence:
 - (i) may include certificates of currency issued by the insurer or by the Supplier's insurance broker that include enough detail to allow the Commonwealth to determine whether the insurances comply with this clause 7; or
 - (ii) except for statutory insurances — may include copies of policies.
- (c) In the case of commercially sensitive policies, the Supplier may comply with clause 7.10(a) by making the policies available for inspection by the Commonwealth or the Commonwealth's adviser (or both), at a place and time reasonably convenient to the Commonwealth or its advisers.
- (d) In addition to any other rights or remedies of the Commonwealth under this Deed or any Official Order, the Commonwealth will be entitled to deduct payments that would otherwise be due to the Supplier in accordance with clause 5.5 (Reduction in Payments) if the Supplier is in breach of its insurance obligations under this clause 7.

7.11 Supplier to Maintain Insurance Policies

- (a) The insurances required under this clause 7 shall be effected on or before the commencement of the Deed Term, and thereafter be maintained until all Services under this Deed and any Official Order have been completed.
- (b) For each insurance referred to in this clause 7, the Supplier must:
 - (i) pay (or cause to be paid) all premiums and deductibles as and when they are due;

- (ii) not do anything or fail to do anything or (so far as is reasonably within its power) permit anything to occur that prejudices any insurance;
 - (iii) if necessary, rectify anything that might prejudice any insurance;
 - (iv) reinstate an insurance policy if it lapses;
 - (v) not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;
 - (vi) immediately notify the Commonwealth:
 - (A) if an insurance policy lapses, is cancelled or avoided, or of any event (including the issue of a notice of intention to cancel) that may result in an insurance policy lapsing or being cancelled or avoided; and
 - (B) if it becomes aware of any actual, threatened or likely Claims (except Claims and potential Claims by the Commonwealth against the Supplier) that could materially reduce the available limits of indemnity under an insurance policy or that may involve the Commonwealth;
 - (vii) comply with any requirement by the Commonwealth to reinstate or replace any depleted aggregate limit of indemnity in an insurance policy from claims that are unrelated to the work under this Deed or an Official Order;
 - (viii) give the insurer full, true and detailed information relating to matters and things the nondisclosure of which might prejudice or affect any policy or the payment of any claims under any insurance policy;
 - (ix) do everything reasonably required by the Commonwealth to allow the Commonwealth or any other person for whose benefit the policy is effected to claim and to collect or recover amounts due under any insurance policy; and
 - (x) not do anything that the Commonwealth has notified the Supplier may invalidate or prejudice any insurance policy or an indemnity to which the Commonwealth may be entitled.
- (c) To the extent that the Supplier's insurances and registrations required by this clause 7 are in fact written on a claims made basis (notwithstanding any requirements of this Deed for such insurances to be written on an occurrence basis) then the Supplier shall maintain those insurances and registrations until seven years following the completion of all Services.

7.12 Variation of Limits of Indemnity

- (a) Subject to clause 7.12(c), the Commonwealth may, by notice to the Supplier, do either or both of the following:
 - (i) require the Supplier to increase or decrease the limits of indemnity under a policy referred to in this clause 7; or

- (ii) vary the kinds of policies that are to be effected under this clause 7.
- (b) The notice takes effect three months after it is given, or at a later date specified in the notice.
- (c) The Commonwealth must not increase the limits of indemnity of an insurance required under this clause 7, or require additional insurances, unless it has obtained an opinion from a reputable insurance broker or otherwise appropriately qualified consultant that an increase or additional insurance is required to conform with current prudent insurance practice for a corporation with a risk profile comparable to the Supplier's risk profile.
- (d) The Supplier must agree a DCP or CCP (as applicable) to give effect to a notice under clause 7.12(a).

7.13 Uninsurable Risks

- (a) If the Supplier becomes aware that a risk to be covered by an insurance policy referred to in this clause 7 has or is likely to become Uninsurable the Supplier must promptly notify the Commonwealth, including:
 - (i) the reasons why the risk is Uninsurable (so far as the Supplier is aware after making reasonable inquiries);
 - (ii) the steps it has taken to obtain insurance for the risk;
 - (iii) the date on which the risk became or will become Uninsurable; and
 - (iv) the Supplier's proposals to mitigate, manage or control the risk while it remains Uninsurable.
- (b) The parties, within five Working Days after the notice under clause 7.13(a), must consult together to discuss all practicable means of managing the risk.

7.14 Commonwealth Insurance Policies

The parties acknowledge and agree that:

- (a) the Commonwealth may, at its sole discretion (and without any obligation to do so), effect and maintain such additional insurance cover as the Commonwealth may consider necessary or appropriate in connection with the performance of this Deed and any Official Order;
- (b) the Supplier must:
 - (i) provide all reasonable assistance to the Commonwealth in relation to Commonwealth held insurance policies (including any Commonwealth held Marine Cargo Insurance);
 - (ii) provide the Commonwealth with a comprehensive preliminary transport schedule for the delivery of any Cargo under a Requisition Order prior to the movement of the relevant Cargo; and

- (iii) comply with any Commonwealth insurer requirements relating to survey inspections and warranties on critical items as communicated to the Supplier at the Commonwealth's cost; and
- (c) nothing in this clause 7.14 reduces or limits the Supplier's obligations or liabilities under or in relation to this Deed or any Official Order, including its obligation to effect and maintain the insurances in accordance with this clause 7.

8 INDEMNITIES AND LIABILITY

8.1 Supplier's Employees and Officers

- (a) The Supplier must 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 Supplier in relation to this Deed or an Official Order.
- (b) The Supplier's liability under clause 8.1(a) is reduced to the extent that the Supplier demonstrates that such Loss arose from a Default of the Commonwealth or a Commonwealth Officer (or both).

8.2 Intellectual Property and Confidentiality

- (a) The Supplier must indemnify the Commonwealth and Commonwealth Officers in respect of any Loss arising out of or in connection with a Claim made by a third party in respect of the following:
 - (i) 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 this Deed or any Official Order (including in clause 4); and
 - (B) a failure by the Supplier to grant (or ensure the grant of) a licence or assign (or ensure the assignment of) IP rights under or referred to in this Deed or any Official Order (including in clause 4); and
 - (ii) 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 Supplier or Supplier Personnel.
- (b) For the purposes of this clause 8.2, 'infringement' includes authorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

8.3 Other Third Party Claims

- (a) The Supplier must indemnify the Commonwealth and Commonwealth Officers in respect of any Loss in connection with a Claim made or threatened by a third party arising out of or in connection with a Supplier Default, including a Claim in respect of:

- (i) the death, personal injury, disease or illness of any person; or
 - (ii) loss of, or damage to property of a third party.
- (b) The liability of the Supplier under clause 8.3(a) is reduced to the extent that the Supplier demonstrates that such Loss arose from a Default of the Commonwealth or a Commonwealth Officer (or both).
- (c) In this clause 8.3:
 - (i) **Claim** does not include a Claim covered by clause 8.1 or 8.2(a); and
 - (ii) **third party** includes a Related Body Corporate of the Supplier.

8.4 Environmental Harm and Contamination

- (a) Without limiting the Supplier's other obligations under this Deed or any Official Order, the Supplier shall indemnify the Commonwealth and Commonwealth Officers (in this clause 8.4, each a **person indemnified**) in respect of any Loss in connection with:
 - (i) a Claim against any of the persons indemnified; or
 - (ii) an order or direction (however described) from a court or a Governmental Authority,

in respect of any Environmental Harm, Environmental Incident, Contamination or remediation requirement arising out of or as a consequence of a violation of any environmental Law by the Supplier, any Supplier Personnel or a Vessel.
- (b) The liability of the Supplier under clause 8.4(a) is reduced to the extent that the Supplier demonstrates that such Loss arose from a violation of an environmental Law by the Commonwealth or a Commonwealth Officer (or both).

8.5 Proceedings Relating to Indemnities

- (a) If:
 - (i) a Claim is brought or threatened against the Commonwealth; and
 - (ii) the Claim is, or may be, the subject of an indemnity given by the Supplier under this Deed,

the Commonwealth must give the Supplier notice of the Claim, which must include particulars of the Claim so far as known to the Commonwealth.
- (b) The Commonwealth must, for any proceedings relating to a Claim of the type referred to in clause 8.5(a):
 - (i) keep the Supplier informed of all developments in relation to the proceedings;

- (ii) conduct the proceedings in accordance with any reasonable directions of the Supplier, subject to the *Legal Services Directions 2017* and other relevant Commonwealth policies; and
 - (iii) not agree to a settlement in relation to the Claim without the prior consent of the Supplier, unless a failure to agree the settlement would be contrary to the *Legal Services Directions 2017* and other relevant Commonwealth policies.
- (c) The Commonwealth may, following a request from the Supplier, agree to apply for leave to withdraw from proceedings relating to a Claim. If the Commonwealth is granted leave to withdraw from the proceedings:
 - (i) the Commonwealth must withdraw from the proceedings;
 - (ii) the Supplier must comply with any conditions imposed by the court in relation to the grant of such leave; and
 - (iii) the Supplier must, in its own name and at its own expense, conduct the proceedings.

8.6 Other Provisions Relating to Indemnities

- (a) The Commonwealth holds the benefit of each indemnity in this clause 8 in favour of a Commonwealth Officer (each a protected person) on trust for the protected person.
- (b) The Commonwealth may recover an amount from the Supplier under an indemnity given by the Supplier under this Deed before the Commonwealth makes a payment in respect of the amount.
- (c) An indemnity in this Deed does not limit a person's other rights under this Deed, any Official Order or at general law.
- (d) Each indemnity in this Deed is separate and independent, and is not to be read down because of any other indemnity.

8.7 Exclusion of Certain Losses

Exclusion of Specified Commonwealth Losses

- (a) Subject to clause 8.7(b), the Supplier is not liable to:
 - (i) pay compensation or damages under or in relation to this Deed or an Official Order; or
 - (ii) make a payment under an indemnity in this Deed,for Loss incurred by the Commonwealth resulting from:
 - (iii) compensation or damages for loss of or damage to reputation or goodwill, direct or indirect financing costs or exemplary or punitive damages, incurred by the Commonwealth; or

- (iv) compensation or damages for loss of or diminished revenue, profits, income, financial opportunity or business opportunity, loss of contract, loss of use or loss of production, suffered by the Commonwealth.
- (b) The exclusion of the Supplier's liability under clause 8.7(a) does not apply to a liability of the Supplier under or arising out of this Deed or an Official Order in relation to:
 - (i) the death, personal injury, disease or illness of any person;
 - (ii) loss of, or damage to, property of a third party;
 - (iii) an infringement of an Intellectual Property right or a Moral Right of any person;
 - (iv) breach of the Supplier's or Supplier Personnel's obligations relating to security, privacy or the protection of Confidential Information, Personal Information or Commonwealth Data;
 - (v) liability of the Supplier arising in connection with Environmental Harm, an Environmental Incident, Contamination or remediation;
 - (vi) the liability of the Supplier under clauses 8 (Employment of Tugs and Pilots) and 9 (Off-Hire) of the Time Charter Terms, or under clause 3 (Cancelling) of the Voyage Charter Terms;
 - (vii) the loss of, or damage to, Commonwealth Property;
 - (viii) fraud;
 - (ix) an act or omission of the Supplier, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
 - (x) a Wilful Default of the Supplier or Supplier Personnel;
 - (xi) restitution of amounts paid under a mistake of fact or law in relation to this Deed or an Official Order;
 - (xii) a repudiation of this Deed or an Official Order by the Supplier, including where the Supplier has intentionally abandoned this Deed or any Official Order;
 - (xiii) liability to the extent to which the Supplier is (or will be) entitled to be paid or indemnified pursuant to an insurance policy required under this Deed or any Official Order in respect of that liability; or
 - (xiv) liability for which, but for a failure by the Supplier to comply with its obligations under this Deed or any Official Order or under an insurance policy required under this Deed or any Official Order, the Supplier would have received payment or been indemnified under an insurance policy effected in accordance with this Deed or any Official Order.
- (c) In clause 8.7(b)(xiii), the reference to a liability for which the Supplier *"is (or will be) entitled to be paid or indemnified pursuant to an insurance policy"* means a liability

for which the Supplier is or would be entitled to be paid or indemnified under the relevant insurance policy if:

- (i) clause 8.7(a) had not existed;
 - (ii) the Supplier had complied with the terms of the policy;
 - (iii) the Supplier had submitted a claim where there was a legitimate entitlement to claim under the policy;
 - (iv) the Supplier had taken reasonable steps to pursue such a claim once it had been submitted; and
 - (v) the insurer had remained solvent.
- (d) In clause 8.7(b)(xiv), the reference to a liability for which the Supplier *"would have received payment or been indemnified under an insurance policy"* means a liability for which the Supplier would have been entitled to be paid or indemnified under the relevant insurance policy if:
- (i) the Supplier had effected and maintained the insurance policy as required by this Deed or any Official Order; and
 - (ii) the circumstances contemplated by clauses 8.7(c)(i) to 8.7(c)(v) had applied with respect to that policy.
- (e) Each paragraph of clause 8.7(b) is independent of, and its application is not affected by, any of the other paragraphs.

Exclusion of Specified Supplier Losses

- (f) Subject to clause 8.7(g), the Commonwealth is not liable to:
- (i) pay compensation or damages under or in connection with this Deed or an Official Order; or
 - (ii) make a payment under an indemnity in connection with this Deed or an Official Order,

for Loss incurred by the Supplier resulting from compensation or damages for loss of or damage to reputation or for exemplary or punitive damages.

- (g) The exclusion of the Commonwealth's liability under clause 8.7(f) does not apply to a liability of the Commonwealth arising out of:
- (i) a fraudulent act or omission of the Commonwealth;
 - (ii) an act or omission of the Commonwealth, where the person concerned has been convicted or found guilty of an offence comprised in the act or omission;
 - (iii) a Wilful Default of the Commonwealth or Commonwealth Personnel; or

- (iv) a repudiation of this Deed or an Official Order by the Commonwealth, including where the Commonwealth has intentionally abandoned this Deed or any Official Order.

8.8 Risk of Loss of or Damage to Commonwealth Property

- (a) Without limiting clause 6.2 of this Deed, the Supplier is liable for, and must compensate and reimburse the Commonwealth in respect of, any Loss incurred by the Commonwealth in connection with any loss of, or damage to, any Commonwealth Property arising out of or as a consequence of a Supplier Default.

8.9 Proportionate Liability Laws

- (a) The parties agree that, to the extent permitted by Law, the provisions of this Deed and any Official Order:
 - (i) are express provisions for their rights, obligations and liabilities with respect to matters to which a Proportionate Liability Law applies; and
 - (ii) exclude, modify and restrict the provisions of a Proportionate Liability Law to the extent of their inconsistency with the Proportionate Liability Law.

8.10 Limitation of Liability Conventions

- (a) Nothing in this Deed or any Official Order derogates from, or constitutes a waiver in any way whatsoever of, any rights, defences, immunities or limitation of liability that the Supplier or a Vessel (or both) may have pursuant to any of the Limitation Conventions, provided that nothing in this clause 8.10 shall create any additional rights, defences, immunities or limitation of liability to those that otherwise apply in accordance with provisions of the Limitation Conventions.

9 DEED AND CONTRACT MANAGEMENT

9.1 Change to this Deed

- (a) This Deed may only be amended by a Deed Change Proposal signed by the Commonwealth Representative and the Supplier Representative in accordance with this clause 9.1.
- (b) Either party may propose an amendment to this Deed by giving to the other party a draft Deed Change Proposal in the form of Attachment H to the COD (**DCP**).
- (c) If the Commonwealth proposes to amend this Deed, it may direct the Supplier to give the Commonwealth, within the period specified in the direction, a DCP providing for the amendment. The Supplier must comply with the direction.
- (d) A DCP must be in the form of Attachment H to the COD and completed in accordance with the instructions in that Attachment.
- (e) A change to this Deed is not binding on either party unless and until a DCP to that effect is executed by both parties and comes into effect.

- (f) The Commonwealth Representative may issue an amendment to this Deed to incorporate any changes that have taken effect under clause 9.2(e). The amendment does not affect the legal status of the change as determined under clause 9.1(e).
- (g) The Commonwealth is not liable to the Supplier for any additional work that the Supplier has undertaken or expenditure that the Supplier has incurred unless a DCP to that effect is executed by the Commonwealth and comes into effect.
- (h) Each party will bear its own cost in relation to preparing a DCP, unless otherwise agreed in writing between the parties.

9.2 Change to an Official Order

- (a) An Official Order may be amended, but only by a Contract Change Proposal signed by the Commonwealth and the Supplier in accordance with this clause 9.2.
- (b) Either party may propose an amendment to an Official Order by giving to the other party a draft Contract Change Proposal in the form of Attachment I to the COD (**CCP**).
- (c) If the Commonwealth proposes to amend an Official Order, it may direct the Supplier to give the Commonwealth, within the period specified in the direction, a CCP providing for the amendment. The Supplier must comply with the direction.
- (d) A CCP must be in the form of Attachment I to the COD and completed in accordance with the instructions in that Attachment.
- (e) A change to an Official Order is not binding on either party unless and until a CCP to that effect is executed by both parties and comes into effect.
- (f) The Commonwealth may issue an amendment to any Official Order to incorporate any changes that have taken effect under clause 9.1(e). The amendment does not affect the legal status of the change as determined under clause 9.2(e).
- (g) The Commonwealth is not liable to the Supplier for any additional work that the Supplier has undertaken or expenditure that the Supplier has incurred unless a CCP to that effect is executed by the Commonwealth and comes into effect.
- (h) Each party will bear its own cost in relation to preparing a CCP, unless otherwise agreed in writing between the parties.

9.3 Conflicts of Interest

- (a) The Supplier:
 - (i) warrants that, to the best of its knowledge after making diligent inquiries at the Deed Effective Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Deed or any Official Order by itself or by any Supplier Personnel; and
 - (ii) shall promptly notify the Commonwealth in writing if such a conflict of interest arises, or appears likely to arise.

- (b) Within five Working Days after giving notice under clause 9.3(a)(ii), the Supplier must notify the Commonwealth, in writing, of the steps the Supplier will take to resolve the issue. If the Commonwealth considers those steps are inadequate, it may direct the Supplier to resolve the issue in a manner proposed by the Commonwealth.
- (c) If the Supplier fails to notify the Commonwealth in accordance with clauses 9.3(a) or 9.3(b) or is unable or unwilling to resolve the issue in the required manner, the Commonwealth may terminate this Deed or any Official Order by notice under clause 11.2(a)(v) of this Deed.

9.4 **Waiver**

- (a) Failure by either party to enforce a condition of this Deed or any Official Order must not be construed as in any way affecting the enforceability of that condition or this Deed or any Official Order as a whole.
- (b) The exercise by a party of its rights under this Deed or any Official Order does not affect any other rights of that party under this Deed or any Official Order or otherwise, and does not constitute:
 - (i) an election to exercise those rights instead of other rights; or
 - (ii) a representation that the party will not exercise other rights.

9.5 **Confidential Information**

- (a) If, in connection with this Deed or any Official Order, Confidential Information is provided or produced by any person, the relevant party shall ensure that any person receiving or producing the information protects the confidential nature of the information except:
 - (i) if disclosure of the information is required by Law or statutory or portfolio duties; or
 - (ii) to the extent that the Commonwealth would be prevented from exercising any of its IP rights under this Deed or any Official Order.
- (b) If it is necessary to disclose Confidential Information, provided or produced by or on behalf of the other party, to a third party, other than a legal adviser or for a purpose within an exception listed in clause 9.5(a), the party wishing to make the disclosure must obtain the written consent of the other party to this Deed.
- (c) The Supplier must, if required by the Commonwealth, ensure that Supplier Personnel, Subcontractors and Subcontractor Personnel engaged in the performance of the Services, or an Official Order give a written undertaking in a form required by the Commonwealth prior to the disclosure of Confidential Information.
- (d) The Supplier must not, in marking information supplied to the Commonwealth, misuse the term 'Confidential Information' or the Supplier's equivalent. The marking of information as 'Confidential Information' or equivalent is not determinative as to whether the information is Confidential Information for the purposes of this Deed.

- (e) The Supplier agrees to deliver to the Commonwealth, as required by the Commonwealth, all documents in its possession, power or control which contain or relate to any information that is Confidential Information of the Commonwealth on the earlier of:
 - (i) demand by the Commonwealth; or
 - (ii) the time the documents and other material are no longer required for the purposes of this Deed or any Official Order.
- (f) If the Commonwealth makes a demand under clause 9.5(e), and the Supplier has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then the Supplier 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.
- (g) The Supplier, 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.
- (h) Return or destruction of the documents referred to in this clause 9.5 does not release the Supplier from its obligations under this Deed or any Official Order.

9.6 Assignment and Novation

- (a) Neither party may, without the prior written consent of the other, assign its rights under this Deed or any Official Order or novate its rights or obligations under this Deed or any Official Order.
- (b) If the Supplier proposes to enter into any arrangement which will require the novation of this Deed or any Official Order, it must notify and seek the consent of the Commonwealth Representative within a reasonable period prior to the proposed novation.
- (c) The Commonwealth may refuse to consent to an arrangement proposed by the Supplier under clause 9.6(b).

9.7 Books and Record Keeping

- (a) The Supplier must retain, maintain and store all Strategic Fleet Documents and must ensure all Subcontractors do the same.
- (b) The Supplier must ensure that Strategic Fleet Documents:
 - (i) where applicable, are maintained in accordance with relevant Accounting Standards;
 - (ii) where applicable, include sufficient detail to enable the amounts payable by the Commonwealth under this Deed and any Official Order to be determined; and
 - (iii) be retained for a period of seven years after the termination or expiration of this Deed and each Official Order.

9.8 Annual Performance Reports

- (a) Without limiting the Supplier's other reporting obligations under this Deed or an Official Order, the Supplier must prepare and submit an Annual Performance Report to the Commonwealth for Approval by 30 October each year.
- (b) The Annual Performance Report must include details of the Supplier's performance under this Deed and each Official Order during the Financial Year immediately preceding the current Financial Year, and must (at a minimum) include the following:
 - (i) where the Supplier has not yet completed the performance of the Transition-In Services, the Supplier's progress towards completing the Services, including registering each Vessel on the AGSR;
 - (ii) details and supporting evidence of the additional costs incurred by the Supplier during the relevant Financial Year which are directly attributable to the operation of an Australian flagged and crewed Vessel and, where applicable, as compared to an overseas flagged and crewed vessel operated by the Supplier;
 - (iii) details of the commercial operations of each Vessel throughout the relevant Financial Year;
 - (iv) a statement that the Term Service Payment provided to the Supplier under any Fleet and Training Order was not used by the Supplier to facilitate the offering of services at rates lower than those that the Supplier would have been able to offer to the market were it not in receipt of the Term Service Payment, and having regard to market rates for non-Australian flagged and crewed vessels of a similar type and size (and engaged in the same trade) as those owned by the Supplier;
 - (v) details of any Requisition Services performed by the Supplier during the relevant Financial Year, including copies of the relevant Requisition Order, and the itemised costs directly attributable to the requisition;
 - (vi) details of the steps taken to reduce and minimise the cost to the Commonwealth of performing any Requisition Services in accordance with clause 3.11;
 - (vii) details of maintenance activities undertaken on the Vessel in that Financial Year, having regard to the Supplier's obligations under clauses 3.7 and 3.8;
 - (viii) details of any safety or compliance incidents that occurred on the Vessel in that Financial Year;
 - (ix) where applicable, demonstrate progress towards achieving a full Australian crew in accordance with 3.4(c)(ii);
 - (x) details of the total number of trainees and cadets undertaking their Standards of Training, Certification, and Watchkeeping (**STCW**) qualifications with the Supplier, together with the number that have commenced or completed their qualifications in the relevant Financial Year, and details of the seafarer occupations that the qualifications relate to; and

- (xi) details of the number of berths on each Vessel (including any Approved substitute or supplementary vessels), together with the number of berths that were:
 - (A) occupied by operational marine crew;
 - (B) utilised by trainees and cadets; and
 - (C) unused and available, and which could have been utilised for trainees and cadets.
- (c) Where and to the extent that financial information required by an Annual Performance Report is not available at the date for submission of the Annual Performance Report, the Supplier must:
 - (i) include the relevant financial information to the extent reasonably available as at 30 October each year; and
 - (ii) provide any updated financial information which has not been provided within the Annual Performance Report as soon as it is available, and in any event no later than 30 April the following year.
- (d) Each Annual Performance Report must:
 - (i) where it includes financial information, comply with the relevant measurement requirements of Accounting Standards and that the financial information included in the report be subject to an assurance audit by a qualified external auditor; and
 - (ii) where applicable, comply with the requirements for reporting cargo movements under a temporary licence issued in accordance with the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).
- (e) Without limiting any other provision under this Deed or an Official Order, the Supplier acknowledges and agrees that:
 - (i) the Commonwealth may appoint its own independent auditor, at its own cost, to review an Annual Performance Report submitted under this clause 9.8;
 - (ii) the Supplier must cooperate with an auditor appointed under this clause 9.8(e), and provide reasonable documentation to support the audit;
 - (iii) if an Annual Performance Report is found by the Commonwealth's auditor to be materially deficient, the Supplier must submit new Annual Performance Report for Approval by the Commonwealth, including outlining a plan for corrective action, and the Supplier will be required to meet the cost of the audit; and
 - (iv) if the Commonwealth's auditor determines that the Supplier was not eligible to receive Term Service Payments, the Commonwealth may exercise its rights under clauses 5.5 and 11.8 as applicable.

- (f) The Supplier agrees that the Commonwealth may publicly disclose each Annual Performance Report, subject to the requirements of clause 9.5 of this Deed.

9.9 Meetings

- (a) The Supplier acknowledges and agrees that the Commonwealth may require the Supplier to attend meetings in connection with the performance of this Deed, and all Services.
- (b) The Commonwealth Representative shall provide the Supplier at least 20 days' notice of the proposed meeting with:
 - (i) the date, time and delivery method of the meeting;
 - (ii) an agenda for the meeting;
 - (iii) location of the meeting if required to be in-person; and
 - (iv) where the meeting is not required to be in-person, virtual meeting requirements including use of an approved Commonwealth virtual meeting platform.
- (c) Where the Commonwealth gives the Supplier notice under this clause 9.9 the parties will meet to review and discuss the Supplier's performance under this Deed. The Supplier must at its own cost attend meetings as reasonably requested by the Commonwealth Representative in relation to this Deed.

9.10 Commonwealth Access

- (a) During the performance of this Deed or any Official Order, the Supplier must, subject to the Commonwealth giving not less than seven days' prior written notice to the Supplier, provide the Commonwealth or any person Approved by the Commonwealth with reasonable access to its premises, each Vessel, and its records and accounts relevant to or impacting on the performance of the Services (including all Strategic Fleet Documents). However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Supplier shall provide, immediate access to the premises, records or accounts for any purpose related to such emergency, investigation or threat. The Commonwealth may copy any records or accounts for the purposes of this Deed or any Official Order.
- (b) Without limiting clauses 9.7, 9.10(a) and 9.10(c), the Supplier acknowledges and agrees that:
 - (i) the Auditor-General has the power under the *Auditor-General Act 1997* (Cth) to conduct audits (including performance audits) of the Supplier and Subcontractors in relation this Deed and any Official Order;
 - (ii) the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to this Deed and any Official Order to any person (including a Minister) who, in the Auditor-General's opinion, has a special interest in the report or the content of the extract; and

- (iii) the Commonwealth may authorise the Auditor-General, or member of the staff of the Australian National Audit Office, to access premises, records and accounts under clause 9.10(a).
- (c) Without limiting the generality of clause 9.10(a), the purposes for which the Commonwealth (or any person authorised by the Commonwealth) may require access include:
 - (i) verifying the information provided by the Supplier in an Annual Performance Report;
 - (ii) inspecting all documentation relating to the seaworthiness of each Vessel (including particulars of any surveys) as well as collision reports, technical reports and safety incident reports; and
 - (iii) auditing the Supplier's compliance with all requirements in this Deed and any Official Order.
- (d) If the Supplier enters into a Subcontract in accordance with clause 9.11, the Supplier shall ensure the Subcontracts require Subcontractors to give the Commonwealth Representative, and any person authorised by the Commonwealth Representative, subject to the Commonwealth giving not less than seven days' prior written notice to the Subcontractor, reasonable access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy. However, in the event of an emergency, an accident or incident investigation, a threat to WHS or the Environment, the Commonwealth may require, and the Supplier shall provide, immediate access to the premises, records or accounts for any purpose related to such emergency, investigation or threat.
- (e) The Commonwealth must comply with, and must require any delegate or person authorised by the Commonwealth to comply with, any reasonable Supplier safety and security requirements or codes of behaviour for the premises.

9.11 Subcontracts

- (a) The Supplier must not Subcontract the whole of the Services under this Deed. The Supplier must not Subcontract any part of the Services under this Deed or any Official Order unless and except to the extent that the Commonwealth has given its prior written consent.
- (b) Without limiting any other conditions that the Commonwealth may impose, the Commonwealth's consent given under this clause 9.11 may be withheld or may be given subject to any conditions, which may include the Approval of the terms of the proposed Subcontract.
- (c) The Supplier must ensure that each Subcontract contains provisions that are:
 - (i) sufficient to enable the Supplier to meet its obligations under this Deed and the relevant Official Order; and

- (ii) equivalent, at a minimum, to:
 - (A) clause 9.12, where the Subcontractor requires access to any Commonwealth Premises, in order to perform the obligations of the Subcontract;
 - (B) clauses 10.17(b), 10.17(c)(i) and 10.17(e);
 - (C) clause 10.11 (Modern Slavery); and
 - (D) clause 11.5 (Termination or Reduction for Convenience).
- (d) The Supplier must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.
- (e) 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 Supplier must promptly notify the Commonwealth and must complete the work under the relevant Official Order either by itself or, if the Commonwealth gives prior written consent, by engaging another Subcontractor.
- (f) The Supplier must inform Subcontractors that the Commonwealth may be required to publicly disclose the Subcontractor's participation in the performance of an Official Order. If requested by the Commonwealth, the Supplier must provide the Commonwealth with names of Subcontractors and copies of Subcontracts (which need not contain prices) for this purpose.
- (g) None of the following reduce or limit the Supplier's obligations or liabilities under or in relation to this Deed or any Official Order:
 - (i) the Supplier subcontracting any part of the work under this Deed or any Official Order;
 - (ii) the Commonwealth's consent to a Subcontractor or a Subcontract; or
 - (iii) an act or omission of Supplier Personnel,and the Supplier is responsible for all Subcontractors.

9.12 Commonwealth Security

- (a) The Supplier must, in the performance of the Services, including when accessing any Commonwealth Premises and the Commonwealth's systems:
 - (i) comply with (and ensure that Supplier Personnel are aware of and comply with) any security requirements of the Commonwealth (including those contained in the Protective Security Policy Framework (PSPF) and Information Security Manual (ISM)) that are applicable to the performance of the Services, including as may be specified in an Official Order, or as may be otherwise notified to the Supplier from time to time;

- (ii) ensure that Supplier Personnel obtain an individual Maritime Security Identification Card, and undertake any additional security checks, clearances or accreditations as may be required by the Commonwealth;
 - (iii) if directed by the Commonwealth, undertake and ensure that Supplier Personnel undertake, a security briefing in relation to accessing Commonwealth Premises;
 - (iv) promptly notify the Commonwealth of any changes to circumstances which may affect the Supplier's capacity to provide the Services in accordance with the Commonwealth's security requirements; and
 - (v) where applicable, provide a written undertaking in respect of security or access to the Commonwealth Premises in the form required by the Commonwealth.
- (b) The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence under Law (including the *Criminal Code Act 1995* (Cth)).

9.13 Commonwealth Data

- (a) Unless otherwise specified in an Official Order, the Supplier must comply with the requirements for Commonwealth Data in this clause 9.13, and must ensure that Supplier Personnel do the same.
- (b) Without limiting clause 6.2, the Supplier must not, and must ensure that Supplier Personnel do not:
- (i) allow any person to access or use Commonwealth Data, except to the extent strictly required for the performance of the Supplier's obligations under this Deed or an Official Order;
 - (ii) alter the Commonwealth Data held by the Supplier, or which the Supplier has access to, unless permitted under this Deed or an Official Order;
 - (iii) purport to sell, exploit, let for hire, assign rights in or otherwise dispose of Commonwealth Data; or
 - (iv) take, transfer, transmit or disclose Commonwealth Data, or allow Commonwealth Data to be taken, transferred, transmitted, accessed or disclosed, outside of Australia.
- (c) Clause 9.13(b)(iv) applies, without limitation, in respect of taking, transferring, transmitting, accessing or otherwise disclosing Commonwealth Data outside of Australia by the Supplier:
- (i) within the Supplier's own organisation; and
 - (ii) to any third party, including to any Related Body Corporate.
- (d) The Supplier must establish and maintain safeguards against the destruction, unauthorised disclosure or access, loss or alteration of Commonwealth Data in the possession or control of the Supplier that:

- (i) are no less rigorous than those notified by the Commonwealth to the Supplier or, if the Commonwealth does not specify any safeguards, no less rigorous than safeguards that are consistent with best international industry standards and practices in relation to protection of data; and
 - (ii) complies with all Laws, and any procedures or requirements in relation to safeguarding Commonwealth Data specified by the Commonwealth, from time to time.
- (e) The Supplier agrees that the Commonwealth may, at any time, with reasonable notice, conduct a security audit of the Supplier's compliance with this clause 9.13.

9.14 **Cyber Security**

- (a) The Supplier warrants that, for the duration of the Deed Term:
 - (i) it has in place a functioning Cyber Security Policy, Incident Response Plan, Ship Security Plan, Ship Security Assessment and Safety Management System implemented onboard each Vessel and, with respect to the Cyber Security Policy and Incident Response Plan, at the Supplier's premises; and
 - (ii) it will take all reasonable steps in order to prevent, as far as practicable, a Cyber Security Incident onboard the Vessel or at any Supplier Premises.
- (b) The Commonwealth may request, and the Supplier must permit, an inspection of any of the documents referred to in clause 9.14(a)(i), together with the results of any audits of those documents undertaken, as applicable, by the Flag State or a Recognised Cyber Security Services Provider.
- (c) Should a Cyber Security Incident occur or be suspected to occur or have occurred, affecting or potentially affecting the Vessel or the Supplier's premises, then:
 - (i) the Supplier or Manager must inform the Commonwealth of the circumstances of the Cyber Security Incident and its consequences within 12 hours of the Supplier or the Manager becoming aware of the Cyber Security Incident;
 - (ii) the Supplier must consult with the Commonwealth before taking steps that may affect the Commonwealth, the Supplier or the Vessel; and
 - (iii) where the Cyber Security Incident causes a loss of time, then the Vessel will be Off-Hire until the Cyber Security Incident has been resolved and the Vessel is restored to an efficient working state.

9.15 **Change of Control**

- (a) Subject to clause 9.15(b), the Supplier must seek the Commonwealth Representative's prior written consent to any proposed Change of Control by providing notice to the Commonwealth at least 20 Working Days before the proposed Change of Control is to occur.
- (b) If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange and the consent of the Commonwealth could

not have been obtained in accordance with clause 9.15(a), the Supplier must seek that consent by providing notice to the Commonwealth within five Working Days after the Change of Control.

- (c) In any notice given to the Commonwealth seeking consent to a Change of Control, the Supplier must include the following details:
 - (i) the ownership and management arrangements of the Supplier or the Guarantor that were in place immediately before the change or, if the change has yet to occur, that were in place at the time the Supplier became aware of the prospective change;
 - (ii) the ownership and management arrangements of the Supplier or the Guarantor that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Supplier reasonably expects to be put in place if the change occurs;
 - (iii) the impact (if any) that the Change of Control has had and is expected to have on:
 - (A) the Supplier's ability to meet its obligations under this Deed and each Official Order; and
 - (B) the Guarantor's ability to meet its obligations under a Deed of Guarantee and Indemnity; and
 - (iv) the steps the Supplier has taken or proposes to take to minimise the impact of the change or prospective change.
- (d) If there is a Change of Control and the Commonwealth does not consent to the Change of Control, then the Commonwealth may:
 - (i) terminate this Deed and any Official Order by notice under clause 11.2(a)(v); or
 - (ii) by notice to the Supplier, require the Supplier to do one or more of the following, within a period specified in the notice (which must be a reasonable period):
 - (A) give further information;
 - (B) provide specified undertakings (including from the Supplier, the Guarantor or the entity that is proposed to assume, or has assumed, Control of the Supplier or Guarantor); or
 - (C) ensure that it, the Guarantor or the entity that is proposed to assume, or has assumed, Control of the Supplier or Guarantor enters into further specified agreements,

and if any of these requirements are not satisfied, the Commonwealth may terminate this Deed and any Official Order by notice under clause 11.2(a)(v).

- (e) Nothing in this clause 9.15 requires the Supplier or the Guarantor to act in a manner inconsistent with its obligations under the *Corporations Act 2001* (Cth) or equivalent Laws in a foreign jurisdiction.

10 POLICY, LAW AND AUTHORISATIONS

10.1 Governing Law

- (a) This Deed and all Official Orders are governed by, and are to be construed in accordance with, the Laws applicable in the Australian Capital Territory.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (c) The United Nations Convention on Contracts for the International Sale of Goods will not apply to Official Orders.

10.2 Compliance with Laws

- (a) Without limiting any other provision under this Deed or an Official Order, the Supplier must, in the performance of this Deed and any Official Order, comply with and ensure that Supplier Personnel and each Vessel complies with, the Laws from time to time in force in the State, Territory, or other jurisdictions (including overseas) in which any part of this Deed or any Official Order is to be carried out, including:
 - (i) the *Shipping Registration Act 1981* (Cth);
 - (ii) the *Navigation Act 2012* (Cth) and Marine Orders;
 - (iii) the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth);
 - (iv) the *Modern Slavery Act 2018* (Cth);
 - (v) the *Fair Work Act 2009* (Cth);
 - (vi) the *Seafarers Rehabilitation and Compensation Act 1982* (Cth);
 - (vii) the *Occupational Health and Safety (Maritime Industry) Act 1993* (Cth); and
 - (viii) the Protection of the Sea Conventions and Legislation.
- (b) The Supplier must provide to the Commonwealth within 10 Working Days after a request by the Commonwealth, written confirmation that, to the best of the Supplier's knowledge and based on reasonable enquiries undertaken by the Supplier, the Supplier and Supplier Personnel are compliant with all Laws (including foreign anti-corruption legislation) regarding the offering of unlawful inducements whether in Australia or otherwise in connection with the performance of this Deed, any Official Order and any Subcontract.

10.3 Authorisations

- (a) The Supplier must, and must ensure that Subcontractors:
 - (i) obtain and maintain in full force all Authorisations required for the provision of the Services, including the operation of the Vessel(s) and the carriage of Cargo in accordance with this Deed and any Official Order;
 - (ii) provide a copy of any Authorisations to the Commonwealth within five Working Days after request by the Commonwealth; and
 - (iii) ensure that all Services are provided in accordance with all Authorisations.
- (b) The Supplier must notify the Commonwealth within five Working Days after receiving notification that an Authorisation is refused, revoked or qualified.
- (c) Without limiting clause 10.3(a) or the Supplier's other obligations under this Deed or an Official Order, the Supplier must, throughout the Deed Term and any Official Order Term, maintain a general licence to enable each vessel to operate in coastal trading under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

10.4 International Ship and Port Facility Security

- (a) The Supplier warrants that the Vessel(s) used in the provision of the Services will comply with the International Ship and Port Facility Security Code (**ISPS Code**) as amended from time to time.
- (b) Upon request, the Supplier must provide a copy of the relevant International Ship Security Certificate to the Commonwealth.
- (c) The Supplier must provide the Commonwealth with the full style contact details of the Company Security Officer and the Commonwealth shall provide the Company Security Officer and Ship Security Officer/master with its full style contact details.
- (d) Except as provided in this Deed or any Official Order, all delay, costs or expenses arising out of or relating to security measures required by a port facility or any relevant authority in accordance with the ISPS Code will be at the Supplier's risk and cost.

10.5 International Safety Management

- (a) The Supplier warrants that the Vessel(s) used in the provision of the Services will have a valid International Safety Management Certificate on board at all times.
- (b) The Supplier must ensure that each Vessel used to provide the Services complies with the requirements of the International Safety Management Code (**ISM Code**). Upon request, the Supplier must provide a copy of the relevant Document of Compliance and Safety Management Certificate to the Commonwealth.
- (c) Except as otherwise provided in this Deed or any Official Order, any Loss or delay caused by failure on the part of the Supplier to comply with the ISM Code will be at the Supplier's risk and cost.

10.6 Work Health and Safety

- (a) The Commonwealth and the Supplier:
 - (i) must, where applicable, comply with, and the Supplier must ensure that all Subcontractors comply with, the obligation under the WHS Legislation to, so far as is reasonably practicable, consult, cooperate and coordinate activities with the Commonwealth, the Supplier or Subcontractors (as the case may be) and any other person who, concurrently with the Commonwealth, the Supplier or the Subcontractor (as the case may be), has a WHS duty under the WHS Legislation in relation to the same matter; and
 - (ii) 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) Supplier Personnel; and
 - (C) other persons,in connection with the Services.
- (b) The Supplier represents and warrants that:
 - (i) it has given careful, prudent and comprehensive consideration to the WHS implications of the work to be performed by it under this Deed and any Official Order; and
 - (ii) the proposed method of performance of that work complies with, and includes a system for identifying and managing WHS risks which complies with, all applicable legislation relating to WHS including the WHS Legislation.
- (c) The Supplier must:
 - (i) provide the Services in such a way that the Commonwealth and Commonwealth Personnel are able to undertake any roles or obligations in connection with the Services (such as in relation to testing or auditing); and
 - (ii) ensure that the Commonwealth and Commonwealth Personnel are able to make full use of the Services for the purposes referred to in clause 3.3, and to maintain, support and develop the Services,without the Commonwealth or Commonwealth Personnel contravening any legislation relating to WHS including the WHS Legislation, any applicable standards relating to WHS or any policy relating to WHS identified in an Official Order.
- (d) Without limiting the Supplier's obligations under this Deed or any Official Order or at Law or in equity (and subject to any relevant foreign government restrictions), the Supplier shall, in connection with or related to the Services, provide, and shall use its reasonable endeavours to ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days (or such other period as

agreed by the Commonwealth in writing) of a request by the Commonwealth Representative any information or copies of documentation requested by the Commonwealth Representative and held by the Supplier or Subcontractor (as the case may be) to enable the Commonwealth to comply with its obligations under the WHS Legislation.

- (e) Subject to clause 9.12 and any relevant foreign government restrictions, the Commonwealth will provide to the Supplier in a timely manner any information or copies of documentation reasonably requested by the Supplier and held by the Commonwealth to enable the Supplier to comply with its obligations under the applicable WHS Legislation in relation to the relevant Official Order.
- (f) To the extent not inconsistent with the express requirements of this Deed and any Official Order, the Commonwealth may direct the Supplier to take specified measures that the Commonwealth considers reasonably necessary to comply with applicable legislation relating to WHS including the WHS Legislation in relation to the provision of the Services. The Supplier must comply with the direction unless the Supplier demonstrates to the reasonable satisfaction of the Commonwealth that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- (g) The Supplier must not use Asbestos Containing Material (**ACM**) in providing the Services and must not take any ACM onto Commonwealth Premises in connection with providing the Services.
- (h) Unless the Commonwealth otherwise agrees in writing, the Supplier shall:
 - (i) ensure that any deliverable provided to the Commonwealth in connection with the Services does not contain a Problematic Substance; and
 - (ii) not use, handle or store a Problematic Substance on Commonwealth Premises in connection with the Services.
- (i) Where the Commonwealth Representative agrees that a deliverable may contain a Problematic Substance or that the Supplier may use, handle or store a Problematic Substance on Commonwealth Premises, the Supplier shall ensure that:
 - (i) full details of the Problematic Substances are provided to the Commonwealth in the format of a Safety Data Sheet (**SDS**), except where the applicable SDS exists within the Australian ChemAlert database and the Supplier identifies that SDS to the Commonwealth Representative by reference to its unique record within that database; and
 - (ii) the Problematic Substance is correctly labelled and packaged (including to clearly identify the nature of the substance and its associated hazards) in accordance with Australian legislative and regulatory requirements, and that all documentation supporting the Services clearly identifies the nature of the substance and its associated hazards.
- (j) If a Notifiable Incident occurs in connection with work carried out under this Deed or any Official Order:

- (i) on Commonwealth Premises;
 - (ii) which involves Commonwealth Personnel; or
 - (iii) which involves a Commonwealth specified system of work,
- the Supplier shall:
- (iv) immediately report the incident to the Commonwealth;
 - (v) promptly provide the Commonwealth with copies of any notices or other documentation provided to, or issued by, the relevant Commonwealth, State or Territory regulator in relation to the Notifiable Incident;
 - (vi) provide the Commonwealth with such other information as may be required by the Commonwealth to facilitate the notification to or investigation by the Commonwealth regulator of the Notifiable Incident in accordance with the WHS Legislation; and
 - (vii) provide other reasonable assistance required by the Commonwealth to undertake mandatory incident reporting.
- (k) From time to time the Commonwealth may advise the Supplier of hazards to health and safety that have been identified at, or in the proximity of, Commonwealth Premises where Supplier Personnel may be working.
- (l) On receipt of advice from the Commonwealth under clause 10.6(k), the Supplier shall undertake necessary risk assessments, identify control measures and advise Supplier Personnel of the hazards and risks and relevant control measures.
- (m) Without limiting any other provision of the Supplier's other obligations under this Deed or an Official Order, the Supplier must:
- (i) maintain an accident and reporting system which requires the timely notification of any accident or incident to any relevant authority and the Commonwealth;
 - (ii) following any accident or incident caused by or involving a Vessel or otherwise relating to the provision of the Services, immediately notify the Commonwealth in writing as soon as practicable and in any event no later than one day after the accident or incident and provide full details of such accident or incident and update that notification at reasonable periods and otherwise promptly upon request from the Commonwealth to do so;
 - (iii) permit the Commonwealth to take such action as it considers necessary or desirable to investigate any accident or incident caused by or involving the Vessel or otherwise relating to the provision of the Services, including permitting the Commonwealth or its nominee on-site access and access to, and liaison with, any relevant regulatory investigative agency including AMSA and provide such safety personnel assistance as the Commonwealth, or its nominee requires; and

- (iv) comply with, and ensure that the Supplier complies with, any conditions placed upon them by AMSA and any other maritime regulatory authorities operating in any foreign countries.

10.7 Drugs and Alcohol

- (a) The Supplier warrants that it has in force an active policy covering the Vessel which meets or exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol On Board Ship" as published by OCIMF Second Edition dated June 2020 (or any subsequent modification, version, variation or replacement of these guidelines) and that this policy will remain in force throughout the Deed Term, and the Supplier will exercise due diligence to ensure the policy is complied with. Any person who tests positive, refuses to test, or is unfit for duty (impaired because of drug or alcohol use) shall be removed from the Vessel and shall not be reassigned to the Vessel or to any other vessel on charter to the Commonwealth or any other Commonwealth Agency.
- (b) In addition to the requirements in clause 10.7(a), while at a loading or discharge terminal, the Supplier shall also comply with any drug and alcohol policies in force at such terminal.

10.8 Chain of Responsibility Laws

- (a) The Supplier must comply with, and must ensure that all Subcontractors comply with, the Chain of Responsibility Laws when providing the Services.
- (b) Without limiting the Supplier's obligations under this Deed or at Law, the Supplier must provide, and must ensure that a Subcontractor provides, to the Commonwealth Representative within 10 Working Days of a request by the Commonwealth Representative:
 - (i) any information or copies of documentation requested by the Commonwealth Representative and held by the Supplier or Subcontractor (as the case may be) to enable the Commonwealth to comply with any duties and obligations of the Commonwealth under the Chain of Responsibility Laws in relation to this Deed or an Official Order; and
 - (ii) written assurances specifying that to the best of the Supplier's or the Subcontractor's (as the case may be) knowledge that it and its officers, employees, agents and Subcontractors are compliant with the Chain of Responsibility Laws and that the Supplier or Subcontractor (as the case may be) has made reasonable enquiries before providing the written assurances.
- (c) Without limiting clauses 10.8(a) and 10.8(b), the Supplier must give the Commonwealth Representative and any person authorised by the Commonwealth Representative access to:
 - (i) premises to conduct site inspections for the purpose of monitoring the Supplier's compliance with the Chain of Responsibility Laws; and
 - (ii) all internal and third party audit results in relation to Chain of Responsibility Laws.

- (d) The Commonwealth Representative may direct the Supplier to take specified measures that the Commonwealth Representative considers reasonably necessary to comply with the Chain of Responsibility Laws, and the Supplier must comply with such directions.

10.9 Environmental Obligations

- (a) Without limiting any other obligations of the Supplier under or in connection with this Deed or any Official Order, Supplier must perform the Services in such a way that:
 - (i) the Commonwealth and Commonwealth Personnel are not placed in breach of; and
 - (ii) the Commonwealth is able to make full use of the Services without being in breach of,

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

10.10 Policy Requirements

- (a) The Supplier must comply with, and ensure that Supplier Personnel comply with, any Commonwealth policies applicable to this Deed, any Official Order and the performance of the Services.

10.11 Modern Slavery

- (a) The Supplier must take reasonable steps to identify, assess and address the risk of Modern Slavery practices in the operations and supply chains used by it in the provision of the Services under this Deed and each Official Order.
- (b) If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used by it in the performance of this Deed and each Official Order, the Supplier must, as soon as reasonably practicable, take all reasonable steps to address or remove these practices, including where relevant by addressing any practices of other entities in its operations and supply chains.

10.12 Child Safety

- (a) If any part of the Services involves the Supplier employing or engaging a person (whether as an officer, employee, agent, Subcontractor or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Supplier agrees:
 - (i) without limiting its other obligations under this Deed or any Official Order, to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
 - (ii) if requested, provide the Commonwealth at the Supplier's cost, a statement of compliance with this clause, in such form as may be specified by the Commonwealth.

- (b) When child safety obligations may be relevant to a Subcontract made in connection with this Deed or any Official Order, the Supplier must ensure that any such Subcontract entered into by the Supplier for the purposes of fulfilling the Supplier's obligations under this Deed or any Official Order imposes on the Subcontractor the same obligations regarding child safety that the Supplier has under this Deed or the Official Order. Each Subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

10.13 Workplace Gender Equality

- (a) Clauses 10.13(b) and 10.13(c) apply only to the extent that the Supplier is a "relevant employer" for the purposes of the WGE Act.
- (b) The Supplier must comply with its obligations under the WGE Act.
- (c) If the Supplier becomes non-compliant with the WGE Act during the Deed Term or any Official Order Term the Supplier must promptly notify the Commonwealth.

10.14 Indigenous Procurement Policy

- (a) Clauses 10.14(b) to 10.14(d) will apply to an Official Order where that Official Order:
 - (i) is for goods and/or services that are wholly delivered in Australia (i.e. where no part of the goods or services are delivered outside of Australia) and
 - (ii) is valued at \$7,500,000 (inc GST) or more, where:
 - (A) at least half of the Official Order's value is to be spent on one or more of the industry sectors in Appendix B of the Indigenous Procurement Policy; and
 - (B) none of the exempt industry sectors in Appendix B of the Indigenous Procurement Policy apply.
- (b) The Supplier must use its reasonable endeavours to increase its:
 - (i) purchasing from Indigenous Enterprises; and
 - (ii) employment of Indigenous Australians, including as trainees or cadets,in the performance of the relevant Official Order, in accordance with the Indigenous Procurement Policy.
- (c) Without limiting any other obligations of the Supplier under this Deed or any Official Order, the Supplier must in its performance of the relevant Official Order:
 - (i) comply with the Indigenous Participation Plan comprised in Attachment L (or such other Indigenous Participation Plan as may be Approved by the Commonwealth in connection with the performance of that Official Order);
 - (ii) comply with all reasonable directions issued by the Commonwealth in relation to the Supplier's implementation of the applicable Indigenous Participation Plan, where those directions directly reflect the requirements in the applicable Indigenous Participation Plan; and

- (iii) report to the Commonwealth via the Indigenous Procurement Policy Reporting Solution (**IPPRS**):
 - (A) at least once every quarter during the applicable Official Order Term; and
 - (B) within five Working Days of the expiry of the applicable Official Order Term,in such form and on such matters as the Commonwealth may require from time to time, including the Supplier's compliance with:
 - (C) the mandatory minimum requirement targets in the Indigenous Procurement Policy; and
 - (D) the Indigenous Participation Plan,together with an explanation of any non-compliances.
- (d) The Supplier acknowledges and agrees that the reports under clauses 10.14(c)(iii)(A) and 10.14(c)(iii)(B):
 - (i) will be recorded in the IPPRS, a central database that is able to be accessed by Commonwealth Agencies and may be made publicly available;
 - (ii) will not be Confidential Information for the purposes of this Deed or any Official Order; and
 - (iii) may be used by Commonwealth Agencies for any purpose, including for evaluation of an offer to provide goods and/or services to a Commonwealth Agency (including Quotations under this Deed).

10.15 Statements of Tax Record

- (a) The Supplier must, at all times during the Deed Term and any Official Order Term, hold a Valid and Satisfactory Statement of Tax Record.
- (b) The Supplier must, on request by the Commonwealth, give the Commonwealth a copy of its Statement of Tax Record.
- (c) If the total estimated value of the goods and services to be provided under a Subcontract is more than \$4 million (GST inclusive), the Supplier must:
 - (i) not enter into the Subcontract unless, at the time of entry into the Subcontract, the Subcontractor holds a Valid and Satisfactory Statement of Tax Record;
 - (ii) ensure that, at all times during the term of that Subcontract, the Subcontractor holds a Valid and Satisfactory Statement of Tax Record;
 - (iii) keep a copy of each Statement of Tax Record relating to the term of that Subcontract; and

- (iv) on request by the Commonwealth, give the Commonwealth a copy of the relevant Statement of Tax Record.

10.16 **Fraud**

- (a) The Supplier:
 - (i) must take all reasonable measures to prevent, detect and investigate any fraud that may occur, is occurring or has occurred under this Deed, any Official Order, or any Subcontract; and
 - (ii) acknowledges and agrees that its obligation in clause 10.16(a)(i) extends to taking all reasonable measures to prevent, detect and investigate any fraud which has or may be committed by Supplier Personnel.
- (b) If the Supplier knows that any fraud is occurring or has occurred, it shall, as soon as practicable, provide written details to the Commonwealth, and provide such further information and assistance as the Commonwealth, or any person authorised by the Commonwealth, reasonably requires in relation to the fraud.

10.17 **Privacy**

- (a) This clause 10.17 applies in addition to, and does not limit, clause 9.13 of this Deed.
- (b) The Supplier must:
 - (i) if it obtains Personal Information in the course of performing this Deed or any Official Order, use or disclose that Personal Information only for the purposes of this Deed and the relevant Official Order subject to any applicable exceptions in the *Privacy Act 1988* (Cth);
 - (ii) comply with its obligations under the *Privacy Act 1988* (Cth); and
 - (iii) as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles.
- (c) The Supplier must notify the Commonwealth as soon as reasonably practicable if:
 - (i) it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 10.17, whether by the Supplier, Supplier Personnel or any other person to whom the Personal Information has been disclosed for the purposes of this Deed or under any Official Order; or
 - (ii) in relation to Personal Information obtained in the course of performing this Deed, or under an Official Order:
 - (A) it becomes aware that a disclosure of such Personal Information may be required by Law; or
 - (B) it is approached by the Privacy Commissioner.

- (d) The Supplier must comply with:
 - (i) any reasonable direction of the Commonwealth relating to the *Privacy Act 1988* (Cth) or this clause 10.17; and
 - (ii) any additional provisions in relation to Personal Information and other privacy considerations in an Official Order.
- (e) The Supplier must ensure that all Supplier Personnel who deal with Personal Information for the purposes of this Deed or an Official Order are aware of, and comply with, this clause 10.17.
- (f) The Commonwealth will handle any complaints alleging an interference with the privacy of an individual related to the Services as follows:
 - (i) where the Commonwealth receives a complaint, it will promptly notify the Supplier and provide sufficient details for the Supplier to minimise the breach or prevent further breaches of any obligations of confidentiality; or
 - (ii) where the Supplier receives a complaint it must promptly, and in any event within two Working Days, notify the Commonwealth of the complaint but must not release to the Commonwealth any Confidential Information concerning the complainant without Approval.
- (g) If the Supplier fails to remedy any breach of its obligations of privacy or confidentiality within 10 Working Days of:
 - (i) a notice from the Commonwealth under clause 10.17(f)(i); or
 - (ii) receiving a complaint under clause 10.17(f)(ii),the Commonwealth may immediately terminate this Deed or any Official Order by notice under clause 11.2(a)(v).
- (h) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of an Official Order or its provision of the Services, the Supplier agrees to:
 - (i) notify the Commonwealth as soon as possible, and in any event within three Working Days of becoming aware; and
 - (ii) unless otherwise directed by the Commonwealth, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- (i) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Commonwealth notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of an Official Order, the Supplier must:
 - (i) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates; and

- (ii) unless otherwise directed by the Commonwealth, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth).

10.18 Public Statements and Announcements

- (a) The Supplier must not (and must ensure that Supplier Personnel do not) make any public statement (including an advertisement, a press release and a statement made on social media) in connection with its involvement in the Panel, including in relation to this Deed, an Official Order and the Services, unless:
 - (i) the statement is required by applicable Law or by a regulatory body; or
 - (ii) the statement is Approved by the Commonwealth Representative beforehand.
- (b) If the Supplier is required by applicable Law or by a regulatory body to make a public statement referred to in clause 10.18(a), it must, to the extent practicable:
 - (i) consult, and take into account the reasonable requirements of, the Commonwealth; and
 - (ii) if requested by the Commonwealth, give the Commonwealth a copy of the statement.
- (c) The Supplier must not (and must ensure that Supplier Personnel do not):
 - (i) use the Commonwealth or any Commonwealth Personnel as a referee without the Commonwealth's prior written consent; and
 - (ii) use, disclose or publish in any form or media any logo or trade mark of the Commonwealth without the Commonwealth's prior written consent.

10.19 Notification of Significant Events

- (a) For the purposes of this clause 10.19, 'Significant Event' means:
 - (i) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or any Supplier Personnel that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (ii) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or any Supplier Personnel that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- (b) The Supplier must notify the Commonwealth Representative immediately on becoming aware of a Significant Event.
- (c) The notice issued by the Supplier under clause 10.19(b) must provide a summary of the Significant Event, including the date that it occurred and whether any Supplier Personnel engaged in connection with any Services were involved.

- (d) The Commonwealth may notify the Supplier that an event is to be considered a Significant Event for the purposes of this clause 10.19. Where so required, the Supplier must provide the notice under clause 10.19(b) in relation to that event within three Working Days of the Commonwealth's notice.
- (e) Where reasonably requested by the Commonwealth, the Supplier must provide the Commonwealth with any additional information regarding the Significant Event within three Working Days of the request.
- (f) The Supplier must, within 10 Working Days of a request by the Commonwealth, prepare and submit a remediation plan for any Significant Event (**Significant Event Remediation Plan**) to the Commonwealth for Approval.
- (g) A Significant Event Remediation Plan prepared by the Supplier under clause 10.19(f) must include the following information:
 - (i) how the Supplier will address the Significant Event in the context of the Services, including confirmation that the implementation of the Significant Event Remediation Plan will not in any way impact on the delivery of any Services, or compliance by the Supplier with its other obligations under this Deed or any Official Order;
 - (ii) how the Supplier will ensure that events similar to the Significant Event will not occur again; and
 - (iii) any other matter reasonably requested by the Commonwealth.
- (h) The Commonwealth will review the Significant Event Remediation Plan submitted by the Supplier, and either Approve it or provide the Supplier with the details of any changes required by the Commonwealth. The Supplier must make the relevant changes and resubmit the Significant Event Remediation Plan to the Commonwealth for Approval within three Working Days of the Commonwealth's request (unless a longer timeframe is agreed in writing by the Commonwealth). This clause 10.19(h) will re-apply to any resubmitted Significant Event Remediation Plan.
- (i) Without limiting its other obligations under this Deed or any Official Order, the Supplier must comply with the Significant Event Remediation Plan as Approved by the Commonwealth. The Supplier agrees to provide such reports and other information about the Supplier's progress in implementing the Significant Event Remediation Plan as may be reasonably required by the Commonwealth.
- (j) If the Supplier fails to comply with its obligations under this clause 10.19, the Commonwealth may terminate this Deed or any Official Order by notice under clause 11.2(a)(v) of this Deed.
- (k) The Commonwealth's rights under this clause 10.19 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Deed, any Official Order, or at Law. The performance by the Supplier of its obligations under this clause 10.19 will be at no additional cost to the Commonwealth.

10.20 Commonwealth Supplier Code of Conduct

- (a) The Supplier must comply with, and ensure that Supplier Personnel comply with, the Code in connection with the performance of the Services, this Deed and any Official Order.
- (b) The Supplier must:
 - (i) periodically monitor and assess, its compliance with, and Supplier Personnel compliance with, the Code; and
 - (ii) on request from the Commonwealth, promptly provide information regarding:
 - (A) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code; and
 - (B) the Supplier's compliance with clause 10.20(a).
- (c) The Supplier must notify the Commonwealth Representative immediately upon becoming aware of any breach of clause 10.20(a).
- (d) The notice issued by the Supplier under clause 10.20(c) must provide a summary of the of the breach, the date that the breach occurred, and details of the Supplier Personnel involved.
- (e) Where the Commonwealth identifies a possible breach of clause 10.20(a), it may notify the Supplier, and the Supplier must, within three Working Days of receiving the notice, either:
 - (i) where the Supplier considers a breach has not occurred, advise the Commonwealth that there has not been a breach and provide information supporting that determination; or
 - (ii) where the Supplier considers that a breach has occurred, notify the Commonwealth under clause 10.20(c) and otherwise comply with its obligations under this clause 10.20.
- (f) Notwithstanding clause 10.20(e), the Commonwealth may notify the Supplier in writing that it considers that the Supplier has breached clause 10.20, in which case the Supplier must notify the Commonwealth under clause 10.20(c) and otherwise comply with its obligations under this clause 10.20.
- (g) If the Supplier fails to comply with its obligations under this clause 10.20, the Commonwealth may terminate this Deed or any Official Order by notice under clause 11.2(a)(v) of this Deed.
- (h) The Commonwealth's rights under this clause 10.20 are in addition to and do not otherwise limit any other rights the Commonwealth may have under this Deed, any Official Order, or at Law. The performance by the Supplier of its obligations under this clause 10.20 will be at no additional cost to the Commonwealth.

- (i) The Supplier agrees that the Commonwealth or any other Commonwealth Agency may take into account the Supplier's compliance with the Code in any future approach to market or procurement process.

11 DISPUTES AND TERMINATION

11.1 Resolution of Disputes

General Principles

- (a) A party must not commence legal proceedings relating to any Dispute unless that party has complied with the procedure for resolving Disputes set out in this clause 11.1.
- (b) The parties acknowledge and agree that the intent of this clause 11.1 is that the parties will seek to resolve Disputes in a non-adversarial manner, and at the lowest reasonably practicable level within their respective organisations.
- (c) The parties must negotiate in good faith and use all reasonable endeavours to resolve Disputes in accordance with this clause 11.1 and as quickly as practicable.

Dispute Resolution Procedure

- (d) If the parties are unable to resolve a Dispute through the reasonable efforts of the Commonwealth Representative and the Supplier Representative, either party claiming a Dispute has arisen must promptly notify the other party setting out details of the Dispute and the Dispute must then be referred to the Management Representatives specified in the Deed Details Schedule.
- (e) If, despite using all reasonable efforts, the Management Representatives are unable to resolve a Dispute within 20 Working Days (or such longer period agreed by the parties in writing) after the referral under clause 11.1(d), the Dispute must then be referred to the Senior Representatives specified in the Deed Details Schedule.
- (f) If, despite using all reasonable endeavours, the Senior Representatives are unable to resolve the Dispute within 20 Working Days (or such other period agreed by the parties in writing) after the referral under clause 11.1(e), either of the parties may, by notice to the other, refer the Dispute to mediation.

Mediation

- (g) The mediation of a Dispute must be held within 30 Working Days (or such other period as the parties may agree in writing) of a referral to mediation under clause 11.1(f).
- (h) The mediator of a Dispute will be agreed between the parties. If the parties cannot agree on a mediator within 15 Working Days after the referral of a Dispute to mediation under clause 11.1(f), the mediator will be chosen by the chairperson of the Resolution Institute or the chairperson of another resolution centre or institute determined by the Commonwealth.

- (i) The mediator's role is to assist the parties to negotiate and resolve a Dispute. A mediator may not make a binding decision on a party to a Dispute unless the party otherwise agrees in writing.

Arbitration

- (j) If, despite using all reasonable endeavours, the parties are unable to resolve the Dispute within 30 Working Days of commencement of the mediation (or such longer period agreed by the parties in writing), the parties must resolve the Dispute by arbitration in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) Arbitration Rules. The seat of arbitration will be Sydney, Australia. The language of the arbitration will be English.
- (k) Each party to a Dispute must pay its own costs of complying with this clause 11.1. The parties to a Dispute must also equally pay the costs of any mediator or arbitrator.
- (l) The parties must, despite any Dispute occurring, continue to perform their respective obligations under this Deed and the relevant Official Order.
- (m) Nothing in this clause 11.1 prevents either party from seeking urgent interlocutory relief in relation to a Dispute.

11.2 Termination for Default

- (a) In addition to its other rights, the Commonwealth may terminate or reduce the scope of this Deed or any Official Order (including any Services) by giving notice to the Supplier, if:
 - (i) an Insolvency Event occurs in relation to the Supplier, except to the extent the exercise of a right under this clause 11.2(a)(i) is prevented by law;
 - (ii) an Insolvency Event occurs in relation to the Guarantor and the Commonwealth does not receive a replacement Deed of Guarantee and Indemnity from another guarantor acceptable to the Commonwealth within 10 Working Days (or another period agreed in writing by the Commonwealth), except to the extent the exercise of a right under this clause 11.2(a)(ii) is prevented by law;
 - (iii) the Supplier has failed to remedy a Default specified in a Default Notice within the period specified in the Default Notice;
 - (iv) the Supplier commits a breach of this Deed or any Official Order that, in the Commonwealth's opinion, is not capable of being remedied;
 - (v) an event occurs in respect of which this Deed or any Official Order provides that a notice of termination may be given under this clause 11.2(a)(v);
 - (vi) the Supplier assigns its rights under this Deed or any Official Order otherwise in accordance with the Requirements of this Deed or any Official Order; or
 - (vii) the Supplier would have, except for the operation of any limitation of liability under this Deed or otherwise by operation of Law (including if applicable

Limitation Conventions apply to limit the liability of the Supplier), been liable to the Commonwealth for Loss in aggregate for an amount greater than the applicable limitation of liability.

- (b) To avoid doubt, the Commonwealth is not required to provide prior notice of an exercise of its right to terminate or reduce the scope of this Deed or any Official Order under clause 11.2(a).

11.3 Default Notice

- (a) If the Commonwealth considers that a Supplier Default has been committed, the Commonwealth may give the Supplier a notice (**Default Notice**) specifying the Default and requiring the Supplier to remedy the Default within a reasonable period, if the Default is capable of being remedied.
- (b) If the Commonwealth gives the Supplier a Default Notice, the Supplier must:
 - (i) remedy the Default within the period specified in the Default Notice;
 - (ii) comply with any directions given to the Supplier by the Commonwealth in relation to the Default; and
 - (iii) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the Default, including those arising from affected Subcontracts.

11.4 Other Termination Events

- (a) Where the terms of this Deed or an Official Order provide that:
 - (i) this Deed or an Official Order will terminate under this clause 11.4 upon the occurrence of a specified event; or
 - (ii) upon the occurrence of a specified event, the Commonwealth may terminate this Deed or an Official Order (or reduce the scope of this Deed or an Official Order) in whole or in part under this clause 11.4,then this Deed or an affected Official Order (as applicable) will be so terminated or reduced upon the occurrence of the specified event, or upon the Commonwealth giving notice to the Supplier (as applicable).
- (b) If this Deed or any Official Order is terminated or reduced under this clause 11.4, then any consequences of such termination as may be specified in the relevant provision of this Deed, or an Official Order, will apply.

11.5 Termination or Reduction for Convenience

- (a) In addition to any other rights it has in relation to this Deed and any Official Order, the Commonwealth may, at any time, for any reason and for its sole convenience, terminate this Deed or an Official Order (or reduce the scope of this Deed or an Official Order) in whole or in part by giving notice to the Supplier.

- (b) None of the other provisions of this Deed or any Official Order limit the Commonwealth's ability to terminate or reduce the scope of this Deed or any Official Order under this clause 11.5.
- (c) If this Deed or any Official Order is terminated or reduced under this clause 11.5, the Commonwealth's liability in respect of the termination or reduction is limited to:
 - (i) payments for Services properly performed in accordance with this Deed or the relevant Official Order before the date of termination or reduction takes effect; and
 - (ii) any reasonable additional costs incurred by the Supplier that are directly attributable to the termination or reduction provided that:
 - (A) the Supplier has used its reasonable efforts to mitigate those costs; and
 - (B) those costs have not already been included under paragraph (i) above,

and then only when the Supplier substantiates these amounts to the satisfaction of the Commonwealth. The Supplier is not entitled to profit calculated by reference to any period after the date the termination or reduction takes effect.

11.6 General Termination Provisions

- (a) If this Deed or any Official Order is terminated (in whole or in part) in accordance with clause 11 or otherwise:
 - (i) the termination takes effect on:
 - (A) the date of the notice of termination; or
 - (B) if the notice of termination specifies a later date, the later date;
 - (ii) the Supplier must:
 - (A) stop work in accordance with the notice of termination;
 - (B) comply with any directions given to the Supplier by the Commonwealth in relation to the termination (and the directions may be given in the notice of termination or at a later, reasonable time);
 - (C) take all reasonable steps to mitigate all Loss in connection with the termination, including those arising from affected Subcontracts;
 - (D) minimise any Loss resulting from the termination and protect Intellectual Property of the Commonwealth;
 - (E) deal with Intellectual Property of the Commonwealth as reasonably directed by the Commonwealth;

- (F) return to the Commonwealth all GFM and the Commonwealth's Confidential Information (except to the extent that the Supplier requires the GFM or the Commonwealth's Confidential Information for work on Official Orders that continue in force); and
 - (G) continue to work on any part of the Services not affected by the termination;
- (iii) subject to clause 11.11, the parties will be relieved from future performance, without prejudice to:
 - (A) any right, or cause of action, that has accrued at the date of termination; or
 - (B) any amount owing under or in connection with this Deed or any Official Order as at the date of termination;
- (iv) subject to clauses 8.7, 11.4(b) and 11.5, the right to recover damages, including full contractual damages, will not be affected; and
- (v) the Supplier must deliver to the Commonwealth all Commonwealth Property that the Supplier or Supplier Personnel have in their possession in connection with this Deed or any Official Order.
- (b) The rights of the Commonwealth to terminate or reduce the scope of this Deed or any Official Order under this clause 11 are in addition to any other right or remedy the Commonwealth may have in relation to this Deed and any Official Order.
- (c) For clarity, the termination of this Deed or any Official Order (for any reason) does not prejudice or otherwise affect the Commonwealth's rights under any Deed of Guarantee and Indemnity after the date of termination.

11.7 General Provisions for Reductions in Scope

- (a) If the Commonwealth gives a notice under this clause 11 to reduce the scope of this Deed or any Official Order, the Supplier must, in respect of the Services being removed from the scope of this Deed or any Official Order:
 - (i) cease performing the removed scope on and from the date(s) specified in the notice; and
 - (ii) comply with clause 11.6 (which is to be modified as necessary to apply in relation to the removed scope).
- (b) If the Commonwealth gives a notice reducing the scope of this Deed or any Official Order:
 - (i) the notice must:
 - (A) include a DCP or CCP (as applicable); or
 - (B) include a direction to the Supplier under clause 9.1 or 9.2 (as applicable) to prepare and submit a DCP or CCP,

to make amendments to this Deed or an Official Order (or both) that the Commonwealth determines, acting reasonably, are appropriate to give effect to the reduction in scope; and

- (ii) the scope of this Deed or an Official Order (as the case requires) is reduced as specified in the notice on and from the day on which the notice takes effect.

11.8 Right of Commonwealth to Recover Money

- (a) Without limiting the Commonwealth's other rights or remedies under this Deed, an Official Order or at Law, if the Supplier owes any debt to the Commonwealth in relation to this Deed or an Official Order, the Commonwealth may:
 - (i) deduct the amount from payment of any Payment Claim; or
 - (ii) give the Supplier notice of the existence of a debt recoverable which must be paid by the Supplier within 30 days after receipt of notice.
- (b) The Commonwealth may exercise any or all of its rights in respect of any security provided in accordance with clause 5.4 to recover any debt owing by the Supplier, except to the extent otherwise recovered by the Commonwealth under clause 11.8(a).
- (c) If the Commonwealth deducts the amount of a debt from any payment or security, it will notify the Supplier that it has done so.
- (d) If any sum of money owed to the Commonwealth is not received by its due date for payment, the Supplier must pay to the Commonwealth interest at the ATO sourced General Interest Charge rate current at the date the payment was due for each day the payment is late.
- (e) Where a provision under this Deed or an Official Order provides that the Commonwealth may recover from the Supplier under this clause 11.8 any cost or expense incurred by the Commonwealth, the cost or expense is deemed to be a debt due and payable by the Supplier to the Commonwealth.
- (f) Nothing in this clause 11.8 will affect the right of the Commonwealth to recover from the Supplier part of or the whole of any debt owed by the Supplier, or any balance that remains owing after deduction.
- (g) For clarity, where the Commonwealth determines that any payments made to the Supplier exceed the Supplier's entitlement to payments calculated in accordance with this Deed or any Official Order, then the Commonwealth may recover any overpayment as a debt due to the Commonwealth in accordance with this clause 11.8. The amount recoverable will be the variance to the payments to which the Supplier is entitled to under this Deed or any Official Order compared to the actual amount paid by the Commonwealth to the Supplier.

11.9 Entire Agreement and Counterparts

- (a) To the extent permitted by Law, this Deed and each Official Order represent the parties' entire agreement in relation to the subject matter and supersede all

tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

- (b) This Deed or any Official Order may be executed in counterparts, but this Deed or the relevant Official Order is not effective until each party has executed and delivered at least one counterpart of this Deed or relevant Official Order (as applicable). All executed counterparts constitute one document.

11.10 Severability

- (a) If any provision of this Deed or an Official Order is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions will not be affected and this Deed or the Official Order (as relevant) must be read as if the provision had been severed.

11.11 Survivorship

- (a) Any provision of this Deed or any Official Order which expressly or by implication from its nature is intended to survive the termination or expiration of this Deed or any Official Order, and any rights arising on termination or expiration, will survive the termination or expiration of this Deed or any Official Order on its terms.
- (b) Without limiting clause 11.11(a), any provision dealing with Confidential Information, IP, Commonwealth Data, privacy, and any warranties, guarantees, licences, indemnities, or rights to recover money under this Deed and any Official Order will survive the termination or expiration of this Deed or any Official Order on its terms.
- (c) Unless otherwise directed by the Commonwealth in writing, the expiry or termination of this Deed will not affect the validity of any Official Orders between the parties which will each continue in accordance with their terms until their respective expiry or termination.

EXECUTION

Executed as a deed.

Signed, sealed and delivered for and on behalf of the **Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (ABN 86 267 354 017) by:

Signature of authorised representative

Signature of witness

Name of authorised representative
(BLOCK LETTERS)

Name of witness
(BLOCK LETTERS)

Date

Executed as a deed by [...Company Name...]
ACN XXX XXX XXX in accordance with
section 127 of the *Corporations Act*
2001 (Cth):

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

ATTACHMENTS