

**COMMONWEALTH OF AUSTRALIA**

**DEPARTMENT OF DEFENCE**

DESIGN SERVICES CONTRACT (AUSTRALIA)

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME]*

***[Last amended: 27 octoBER 2022 - PLEASE REMOVE PRIOR TO TENDER ISSUE OR EXECUTION]***



**19th Chief Engineer Works**

**ROYAL AUSTRALIAN ENGINEERS**

**373A Avoca Street, RANDWICK, NSW 2031**

**(Ph: 02 9349 0242)**

**Please note:**

* matters in ***[SQUARE BRACKETS AND ITALICS]*** are to be completed by the Principal before documents issued to Tenderers; and
* matters in **[SQUARE BRACKETS AND BOLD]** are to be completed by Tenderers before lodging their Tender.

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FORMAL AGREEMENT

This Contract is made on day of

Parties The principal set out in the Contract Particulars (Principal)

The consultant set out in the Contract Particulars (Consultant)

The Principal and the Consultant promise to carry out and complete their respective obligations in accordance with:

(a) the attached Conditions of Contract; and

(b) the other documents referred to in clause 19.1 of the Conditions of Contract as constituting the Contract.

**SIGNED** as an agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Principal** in the presence of: |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Signatory |
| Name of Witness in full | Name of Authorised Signatory in full |

***[S 127 OF CORPORATIONS ACT]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Consultant** in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director ***[delete position as appropriate]*** |
|  |  |  |  |
| Full name of director who states that they are a director of the **Consultant** |  |  | Full name of company secretary/director ***[delete position as appropriate]*** who states that they are a company secretary/director ***[delete position as appropriate]*** of the **Consultant** |

***[OR - AUTHORISED SIGNATORY OF COMPANY]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Consultant** by its authorised signatory in the presence of: |  |  |  |
| Signature of Witness |  |  | Signature of Authorised Signatory |
| Name of Witness in full | Name of Authorised Signatory in full |

CONDITIONS OF CONTRACT

1. Role of the consultant
   1. Engagement

The Consultant must carry out the Services in accordance with the Contract.

* 1. Standard of Care

The Consultant:

* + 1. must exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional provider of the Services;
    2. warrants that each of its subconsultants will exercise the standard of skill, care and diligence that would be expected of an expert professional provider of the service being provided by the subconsultant;
    3. must:
       1. ensure that the Design Documentation complies with the requirements of the Contract; and
       2. use its best endeavours to ensure that the Design Documentation will be fit for its intended purpose;
    4. must ensure that the Services are provided economically and in accordance with any budgetary requirements of the Principal notified to the Consultant; and
    5. must exercise the utmost good faith in the best interests of the Principal and keep the Principal fully and regularly informed as to all matters affecting or relating to the Services and the Works.
  1. Authority to Act

Other than as expressly authorised, the Consultant has no authority to, and must not:

* + 1. enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
    2. take any act or step to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.

The Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Principal.

* 1. Knowledge of the Principal's Requirements

The Consultant must:

* + 1. inform itself of the Principal’s requirements for the Services and the Works;
    2. (without limitation) refer to the Principal Material and the Principal's Program; and
    3. consult the Principal throughout the carrying out of the Services.
  1. Notice of Matters Impacting on the Services or the Works

Without limiting clauses 12.1 - 12.5 (if applicable), if the Consultant becomes aware of any matter which:

* + 1. is likely to change or which has changed the scope, timing or cost of the Services or the Works;
    2. affects or may affect the Principal's Program or the Consultant's approved program under clause 7.2; or
    3. involves any error, omission or defect in any continuing or completed aspect of the Works or the Services,

the Consultant must promptly give written notice of that matter to the Contract Administrator containing, as far as practicable in the circumstances:

* + 1. particulars of the change, error, omission or defect;
    2. its likely impact; and
    3. the Consultant's recommendation as to how to minimise its impact upon the scope, timing and cost of the Services and the Works.
  1. Co‑ordination with Other Contractors

Without limiting clause 5.15(a), the Consultant must:

* + 1. permit Other Contractors to carry out their work;
    2. fully co‑operate with each Other Contractor;
    3. carefully co‑ordinate and integrate the Services with the activities of each Other Contractor;
    4. carry out the Services so as to avoid interfering with, disrupting or delaying, the activities of each Other Contractor; and
    5. without limitation, provide whatever advice, support and co‑operation is reasonable to facilitate the due carrying out of the activities of each Other Contractor.
  1. Access to Consultant's Premises

The Consultant must at all reasonable times:

* + 1. give to the Contract Administrator, or to any persons authorised in writing by the Contract Administrator, access to premises occupied by the Consultant or its subconsultants where Services are being carried out; and
    2. permit those persons referred to in paragraph (a) to inspect the carrying out of the Services and any Design Documentation or other Project Documents.
  1. Conflict of Interest

The Consultant warrants that:

* + 1. at the Award Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract;
    2. it will use its best endeavours to ensure that no conflict of interest exists or is likely to arise in the performance of the obligations of any subconsultants; and
    3. if any such conflict of interest or risk of such conflict of interest arises, the Consultant will:
       1. notify the Contract Administrator immediately in writing of that conflict or risk; and
       2. take all steps required by the Contract Administrator to avoid or minimise the conflict of interest or risk of conflict of interest.
  1. Subcontracting
     1. The Consultant:
        1. must not, without the prior written approval of the Contract Administrator, which will not be unreasonably withheld, subcontract any Services, except to a subconsultant named in the Contract Particulars;
        2. will:
           1. not be relieved of any of its liabilities or obligations under the Contract, including those under clauses 1.1 and 1.2; and
           2. remain responsible for all subconsultants and for all Services which are or may be subcontracted as if it was itself executing the Services, whether or not any subconsultants default or otherwise fail to observe any of the requirements of the relevant subcontract;
        3. will be vicariously liable to the Principal for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or connected with, the Services;
        4. must ensure that each subcontract contains provisions:
           1. which bind the subconsultants to participate in any novation required by the Principal under clause 10.5(a); and
           2. as otherwise required by this Contract; and
        5. must obtain and hold satisfactory and valid STRs of any subconsultant referred to in subparagraph (i) where the subcontract price is valued (or estimated) to be over $4 million (inclusive of GST). For the purposes of this subparagraph (v), a reference to “satisfactory” and “valid” has the meaning given in clause 13.11(f).
  2. Statutory Requirements

In carrying out the Services, the Consultant must:

* + 1. unless otherwise specified in the Contract Particulars, comply with all applicable Statutory Requirements;
    2. without limiting paragraph (a):
       1. apply for and obtain all Approvals referred to in the Contract Particulars; and
       2. give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
    3. promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Site, the Works or the Services issues to the Consultant.
  1. Change in Statutory Requirements or Variance with Contract

If:

* + 1. there is any change in a Statutory Requirement after the Award Date; or
    2. a Statutory Requirement is at variance with the Contract,

then:

* + 1. the party discovering this must promptly notify the other;
    2. the Contract Administrator will instruct the Consultant as to the course it is to adopt insofar as the Services are affected by the change or variance; and
    3. the Fee will be:
       1. increased by any extra costs reasonably incurred by the Consultant; or
       2. decreased by any saving made by the Consultant,

in carrying out the Services after the giving of the notice under paragraph (c) and arising directly from the change or variance or the Contract Administrator's instruction, in either case as determined by the Contract Administrator.

* 1. Novation

The Principal may at any time, without the consent of the Consultant, novate the Contract to a Contractor.

If the Principal elects to novate the Contract, the Consultant must execute a Consultant Deed of Novation to give effect to the novation within 7 days of receipt of the Consultant Deed of Novation from the Principal.

* 1. The Environment

Without limiting the Consultant's other obligations under the Contract, the Consultant must:

* + 1. ensure that, in preparing the Design Documentation and in carrying out the Services:
       1. it complies with the Environmental Management Plan;
       2. other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
       3. it does not cause any Environmental Incident;
       4. without limiting subparagraph (iii), it does not cause or contribute to any Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
       5. it immediately notifies the Contract Administrator of any non-compliance with the requirements of this clause 1.13, a breach of any Statutory Requirement for the protection of the Environment, any Environmental Incident or the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
       6. its subconsultants comply with the requirements in this clause 1.13; and
    2. clean up and restore the Environment, including any Contamination or Environmental Harm arising out of or in connection with the Services, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment. To the extent that the requirement to clean up and restore the Environment arises other than as a result of a failure by the Consultant to carry out the Services strictly in accordance with the requirements of the Contract, the Consultant will be entitled to the direct, reasonable and substantiated costs it incurs in cleaning up and restoring the Environment under this clause as determined by the Contract Administrator.
  1. Pandemic Adjustment Event
     1. If the Consultant considers that there has been a Pandemic Adjustment Event, it must promptly give the Contract Administrator and the Principal notice in writing, together with detailed particulars of the following:
        1. the relevant change in circumstances and the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the Pandemic and full details of the adverse effect;
        2. the likely duration of the Pandemic Adjustment Event;
        3. the Consultant’s plan to deal with the consequences of the Pandemic Adjustment Event which must as a minimum include details of the steps that the Consultant will take to:
           1. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Adjustment Event; and
           2. minimise any additional cost to the Principal in respect of the Pandemic Adjustment Event,

(**Consultant’s** **Pandemic Adjustment Plan**); and

* + - 1. such other details or information as the Contract Administrator may require.
    1. The Contract Administrator must, within 14 days of receipt of the Consultant’s notice under paragraph (a) notify the Consultant and the Principal of its determination whether a Pandemic Adjustment Event has occurred.
    2. Where the Contract Administrator has determined a Pandemic Adjustment Event has occurred, the Contract Administrator may, without being under any obligation to do so, instruct the Consultant as to the course it must adopt insofar as the Services are affected by the Pandemic Adjustment Event.
    3. If a Pandemic Adjustment Event occurs:
       1. subject to paragraph (f), the Consultant will be entitled to:
          1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 7.7; and
          2. have the Fee increased by the extra costs reasonably incurred by the Consultant:

after the giving of the notice under paragraph (a) which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c); and

to the extent such costs were exclusively incurred for the purposes of performing the Services,

as determined by the Contract Administrator; and

* + - 1. the Consultant must:
         1. comply with any direction of the Contract Administrator in relation to the Pandemic Adjustment Event; and
         2. subject to any amendments required by the Contract Administrator, implement the Consultant’s Pandemic Adjustment Plan.
    1. To the extent permitted by law:
       1. the entitlement of the parties in respect of a Pandemic Adjustment Event will be determined solely under this clause 1.14; and
       2. without limiting subparagraph (i), the Consultant will not be entitled to make (nor will the Principal be liable upon) any Claim arising out of or in connection with a Pandemic Adjustment Event, any instruction of the Contract Administrator under paragraph (c) or any amendment required by the Contract Administrator under paragraph (d)(ii)B, other than under paragraph (d)(i).
    2. The Contract Administrator:
       1. will reduce any entitlement the Consultant would have otherwise had under paragraph (d)(i)B to the extent that the Consultant has failed to take all reasonable steps to minimise any additional cost to the Principal in respect of the Pandemic Adjustment Event; and
       2. may, for the purposes of assessing the Consultant’s entitlement under paragraph (d)(i)B, take into account any breakdown of the Fee submitted by the Consultant in its tender for the Services.

1. Role of the PRINCIPAL
   1. Information and Services

The Principal must as soon as practicable make available to the Consultant:

* + 1. all relevant information, documents and particulars relating to the Works and to the Principal’s requirements for the Works, including the Principal's Program; and
    2. details of the budget for the Works, as relevant to the Services.
  1. Additional Information

If:

* + 1. the Consultant, in its reasonable opinion, considers that any additional information, documents or particulars are needed to enable it to carry out the Services; and
    2. the additional information, documents or particulars are not provided by the Principal under this Contract or by an Other Contractor,

then:

* + 1. the Consultant must give notice in writing to the Contract Administrator of the details of the additional information, documents or particulars and the reasons why they are required; and
    2. the Principal must, if the Contract Administrator believes that the additional information, documents or particulars are needed by the Consultant, use its best endeavours to arrange the provision of the additional information, documents or particulars.
  1. Access

Subject to:

* + 1. the Construction Contract;
    2. any other agreement or arrangement with any party other than the Consultant; and
    3. the Site Management Plan and the Work Health and Safety Plan having been finalised under clause 6.4,

the Principal must:

* + 1. as soon as practicable provide the Consultant with access to the Site upon which the Works are to be constructed; and
    2. arrange access to any other property which may be necessary for the Consultant to carry out the Services.
  1. Making of Decisions

If:

* + 1. the Consultant requests the Principal to consider the selection of alternative courses of action; and
    2. all information required to enable a decision to be made is provided by the Consultant or is otherwise available,

the Principal must, in such reasonable time as not to delay or disrupt the carrying out of the Services, give a decision on the required course of action.

1. Personnel
   1. Contract Administrator

The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

The Consultant must:

* + 1. comply with any direction by the Contract Administrator given or purported to be given under a provision of this Contract;
    2. not comply with any direction of the Principal other than as expressly stated in the Contract; and
    3. not comply with any purported direction of a person associated with the project or the Contract other than a direction:
       1. by the Contract Administrator in accordance with paragraph (a); or
       2. of the Principal which is expressly provided for in the Contract.

Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.

* 1. Replacement of Contract Administrator

The Principal may at any time replace the Contract Administrator, in which event the Principal will appoint another person as the Contract Administrator and notify the Consultant of that appointment.

Any substitute Contract Administrator appointed under this clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

* 1. Parties' Conduct

Without limiting any of the rights or obligations of the Principal and Consultant under the Contract, the Principal and Consultant must co-operate with each other in carrying out their obligations under the Contract.

* 1. Contract Administrator's Representative

The Contract Administrator may:

* + 1. by written notice to the Consultant appoint persons to exercise any of the Contract Administrator's functions under the Contract;
    2. not appoint more than one person to exercise a specific function under the Contract; and
    3. revoke any appointment under paragraph (a) by notice in writing to the Consultant.

As at the Award Date, the Contract Administrator is deemed to have appointed the persons set out in the Contract Particulars to carry out the functions set out in the Contract Particulars.

All references in the Contract to Contract Administrator include a reference to a representative appointed under this clause 3.4.

* 1. Key People

The Consultant must:

* + 1. employ those people specified in the Contract Particulars, including the Consultant's Representative, in the jobs specified in the Contract Particulars;
    2. subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
    3. if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Consultant, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.
  1. Removal of Persons

The Contract Administrator may by notice in writing instruct the Consultant to remove any person from the performance of the Services who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Consultant must ensure that this person is not again employed in the Services.

* 1. Project Review

This clause 3.7 does not apply unless the Contract Particulars state that it applies.

The Consultant must:

* + 1. meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
    2. present a progress report at each meeting detailing:
       1. the activities of the Consultant;
       2. the progress made in respect of the Services in the preceding month; and
       3. such other matters as the Contract Administrator may require from time to time;
    3. discuss the reports it has prepared under clause 5.15 and other matters as the Contract Administrator may from time to time require;
    4. promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
    5. if it requires instructions from the Principal, make all necessary recommendations as to the action required.

The Contract Administrator must:

* + 1. before each meeting, prepare an agenda for that meeting; and
    2. after each meeting, prepare minutes of the meeting and distribute them to all attendees of the meeting.

1. Insurance
   1. Consultant Insurance Obligations

The Consultant must:

* + 1. from the Award Date effect and maintain the following insurance:
       1. Public Liability Insurance;
       2. Workers Compensation Insurance;
       3. Professional Indemnity Insurance; and
       4. such other insurances on such terms as are set out in the Contract Particulars,

each of which is to be:

* + - 1. for the amounts specified in the Contract Particulars;
      2. with insurers having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better or with such other insurer approved by the Contract Administrator; and
      3. on terms which are satisfactory to the Contract Administrator (confirmation of which must not be unreasonably withheld or delayed);
    1. in relation to the Workers Compensation Insurance and Employers' Liability Insurance, ensure that:
       1. to the extent permitted by law, the insurance extends to provide indemnity to the Principal in respect of any statutory and common law liability to the Consultant's employees; and
       2. each of its subconsultants legally required to do so has Workers Compensation Insurance and Employers' Liability Insurance covering the subconsultant in respect of its statutory and common law liability to employees in the same manner as the Consultant is required to do so under paragraph (a)(ii);
    2. provide the Contract Administrator with evidence satisfactory to the Contract Administrator that each policy is current as required by the Contract Administrator from time to time;
    3. ensure that:
       1. if the insurer gives the Consultant notice of expiry, cancellation or rescission of any required insurance policy, the Consultant as soon as possible informs the Principal in writing that the notice has been given and effects replacement insurance on terms and subject to limits acceptable to the Contract Administrator, whose acceptance will not be unreasonably withheld; and
       2. if the Consultant cancels, rescinds or fails to renew any required insurance policy, the Consultant as soon as possible obtains replacement insurance as required by this Contract and informs the Principal in writing as soon as possible of the identity of the replacement insurer, and provides such evidence as the Contract Administrator reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract; and
    4. ensure that any subconsultants that perform any design work forming part of the Services also maintain Professional Indemnity Insurance in the same manner and on the same terms as those required to be obtained by the Consultant under paragraph (a)(iii), for not less than the amount referred to in the Contract Particulars.

The obtaining of insurance as required under this clause 4.1 will not limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Consultant under any other provisions of the Contract or otherwise at law or in equity.

* 1. Failure to Insure

If the Consultant fails to:

* + 1. provide evidence satisfactory to the Contract Administrator that a policy is current; or
    2. obtain insurance in accordance with clause 4.1,

the Principal may, without prejudice to any other rights it may have, take out the relevant insurance and the cost will be a debt due from the Consultant to the Principal.

* 1. Period of Insurance

The insurance which the Consultant is required to obtain under this clause 4 must be maintained:

* + 1. in the case of Public Liability Insurance and Workers Compensation Insurance, until completion of the Services; and
    2. in the case of Professional Indemnity Insurance, until the expiration of the period specified in the Contract Particulars following completion of the Services.
  1. Notice of Potential Claim

The Consultant must:

* + 1. as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract;
    2. keep the Principal informed of all significant developments concerning the claim, except in circumstances where the Principal is making a claim against the Consultant; and
    3. ensure that its subconsultants similarly inform the Consultant and the Principal in respect of occurrences which may give rise to claims by them,

provided that, in respect of Professional Indemnity Insurance, the Consultant:

* + 1. subject to paragraph (e), is not required to provide details of individual claims; and
    2. must notify the Principal if the estimated total combined value of claims made against the Consultant and claims which may arise from circumstances reported by the Consultant to its insurer in a policy year would potentially reduce the available limit of policy indemnity for that year below the amount required by the Contract.
  1. Cross Liability

This clause 4.5 does not apply to Professional Indemnity Insurance and Workers Compensation Insurance.

Where the Contract requires insurance to provide cover to more than one insured, the Consultant must ensure that the insurance policy provides that:

* + 1. the insurance (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
    2. the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties to whom coverage extends and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured; and
    3. a notice to the insurer by one insured will be deemed to be notice on behalf of all insureds.

1. DESIGN AND Documentation
   1. Principal's Documents

The Principal must provide to the Consultant the Principal Material and number of copies of the Principal Material specified in the Contract Particulars.

* 1. Consultant's Design

The Consultant must:

* + 1. design the parts of the Works:
       1. which the Contract requires it to design in accordance with the Brief and the other requirements of the Contract and for this purpose (but without limitation) prepare all relevant Design Documentation; and
       2. to maximise the achievement of the WOL Objectives;
    2. as part of the program it is to prepare under clause 7.2, submit to the Contract Administrator for approval a documentation program which makes allowance for the Design Documentation to be submitted to the Contract Administrator in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Design Documentation within the period of time within which the Contract Administrator may review the Design Documentation under clause 5.3;
    3. be responsible for co-ordinating the work of its subconsultants, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these subconsultants in a manner and at a rate of progress so that the Consultant complies with its obligations under paragraph (e);
    4. conduct design reviews at each of the design review milestones as identified in the DCAP; and
    5. submit the Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under paragraph (b).
  1. Contract Administrator may Review Design Documentation
     1. The Contract Administrator may:
        1. review any Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Consultant; and
        2. within the number ofdays set out in the Contract Particulars of the submission by the Consultant of such Design Documentation or resubmitted Design Documentation, reject the Design Documentation.
     2. If any Design Documentation is rejected, the Consultant must submit amended Design Documentation to the Contract Administrator.
  2. No Obligation to Review
     1. The Contract Administrator does not assume or owe any duty of care to the Consultant to review, or in reviewing, the Design Documentation submitted by the Consultant for errors, omissions or compliance with the Contract.
     2. No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Design Documentation prepared by the Consultant or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of the Principal in relation to, the Design Documentation will:
        1. relieve the Consultant from, or alter or affect, the Consultant's obligations under the Contract or otherwise according to law; or
        2. prejudice the Principal's rights against the Consultant under the Contract or otherwise according to law.
  3. Copies of Design Documentation

For the purposes of clauses 5.2(e) and 5.3, the Consultant must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Design Documentation in:

* + 1. hard copy; and
    2. electronic copy,

in each case in accordance with the requirements set out in the Contract Particulars.

* 1. Licence over Design Documentation

The Consultant grants to the Principal a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Design Documentation, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Design Documentation with the exception of any Design Documentation referred to in the Contract Particulars.

This licence:

* + 1. arises, for any Design Documentation, immediately when the Design Documentation is:
       1. produced; or
       2. provided, or required to be provided, to the Principal or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Services or the Works by, for or on behalf of the Consultant;

* + 1. includes an unlimited right to sublicense;
    2. without limitation, extends to:
       1. any subsequent occupation, use, operation, maintenance or servicing of, or additions, alterations or repairs to the Works; and
       2. use in any way for any other Commonwealth or Principal project; and
    3. survives the termination of this Contract on any basis.
  1. Intellectual Property Warranties

The Consultant warrants that:

* + 1. the Consultant owns all Intellectual Property Rights in the Design Documentation or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by this Contract;
    2. use by the Principal or any sublicensee or subsublicensee of the Design Documentation in accordance with this Contract will not infringe the rights (including Intellectual Property Rights) of any third party;
    3. neither the Principal nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use of the Design Documentation, whether by reason of Intellectual Property Rights of that third party or otherwise; and
    4. the use by the Principal or by any sublicensee or subsublicensee of the Design Documentation in accordance with this Contract will not breach any laws (including any laws in respect of Intellectual Property Rights).
  1. Intellectual Property Rights

The Consultant must:

* + 1. ensure that the Services do not infringe any patent, registered design, trade mark or name, copyright or other protected right; and
    2. indemnify the Principal against any claims against, or costs, losses or damages suffered or incurred by, the Principal arising out of, or in connection with, any actual or alleged infringement of any patent, registered design, trade mark or name, copyright or other protected right.
  1. Principal Material
     1. The Principal Material will remain the property of the Principal.
     2. The Principal must inform the Consultant of any Principal Material in which third parties hold the copyright and of any conditions attaching to the use of that material because of that copyright. The Consultant may use that material only in accordance with those conditions.
     3. The Consultant will be responsible for the protection, maintenance and return of the Principal Material in its possession.
  2. DCAP

The Consultant:

* + 1. warrants that:
       1. the DCAP complies with the requirements of this Contract; and
       2. preparation of the Design Documentation in accordance with the DCAP will ensure that the Design Documentation complies with the requirements of this Contract and that the Consultant otherwise discharges its obligations under the Contract;
    2. acknowledges that the DCAP:
       1. does not limit the Consultant's obligations under this Contract; and
       2. may require updating and refining throughout the execution of the Services:
          1. to the extent that it does not reflect the tasks or other things to be done or provided to perform the Services in accordance with the Contract; and
          2. without limiting subsubparagraph A, on account of Variations;
    3. must update and refine the DCAP as required by paragraph (b)(ii) with the written approval of the Contract Administrator;
    4. will not be entitled to bring any Claim against the Principal arising out of or in connection with any work which the Consultant is required to carry out arising out of or in connection with paragraph (b) or (c); and
    5. acknowledges that the Principal has not made and does not make any representation or give any warranty as to any of the matters referred to in paragraphs (a)(i) and (a)(ii).
  1. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Design Documentation or any other Project Documents:

* + 1. the order of precedence in the Contract Particulars will apply;
    2. where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation or any other Project Documents, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail;
    3. if it is discovered by the Consultant or the Contract Administrator, then the party discovering it must promptly give notice to the other; and
    4. the Contract Administrator must instruct the Consultant as to the course it must adopt within 14 days of the notice under paragraph (c).
  1. Access to Premises and Project Documents

Without limiting clause 1.7, the Consultant must:

* + 1. at the request of the Contract Administrator at any time during the execution of the Services and the period of 10 years following completion of the Services:
       1. provide access to its premises and make the Project Documents available for inspection and copying by the Contract Administrator or any other person nominated by the Contract Administrator;
       2. provide to the Contract Administrator such copies of the Project Documents as the Contract Administrator or any nominated person may require, in such formats as may be required;
       3. provide all such facilities and assistance and answer all questions of the Contract Administrator or any nominated person; and
       4. make available any officers, employees, agents or subconsultants for interviews with the Contract Administrator or any nominated person; and
    2. ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under this clause 5.12 as if the subconsultant were the Consultant.
  1. Measurements and Dimensions

Unless expressly stated to the contrary in the Contract or directed by the Contract Administrator:

* + 1. the Consultant must obtain and check all relevant measurements and dimensions on the Site before proceeding with the Services; and
    2. the layout of plant, equipment, ductwork, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimensions information concerning the Site required to carry out the Services must be obtained and checked by the Consultant.

The Principal will not be liable upon any Claim by the Consultant resulting from the Consultant's failure to obtain and check measurements and dimensions information concerning the Site as required by this clause.

* 1. Samples
     1. The Consultant must obtain each sample required by the Contract and provide the sample it obtains to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 5.2(b), as updated with the approval of the Contract Administrator under clause 7.2.
     2. The Contract Administrator must reject or give its permission to use the sample provided by the Consultant or any resubmitted sample within 14 days of submission by the Consultant.
     3. Where any sample is rejected, the Consultant must submit an amended or substituted sample to the Contract Administrator and must not commence design of any part of the Works to which it applies, unless the Contract Administrator gives it permission to use the sample.
     4. The Contract Administrator owes no duty to the Consultant to review the sample submitted by the Consultant for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the sample submitted by the Consultant will relieve the Consultant from, or alter or affect, the Consultant's obligations under the Contract or otherwise in law or in equity.
  2. Work Health and Safety

The Consultant must:

* + 1. ensure that in carrying out the Services:
       1. it complies with all Statutory Requirements and other requirements of the Contract in respect of work health and safety, including the applicable WHS Legislation;
       2. where the applicable WHS Legislation does not prescribe a duty referred to in this Contract as one the Consultant must comply with, it complies with the duty contained in the Commonwealth WHS Legislation;
       3. it complies with the duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
       4. it complies with the duty under the WHS Legislation to notify the relevant regulator immediately upon becoming aware that a notifiable incident (within the meaning of the WHS Legislation) has occurred arising out of its business or undertaking; and
       5. it complies with the duty under the WHS Legislation to, where a notifiable incident has occurred, to ensure, so far as is reasonably practicable, that the site where the notifiable incident has occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs, unless it is to:
          1. assist an injured person or remove a deceased person;
          2. make the area safe or to minimise the risk of a further notifiable incident; or
          3. the relevant regulator/inspector has given permission to disturb the site;
    2. carry out the Services to ensure the health and safety of persons is not put at risk;
    3. without limiting the Consultant's obligations under the Contract or otherwise at law or in equity, notify the Contract Administrator:
       1. in respect of notifiable incidents within the meaning of the WHS Legislation, immediately;
       2. in respect of work health and safety incidents or accidents (which are not notifiable incidents) where the nature of the incident or accident indicates a potential systemic failure to identify hazards and manage risks to health and safety, so far as is reasonably practicable within 24 hours of the incident or accident occurring; and
       3. in respect of all other work health and safety matters arising out of or in connection with the Services, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraphs (i) or (ii)), in a monthly report;
    4. for the purposes of paragraphs (a)(iv) and (c) above, in respect of any notifiable incident:
       1. immediately provide the Contract Administrator with a copy of the notice required to be provided to the relevant Commonwealth, State or Territory regulator;
       2. promptly provide the Contract Administrator with a copy of all witness statements and the investigation report relating to the notifiable incident;
       3. promptly provide the Contract Administrator with copies of any notice(s) or other documentation issued by the relevant Commonwealth, State or Territory regulator; and
       4. within 10 days of the date of notification to the relevant Commonwealth, State or Territory regulator, provide the Contract Administrator with a summary of the related investigations, actions to be taken, and any impact on the Contract that may result from the notifiable incident;
    5. institute systems to:
       1. obtain regular written assurances from each Other Contractor and subconsultant about their ongoing compliance with the WHS Legislation; and
       2. provide, in a format specified by the Contract Administrator, the written assurances regarding the Consultant's ongoing compliance with the WHS Legislation;
          1. on a quarterly basis (when requested by the Contract Administrator); and
          2. as otherwise directed by the Contract Administrator;
    6. provide the written assurances obtained under paragraph (e) to the Contract Administrator in accordance with paragraph (e);
    7. without limiting the Consultant's obligations under the Contract or otherwise at law or in equity within 10 days of receipt provide to the Contract Administrator copies of:
       1. all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Consultant or subconsultant relating to work health and safety matters;
       2. all formal notices issued by a health and safety representative of the Consultant or subconsultant under or in compliance with the applicable WHS Legislation; and
       3. all formal notices, written communications and written undertakings given by the Consultant or subconsultant to the regulator or agent of the regulator under or in compliance with the applicable WHS Legislation,

arising out of or in connection with the Services;

* + 1. exercise a duty of the utmost good faith to the Principal in carrying out the Services to enable the Principal to discharge the Principal's duties under the WHS Legislation;
    2. ensure all subcontracts include provisions equivalent to the obligations of the Consultant in clause 5.15;
    3. ensure that, if any Statutory Requirement requires that:
       1. a person:
          1. be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; or
          2. has prescribed qualifications or experience, or if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
       2. a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
    4. not direct or allow a person to carry out work, or use plant or a substance (or design) at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (j) are met;
    5. immediately notify the Contract Administrator giving full particulars, so far as they are known to it, upon becoming aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend an authorisation relating to work health and safety;
    6. without limiting the Consultant's obligations under the Contract (including paragraph (d) in respect of notifiable incidents) or otherwise at law or in equity, within 10 days of a request by the Contract Administrator or anyone else acting on behalf of the Principal, provide all information or copies of documentation held by the Consultant or a subconsultant to the Contract Administrator or anyone else acting on behalf of the Principal to enable the Principal to comply with its obligations under the WHS Legislation;
    7. if requested by the Contract Administrator or required by the WHS Legislation, produce evidence of any Approvals including any authorisations, licences, registrations, prescribed qualifications or experience, or any other information relevant to work health and safety to the satisfaction of the Contract Administrator before the Consultant or any subconsultant commences such work;
    8. where the Consultant is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contract Administrator prior to Completion (as defined in the Construction Contract) and before the expiry of the Defects Liability Period (as defined in the Construction Contract) information concerning:
       1. the purpose for which any plant, structure or substance (as defined in the WHS Legislation) has been designed or manufactured;
       2. the results of any calculations, analysis, testing or examination carried out concerning the safety of the plant, substances or structures referred to in subparagraph (i) (and the risks to the health and safety of persons); and
       3. any conditions necessary to ensure the plant, substances or structures are without risks to health and safety when used for the purpose for which they were designed or manufactured;
    9. ensure that the Design Documentation eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
    10. not use Asbestos or ACM in carrying out the Services;
    11. ensure that the Design Documentation does not provide for Asbestos or ACM to be used in (or incorporated into the Works;
    12. with each submission of Design Documentation under clause 5.2, provide the Contract Administrator with a certificate in a form satisfactory to the Contract Administrator which states that:
        1. all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) described in the Design Documentation to be used in (or incorporated into) the Works are entirely (meaning 100%) free of Asbestos and ACM; and
        2. the Consultant has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Services;
    13. without limiting paragraph (s), if any imported materials, goods, products, equipment and plant described in the Design Documentation are to be used in (or incorporated into) the Works, the Consultant must provide to the Contract Administrator with each submission of Design Documentation under clause 5.2:
        1. sample test reports; and
        2. test report information, in the form of an analysis certificate from a NATA accredited laboratory or an equivalent international laboratory (listed at the NATA website) accredited for the relevant test method,

in relation to the imported materials, goods, products, equipment or plant to be used in or used in (or incorporated into) the Works; and

* + 1. if the Consultant is a designer of a structure (or part of a structure) for the purposes of the WHS Legislation, the Consultant must provide to the Contract Administrator, with each submission of Design Documentation under clause 5.2, a written report that specifies the hazards relating to the design of the structure (or part) which, as far as the Consultant is reasonably aware:
       1. create a risk to health or safety to those carrying out construction work on the structure (or part); and
       2. are associated only with that particular design.
  1. Local Industry Capability

Without limiting clause 5.2, the Consultant must design the Works so as to ensure that appropriate opportunities are provide for local industry in the delivery of the Works.

1. Quality
   1. Quality Assurance

The Consultant:

* + 1. must implement the quality assurance system specified in the DCAP;
    2. must allow the Contract Administrator access to the quality system of the Consultant and its subconsultants so as to enable monitoring and quality auditing; and
    3. will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
       1. the implementation of, and compliance with, the quality assurance requirements of the Contract;
       2. any direction by the Contract Administrator concerning the Consultant’s quality assurance system or its compliance or non‑compliance with that system;
       3. any audit or other monitoring by the Contract Administrator of the Consultant’s compliance with the quality assurance system; or
       4. any failure by the Contract Administrator, or anyone else acting on behalf of the Principal, to detect any Services which are not in accordance with the requirements of the Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
  1. Non-Complying Services

If the Contract Administrator discovers or believes that any Services have not been performed in accordance with the Contract, the Contract Administrator may give the Consultant an instruction specifying the non-complying Services and doing one or more of the following:

* + 1. requiring the Consultant to:
       1. reperform the Services which are non-complying and specifying the time within which this must occur; and
       2. to take all such steps as are reasonably necessary to:
          1. mitigate the effect on the Principal of the failure to carry out the Services in accordance with the Contract; and
          2. put the Principal (as closely as possible) in the position in which it would have been if the Consultant had carried out the Services in accordance with the Contract; and
    2. advising the Consultant that the Principal will accept the non-complying Services despite the non-compliance.
  1. Reperformance of the Non-complying Services

If a direction is given under clause 6.2, the Consultant must reperform the non-complying Services:

* + 1. within the time specified in the Contract Administrator's instruction; and
    2. if after the Date for Completion, so as to minimise the delay and disruption to the execution of the Works.
  1. Project Plans
     1. The Consultant:
        1. must carry out the Services in accordance with, and otherwise implement, the Project Plans; and
        2. for the purposes of subparagraph (i), must:
           1. prepare draft Project Plans based on the corporate approach to preparing the Project Plans and performing the Services to be covered by the Project Plans, submitted by the Consultant in its tender for the Services, and otherwise in accordance with the requirements of the Contract and submit them to the Contract Administrator so as to ensure that there is no delay or disruption to the Services and in any event no later than:

for the Environmental Management Plan, the Site Management Plan and the Work Health and Safety Plan, the number of days set out in the Contract Particulars after the Award Date for each Project Plan; and

for the Commissioning and Handover Plan, at least 14 days prior to the issue of any Design Documentation for the purpose of engaging a Contractor;

* + - * 1. not commence any of the Services to which any Project Plan applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the draft Project Plans and has not rejected them;
        2. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Contract Administrator;
        3. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Services and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator;
        4. after the Project Plans have been finalised, continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Consultant) and submit an amended draft of the Project Plan to the Contract Administrator, after which subsubparagraphs A-D will apply (to the extent applicable); and
        5. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
    1. The Consultant will not be relieved from compliance with any of its Contract obligations under the Contract or otherwise at law or in equity as a result of:
       1. the implementation of, and compliance with, the requirements of any Project Plan;
       2. any direction by the Contract Administrator concerning a Project Plan or the Consultant's compliance or non-compliance with a Project Plan;
       3. any audit or other monitoring by the Contract Administrator of the Consultant's compliance with a Project Plan; or
       4. any failure by the Contract Administrator, or anyone else acting on behalf of the Principal, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
  1. Commissioning and Handover

The Consultant must:

* + 1. ensure that the Design Documentation:
       1. complies with its Commissioning and Handover Plan; and
       2. provides such information as may be necessary to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the occupants;
    2. in consultation with the Contract Administrator, provide the Principal with such other specific assistance as may be required by the Contract Administrator to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to the occupants, including providing the occupants with the required training to operate and maintain the Works (as applicable and if required); and
    3. as and when reasonably required by the Contract Administrator, meet with the Contract Administrator and such other persons as are nominated by the Contract Administrator with a view to ensuring that the Principal and the nominated other persons have sufficient information to enable the Principal or the nominated persons to:
       1. operate the Works;
       2. maintain the Works; or
       3. perform such other activities as may be required by the Principal in respect of the Works.

1. Time
   1. Progress

The Consultant must:

* + 1. regularly and diligently progress the Services; and
    2. subject to clause 7.11, achieve Completion of each Milestone by its Date for Completion.
  1. Programming

The Consultant must:

* + 1. within 14 days of the Award Date, prepare a program of the Services which must:
       1. be based upon the Principal's Program; and
       2. contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
    2. update the program periodically at least at intervals of no less than that specified in the Contract Particulars to take account of:
       1. changes to the program;
       2. changes to the Principal's Program; or
       3. delays which may have occurred, including any for which the Consultant is granted an extension of time under clause 7.8;
    3. give the Contract Administrator copies of all programs for approval;
    4. ensure that the subconsultants adhere to the program; and
    5. provide all programs in a format compatible with the software described in the Contract Particulars.
  1. Consultant Not Relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Contract Administrator will not:

* + 1. relieve the Consultant from or alter its obligations under the Contract especially (without limitation) the obligation to achieve Completion of each Milestone by its Date for Completion;
    2. evidence or constitute the granting of an extension of time or an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any, or all, of the Services; or
    3. affect the time for the carrying out of the Principal's or Contract Administrator's Contract obligations.
  1. Suspension
     1. The Contract Administrator:
        1. may instruct the Consultant to suspend and, after a suspension has been instructed, to re‑commence, the carrying out of all or a part of the Services; and
        2. is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Consultant.
     2. If a suspension under this clause 7.4 arises as a result of:
        1. the Consultant's failure to carry out its obligations in accordance with the Contract, the Consultant will not be entitled to make any Claim against the Principal arising out of, or in connection with, the suspension; or
        2. a cause other than the Consultant's failure to carry out its obligations in accordance with the Contract:
           1. an instruction to suspend under this clause 7.4 will entitle the Consultant to:

be paid by the Principal the extra costs reasonably incurred by it as a result of the suspension as determined by the Contract Administrator; and

an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 7.5;

* + - * 1. the Consultant must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
        2. the Consultant will not be entitled to make any other Claim against the Principal arising out of, or in connection with, the suspension other than under this subparagraph (ii).
    1. Except to the extent permitted by the relevant Security of Payment Legislation, the Consultant may only suspend the Services when instructed to do so under this clause 7.4.
  1. Delays Entitling Claim

If the Consultant is, or is likely to be, delayed:

* + 1. prior to the Date for Completion of a Milestone by an Act of Prevention or a Pandemic Adjustment Event in a manner which will prevent it from achieving Completion of the Milestone by the relevant Date for Completion; or
    2. after the Date for Completion of a Milestone by an Act of Prevention or a Pandemic Adjustment Event in a manner which will delay it in achieving Completion of the Milestone,

the Consultant may claim an extension of time.

* 1. Claim

To claim an extension of time, the Consultant must:

* + 1. within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Contract Administrator for an extension to the relevant Date for Completion, which:
       1. gives detailed particulars of the delay and the occurrence causing the delay; and
       2. states the number of days extension of time claimed together with the basis of calculating that period, including evidence that it will be delayed in achieving Completion in the manner set out in clause 7.7(c); and
    2. if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Consultant wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Contract Administrator:
       1. every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
       2. containing the information required by paragraph (a).
  1. Conditions Precedent to Extension

It is a condition precedent to the Consultant’s entitlement to an extension of time that:

* + 1. the Consultant must give the written claim required by clause 7.6 as required by that clause;
    2. the cause of the delay was beyond the reasonable control of the Consultant; and
    3. the Consultant must have actually been, or be likely to be, delayed by:
       1. prior to the Date for Completion of a Milestone, an Act of Preventionor a Pandemic Adjustment Event in a manner which will prevent it from achieving Completion of the Milestone by the relevant Date for Completion unless that date is extended; or
       2. after the Date for Completion of a Milestone, an Act of Prevention or a Pandemic Adjustment Event in a manner which will delay it in achieving Completion of the Milestone.
  1. Extension of Time

Subject to clause 7.9, if the conditions precedent in clause 7.7 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Contract Administrator and notified to the Principal and the Consultant within 21 days of the Consultant's written claim under clause 7.6.

* 1. Reduction in Extension of Time

The Contract Administrator will reduce any extension to the relevant Date for Completion it would otherwise have notified to the Principal and the Consultant under clause 7.8 to the extent that the Consultant:

* + 1. contributed to the delay; or
    2. failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.
  1. Unilateral Extensions

Whether or not the Consultant has made, or is entitled to make, a claim for an extension of time under clause 7.5, the Principal may, in the Principal's absolute discretion at any time and from time to time by written notice to the Consultant and the Contract Administrator, unilaterally extend any Date for Completion.

The parties acknowledge that:

* + 1. the Principal is not required to exercise the Principal's discretion under this clause 7.10 for the benefit of the Consultant;
    2. this clause 7.10 does not give the Consultant any rights; and
    3. the exercise or failure to exercise the Principal's discretion under this clause 7.10 is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 or otherwise subject to review.
  1. Acceleration
     1. The Contract Administrator may (in its absolute discretion) at any time and from time to time, by written notice to the Consultant require the Consultant to use its best endeavours to achieve a Milestone by a date earlier than the Date for Completion (**Accelerated Date for Completion**).
     2. If a direction is given by the Contract Administrator under paragraph (a), the Consultant must:
        1. use its best endeavours to:
           1. accelerate the performance of the Services; and
           2. otherwise do all things necessary,

to achieve Completion of the Milestone by the Accelerated Date for Completion; and

* + - 1. keep the Contract Administrator fully and regularly informed of the progress of the Services against the Accelerated Date for Completion.
    1. The Consultant will:
       1. be entitled to its extra costs properly and reasonably incurred in complying with paragraph (b); and
       2. not be entitled to make any Claim, other than for payment of an amount in accordance with subparagraph (i), arising out of or in connection with a direction by the Contract Administrator under paragraph (a).
    2. If the Consultant does not achieve Completion of a Milestone by its Accelerated Date for Completion, the Consultant must nevertheless:
       1. use its best endeavours to accelerate the performance of the Services and otherwise do all things necessary to achieve Completion of the Milestone as soon as possible after the Accelerated Date for Completion; and
       2. in any event, achieve Completion of the Milestone no later than its Date for Completion.

1. Variation
   1. Variation Price Request

The Contract Administrator may, at any time, issue a document titled "Variation Price Request" to the Consultant which will set out details of a proposed Variation which the Principal is considering with respect to the Services.

The Consultant must immediately take all action required under any relevant subcontract in relation to each subconsultant that would be involved in carrying out the proposed Variation.

Within 14 days of the receipt of a "Variation Price Request", the Consultant must provide the Contract Administrator with a written notice in which the Consultant sets out:

* + 1. the adjustment (if any) to the Fee to carry out the proposed Variation; and
    2. the effect (if any) which the proposed Variation will have on the then approved program, including each Date for Completion.
  1. Variation Order

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 8.1, the Contract Administrator may at any time instruct the Consultant to carry out a Variation by a written document titled "Variation Order", in which the Contract Administrator will state one of the following:

* + 1. the proposed adjustment to the Fee as set out in the Consultant's notice under clause 8.1 (if any) is agreed and the Fee will be adjusted accordingly; or
    2. any adjustment to the Fee will be determined under clauses 8.3(b) and 8.3(c).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

* 1. Cost of Variation

The Fee will be increased or decreased for all Variations which have been the subject of a direction by the Contract Administrator:

* + 1. as agreed under clause 8.2(a);
    2. if paragraph (a) does not apply, in accordance with the rates and prices in the Table of Variation Rates and Prices, if and insofar as the Contract Administrator determines that those rates or prices are applicable to, or it is reasonable to use them for valuing, the Variation; or
    3. to the extent paragraphs (a) and (b) do not apply, by a reasonable amount:
       1. to be agreed between the parties; or
       2. failing agreement, determined by the Contract Administrator.
  1. Rates and Prices

Where any rates and prices in the Table of Variation Rates and Prices are used under clause 8.3(b), the rates and prices will be deemed to cover:

* + 1. all labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Consultant’s obligations under the Contract; and
    2. all costs and expenses which will be incurred by the Consultant arising out of or in connection with the Variation.
  1. Omissions

If a Variation the subject of a direction by the Contract Administrator omits any part of the Services, the Principal may thereafter carry out this omitted work either itself or by engaging Other Contractors.

1. Payment
   1. Payment Obligation

Subject to clause 9.11 and to any other right to set‑off which the Principal may have, the Principal will pay the Consultant:

* + 1. the Fee; and
    2. any other amounts which are payable by the Principal to the Consultant under the Contract.

Where part or all of the Fee is payable on the Completion of a Milestone, the Consultant’s entitlement to be paid the relevant instalment of the Fee will not arise until such time as Completion of the applicable Milestone is achieved.

* 1. Payment Claims

Subject to clause 9.3, the Consultant must give the Contract Administrator claims for payment on account of the Fee and all other amounts then payable by the Principal to the Consultant under the Contract:

* + 1. at the times stated in the Contract Particulars until completion of the Services or termination of the Contract (whichever is earlier);
    2. unless terminated earlier, after completion of the Services, within the time required by clause 9.7;
    3. in the format set out in the Schedule of Collateral Documents or in any other format which the Contract Administrator reasonably requires;
    4. which are based on the Table of Variation Rates and Prices to the extent it is relevant;
    5. which show separately the amounts (if any) claimed on account of:
       1. the Fee; and
       2. all other amounts then payable by the Principal to the Consultant under the Contract; and
    6. which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Consultant:
       1. to enable the Contract Administrator to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Consultant under the Contract; and
       2. including any such documentation or information which the Contract Administrator may by written notice from time to time require the Consultant to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
  1. Conditions Precedent
     1. The Consultant's entitlement to submit a payment claim under clause 9.2 is conditional upon the Consultant having:
        1. obtained the insurance required by clause 4.1 and (if requested) provided evidence of this to the Contract Administrator;
        2. complied with its programming obligations under clause 7.2;
        3. complied with clause 9.12; and
        4. provided all relevant information as required under the WHS Legislation or under this Contract arising out of or in connection with work health and safety.
     2. If the Consultant has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
        1. the payment claim is deemed to have been invalidly submitted under clause 9.2;
        2. the Contract Administrator will not be obliged to include in any payment statement under clause 9.4 any amount in the payment claim; and
        3. the Principal will not be liable to pay any amount in the payment claim.
     3. If the Consultant:
        1. submits a payment claim; and
        2. has failed to comply with the requirements of clause 9.2(f) in relation to any amount (or portion of any amount) in the payment claim,

then:

* + - 1. the Consultant will not be entitled to payment of;
      2. the Contract Administrator will not be obliged to include in any payment statement under clause 9.4; and
      3. the Principal will not be liable to pay,

the amount (or the portion of the amount) in the payment claim in relation to which the Consultant has failed to comply with the requirements of clause 9.2(f), unless:

* + - 1. the Contract Administrator (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Consultant) issues a written notice to the Consultant identifying the documentation or information which the Consultant has failed to provide under clause 9.2(f); and
      2. the Consultant provides that documentation or information to the Contract Administrator within the time required in the Contract Administrator's notice.
  1. Payment Statements

The Contract Administrator:

* + 1. must, within 10 business days of receiving a payment claim submitted or purported to be submitted in accordance with clause 9.2; or
    2. may, if the Consultant fails to submit any such claim in accordance with clause 9.2, at any time,

give the Consultant (with a copy to the Principal), on behalf of the Principal, a payment statement which is in the form set out in the Schedule of Collateral Documents and which states:

* + 1. the payment claim to which it relates (if any);
    2. the Consultant's total value of entitlement to payment under the Contract;
    3. the amount already paid to the Consultant;
    4. the amount (if any) which the Contract Administrator believes to be then payable by the Principal to the Consultant on account of the Fee and otherwise in accordance with the Contract and which the Principal proposes to pay to the Consultant; and
    5. if the amount in paragraph (f) is less than the amount claimed in the payment claim:
       1. the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and
       2. if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contract Administrator will not constitute:

* + 1. approval of any Services nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Contract; or
    2. a waiver of the requirements of clauses 9.2 and 9.3 in relation to any payment claim other than to the extent (if any) to which the Principal expressly waives such requirements in respect of the payment claim the subject of the payment statement.
  1. Payment
     1. Within 3 business days of the Consultant receiving a payment statement under clause 9.4, the Consultant must give the Contract Administrator, with a copy to the email address set out in the Contract Particulars, a tax invoice for the amount stated as then payable by the Principal to the Consultant in the payment statement.
     2. Within the number of business days stated in the Contract Particulars of the Principal receiving a payment statement under clause 9.4, the Principal will pay the Consultant the amounts set out as then payable in the payment statement.
  2. Payment on Account

Any payment of moneys under clause 9.5 is not:

* + 1. evidence of the value of Services or that Services have been satisfactorily carried out in accordance with the Contract;
    2. an admission of liability; or
    3. approval by the Principal or the Contract Administrator of the Consultant’s performance or compliance with the Contract,

but is only to be taken as payment on account.

* 1. Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Contract Administrator) after completion of the Services, the Consultant must give the Contract Administrator:

* + 1. a payment claim which complies with clause 9.2 and which must include all amounts which the Consultant claims from the Principal on account of all amounts payable under the Contract; and
    2. notice of any other amounts which the Consultant claims from the Principal,

in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract which occurred prior to Completion.

The payment claim and notice required under this clause 9.7 are in addition to the other notices which the Consultant must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Consultant cannot include in this payment claim or notice any Claims which are barred by clause 12.5.

* 1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 9.7 has passed, the Consultant releases the Principal from any Claim in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract which occurred prior to completion, except any Claim:

* + 1. included in a payment claim or notice under clause 9.7 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 9.7; or
    2. directly arising as a result of a Claim made by a third party against the Consultant which could not have been reasonably foreseen by the Consultant at the time of submitting the payment claim and notice under clause 9.7.
  1. Interest

The Principal will pay simple interest at the rate stated in the Contract Particulars on any:

* + 1. amount which has been set out as payable by the Contract Administrator in a payment statement under clause 9.4, but which is not paid by the Principal within the time required by the Contract; and
    2. damages.

This will be the Consultant’s sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

* 1. Correction of Payment Statements

The Contract Administrator may, in any payment statement:

* + 1. correct any error in any previous payment statement; and
    2. modify any previous payment statement,

issued by the Contract Administrator.

* 1. Right of Set‑Off

The Principal may:

* + 1. deduct from moneys otherwise due to the Consultant:
       1. any debt or other moneys due from the Consultant to the Principal; and
       2. any claim to money which the Principal may have against the Consultant whether for damages or otherwise,

under the Contract or otherwise at law or in equity, relating to the Works or the Services; and

* + 1. without limiting paragraph (a), deduct any debt or claim referred to in paragraph (a)(i) or (a)(ii) from any moneys which may be or thereafter become payable to the Consultant by the Principal in respect of any Variation the subject of a "Variation Order" under clause 8.2.

9.12 Payment of Workers and Subconsultants - Option 1 (New South Wales Only)

The Consultant is not entitled to give the Contract Administrator a payment claim under clause 9.2 and the Principal is not obliged to make any payment under clause 9.5 unless the Consultant has provided the Contract Administrator with:

* + 1. a supporting statement (as defined in section 13(9) of the *Building and Construction Industry Security of Payment Act* *1999* (NSW)) and prescribed by the *Building and Construction Industry Security of Payment Regulation* *2008* (NSW);
    2. a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act* *1987* (NSW) and Schedule 2 Part 6 of the *Payroll Tax Act* *2007* (NSW),which is in a form approved by the Contract Administrator, and covers the period of the relevant payment claim; and
    3. evidence of compliance with its Workers Compensation Insurance obligations under clause 4.1.

The Principal is entitled to withhold from any amount stated as then payable by the Principal in a payment statement under clause 9.4, the amount disclosed as unpaid under clause 9.12.

* 1. Payment of Workers and Subconsultants - Option 2 (All Other States and Territories)

The Consultant must with each payment claim under clause 9.2 provide the Contract Administrator with:

* + 1. a statutory declaration, together with any supporting evidence which may be reasonably required by the Contract Administrator, duly signed by the Consultant or, where the Consultant is a corporation, by a representative of the Consultant who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, workers and subconsultants):
       1. all workers who have at any time been employed by the Consultant in connection with the Services have at the date of the payment claim been paid all moneys due and payable to them in respect of their employment in connection with the Services; and
       2. all subconsultants have been paid all moneys due and payable to them in respect of the Services; and
    2. documentary evidence that, except to the extent otherwise disclosed (such disclosure to specify all relevant amounts and workers), as at the date of the payment claim, all workers who have been employed by a subconsultant have been paid all moneys due and payable to them in respect of their employment in connection with the Services.

The Principal is entitled to withhold from any amount stated as then payable by the Principal in a payment statement under clause 9.4, the amount disclosed as unpaid under clause 9.12.

* 1. GST
     1. Subject to paragraph (b), where any supply occurs under or in connection with the Contract or the Services for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
     2. Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Services which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (a).
     3. As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
     4. If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
        1. is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
        2. is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
     5. In this clause terms defined in GST Legislation have the meaning given to them in GST Legislation.
  2. General Liability for Taxes

As between the Principal and the Consultant, the Consultant bears the risk of, and must pay, all Taxes (except to the extent of the GST under clause 9.13 or as otherwise set out in the Contract Particulars) incurred or imposed in connection with the:

* + 1. Services;
    2. Contract; or
    3. Site.
  1. Security of Payment Legislation

The Consultant agrees with the Principal that:

* + 1. a payment claim submitted to the Contract Administrator under clause 9.2 which also purports to be (or is at law) a payment claim under the relevant Security of Payment Legislation is received by the Contract Administrator as agent for the Principal;
    2. unless otherwise notified to the Consultant by the Principal in writing, the Contract Administrator will give payment statements and carry out all other functions of the Principal under the relevant Security of Payment Legislation as the agent of the Principal;
    3. to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clauses 9.2(a) and (b) on which the Consultant has satisfied the requirements of clause 9.3(a); and
    4. a reference to a "payment statement" is also a reference to a "payment schedule" for the purposes of the relevant Security of Payment Legislation.

1. Termination
   1. Preservation of Rights

Subject to clause 10.6, nothing in this clause 10 or that the Principal does or fails to do pursuant to this clause 10 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages) which it may have where the Consultant breaches (including repudiates) the Contract.

* 1. Consultant Default

The Principal may give a written notice under clause 10.3 to the Consultant if the Consultant:

* + 1. does not commence the Services in accordance with the requirements of the Contract;
    2. suspends the Services in breach of clause 7.4 or otherwise does not proceed with the Services regularly and diligently;
    3. fails to comply with any of its obligations under clause 4.1 or 4.3;
    4. fails to exercise the standard of skill, care and diligence required by the Contract;
    5. does not comply with any direction of the Contract Administrator made in accordance with the Contract; or
    6. is otherwise in substantial breach of the Contract.
  1. Contents of Notice of Default

A notice under this clause 10.3 must state:

* + 1. that it is a notice under clause 10.3;
    2. the failure or breach relied upon; and
    3. that the Principal requires the Consultant to remedy the failure or breach within the number of days set out in the Contract Particulars of receiving the notice.
  1. Termination for Insolvency or Breach

If:

* + 1. an Insolvency Event occurs to the Consultant or, where the Consultant comprises 2 or more persons, to any one of those persons;
    2. the Consultant does not remedy a failure or breach of Contract the subject of a notice under clause 10.3 within the number of days set out in the Contract Particulars of receiving the notice under clause 10.3; or
    3. the Consultant fails to comply with clause 13.12,

then the Principal may by written notice to the Consultant terminate the Contract.

* 1. Principal's Entitlements after Termination

Subject to clause 10.1, if the Principal terminates the Contract under clause 10.4 or if the Consultant repudiates the Contract and the Principal otherwise terminates the Contract:

* + 1. the Principal will:
       1. be entitled to require the Consultant to novate to the Principal, or the Principal's nominee, any or all subcontracts between the Consultant and its subconsultants as required by the Principal;
       2. to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Consultant, including any amount the subject of a payment claim under clause 9.2 or a payment statement under clause 9.4; and
       3. be entitled to recover from the Consultant any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in connection with, such termination; and
    2. the Consultant must comply with clause 15.3 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

Clause 10.5 will survive the termination of the Contract.

* 1. Consultant's Entitlements after Termination

If the Principal repudiates the Contract and the Consultant terminates the Contract, the Consultant will:

* + 1. be entitled to claim an amount determined in accordance with clause 10.8 as if the Principal had terminated the Contract under clause 10.7; and
    2. not be entitled to a quantum meruit.
  1. Termination for Convenience

Without prejudice to any of the Principal's other rights under this Contract, the Principal may:

* + 1. at any time for its sole convenience, and for any reason, by written notice to the Consultant terminate the Contract effective from the time stated in the Principal’s notice or if no such time is stated, at the time the notice is given to the Consultant; and
    2. thereafter, at its absolute discretion, complete the uncompleted part of the Services either itself or by engaging Other Contractors.
  1. Costs

If the Principal terminates the Contract under clause 10.7, the Consultant:

* + 1. will be entitled to payment of the following amounts as determined by the Contract Administrator:
       1. for Services carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Consultant submitted a payment claim for Services carried out to the date of termination; and
       2. the cost of goods or materials (if any) reasonably ordered by the Consultant for the Services for which the Consultant is legally bound to pay provided that:
          1. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
          2. title in the goods and materials will vest in the Principal upon payment; and
    2. must:
       1. take all steps possible to mitigate the costs referred to in paragraph (a)(ii); and
       2. comply with clause 15.3 (including by handing over to the Contract Administrator copies of Project Documents prepared by the Consultant to the date of termination (whether complete or not)).

The amount to which the Consultant is entitled under this clause 10.8 will be a limitation upon the Principal’s liability to the Consultant arising out of, or in connection with, the termination of the Contract (whether under clause 10.7 or deemed to be under clause 10.7 through the operation of clause 10.6(a)) and the Consultant will not be entitled to make any Claim against the Principal arising out of, or in connection with, the termination of the Contract other than for the amount payable under this clause 10.8.

This clause 10.8 will survive the termination of the Contract by the Principal under clause 10.7 or by the Consultant following repudiation by the Principal.

1. Dispute resolution
   1. Notice of Dispute

If a dispute or difference arises between the Consultant and the Principal or between the Consultant and the Contract Administrator in respect of any fact, matter or thing arising out of, or in connection with, the Services, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 11.

Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:

* + 1. the dispute or difference;
    2. particulars of the party's reasons for being dissatisfied; and
    3. the position which the party believes is correct.
  1. Executive Negotiation
     1. If a notice is given under clause 11.1 the dispute or difference is to be referred to the Executive Negotiators.
     2. The Executive Negotiators must within:
        1. 21 days of the notice of dispute given under clause 11.1; or
        2. such longer period of time as the Executive Negotiators may agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation).

* 1. Arbitration Agreement

If, within:

* + 1. 21 days of the notice of dispute given under clause 11.1; or
    2. such longer period of time as the Executive Negotiators may agree in writing,

the Executive Negotiators:

* + 1. or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
    2. cannot resolve the dispute or difference; or
    3. have not reached agreement upon a procedure to resolve the dispute or difference,

the dispute or difference will be referred to arbitration in accordance with clause 11.4 by a written notice by either party to the other party.

* 1. Arbitration
     1. Arbitration pursuant to this clause will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration.
     2. The seat of the arbitration will be Melbourne, Australia and hence the proper law of the arbitration shall be Victoria.
     3. Notwithstanding anything else, to the extent permissible by law, the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration pursuant to this clause.
  2. Continuation of Services

Despite the existence of a dispute or difference between the parties the Consultant must:

* + 1. continue to carry out the Services; and
    2. otherwise comply with its obligations under the Contract.

1. Notices
   1. Notice of Variation

If a direction by the Contract Administrator, other than a "Variation Order" under clause 8.2, constitutes or involves a Variation, the Consultant must, if it wishes to make a Claim against the Principal arising out of, or in connection with, the direction:

* + 1. within 7 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
    2. within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 12.3(b); and
    3. continue to carry out the Services in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under this clause 12.1.
  1. Notices of Other Claims

Except for claims for:

* + 1. an extension of time under clause 7.5;
    2. payment under clause 9 of the original Fee specified in the Contract Particulars;
    3. a Variation instructed in accordance with clause 8.2 or to which clause 12.1 applies; or
    4. contribution or indemnity for loss or damage caused or contributed to by the negligence of the Principal where a third party (other than a subconsultant of the Consultant or other party for whom the Consultant is legally responsible) makes a claim (whether in tort, under statute or otherwise at law) against the Consultant,

the Consultant must give the Contract Administrator the notices required by clause 12.3 if it wishes to make a Claim against the Principal in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in connection with, the Services or the Contract, including anything in respect of which:

* + 1. it is otherwise given an express entitlement under the Contract; or
    2. the Contract expressly provides that:
       1. specified costs are to be added to the Fee; or
       2. the Fee will be otherwise increased or adjusted,

as determined by the Contract Administrator.

* 1. Prescribed Notices

The notices referred to in clause 12.2 are:

* + 1. a written notice within 21 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
       1. that the Consultant proposes to make a Claim; and
       2. the direction or other fact, matter or thing upon which the Claim will be based; and
    2. a written Claim within 21 days of giving the written notice under paragraph (a), which must include:
       1. detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
       2. the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
       3. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
       4. details of the amount claimed and how it has been calculated.
  1. Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 12.1(b) or clause 12.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by clause 12.3(b) every 28 days after the written claim under clause 12.1(b) or 12.3(b)(as the case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

* 1. Time Bar

If the Consultant fails to comply with clause 12.1, 12.2, 12.3 or 12.4, the:

* + 1. Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Consultant; and
    2. Consultant will be absolutely barred from making any Claim against the Principal,

arising out of, or in connection with, the relevant direction or fact, matter or thing to which clause 12.1 or 12.2 applies.

* 1. Other Provisions Unaffected

Nothing in clauses 12.1 ‑ 12.5 will limit the operation or effect of any other provision of the Contract which requires the Consultant to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against the Principal.

* 1. Address for Service

Any notice to be given or served under or arising out of a provision of the Contract must:

* + 1. be in writing;
    2. be delivered by hand, sent by prepaid express post or sent by email (except for notices under clauses 10 and 11 which, if sent by email, must additionally be delivered by hand or sent by prepaid express post) to the relevant address or email address:
       1. specified in the Contract Particulars; or
       2. last notified in writing to the party giving or serving the notice,

for the party to whom or upon which the notice is to be given or served;

* + 1. be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice; and
    2. in the case of notices sent by email:
       1. be in Portable Document Format (**pdf**) and appended as an attachment to the email; and
       2. include the words "This is a notice under clause 12.7 of the Contract" in the subject field of the email.
  1. Receipt of Notices
     1. Subject to paragraph (b), a notice given or served in accordance with clause 12.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:
        1. delivery by hand, on delivery;
        2. prepaid express post sent to an address in the same country, on the fifth day after the date of posting;
        3. prepaid express post sent to an address in another country, on the seventh day after the date of posting; and
        4. email, the earlier of:
           1. delivery to the email address to which it was sent; or
           2. one hour after the email enters the server of the email address to which it was sent, provided that no delivery or transmission error is received by the sender within one hour of the time of sending shown on the "sent" email.
     2. In the case of notices under clauses 10 and 11, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 12.7(b), the notice is taken to be received by the party to whom or upon whom the notice is given or served on the earlier of:
        1. the date the notice sent by email is taken to be received; or
        2. the date the notice delivered by hand or sent by prepaid express post is taken to be received,

as determined in accordance with paragraph (a).

1. General
   1. Workplace Gender Equality

The Consultant must:

* + 1. comply with its obligations under the *Workplace Gender Equality Act 2012* (Cth); and
    2. not enter into a subcontract made in connection with the Contract with a subconsultant named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
  1. Privacy
     1. The Consultant must:
        1. comply with its obligations under the Privacy Act;
        2. comply with the Australian Privacy Principles when doing any act or engaging in any practice for the purposes of the Contract, as if it were an agency as defined in the Privacy Act;
        3. use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract only for the purposes of fulfilling its obligations under the Contract;
        4. not disclose Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract without the prior written approval of the Contract Administrator;
        5. not collect, transfer, store or otherwise use Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract outside Australia, or allow parties outside Australia to have access to it, without the prior written approval of the Contract Administrator;
        6. co-operate with demands or inquiries made by the Federal Privacy Commissioner or the Contract Administrator in relation to the management of Personal Information in connection with the Contract;
        7. ensure that any person whom the Consultant allows to access Personal Information which is received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, as if the person was an agency as defined in the Privacy Act;
        8. comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
        9. ensure that records (as defined in the Privacy Act) containing Personal Information received, created or held by the Consultant for the purposes of, under, arising out of or in connection with the Contract are, at the expiration or earlier termination of the Contract, at the Contract Administrator's election, to be either returned to the Principal or deleted or destroyed in the presence of a person duly authorised by the Contract Administrator to oversee such deletion or destruction;
        10. agree to the naming or other identification of the Consultant in reports by the Federal Privacy Commissioner;
        11. ensure that any subcontract made in connection with the Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising out of clause 13.2 as if the subconsultant were the Consultant;
        12. enforce the obligations referred to in subparagraph (xi) in accordance with such directions as the Contract Administrator may give; and
        13. not use Personal Information collected by the Consultant for the purposes of, under, arising out of or in connection with the Contract for, or relating to, any direct marketing purpose.
     2. The Consultant must immediately notify the Principal in writing if the Consultant:
        1. becomes aware of a breach of the obligations under clause 13.2 by itself or by a subconsultant;
        2. becomes aware of a breach of a subconsultant's obligations under a subcontract as contemplated by paragraph (a)(xi);
        3. becomes aware that a disclosure of Personal Information may be required by law; or
        4. is approached or contacted by, or becomes aware that a subconsultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     3. The Consultant acknowledges that, in addition to the requirements of clause 13.2, the Consultant may also be obliged to comply with other obligations in relation to the handling of Personal Information, including State and Territory legislation.
     4. Nothing in clause 13.2 limits any of the Consultant's obligations under the Contract or otherwise at law or in equity.
     5. In this clause 13.2, **received** includes collected.
  2. Freedom of Information

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

The Consultant acknowledges that Commonwealth requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

* 1. Assignment
     1. The Consultant must not, without the prior written approval of the Principal and except on the terms and conditions determined in writing by the Principal, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.
     2. For the purpose of but without limiting paragraph (a), an assignment of this Contract will be deemed to have occurred where there has been a Change of Control.
  2. Publicity

Without limiting clause 19.3(f), the Consultant must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Services or the Works for publication in the media without the prior written approval of the Contract Administrator; and
    2. refer any enquiries from the media concerning the Services or the Works to the Contract Administrator.
  1. National Construction Code Certification

This clause 13.6 only applies if the Contract Particulars state that it applies.

Without limiting clauses 1.10 and 1.11, the Consultant must provide to the Contract Administrator written certification from an Accredited Building Surveyor:

* + 1. at the time it submits any Design Documentation under clause 5.2 - that the Design Documentation submitted at that time complies with the National Construction Code;
    2. before issue of any Design Documentation for the purpose of engaging a Contractor - that the Design Documentation to be issued at that time complies with the National Construction Code; and
    3. prior to Completion (as defined in the Construction Contract) of the Works or a Stage or a Section (as defined in the Construction Contract) - that the Works comply or the Stage or the Section (as defined in the Construction Contract) complies with the National Construction Code.
  1. Applicable Standards
     1. The Consultant acknowledges that Annexure 2 identifies:
        1. the Australian standards which are applicable to the Services; or
        2. in the absence of an applicable Australian standard, the relevant international standards which are applicable to the Services,

(**Applicable Standards**).

* + 1. Subject to paragraph (c) and without limiting the Consultant's obligations under this Contract, the Consultant must comply with the Applicable Standards in performing Services.
    2. Where there is an ambiguity, discrepancy or inconsistency between any Applicable Standard and the Contract, any other Project Documents or the National Construction Code, the higher standard, quality or quantum will prevail.
    3. The Contract Administrator may, at any time, request that the Consultant provides:
       1. a certificate which certifies that the Design Documentation or the Services complies with the Applicable Standards; and
       2. a corresponding certificate from each relevant subconsultant which certifies that (to the extent then applicable) all design carried out by that subconsultant or the Services performed by that subconsultant complies with the Applicable Standards.
    4. The Consultant acknowledges that the Principal may exercise any of its rights under this Contract (including under clause 5.12) to carry out periodic auditing of the Consultant's compliance with clause 13.7.
  1. Indigenous Procurement Policy
     1. The Consultant must use its reasonable endeavours to increase its:
        1. purchasing from Indigenous Enterprises; and
        2. employment of Indigenous Australians,

in carrying out the Services, in accordance with the Indigenous Procurement Policy.

* 1. Defence's Security Alert System
     1. Nothing that the Consultant is or may be required to do under clause 13.9 will derogate from, or otherwise limit, the Consultant's obligations under the Contract.
     2. The Consultant must be, and must ensure that its subconsultants are, fully familiar with the requirements of Defence's Security Alert System.
     3. The Consultant must, and must ensure that its subconsultants:
        1. attend any security briefing requested by the Contract Administrator from time to time; and
        2. participate in any rehearsal of Defence's Security Alert System directed by the Contract Administrator from time to time.
     4. In carrying out the Services, the Consultant must, and must ensure that its subconsultants, comply with the requirements of Defence's Security Alert System:
        1. at the level specified in the Contract Particulars; and
        2. at any alternative level (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time.
     5. If there is any change to Defence's Security Alert System level specified in the Contract Particulars (or individual measure from a higher level to meet a specific threat or threats) applicable to the Site from time to time after the Award Date:
        1. the Contract Administrator will notify the Consultant of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Consultant as to the course it is to adopt insofar as the Services are affected by the change to the level (or individual measure from a higher level to meet a specific threat or threats); and
        2. subject to subparagraph (iii), the Consultant will be entitled to have the Fee increased by the extra costs reasonably incurred by the Consultant which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator; or
        3. the Fee will be decreased by any saving made by the Consultant after the giving of the notice under subparagraph (i) which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator.
     6. To the extent permitted by law, the Consultant will not be entitled to make (nor will the Principal be liable upon) any claim (whether under the Contract or otherwise at law or in equity) arising out of or in connection with the change to Defence's Security Alert System level (or individual measure from a higher level to meet a specific threat or threats) or the Contract Administrator’s instruction under paragraph (e)(i), other than under paragraph (e)(ii). Such entitlement will be subject to the Consultant complying with this clause 13.
  2. Fraud Control
     1. Without limiting the Consultant's other obligations, the Consultant must:
        1. proactively take all necessary measures to prevent, detect and investigate any fraud in connection with the Contract or the Services (including all measures directed by the Contract Administrator); and
        2. proactively take all necessary corrective action to mitigate any loss or damage to the Principal resulting from fraud to the extent that the fraud was caused or contributed to by the Consultant or any of its officers, employees, subconsultants or agents and put the Principal in the position it would have been in if the fraud had not occurred (including all corrective action directed by the Contract Administrator).
     2. If the Consultant knows or suspects that any fraud is occurring or has occurred it must immediately provide a detailed written notice to the Contract Administrator including details of:
        1. the known or suspected fraud;
        2. how the known or suspected fraud occurred;
        3. the proactive corrective action the Consultant will take under paragraph (a)(ii); and
        4. the proactive measures which the Consultant will take under paragraph (a)(i) to ensure that the fraud does not occur again,

and such further information and assistance as the Principal, or any person authorised by the Principal, requires in relation to the fraud.

* 1. Shadow Economy Procurement Connected Policy
     1. Clause 13.11 does apply unless the Contract Particulars state that it does not apply.
     2. Without limiting the operation of clause 1.9, the Consultant must not enter into a subcontract with a subconsultant (or agree to a novation of a subcontract to a subconsultant) if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST) unless the Consultant has obtained and holds any of the STRs referred to in the table below, as applicable to the relevant subconsultant.

|  |  |
| --- | --- |
| **If the subconsultant to enter into the subcontract is:** | **STRs required** |
| 1. a body corporate or natural person | a satisfactory and valid STR in respect of that body corporate or person. |
| 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR:  (i) on behalf of the partnership; and  (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the subcontract. |
| 1. a trustee acting in its capacity as trustee of a trust | a satisfactory and valid STR in respect of the:  (i) trustee; and  (ii) the trust. |
| 1. a joint venture participant | a satisfactory and valid STR in respect of:  (i) each participant in the joint venture; and  (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator. |
| 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of:  (i) the relevant member of the Consolidated Group; and  (ii) the head company in the Consolidated Group. |
| 1. a member of a GST Group | a satisfactory and valid STR in respect of the:  (i) the GST Group member; and  (ii) the GST Group representative. |

* + 1. The Consultant must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Consultant becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Consultant or subconsultant is:** | **Additional STRs required** |
| 1. a partner acting for and on behalf of a partnership | a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of the Contract or subcontract (as applicable). |
| 1. a trustee acting in its capacity as trustee of a trust | a satisfactory and valid STR in respect of any new trustee appointed to the trust. |
| 1. a joint venture participant | a satisfactory and valid STR in respect of:   * + - 1. any new participant in the joint venture; and       2. any new joint venture operator if the new operator is not already a participant in the joint venture. |
| 1. a member of a Consolidated Group | a satisfactory and valid STR in respect of any new head company of the Consolidated Group. |
| 1. a member of a GST Group | a satisfactory and valid STR in respect of any new representative for the GST Group. |

* + 1. The Consultant must provide the Principal with copies of the STRs referred to in paragraph (b) or paragraph (c) within 5 business days after a written request by the Principal.
    2. The Consultant:
       1. warrants that at the Award Date it holds a valid and satisfactory STR;
       2. must hold a valid and satisfactory STR at all times during the Services and, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR;
       3. must ensure that any subconsultant, if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), holds a valid and satisfactory STR at all times during the term of the relevant subcontract; and
       4. must retain a copy of any STR held by any subconsultant in accordance with subparagraph (iii) and must, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR.
    3. For the purposes of the Contract, an STR is taken to be:
       1. **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
       2. **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.
  1. Defence Industry Security Program

Without limiting clause 15 or any other provision of the Contract, the Consultant:

* + 1. must at its cost obtain and thereafter maintain for the term of the Contract the level of DISP membership specified in the Contract Particulars in accordance with Control 16.1 of the Defence Security Principles Framework;
    2. must comply with any other direction or requirement of the Contract Administrator in relation to the DISP; and
    3. acknowledges and agrees that if the Consultant has failed to strictly comply with this clause 13.12 (including any direction or requirement of the Contract Administrator in relation to the DISP), the Principal may (in its absolute discretion):
       1. terminate the Contract under clause 10.4; or
       2. take such failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Principal project,

and the exercise of any of the Principal's absolute discretions under this paragraph is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 or otherwise subject to review.

* 1. Modern Slavery
     1. The Consultant must take reasonable steps to identify, assess and address risks of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services.
     2. The Consultant must ensure the Consultant's key people under clause 3.5 and other personnel responsible for managing the operations and supply chains used in the performance of the Services have undertaken suitable training to be able to identify and report Modern Slavery.
     3. If at any time the Consultant becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the performance of the Services, the Consultant must:
        1. promptly notify the Contract Administrator of the Modern Slavery practices and provide any relevant information requested by the Contract Administrator;
        2. as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
        3. regularly update the Contract Administrator of the steps taken by it in accordance with subparagraph (ii).
     4. For the purposes of this clause 13.13, **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Consultant acknowledges that the Principal may be subject to a number of Commonwealth requirements and policies, which support internal and external scrutiny of its tendering and contracting processes and the objectives of transparency, accountability and value-for-money including requirements to:

* + 1. publish details of agency agreements, Commonwealth contracts, amendments and variations to any agreement or contract and standing offers with an estimated value of $10,000 or more on AusTender (the Commonwealth's business opportunity website located at www.tenders.gov.au);
    2. report and post on the internet a list of contracts valued at $100,000 or more and identify confidentiality requirements in accordance with the Senate Order on Department and Agency Contracts; and
    3. report and post on the internet information about its contracts in other ways pursuant to its other reporting and disclosure obligations, including annual reporting requirements and disclosure to any House or Committee of the Parliament of the Commonwealth of Australia.
  1. Commercial-in-Confidence Information

Clause 14.2 does not apply unless the Contract Particulars state that it applies.

* + 1. Subject to paragraph (b), the Principal must keep confidential any information provided to the Principal by the Consultant before or after the Award Date when:
       1. a written request to keep specific information confidential and the justification for keeping such information confidential has been expressly made by the Consultant to the Principal in its tender;
       2. the Principal agrees (in its absolute discretion) that such information is commercial-in-confidence information;
       3. the Principal notifies the Consultant in writing that the Principal (in its absolute discretion) agrees, including the terms of any agreement under subparagraph (ii); and
       4. such information is identified in the Contract Particulars,

(**Commercial-in-Confidence Information**).

* + 1. The Principal's obligation in paragraph (a) does not apply if the Commercial-in-Confidence Information is:
       1. disclosed by the Principal to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with its obligations or to exercise its rights under or in connection with this Contract;
       2. disclosed by the Principal to its legal or other advisers, or to its officers, employees, contractors or agents in order to comply with the Principal's management, reporting or auditing requirements;
       3. disclosed by the Commonwealth to any responsible Minister or any Ministerial adviser or assistant;
       4. disclosed by the Commonwealth to any House or Committee of the Parliament of the Commonwealth of Australia;
       5. disclosed to any Commonwealth department, agency or authority by virtue of or in connection with its functions, or statutory or portfolio responsibilities;
       6. authorised or required by law to be disclosed; or
       7. in the public domain otherwise than due to a breach of paragraph (a).

1. INFORMATION SECURITY
   1. Consultant's Warranty
      1. The Consultant acknowledges and agrees that:
         1. the Confidential Information is confidential; and
         2. part of the Confidential Information may be Sensitive and Classified Information.
      2. The Consultant warrants that:
         1. on the Award Date and on the date of submitting each payment claim under clause 9.5, it is not aware of any breach of clause 15 by the Consultant or any Recipient; and
         2. that each Recipient of Sensitive and Classified Information (or any part of it) involved in carrying out the Services properly applied for, obtained and held a current security clearance at or above the level/s specified by the Principal in the Contract Particulars:
            1. before the Recipient was issued with the Sensitive and Classified Information; and
            2. at all times during the Recipient's access to the Sensitive and Classified Information.
   2. Requirements
      1. The Consultant must strictly comply with (and ensure that all Recipients of Confidential Information strictly comply with):
         1. clause 15; and
         2. all other Confidential Information and Sensitive and Classified Information security procedures, security processes and information security requirements notified by the Contract Administrator (including any Separation Arrangements); and
      2. the Consultant must not:
         1. copy or otherwise reproduce in any form or medium the contents of the Confidential Information or Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Confidential Information or Sensitive and Classified Information (or any part of it) to be copied or reproduced in any form or medium; or
         2. disclose, use or deal with, the Confidential Information or Sensitive and Classified Information (or any part of it) or otherwise cause, permit or allow the Confidential Information or Sensitive and Classified Information (or any part of it) to be disclosed, used or dealt with,

for any purpose other than performing the Services. If the Consultant wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Services, it must notify the Contract Administrator, providing details of the proposed copying, reproduction, disclosure, use or dealing with the Sensitive and Classified Information (or any part of it) (including all names, addresses and current security clearances of all proposed Recipients).

* + 1. Where a request for copying, reproduction, disclosure, use or dealing is made under paragraph (b), the Contract Administrator will notify the Consultant that the Principal (in its absolute discretion) either:
       1. grants permission, whether with or without such conditions as the Principal thinks fit (including conditions requiring the Recipient of Sensitive and Classified Information (or any part of it) to properly apply for, obtain and hold a current security clearance level at or above the level/s specified by the Principal in the Contract Particulars before the Recipient is issued with the Sensitive and Classified Information (or any part of it) and at all times during the Recipient’s access to the Sensitive and Classified Information or to enter into a deed in a form approved by the Principal); or
       2. refuses permission.
    2. If the Principal grants permission under paragraph (c), the Consultant must strictly comply with any conditions under paragraph (c).
    3. The Consultant must:
       1. ensure:
          1. the Confidential Information (or any part of it); and
          2. all documents, materials, media, information technology environments and all other things on or in which the Confidential Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar); and
        2. otherwise in accordance with all Separation Arrangements; and
      1. ensure:
         1. the Sensitive and Classified Information (or any part of it); and
         2. all documents, materials, media, information technology environments and all other things on or in which the Sensitive and Classified Information (or any part of it) may be or is recorded, contained, set out, referred to, stored, processed or communicated (including via electronic or similar means),

are strictly kept:

* + - * 1. at locations in Australia only (unless otherwise approved in writing by the Principal (in its absolute discretion));
        2. in information technology environments which are accredited or certified by the Principal (in its absolute discretion) at or above the level/s specified by the Principal in the Contract Particulars:

before the Consultant (or Recipient) was issued with the Sensitive and Classified Information; and

at all times during the Consultant's (or Recipient’s) access to the Sensitive and Classified Information,

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

* + - * 1. for caveated or compartmented information (or any part of it) forming part of the Sensitive and Classified Information, in information technology environments which are specifically accredited or certified by the Principal (in its absolute discretion) at or above the level/s specified by the Principal in the Contract Particulars required for such caveated or compartmented information (or any part of it):

before the Consultant (or Recipient) was issued with such caveated or compartmented information (or any part of it); and

at all times during the Consultant's (or Recipient’s) access to such caveated or compartmented information (or any part of it),

and are not introduced into or kept in any information technology environment that is accredited or certified at a lower level;

* + - * 1. secure and protected at all times from all unauthorised use, access, configuration and administration (or similar);
        2. without limiting subsubparagraph F, secure and protected at all times from all use, access, configuration and administration (or similar) from any location outside of Australia;
        3. in accordance with all Principal requirements and policies and Statutory Requirements (including the Information Security Requirements) including in respect of caveats; and
        4. in accordance with all Separation Arrangements; and
      1. immediately:
         1. to the maximum extent possible, detect all actual or potential Confidential Information Incidents and Sensitive and Classified Information Incidents;
         2. notify the Contract Administrator if it becomes aware of any actual or potential Confidential Information Incident or Sensitive and Classified Information Incidents; and
         3. take all steps necessary to prevent, end, avoid, mitigate or otherwise manage the adverse effect of any actual or potential Confidential Information Incident or Sensitive and Classified Information Incident,

(together the **Confidential Information Requirements**).

* 1. Return, Destruction and Erasure
     1. Within 7 days of:
        1. a request from the Contract Administrator, at any time;
        2. the termination of the Contract under clause 10.4 or otherwise at law; or
        3. the completion of the Services,

the Consultant must:

* + - 1. subject to paragraph (b), as directed by the Principal or the Contract Administrator in the notice or request (if any) promptly:
         1. securely and appropriately return all copies of the Confidential Information or Sensitive and Classified Information (in a tangible form) to the Contract Administrator;
         2. securely and appropriately return, destroy and erase all copies of the Confidential Information or Sensitive and Classified Information (whether in a tangible or intangible form);
         3. ensure all Recipients of Confidential Information or Sensitive and Classified Information (or any part of it) promptly securely and appropriately return, destroy and erase all copies of the Confidential Information or Sensitive and Classified Information (whether in a tangible or intangible form); and
         4. provide the Contract Administrator with a statutory declaration in a form approved by the Principal from an authorised officer whose identity and position is approved by the Principal (acting reasonably) confirming that the Confidential Information or Sensitive and Classified Information (whether in a tangible form or intangible form) has been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
      2. promptly notify the Contract Administrator of all Confidential Information or Sensitive and Classified Information (or any part of it) which the Consultant knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Consultant and all Recipients; and
         2. is beyond the Consultant's (or a Recipient’s) possession, power, custody or control,

giving full particulars (including the nature and extent of the Confidential Information or Sensitive and Classified Information, precise location, entity in possession, custody or control and all relevant Confidential Information or Sensitive and Classified Information and information security arrangements).

* + 1. To the extent required by a Statutory Requirement or to maintain compliance with the Consultant's quality assurance procedure, system or framework, the Consultant may keep one copy of the Confidential Information or Sensitive and Classified Information for its records subject to the Consultant:
       1. promptly notifying the Contract Administrator of all Confidential Information it proposes to keep and the detailed basis for doing so; and
       2. maintaining the information security of the Confidential Information in accordance with clause 15.
    2. The Consultant acknowledges and agrees that the return, destruction or erasure of the Confidential Information or Sensitive and Classified Information does not affect the Consultant's obligations under clause 15.
  1. Compliance

Within:

* + 1. 24 hours in the case of Confidential Information; or
    2. 12 hours in the case of Sensitive and Classified Information,

(or such other period notified by the Contract Administrator in its request) of receipt of a request by the Contract Administrator, at any time, the Consultant must:

* + 1. provide the Contract Administrator with:
       1. evidence of the Consultant's and all Recipients' compliance with clause 15, including all arrangements that the Consultant and all Recipients have in place; and
       2. a statutory declaration in a form approved by the Principal from an authorised officer whose identity and position is approved by the Principal (acting reasonably) in respect of the Consultant's and all Recipients' compliance with clause 15,

by the time and date specified in the request; and

* + 1. as directed by the Contract Administrator in the request, provide the Principal and the Contract Administrator with access to the Consultant's and all Recipients' premises, records, information technology environments and equipment to enable the Principal and the Contract Administrator to monitor and assess the Consultant's and all Recipients' compliance with clause 15, by the time and date specified in the request.
  1. Acknowledgement, Release and Indemnity

Without limiting any other provision of the Contract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Principal has entered into the Contract and, if applicable, has made payments to the Consultant under clause 9.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 15;
       2. without limiting any other right or remedy of the Principal (under the Contract or otherwise at law or in equity), if the Consultant:
          1. notifies the Contract Administrator under clause 15.2(e)(iii)B; or
          2. has failed to strictly comply with clause 15,

the Principal may (in its absolute discretion) terminate the Contract under clause 10.4; or

* + - 1. the exercise of any of the Principal's absolute discretions under clause 15 is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 or otherwise subject to review;
    1. releases the Principal in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Principal's absolute discretions under clause 15; and
    2. indemnifies the Principal in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Principal arising out of or in connection with:
       1. a Confidential Information Incident or Sensitive and Classified Information Incident;
       2. the Consultant's failure to strictly comply with clause 15; or
       3. the exercise of any of the Principal's absolute discretions under clause 15.

1. MATERIAL CHANGE or STRATEGIC INTEREST ISSUE
   1. Consultant's Warranty

Subject to clause 16.2, the Consultant warrants that, on the Award Date and on the date of submitting each payment claim under clause 9.5, it is not aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

in relation to the Consultant.

* 1. Notice of Material Change or Strategic Interest Issue

If, at any time, the Consultant becomes aware of any:

* + 1. Material Change; or
    2. Strategic Interest Issue,

the Consultant must immediately notify the Contract Administrator, providing details of:

* + 1. the Material Change or Strategic Interest Issue; and
    2. the steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Principal.
  1. Acknowledgement, Release and Indemnity

Without limiting any other provision of the Contract, the Consultant:

* + 1. acknowledges and agrees that:
       1. the Principal has entered into the Contract and, if applicable, has made payments to the Consultant under clause 9.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 16;
       2. without limiting any other right or remedy of the Principal (under the Contract or otherwise at law or in equity), if:
          1. the Consultant:

notifies the Contract Administrator under clause 16.2; or

has failed to strictly comply with clause 16; or

* + - * 1. the Principal otherwise considers (in its absolute discretion) that there exists (or is likely to exist) a Material Change or Strategic Interest Issue in relation to the Consultant,

the Principal may (in its absolute discretion) do any one or more of the following:

* + - * 1. notify the Consultant that it is required to:

meet with the Principal or otherwise provide further information, documents or evidence in relation to, and otherwise clarify, the:

nature and extent of the Material Change or Strategic Interest Issue; and

steps which the Consultant has taken (or will take) to prevent, end, avoid, mitigate, resolve or otherwise manage the risk of any adverse effect of the Material Change or Strategic Interest Issue on the interests of the Principal,

by the time and date specified in the notice; or

* + - * 1. regardless of whether or not the Principal has notified the Consultant under subsubparagraph C:

notify the Consultant that:

the Consultant may continue to perform the Services, whether with or without such conditions as the Principal thinks fit (in its absolute discretion) including the Consultant immediately:

implementing Separation Arrangements; or

completing, duly executing and returning a deed in a form acceptable to the Principal,

by the time and date specified in the notice; or

the Principal has elected to treat the Material Change or Strategic Interest Issue as an Insolvency Event for the purposes of clause 10.4 and terminate the Contract under clause 10.4; or

* + - 1. the exercise of any of the Principal's absolute discretions under clause 16 is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 or otherwise subject to review;
    1. releases the Principal in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Consultant or any other person or entity arising out of or in connection with the exercise of any of the Principal's absolute discretions under clause 16; and
    2. indemnifies the Principal in respect of all costs, expenses, losses, damages or liabilities suffered or incurred by the Principal arising out of or in connection with:
       1. a Material Change or Strategic Interest Issue;
       2. the Consultant's failure to strictly comply with clause 16; or
       3. the exercise of any of the Principal's absolute discretions under clause 16.

1. financial viability
   * 1. The Consultant:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 9.5:
           1. it has the financial viability necessary to perform the Services and otherwise meet its obligations under the Contract (including the payment of all subconsultants (in accordance with paragraph (b)); and
           2. each subconsultant engaged in Services has the financial viability necessary to perform its activities in accordance with the relevant subcontract; and
        2. acknowledges and agrees that the Principal has entered into the Contract and, if applicable, has made payments to the Consultant under clause 9.5, strictly on the basis of and in reliance upon the obligations and warranties set out in clause 17.
     2. The Consultant must pay all subconsultants in accordance with the payments terms in all subcontracts.
     3. The Consultant must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
        1. the Consultant's ability to perform the Services or otherwise meet its obligations under the Contract; and
        2. a subconsultant's ability to perform its activities in accordance with the relevant subcontract,

including any potential or actual change in:

* + - 1. the Consultant's financial viability; or
      2. a subconsultant's financial viability.
    1. The Contract Administrator may (in its absolute discretion) at any time request the Consultant to provide the Contract Administrator with a solvency statement in the form required by the Principal with respect to:
       1. the Consultant, properly completed and duly executed by the Consultant; or
       2. a subconsultant, properly completed and duly executed by the subconsultant.
    2. If the Principal considers (in its absolute discretion) that there could be or has been a change in:
       1. the Consultant's financial viability; or
       2. a subconsultant's financial viability,

which could adversely affect:

* + - 1. the Consultant's ability to perform the Services or otherwise meet its obligations under the Contract; or
      2. a subconsultant's ability to perform its activities in accordance with the relevant subcontract,

the Contract Administrator may (in its absolute discretion) direct the Consultant to take such steps as the Principal considers necessary to secure the performance of the Services and the meeting of its obligations under the Contract, including requiring the Consultant to:

* + - 1. provide a deed of guarantee, undertaking and substitution in the form required by the Principal;
      2. establish a trust account for the payment of subconsultants on the terms (including any trust deed) required by the Principal;
      3. provide Subconsultant Deeds of Covenant or Consultant Deeds of Covenant; or
      4. provide Collateral Warranties.
    1. If the Contract Administrator gives a direction under paragraph (e), then the Consultant must take such steps as the Principal considers necessary to better secure a subconsultant's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Principal.
    2. The Consultant acknowledges and agrees that:
       1. nothing in clause 17 will limit, reduce, or otherwise affect any of the rights of the Principal under other provisions of the Contract or otherwise at law or in equity;
       2. neither the Principal nor the Contract Administrator is required to exercise any discretion under clause 17 for the benefit of the Consultant (or any subconsultant);
       3. clause 17 does not give the Consultant (or any subconsultant) any rights; and
       4. the exercise or failure to exercise a discretion under clause 17 is not capable of being the subject of a dispute or difference for the purposes of clause 11.1 or otherwise subject to review.

The Consultant must ensure that each subcontract includes provisions equivalent to the obligations of the Consultant in clause 17.

1. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

Clause 18 does not apply unless the Contract Particulars state that it applies.

* 1. PT PCP Subcontracts
     1. The Consultant must comply with the Payment Times Procurement Connected Policy.
     2. If the Consultant enters into a PT PCP Subcontract, the Consultant must include in the PT PCP Subcontract:
        1. a requirement for the Consultant to pay the PT PCP Subcontractor:
           1. subject to paragraph (d), within 20 days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a business day, payment is due on the next business day; and
           2. subject to paragraph (e), for payments made by the Consultant after the payment is due, the unpaid amounts plus interest on the unpaid amount calculated in accordance with paragraphs (e) and (f);
        2. a statement that the Payment Times Procurement Connected Policy applies to that PT PCP Subcontract; and
        3. a statement that the PT PCP Subcontractor may make a complaint to the PT PCP Policy Team or to the Commonwealth in accordance with the Payment Times Procurement Connected Policy if there has been a non-compliance with the requirements of this paragraph (b).
     3. If the Consultant enters into a Reporting Entity Subcontract in anticipation of, or after, entering into the Contract, the Consultant must use reasonable endeavours to include in that Reporting Entity Subcontract:
        1. obligations equivalent to those in paragraph (b); and
        2. a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that Reporting Entity Subcontract will include:
           1. obligations equivalent to those in paragraph (b); and
           2. obligations equivalent to this subparagraph (ii) (such that the obligations in this subparagraph (ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
     4. Paragraph (b)(i)A does not limit any obligation to comply with applicable Statutory Requirements that provide a shorter payment period than the period specified in paragraph (b)(i)A.
     5. The Consultant is not required to pay any interest in accordance with paragraph (b)(i)B if either:
        1. the Principal has failed to pay the Consultant in accordance with the timeframes and requirements under this Contract; or
        2. the amount of interest payable is less than $100 (GST inclusive).
     6. Interest payable under paragraph (b)(i)B:
        1. will be simple interest calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Consultant effects payment; and
        2. will be paid at the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment.
  2. PT PCP Evaluation Questionnaire

If requested in writing by the Principal, the Consultant must properly complete and return a PT PCP Evaluation Questionnaire within 30 days of the request.

* 1. Non-Compliance and Remediation
     1. If the Principal considers or becomes aware that the Consultant has not or may not have complied with:
        1. the requirements of clause 18.1; or
        2. the payment requirements of a PT PCP Subcontract,

the Principal may direct the Consultant to provide to the Principal either or both of the following within the timeframes specified by the Principal:

* + - 1. information to enable the Principal to review the Consultant's compliance; or
      2. a properly completed PT PCP Remediation Plan.
    1. The Consultant must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under paragraph (a)(iv).
    2. If the Principal considers that the Consultant has failed to comply with any of its obligations under this clause 18, without limiting the Principal's rights and remedies at law or otherwise under the Contract, the Principal may do either or both of the following:
       1. take the failure or non-compliance into account as part of the Principal's monitoring of the Consultant's performance under the Contract; or
       2. report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
    3. The Consultant agrees that if it is the subject of a complaint in relation to its compliance with clause 18.1 or the associated payment requirements of a PT PCP Subcontract:
       1. it will not take any prejudicial action against the PT PCP Subcontractor due to the complaint or any investigation or inquiry in relation to the complaint; and
       2. it will cooperate in good faith with the Principal in connection with any investigation or inquiry and any attempt to resolve the complaint.
  1. Consent
     1. For any PT PCP Purpose, the Consultant consents to the Principal:
        1. using and sharing with any other Commonwealth Entity (as defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)) the information provided by the Consultant as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Principal in connection with this Contract or a PT PCP Subcontract; and
        2. receiving information obtained under, or in accordance with, the PTR Act (**Protected Information**) from Entrusted Person and using such Protected Information.

For the purposes of subparagraph (ii), **Entrusted Person** has the meaning given in the PTR Act.

* + 1. By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the Payment Times Procurement Connected Policy that includes any personal information within the meaning of Privacy Act, the Consultant warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 18.4. The Consultant must provide evidence of such consents to the Principal on request.
  1. Interpretation

A reference to the Principal in clauses 18.2, 18.3(a), 18.3(d)(ii) and 18.4 includes the PT PCP Policy Team.

1. Glossary of terms, interpretation AND MISCELLANEOUS
   1. Glossary of Terms

Unless the context otherwise indicates, whenever used in this Contract, each word or phrase in the headings in this clause 19.1 has the meaning given to it under the relevant heading.

Accredited Building Surveyor

1. A person who is a building surveyor accredited by the Australian Institute of Building Surveyors and has the capacity to certify compliance with the requirements of the National Construction Code for projects similar to the Works.

ACM

1. Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011 (Cth).

Act of Prevention

1. Any one of:
   1. a breach of the Contract by the Principal;
   2. any other act or omission of the Principal, the Contract Administrator or an Other Contractor engaged by the Principal; or
   3. a Variation the subject of a direction by the Contract Administrator.

Approval

1. Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Works or the Services or under any other applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Services; or
   2. service, occupy and use the completed Works, to the extent that the Services are relevant to such satisfaction.

Asbestos

Has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011 (Cth).

Australian Privacy Principle

Has the meaning given in the Privacy Act.

Award Date

1. The date:
   1. subject to paragraph (b), on which the Formal Agreement, to which these Conditions of Contract are attached, has been completed and signed by the Principal and the Consultant; or
   2. if a letter of acceptance was given by the Principal in accordance with clause 8(b)(ii) of the Tender Conditions for this Contract - the date of that letter.

Brief

1. The documents referred to in the Contract Particulars.

Change of Control

1. In relation to the Consultant, where a person who did not (directly or indirectly) effectively Control the Consultant at the Award Date, either alone or together with others, acquires Control of the Consultant.

Claim

1. Includes any claim for an increase in the Fee, for payment of money (including damages) or for an extension of time:
   1. under, arising out of, or in connection with, the Contract, including any direction of the Contract Administrator;
   2. arising out of, or in connection with, the Works, the Services or either party’s conduct before the Contract; or
   3. otherwise at law or in equity including:
      1. by statute;
      2. in tort for negligence or otherwise, including negligent misrepresentation; or
      3. for restitution.

Commissioning and Handover Plan

1. The commissioning and handover plan prepared by the Consultant and finalised under clause 6.4, which must set out in adequate detail the procedures the Consultant will implement to manage the Services from a commissioning and handover perspective to ensure:
   1. the timely, efficient and comprehensive commissioning of the Works (including the inspection and testing process); and
   2. the smooth handover of the Works to the Principal,
2. in accordance with the Contract.

Commonwealth

1. Commonwealth of Australia.

Commonwealth Procurement Rules

1. The Commonwealth Procurement Rules issued under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Completion

1. The point in time when, in respect of a Milestone:
   1. the Design Documentation has been completed in accordance with the Contract;
   2. the Services have been completed in accordance with the Contract; and
   3. the Consultant has done everything which the Contract requires it to do as a condition precedent to Completion, including those things described in Annexure 1 and in the Contract Particulars.

Confidential Information

* 1. Means, subject to paragraph (b):
     1. the Contract;
     2. the Project Documents;
     3. any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Principal, the Contract Administrator or anyone on the Principal's behalf, whether or not owned by the Principal, which is connected with the Consultant which:
        1. by its nature is confidential;
        2. the Consultant knows or ought to know is confidential; or
        3. is the subject of a Separation Arrangement; and
     4. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form) described in subparagraph (iii) including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.
  2. **Confidential Information** does not mean any document, drawing, information or communication (whether in written, oral or electronic form) given to the Consultant by the Principal, the Contract Administrator or anyone on the Principal's behalf, whether or not owned by the Principal, which:
     1. is in the possession of the Consultant without restriction in relation to its disclosure or use before the date of its receipt from the Principal, the Contract Administrator or anyone on the Principal's behalf;
     2. is in the public domain otherwise than due to a breach of clause 15; or
     3. has been independently developed or acquired by the Consultant.

Confidential Information Incident

1. A single breach or a series of breaches of clause 15, any Separation Arrangements or any other unwanted or unexpected Confidential Information Security Event that has a significant probability of compromising Principal business and threatening Principal information security.
2. **Confidential Information Security Event**
3. An identified fact, circumstance, occurrence or event indicating a potential or actual breach of information security requirements, a failure of information security safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Commonwealth information security.
4. **Consolidated Group**
5. A Consolidated Group or MEC (Multiple Entry Consolidated) group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

Construction Contract

1. A building or construction contract which the Principal has entered into or will enter into with a Contractor to construct or design and construct any part of the Works.

Consultant

1. The person named in the Contract Particulars.

Consultant Deed of Novation

1. A consultant deed of novation in the form set out in the Schedule of Collateral Documents.

Consultant's Representative

1. The person named in the Contract Particulars or any other person from time to time appointed as Consultant's Representative in accordance with clause 3.5.

Contamination

1. The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

Contract

1. The contractual relationship between the parties constituted by:
   1. either:
      1. subject to subparagraph (ii), if a letter of acceptance was given by the Principal in accordance with clause 8(b)(ii) of the Tender Conditions for this Contract - that letter; or
      2. if the Formal Agreement to which these Conditions of Contract are attached has been signed - that Formal Agreement;
   2. these Conditions of Contract;
   3. the Contract Particulars;
   4. the Special Conditions;
   5. the Brief;
   6. the DCAP; and
   7. the other documents (if any) referred to in the Contract Particulars.

Contract Administrator

1. The person nominated in the Contract Particulars or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

Contractor

1. Any contractor engaged or to be engaged by the Principal to construct or design and construct the Works including any subcontractor of such contractor.

Contract Particulars

1. The particulars annexed to these Conditions of Contract and entitled "Contract Particulars".

Control

1. Includes:
   1. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
   2. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
   3. the ability to appoint or remove all or a majority of the directors of a corporation;
   4. the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; and
   5. any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Correctly Rendered Invoice

1. An invoicewhich is:
   1. rendered in accordance with all of the requirements of the PT PCP Subcontract; and
   2. for amounts that are correctly calculated and due for payment and payable under the PT PCP Subcontract.

Cyber Security Event

1. An identified occurrence of a system, service or network state indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered occurrence of a system, service or network state which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Cyber Security Incident

1. A single or series of unwanted or unexpected Cyber Security Events that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Date for Completion

1. The date or period of time (if any) specified in the Contract Particulars for Completion of a Milestone, as adjusted under the Contract.

DCAP

1. The Detailed Consultant's Activities Proposal referred to in the Contract Particulars, as amended from time to time in accordance with clause 5.10.

Defence Security Principles Framework

1. The Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security, as amended from time to time.

DEQMS

1. The Defence Estate Quality Management System website available at www.defence.gov.au/estatemanagement.

Design Documentation

1. All material brought, or required to be brought, into existence by the Consultant as part of, or for the purpose of, carrying out the Services including documents, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards.

direction

1. Any agreement, approval, assessment, authorisation, certificate, consent, decision, demand, determination, direction, explanation, failure to consent, instruction, notice, notification, order, permission, rejection, request or requirement.

DISP

The Defence Industry Security Program more particularly described at http://www.defence.gov.au/dsvs/industry.

Employers Liability Insurance

1. If the Services are performed or the Consultant's employees perform work, are employed or normally reside in Western Australia or any jurisdiction outside Australia, a policy of insurance covering the liability of the Consultant to its employees at common law, for death or injuries arising out of or in connection with their employment, whether as an extension to Workers Compensation Insurance or otherwise.

Environment

1. Includes:
   1. ecosystems and their constituent parts, including people and communities;
   2. natural and physical resources;
   3. the qualities and characteristics of locations, places and areas; and
   4. the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

Environmental Harm

1. Any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident

1. Any Environmental Harm or Contamination caused by or in relation to the Services.

Environmental Management Plan

1. The environmental management plan prepared by the Consultant and finalised under clause 6.4 which sets out in adequate detail the procedures the Consultant will implement to manage the Services from an environmental perspective and which must describe how the Consultant proposes to ensure the Services will be performed consistently with and so as to maximise the achievement of the:
   1. Statutory Requirements;
   2. Consultant's environmental commitments set out in the DCAP;
   3. ESD Principles; and
   4. Environmental Objectives.

Environmental Objectives

1. The Environmental Objectives are to:
   1. encourage best practice environmental management through planning, commitment and continuous improvement;
   2. prevent and minimise adverse impacts on the Environment;
   3. identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
   4. identify and control possible environmental hazards associated with the Works and the Services;
   5. establish procedures to ensure that no hazardous substance is stored on Principal land without approval;
   6. recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
   7. define roles and responsibilities for personnel;
   8. ensure environmental training and awareness programmes are provided to employees and subconsultants;
   9. ensure subconsultants implement the Environmental Management Plan;
   10. define how the management of the Environment during the Services is reported and performance evaluated;
   11. describe all monitoring procedures required to identify impacts on the Environment as a result of the Works and the Services;
   12. implement complaint reporting procedures and maintain records of complaints and response to complaints; and
   13. establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

ESD

1. Ecologically sustainable development.

ESD Principles

1. Means:
   1. efficient and effective use of natural resources in a way that maintains the ecological processes on which life depends;
   2. increased energy conservation and efficiency;
   3. sustainable use of renewable energy resources;
   4. reduction or elimination of toxic and harmful substances in facilities and their surrounding environments;
   5. improvements to interior and exterior environments leading to increased productivity and better health;
   6. efficiency in resource and materials utilisation, especially water resources;
   7. selection of materials and products based on their life-cycle environmental impacts;
   8. increased use of materials and products with recycled content;
   9. recycling of construction waste and building materials after demolition;
   10. reduction in harmful waste products produced during construction;
   11. maintaining the cultural, economic, physical and social wellbeing of people and communities; and
   12. the additional use, operation and maintenance practices that reduce or minimise harmful effects on people and the natural environment;
   13. additional principles (if any) relating to ESD specified in the Contract Particulars.

Executive Negotiators

1. The representatives of the parties nominated in the Contract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Fee

1. The amount specified in the Contract Particulars as adjusted, subject to clause 12.5 (if applicable), under the Contract.

Governmental Requirements

1. Includes all policies, plans, manuals, guidelines, instructions (including departmental procurement policy instructions) and other Commonwealth, State, Territory or local requirements which are, or may become, applicable to the Site, the Works or the Services.

GST

1. The tax payable on taxable supplies under the GST Legislation.
2. **GST Group**

A GST group formed in accordance with Division 48 of the GST Legislation.

GST Legislation

1. Means *A New Tax System (Goods and Services Tax) Act* *1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Indigenous Enterprise

1. Means an organisation that is 50% or more indigenous owned that is operating a business.

Indigenous Procurement Policy

1. Means the Commonwealth's Indigenous Procurement Policy dated 1 July 2015 available at www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy.
2. **Information Security Requirements**
3. Means the:
   1. Australian Government's ProtectiveSecurityPolicy Framework available at https://www.protectivesecurity.gov.au/;
   2. Australian Government's Information Security Manual available at https://www.cyber.gov.au/ism; and
   3. Defence Security Principles Framework,

each as amended from time to time.

Insolvency Event

1. Any one of the following:
   1. the Consultant, being a person, has judgment entered against it in any court in any jurisdiction, becomes the subject of any bankruptcy petition, commits an act of bankruptcy, is made bankrupt or has communications with creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of debts whether formal or informal, with its creditors;
   2. where the Consultant is a corporation:
      1. notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
      2. a liquidator or provisional liquidator is appointed in respect of a corporation;
      3. the corporation entering a deed of company arrangement with creditors;
      4. a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
      5. an application is made to a court for the winding up of the corporation and not stayed within 14 days;
      6. any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of proposing or implementing a scheme of arrangement other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
      7. a winding up order or deregistration order is made in respect of the corporation;
      8. the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
      9. as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), the corporation is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth)); or
      10. a mortgagee of any property of the corporation takes possession of that property; or
   3. the Consultant has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

Intellectual Property Rights

1. All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

Material Change

1. Any actual, potential or perceived material change to the circumstances of the Consultant including any change:
   1. arising out of or in connection with:
      1. a Change of Control;
      2. an Insolvency Event; or
      3. the Consultant's financial viability, availability, capacity or ability to perform the Services and otherwise meet its obligations under the Contract; or
   2. which affects the truth, completeness or accuracy of:
      1. if the Consultant lodged a registration of interest, the registration of interest;
      2. if the Consultant lodged a tender, the tender; or
      3. any other information, documents, evidence or clarifications provided by the Consultant to the Principal arising out of or in connection with its registration of interest, the registration of interest process, its tender, the tender process, the Contract or the Services.

Milestone

1. A milestone described in the Contract Particulars.

NATA

1. National Association of Testing Authorities Australia.

National Construction Code

1. The National Construction Code that applies in the Australian State or Territory where the Works are located, as amended from time to time, produced and maintained by the Australian Building Codes Board on behalf of the Commonwealth Government and each State and Territory Government.

Other Contractor

1. Any contractor, supplier, subcontractor, consultant, artist, tradesperson or other person engaged to do work other than the Consultant and its subconsultants.

Pandemic

1. The disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020.

Pandemic Adjustment Event

1. A disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services provided that the:
   1. disruption:
      1. arises from a chance in circumstances relating to the Pandemic first occurring after the Award Date; and
      2. is a direct result of the Pandemic; and
   2. adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).

Payment Times Procurement Connected Policy (or PT PCP)

The Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended from time to time.

Personal Information

1. Has the meaning given in the Privacy Act.

Privacy Act

1. The *Privacy Act 1988* (Cth).

Professional Indemnity Insurance

1. A policy of insurance to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the Consultant or its subconsultants in carrying out the Services.

Project Documents

1. Includes all documents, information, design and other material provided, or required to be provided to the Principal or the Contract Administrator by the Consultant under or in connection with the Contract.

Project Plans

1. The:
   1. Environmental Management Plan;
   2. Site Management Plan;
   3. Commissioning and Handover Plan; and
   4. Work Health and Safety Plan,
2. as amended (if at all) with the written consent of the Contract Administrator.

Principal

1. The person named in the Contract Particulars.

Principal Material

1. All material provided to the Consultant by the Principal, including documents provided in accordance with clause 5 and any other documents, equipment, machinery and data (stored by any means).

Principal's Program

1. Any program, as amended from time to time, prepared by or on behalf of the Principal setting out the times for the completion of the whole or any part of the Services and the Works.

**PT PCP Evaluation Questionnaire**

A questionnaire in substantially the form set out in Appendix C of the Payment Times Procurement Connected Policy.

**PT PCP Policy Team**

The relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day.

**PT PCP Purpose**

Means:

* + 1. the review, evaluation, monitoring, assessment and reporting on the Payment Times Procurement Connected Policy, including the compliance by those Commonwealth suppliers and their subcontractors that are Reporting Entities; or
    2. improving payment times to PT PCP Subcontractors.

**PT PCP Remediation Plan**

A written remediation plan substantially in the form set out in Appendix D of the Payment Times Procurement Connected Policy.

**PT PCP Subcontract**

A subcontract between a Reporting Entity and another party (**Other Party**) where:

* + 1. the subcontract is, wholly or in part, for the provision of goods or services for the purposes of the Contract;
    2. both parties are carrying on business in Australia; and
    3. the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than, or is reasonably estimated to not exceed, $1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work or official orders entered into that are valued at up to $1,000,000 (GST inclusive) under standing offer or panel arrangements),

but does not include the following subcontracts:

* + 1. subcontracts entered into prior to the Reporting Entities' tender response for the Services;
    2. subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
    3. subcontracts for the purposes of:
       1. procuring and consuming goods or services overseas; or
       2. procuring real property, including leases and licences.

**PT PCP Subcontractor**

The party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.

**PTR Act**

The *Payment Times Reporting Act 2020* (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.

Public Liability Insurance

1. A policy of liability insurance covering the Principal, the Consultant, the Contract Administrator and all subconsultants for their respective liabilities:
   1. to third parties; and
   2. to each other,
2. for loss of or damage to property and death of or injury to any person arising out of, or in connection with, the Services. This policy is not required to cover liabilities insured under Workers Compensation Insurance, Employers Liability Insurance or Professional Indemnity Insurance.

Recipient

1. Any person provided with Confidential Information or Sensitive and Classified Information (or any part of it) (whether in a tangible or an intangible form), including potential or actual subconsultants, suppliers and material suppliers.
2. **Reporting Entity**
3. Has the meaning given in the PTR Act.
4. **Reporting Entity Subcontractor**
5. Any person that:
   1. is Reporting Entity; and
   2. provides goods or services directly or indirectly to the Consultant for the purposes of the Contract where the value of such goods or services are estimated to exceed $4,000,000 (GST inclusive),
6. and **Reporting Entity Subcontract** has a corresponding meaning.

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Design Services Contract:
   1. posted on the Defence Estate Quality Management System website located at www.defence.gov.au/ estatemanagement (or any alternative location notified by the Principal), as amended from time to time by the Principal; and
   2. which as at the Award Date include the contracts and other documents referred to in the Contract Particulars.

Security of Payment Legislation

1. Means:
   1. *Building and Construction Industry Security of Payment Act 1999* (NSW);
   2. *Building and Construction Industry Security of Payment Act 2002* (Vic);
   3. *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
   4. in Western Australia:
      1. the *Construction Contracts Act 2004* (WA); or
      2. if this contract is executed after the date on which a provision of the *Building and Construction Industry (Security of Payment) Act* *2021* (WA) commences, then the *Building and Construction Industry (Security of Payment) Act* *2021* (WA) and any provision of the *Construction Contracts Act 2004* (WA) which has not been repealed;
   5. *Construction Contracts (Security of Payments) Act 2004* (NT);
   6. *Building and Construction Industry Security of Payment Act 2009* (Tas);
   7. *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
   8. *Building and Construction Industry Security of Payment Act 2009* (SA); and
   9. any legislation in any State or Territory of Australia addressing security of payment in the building and construction industry.

Sensitive and Classified Information

1. Any document, drawing, information or communication (whether in written, oral or electronic form) issued or communicated to the Consultant by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:
   1. identified at the time of issue or communication as "Sensitive Information";
   2. marked with a national security classification or as "Classified Information";
   3. identified at the time of issue or communication as "Classified Information"; or
   4. the Consultant knows or ought to know is subject to, or ought to be treated as sensitive or classified information in accordance with any Statutory Requirement (including the Information Security Requirements); and
   5. everything recording, containing, setting out or making reference to the document, drawing, information or communication (whether in written, oral or electronic form), including documents, notes, records, memoranda, materials, software, disks and all other media, articles or things.

Sensitive and Classified Information Incident

1. A single breach or a series of breaches of clause 15, any Separation Arrangements, any Cyber Security Event, any Cyber Security Incident or any other unwanted or unexpected Sensitive and Classified Information Security Event that has a significant probability of compromising Sensitive and Classified Information security procedures, processes and requirements and threatening security.

Sensitive and Classified Information Security Event

1. An identified fact, circumstance, occurrence or event indicating a potential or actual breach of Sensitive and Classified Information security procedures, processes and requirements, a failure of Sensitive and Classified Information security procedure, process and requirement safeguards or a previously unknown or unencountered fact, circumstance, occurrence or event which is or may be relevant to Sensitive and Classified Information security procedures, processes and requirements.

Separation Arrangement

1. Any arrangement that the Consultant:
2. (a) has in place;
3. (b) will put in place; or
4. (c) is required to put in place under clause 16.3,
5. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 15.

Services

1. The professional services described in, or reasonably to be inferred from, the Brief, as adjusted under the Contract.
2. **Shadow Economy Procurement Connected Policy**
3. The Shadow Economy Procurement Connected Policy – Increasing the Integrity of Government Procurement – March 2019, as amended from time to time.

Site

1. The site for the Works described in the Contract Particulars.

Site Management Plan

1. The site management plan prepared by the Consultant and finalised under clause 6.4, which must set out in adequate detail all procedures the Consultant will implement to manage the carrying out of the Services on and near the Site, including:
   1. the matters specified in the Contract Particulars; and
   2. any other matters required by the Contract Administrator.

Special Conditions

1. The document referred to in the Contract Particulars.
2. **Statement of Tax Record** or **STR**
3. Has the meaning given in the Shadow Economy Procurement Connected Policy.

Strategic Interest Issue

1. Any issue that involves an actual, potential or perceived risk of an adverse effect on the national security interests of the Commonwealth including:
   1. protecting Australia’s national security requirements, in accordance with all Statutory Requirements (including the Information Security Requirements);
   2. ensuring that the whole (or any part) of the Confidential Information is not exported (or capable of being exported) outside of Australia or is not disclosed or transmitted (or capable of being disclosed or transmitted) to any person who does not hold (or is not eligible to hold) an Australian Defence security clearance, unless the Commonwealth has given its prior written consent (in its absolute discretion); and
   3. ensuring compliance by the Consultant with Australia’s national security requirements, in accordance with all Statutory Requirements (including the Information Security Requirements).

Statutory Requirements

1. Means:
   1. any law applicable to the Services, including Acts, ordinances, regulations, by-laws and other subordinate legislation;
   2. Approvals (including any conditions or requirement under them);
   3. Governmental Requirements;
   4. Information Security Requirements; and
   5. any additional requirements set out in the Contract Particulars.

Table of Variation Rates and Prices

1. The table (if any) set out or referred to in the Contract Particulars, containing rates and prices to be used for the purposes of valuing a Variation.

Tax or Taxes

1. Any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing.

Variation

1. Unless otherwise stated in the Contract, means any change to the Services, including any addition, increase, decrease, omission or deletion to or from the Services.

WHS Legislation

1. Means any of the following:
   1. *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations* 2011 (Cth); and
   2. any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act* 2011 (Cth).

WOL

1. Whole of life.

WOL Cost

1. The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to the Principal arising out of, or in connection with, the Works over the whole life of the Works including the costs of designing and constructing the Works prior to Completion (as defined in the Construction Contract) and operating and maintaining the Works after Completion (as defined in the Construction Contract).

WOL Objectives

1. Means balancing:
   1. WOL Cost;
   2. the useful life of the Works;
   3. the reliability and availability of the Works throughout their useful life;
   4. the operability and maintainability of the Works throughout their useful life;
   5. the value for money achieved by the Principal from the design, construction, operation and maintenance of the Works; and
   6. the achievement of the ESD Principles.

Workers Compensation Insurance

1. A policy of insurance in the form prescribed by Statutory Requirements in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside, to insure against liability for death of or injury to persons employed by the Consultant as required by the Statutory Requirements (and including Employers Liability Insurance, if applicable).

Work Health and Safety Plan

1. The work health and safety plan prepared by the Consultant and finalised under clause 6.4 which must set out in adequate detail the procedures the Consultant will implement to manage the Services from a work health and safety perspective and which must:
   1. describe how the Consultant proposes to ensure the Services are performed consistently with Statutory Requirements in relation to work health and safety; and
   2. address the matters specified in the Contract Particulars.

Works

1. The development described in the Contract Particulars.
   1. Interpretation

In this Contract, unless the context otherwise indicates:

* + 1. words in the singular include the plural and vice versa;
    2. references to a person include an individual, firm, corporation or unincorporated body;
    3. except in clause 19.1, headings are for convenience only and do not affect the interpretation of this Contract;
    4. references to any party to this Contract include its successors or permitted assigns;
    5. a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to this Contract;
    6. references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
    7. words denoting any gender include all genders;
    8. references to any legislation or to any section or provision of any legislation include any:
       1. statutory modification or re‑enactment of or any statutory provision substituted for that legislation, section or provision; and
       2. ordinances, by‑laws, regulations and other statutory instruments issued under that legislation, section or provision;
    9. no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
    10. a reference to "$" is to Australian currency;
    11. where under the Contract:
        1. a direction is required to be given or must be complied with; or
        2. payment of money must be made (other than under clause 9.5),

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;

* + 1. for the purposes of clauses 7.8, 7.9 and 7.10:
       1. any extension of time stated in days; or
       2. any reference to "day",

will exclude public holidays and include only those days which are stated in the Consultant's approved program under clause 7.2 as working days;

* + 1. for the purposes of clauses 9.4, 9.5 and 13.11, "business day" is any day other than:
       1. Saturday, Sunday or a public holiday (where the Site is located);
       2. the 27th, 28th, 29th, 30th or 31st day of December (other than where the Site is located in Victoria, Tasmania or the Northern Territory);
       3. any other day on which there is a Statewide shutdown of the operations of the building and construction industry (where the Site is located in South Australia); and
       4. any agreed holiday stated in the Contract Particulars (where the Site is located outside Australia).
    2. other than as set out in paragraphs (k), (l) and 19.2(l)(l) references to "day" are references to calendar days;
    3. the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
    4. where a clause contains two options, the option specified in the Contract Particulars will apply;
    5. the word "subconsultant" will include subconsultants, subcontractors and suppliers, and the word "subcontract" will include a contract with a subconsultant;
    6. derivatives of a word or expression which has been defined in clause 19.1 will have a corresponding meaning to that assigned to it in clause 19.1; and
    7. unless agreed or notified in writing by the Contract Administrator, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief is a reference to the edition last published prior to the submission of the Design Documentation. If requested by the Contract Administrator, the Consultant must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief and the Design Documentation available to the Contract Administrator.
  1. Miscellaneous
     1. This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in the Contract Particulars.
     2. None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
        1. to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
        2. otherwise, both parties agree in writing.
     3. This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
        1. any prior agreement in conflict or at variance with the Contract; or
        2. any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
     4. Where a party comprises two or more persons, each person will be jointly and severally bound by the party’s obligations under the Contract.
     5. Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
     6. This Contract, the Principal Material and the Project Documents are confidential. The Consultant must:
        1. not disclose any of the Contract, the Principal Material or the Project Documents without the prior written consent of the Principal except to the extent that the disclosure is required for the Consultant to carry out its obligations under the Contract; and
        2. ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subconsultant to comply with the Consultant's obligations arising under this clause 19.3(f) as if the subconsultant were the Consultant.
     7. The Consultant must indemnify the Principal against:
        1. any liability to or claim by a third party including a subconsultant or Other Contractor; and
        2. all costs, losses and damages suffered or incurred by the Principal,

to the extent arising out of or in connection with any breach by the Consultant of a term of this Contract.

* + 1. All obligations to indemnify under this Contract survive termination of the Contract.
    2. Unless expressly stated to the contrary in this Contract, the Consultant must perform the Services at its cost.

CONTRACT PARTICULARS

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **CLAUSE 1 - ROLE OF THE CONSULTANT** | | | | | | | | | | |
| **Services which may be let to one of the named subconsultants:**  (Clause 1.9(a)(i)) | | **Services** | | | | | **Subconsultants** | | | |
| .............................................. | | | | | .................................................. | | | |
| .............................................. | | | | | .................................................. | | | |
| **Statutory Requirements with which the Consultant does not need to comply:** (Clause 1.10(a)) | |  | | | | | | | | |
| **Approvals which the Consultant is to obtain:**  (Clause 1.10(b)(i)) | |  | | | | | | | | |
| **CLAUSE 3 - PERSONNEL** | | | | | | | | | | |
| **Contract Administrator's representatives and their functions:** (Clause 3.4) | | **Representative**  .............................................. | | | | **Function(s)**  ................................................... | | | | |
| **Consultant's key people:**  (Clause 3.5) | | **Person** | | | | | **Position** | | | |
| .............................................. | | | | | .............................................. | | | |
| .............................................. | | | | | .............................................. | | | |
| **Project Review Meetings:**  (Clause 3.7) | | Clause 3.7 ***[DOES/DOES NOT]*** apply.  (Clause 3.7 does not apply unless otherwise stated) | | | | | | | | |
| **CLAUSE 4 - INSURANCE** | | | | | | | | | | |
| **Insurance policies required to be obtained by the Consultant:**  (Clause 4.1(a)) | | **Public Liability Insurance**  Amount of Cover: $..................................... in respect of any one occurrence and $............ in the aggregate, all occurrences during the period of insurance.  **Workers Compensation Insurance**  Amount of Cover: The minimum amounts required by statute in each State and Territory in which the Services are to be performed or the Consultant's employees are employed or normally reside.  **Employers' Liability Insurance**  Amount of Cover: The amount that an expert professional provider of the Services would purchase, which must not be less than $..................  **Professional Indemnity Insurance**  Amount of Cover: $…….. per claim and $……….. in the aggregate, all claims during the period of insurance.  **Other Insurances:** (Clause 4.1(a)(iv)) | | | | | | | | |
| **Minimum amounts of subconsultants' Professional Indemnity Insurance:** (Clause 4.1(e)) | | **Professional Indemnity Insurance**  Amount of Cover: $…….. per claim and $……….. in the aggregate, all claims during the period of insurance. | | | | | | | | |
| **Period for maintenance of Professional Indemnity Insurance:**  (clause 4.3(b)) | | Where any part of the Services are carried out in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years | | | | | | | | |
| **CLAUSE 5 - DESIGN AND DOCUMENTATION** | | | | | | | | | | |
| **Principal Material and number of copies to be provided by the Principal to the Consultant:** (Clause 5.1) | | **Principal Material**  .............................................. | | | | **Copies**  ................................................... | | | | |
| **Number of days for review:** (Clause 5.3(a)(ii)) | |  | | | | | | | | |
| **Number of copies of Design Documentation to be submitted by the Consultant to the Contract Administrator:** (Clause 5.5) | | ..........................................................hard ***[copy / copies]***  ....................................................electronic ***[copy/copies]*** | | | | | | | | |
| **Design Documentation hard copy requirements:** (Clause 5.5(a)) | | Compatible with Autocad 2008 or newer version To scale Printed in black ink on white or transparent ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator) | | | | | | | | |
| **Design Documentation electronic copy requirements:** (Clause 5.5(b)) | | Compatible with Autocad 2008 or newer version in .dwg format on CD-ROM or as determined by the Contract Administrator | | | | | | | | |
| **Exempted Design Documentation:** (Clause 5.6) | | ............................................................................................ (unless otherwise stated there is no exempt Design Documentation) | | | | | | | | |
| **Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:** (Clause 5.11(a)) | | 1. Formal Agreement or letter of acceptance (whichever is applicable)  2. Conditions of Contract  3. Special Conditions  4. Contract Particulars  5. Brief  6. Any other documents forming part of the Contract (as set out in the relevant item under clause 19.1 in these Contract Particulars)  7. Design Documentation (which has not been rejected under clause 5.3)  8. DCAP  9. Project Plans | | | | | | | | |
| **CLAUSE 6 - QUALITY** | | | | | | | | | | |
| **Number of days for submission of Project Plans:** (Clause 6.4(a)(ii)A) | | Site Management Plan: | | | | | .............................................. | | | |
| Environmental Management Plan: | | | | | ................................................. | | | |
| Work Health and Safety Plan: | | | | | ................................................. | | | |
| **Number of days for review of Project Plans:** (Clause 6.4(a)(ii)B) | |  | | | | | | | | |
| **CLAUSE 7 - TIME** | | | | | | | | | | |
| **Maximum intervals between program updates by Consultant:**  (Clause 7.2(b)) | |  | | | | | | | | |
| **Program format to be compatible with:**  (Clause 7.2(e)) | | ***[PRIMAVERA SURETRAK/MICROSOFT PROJECT]*** or approved equivalent | | | | | | | | |
| **CLAUSE 9 - PAYMENT** | | | | | | | | | | |
| **Times for submission of payment claims by the Consultant to Contract Administrator:**  (Clause 9.2(a)) | | Monthly on the …………. day of each month  ***[OR, IF THE SITE IS NOT IN NSW]***  Completion of the following Milestones: | | | | | | | | |
| **Email address for copy of tax invoice:**  (Clause 9.5(a)) | | invoices@defence.gov.au | | | | | | | | |
| **Number of business days for payment:**  (Clause 9.5(b)) | | To the extent that the relevant part of the Services is carried out in:  1. Queensland or New South Wales: 5;  2. any other Australian State or Territory: 10; or  3. outside Australia: 30. | | | | | | | | |
| **Interest Rate:**  (Clause 9.9) | | 1. In the case of damages - the General Interest Charge Rate determined under section 8AAD of the *Taxation Administration Act* 1953 (Cth) current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator; or  2. In the case of late payments - the greater of:  (a) the rate in paragraph (1); and  (b) the rate of interest prescribed under any applicable Security of Payment Legislation. | | | | | | | | |
| **Option for payment of workers and subconsultants**  (Clause 9.12) | | ***[OPTION 1/ OPTION 2]*** applies.  (Option 2 applies unless otherwise stated) | | | | | | | | |
| **Taxes:**  (Clause 9.14) | | ............................................................................................ | | | | | | | | |
| **clause 10 ‑ Termination** | | | | | | | | | | |
| **Number of days to remedy breach:** (Clauses 10.3(c) and 10.4(b)) | |  | | | | | | | | |
| **CLAUSE 12 - NOTICES** | | | | | | | | | | |
| **Address and email address, for the giving or serving of notices, upon:**  (Clause 12.7) | | **Principal:** | | | | | | | | |
| **Contract Administrator:** | | | | | | | | |
| **Consultant:** | | | | | | | | |
| **CLAUSE 13 - GENERAL** | | | | | | | | | | |
| **National Construction Code Certification:**  (Clause 13.6) | | Clause 13.6 ***[DOES/DOES NOT]*** apply (Clause 13.6 does apply unless otherwise stated) | | | | | | | | |
| **Defence's Security Alert System level:** (Clause 13.9(d)(i)) | | ("("Alert" if not otherwise specified) | | | | | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 13.11) | | Clause 13.11 ***[DOES/DOES NOT]*** apply. (Clause 13.11 does apply unless otherwise stated) | | | | | | | | |
| **DISP Membership Levels:** (Clause 13.12(a)) | DISP Membership ***[IS/IS NOT]*** required.  Where DISP Membership is required: | | | | | | | | | |
| **DISP Membership / Security Domain** | | | | | | | **Level** | | |
| DISP Membership | | | | | | | ***[INSERT LEVEL, WHICH MUST EQUAL THE HIGHEST DISP MEMBERSHIP REQUIRED FOR THE 4 DOMAINS BELOW. INSERT "NOT APPLICABLE" IN THIS AND BELOW ROWS IF DISP MEMBERSHIP IS NOT REQUIRED]*** | | |
| Governance | | | | | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Personnel Security | | | | | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Physical Security | | | | | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| Information / Cyber Security | | | | | | | ***[INSERT LEVEL AND SPECIFIC DETAILS (AS REQUIRED)]*** | | |
| **CLAUSE 14 - COMMERCIAL-IN-CONFIDENCE INFORMATION** | | | | | | | | | | |
| **Commercial-in-Confidence Information:** (Clause 14.2) | | Clause 14.2 ***[DOES/DOES NOT]*** apply. (Clause 14.2 does not apply unless otherwise stated) | | | | | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 14.2) | | **Specific Information** | | | **Justification** | | | | | **Period of confidentiality** |
| ……………………… | | | ………………… | | | | | ……………… |
| **CLAUSE 15 - INFORMATION SECURITY** | | | | | | | | | | |
| **Current security clearance level/s:** (Clause 15.1(b) and 15.2(c)(i)) | | | |  | | | | | | |
| **Information technology environment accreditation or certification level/s:** (Clause 15.2(e)(ii)D) | | | |  | | | | | | |
| **Information technology environment accreditation or certification level/s (caveated or compartmented information):** (Clause 15.2(e)(ii)E) | | | |  | | | | | | |
| **CLAUSE 18 – PAYMENT TIMES PROCUREMENT CONNECTED POLICY** | | | | | | | | | | |
| **Reporting Entity:** (Clause 18) | | | | [To be inserted following selection of the successful Tenderer - noting that clause 18 will only apply where the successful Tenderer is a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy]  Clause 18 ***[DOES/DOES NOT]*** apply. | | | | | | |
| **CLAUSE 19 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS** | | | | | | | | | | |
| **Brief:**  (Clause 19.1) | |  | | | | | | | | |
| **Completion - additional conditions precedent to Completion:**  (Clause 19.1) | |  | | | | | | | | |
| **Consultant:**  (Clause 19.1) | |  | | | | | | | | |
| **Consultant's Representative:**  (Clause 19.1) | |  | | | | | | | | |
| **Contract - other documents forming part of the Contract:**  (Clause 19.1) | |  | | | | | | | | |
| **Contract Administrator:**  (Clause 19.1) | |  | | | | | | | | |
| **Date for Completion of Milestones:**  (Clause 19.1) | | **Milestone** | | | | | | | **Date for Completion** | |
| Masterplan and Feasibility Review ***[OPTIONAL]*** | | | | | | | ................................................ | |
| Concept Design Report and cost estimates | | | | | | ................................................. | | |
| Schematic Design Report and cost estimates | | | | | | ................................................. | | |
| Detailed Design Report and cost estimates | | | | | | ................................................. | | |
| Tender Report and cost estimates | | | | | | ................................................. | | |
| Completion under Construction Contracts ***[OPTIONAL]*** | | | | | | ................................................. | | |
| **DCAP (Detailed Consultant's Activities Proposal):**  (Clause 19.1) | |  | | | | | | | | |
| **ESD Principles (additional):**  (Clause 19.1)] | |  | | | | | | | | |
| **Executive Negotiators:**  (Clause 19.1) | | **Principal:** Commanding Officer, 19th Chief Engineer Works, Royal Australian Engineers  **Consultant:** | | | | | | | | |
| **Fee:**  (Clauses 19.1, 1.10(b)(ii), 1.11(e), 1.14(d)(i)B, 9.1(a) and 12.2(b)) | | $  ***[NOTE: THE FEE MAY BE PAYABLE ON THE COMPLETION OF "MILESTONES" OR ON A MONTHLY BASIS (IN ACCORDANCE WITH CLAUSE 9.2(a))]*** | | | | | | | | |
| **Milestones:**  (Clause 19.1) | | **Milestone** | | | | | | | **Description** | |
| Masterplan and Feasibility Review ***[OPTIONAL]*** | | | | | | | Completion of Design Documentation comprising masterplan and feasibility review (notionally 5%) for submission to the relevant siting board. | |
| Concept Design Report and cost estimates | | | | | | | Completion of Design Documentation comprising Concept Design Report (notionally 30%) and cost estimates to achieve cost certainty of +/-10% for inclusion in Detailed Business Case and subsequent approvals in respect of the Works. | |
| Schematic Design Report and cost estimates | | | | | | | Completion of Design Documentation comprising Schematic Design Report (notionally 50%) and updated cost estimates. | |
| Detailed Design Report and cost estimates | | | | | | | Completion of Design Documentation comprising Detailed Design Report (notionally 90%, including specifications) and updated cost estimates. | |
| Tender Report and cost estimates | | | | | | | Completion of Design Documentation (notionally 100%) for issue of tenders for Construction Contracts and updated cost estimates. | |
| Completion under Construction Contracts ***[OPTIONAL]*** | | | | | | | As defined in the Construction Contract. | |
| **Principal**  (Clause 19.1) | | ................................................................................................. | | | | | | | | |
| **Schedule of Collateral Documents:**  (Clause 19.1) | | 1. Payment Claim  2. Payment Statement  3. Consultant Deed of Novation | | | | | | | | |
| **Site:**  (Clause 19.1) | |  | | | | | | | | |
| **Site Management Plan:** (Clause 19.1) | | Security procedures Access to the Site by visitors and vehicles Site induction procedures Safety procedures Emergency procedures Approval procedures User group and stakeholder procedures | | | | | | | | |
| **Special Conditions:** (Clause 19.1) | | As set out in Annexure 3 | | | | | | | | |
| **Statutory Requirements (additional):** (Clause 19.1) | |  | | | | | | | | |
| **Table of Variation Rates and Prices:**  (Clause 19.1) | |  | | | | | | | | |
| **Work Health and Safety Plan:**  (Clause 19.1) | | 1. Matters to be addressed in the Work Health and Safety Plan are to include the following (as relevant):    * 1. the names, positions and responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the Services;      2. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Services are being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;      3. the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Contract Administrator with respect to work health and safety matters), project-specific emergency plans and first aid procedures;      4. any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules; and      5. ensuring that work health and safety is a compulsory agenda item at all meetings in accordance with clause 3.7 of the Conditions of Contract and ensuring that the outcomes of those agenda items are communicated to the Contract Administrator. | | | | | | | | |
|  | | 1. Proposed design risk assessments to ensure compliance with Statutory Requirements, including regarding design and the process for addressing design changes relevant to work health and safety. | | | | | | | | |
|  | | 1. Management of work health and safety generally, Contract or site specific, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally and emergency procedures), the process of communication, information-sharing and provision of assurances to the Contract Administrator under clause 5.15 of the Conditions of Contract, and dispute resolution on work health and safety matters. | | | | | | | | |
|  | | 1. Provision of assurances to the Contract Administrator regarding compliance with any relevant or applicable requirements or standards (or codes of practice) relating to the design and the provision of the Services. | | | | | | | | |
|  | | 1. Processes for management of subconsultants to ensure compliance with WHS Legislation and subcontract requirements. | | | | | | | | |
|  | | 1. Processes for carrying out calculations, analysis, testing or examinations regarding design to ensure compliance with WHS Legislation and the method of storing and communicating the results of such calculations, analysis, testing or examinations. | | | | | | | | |
|  | | 1. Management of project hazards and risks generally in respect of the design and the provision of the Services to ensure compliance with WHS Legislation. | | | | | | | | |
| **Works:**  (Clause 19.1) | |  | | | | | | | | |
| **Agreed holidays:** (Clauses 19.2(m)(iv)) | |  | | | | | | | | |
| **Governing Law:**  (Clause 19.3(a)) | | (The law in the State of Victoria, Australia applies unless otherwise stated) | | | | | | | | |
|  | | | | | | | | | | |
| **ANNEXURE 1 - COMPLETION** | | |  | | | | | | | |
| **Annexure 1:** | | | Annexure 1 ***[DOES/DOES NOT]*** apply (Annexure 1 applies unless otherwise stated) | | | | | | | |
| **Number of copies of Final Operation and Maintenance Manuals:**  (Clause 3(b)(iv)) | | |  | | | | | | | |
| **Content of manuals (additional):**  (Clause 3(e)(xii)) | | |  | | | | | | | |
| **Number of persons to be trained:**  (Clause 4(a)) | | |  | | | | | | | |
| **Categories of persons to be trained:**  (Clause 4(a)) | | |  | | | | | | | |

ANNEXURE 1 - COMPLETION

Annexure 1 applies unless the Contract Particulars state that it does not apply.

1. "**As-Constructed**" Drawings and Documents

The Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (both as defined in the Construction Contract), if requested by the Contract Administrator:

* + 1. provide to the Contract Administrator the number of complete sets of the drawings and documents as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Description** | **Hard copy format** | **No of hard copies** | **Electronic copy format** | **No of electronic copies** |
| * + - 1. Wiring diagrams |  |  |  |  |
| * + - 1. Functional diagrams |  |  |  |  |
| * + - 1. "As-Constructed" drawings |  |  |  |  |
| * + - 1. "As-Constructed" lighting and power layout |  |  |  |  |
| * + - 1. "As-Constructed" main switchboard layout |  |  |  |  |
| * + - 1. "As-Constructed" main switchboard schematic drawings |  |  |  |  |
| * + - 1. "As-Constructed" main switchboard circuit index |  |  |  |  |
| * + - 1. "As-Constructed" fire detector layout |  |  |  |  |
| * + - 1. Wiring diagram for the fire alarm control panel |  |  |  |  |
| * + - 1. "As-Constructed" underground cabling layout |  |  |  |  |
| * + - 1. "As-Constructed" distribution board layout |  |  |  |  |
| * + - 1. "As-Constructed" distribution board circuit index |  |  |  |  |
| * + - 1. "As-Constructed" sub mains cabling layout |  |  |  |  |
| * + - 1. "As-Constructed" Site survey |  |  |  |  |
| * + - 1. **[*INSERT OTHER "AS‑CONSTRUCTED" DOCUMENTS REQUIRED. THE ABOVE LIST IS BY WAY OF EXAMPLE ONLY.*]** |  |  |  |  |

* + 1. without limiting paragraph (a), ensure that the "As-Constructed" drawings and documents:
       1. are prepared in accordance with the requirements of the Contract; and
       2. have the words "As-Constructed" printed in the following locations:
          1. if a document, immediately above the title and reference; and
          2. if a drawing, immediately above the title and drawing number block at the bottom right hand corner of the drawing and immediately to the left of the drawing number block at the top left hand corner of the drawing, parallel to and outside the left hand border of the drawing; and
    2. provide to the Contract Administrator a comprehensive document and drawing index setting out all documents and drawings prepared by the Consultant and by its subconsultants.

1. **Warranties**
   * 1. If requested by the Contract Administrator, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (both as defined in the Construction Contract), provide the Contract Administrator with the following minimum warranties, in the form of the Collateral Warranty (as defined in the Construction Contract), for the following warranty periods:

| **Description** | **Warranty Period** |
| --- | --- |
| ***[INSERT]*** | ***[INSERT]*** |
| ***[INSERT]*** | ***[INSERT]*** |
| ***[INSERT]*** | ***[INSERT]*** |
| ***[INSERT]*** | ***[INSERT]*** |

1. **Operation and Maintenance Manuals**

If requested by the Contract Administrator and to the extent that the Services are relevant, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (both as defined in the Construction Contract):

* + 1. assist in the compilation of specific operation and maintenance manuals for each aspect of the Works or the Stage or Section (both as defined in the Construction Contract), including obtaining and coordinating information provided by the Consultant and its subconsultants;
    2. without limiting paragraph (a):
       1. prior to the commencement of commissioning of the Works or the Stage or Section (both as defined in the Construction Contract), provide one copy of draft operation and maintenance manuals in respect of each aspect of the Works or the Stage or Section (both as defined in the Construction Contract) (**Draft Operation and Maintenance Manuals**) to the Contract Administrator for approval;
       2. within 14 days of the completion of the commissioning of the Works or the Stage or Section (both as defined in the Construction Contract), provide one copy of all operation and maintenance manuals in respect of the Works or the Stage or Section (both as defined in the Construction Contract) which have been amended during commissioning (**Draft Amended Operation and Maintenance Manuals**) (such amendments being clearly indicated in each Draft Amended Operation and Maintenance Manual) to the Contract Administrator for approval;
       3. resubmit the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals to the Contract Administrator as necessary; and
       4. once approved by the Contract Administrator, submit the number of copies of the final, approved versions of the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals (**Final Operation and Maintenance Manuals**) set out in the Contract Particulars to the Contract Administrator.

For the purposes of this clause 3:

* + 1. catalogues, sales brochures and other documents giving general information in respect of aspects of the Works or the Stage or Section (both as defined in the Construction Contract) will not be acceptable;
    2. all manuals must be sufficiently comprehensive for routine maintenance, overhaul and repairs to be carried out by personnel who are qualified to undertake maintenance work but who are not necessarily familiar with any particular aspect of the Works or the Stage or Section (both as defined in the Construction Contract); and
    3. without limiting the generality of this clause 3, the manuals must be securely bound in 2 ring binders and include:
       1. a comprehensive list of contents including illustrations and drawings;
       2. function, application, specification and comprehensive technical data of all equipment including sub-assemblies, proprietary items, and system circuit and schematic diagrams where applicable;
       3. a description of the equipment and its principles of operation;
       4. routine maintenance and lubrication schedules;
       5. dismantling and re-assembly procedures;
       6. trouble-shooting suggestions;
       7. a complete lists of parts;
       8. a list of spare parts recommended to be held in stock;
       9. the procedure for ordering spare parts;
       10. clear and comprehensive illustrations and/or drawings with parts readily identifiable;
       11. text which is clearly printed on good quality A4 size matt paper, not less than 95 gsm;
       12. the matters specified in the Contract Particulars; and
       13. any other matter required by the Contract Administrator.

1. **Training**

If requested by the Contract Administrator and to the extent that the Services are relevant, the Consultant must, prior to Completion (as defined in the Construction Contract) of the Works or a Stage or Section (both as defined in the Construction Contract):

* + 1. during commissioning of the Works or the Stage or Section (both as defined in the Construction Contract), assist in the planning, management and delivery of a comprehensive training program in respect of all operational and maintenance aspects of the Works or the Stage or Section (both as defined in the Construction Contract) for the number of and each category of persons set out in the Contract Particulars; and
    2. assist in the carrying out of such training using:
       1. trained instructors, fully experienced in respect of all operational and maintenance aspects of the Works or the Stage or Section (both as defined in the Construction Contract); and
       2. the Final Operation and Maintenance Manuals, with copies of such manuals to be made available during the training to all trainees.

ANNEXURE 2 - APPLICABLE STANDARDS

***[INSERT]***

ANNEXURE 3 - SPECIAL CONDITIONS

1. CHILD SAFETY

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE CONSULTANT AND ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONSULTANTS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE CONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONSULTANT IS CARRYING OUT ACTIVITIES THAT MAY BE PROVIDED ON A SCHOOL’S PREMISES EVEN WHERE INTERACTING WITH CHILDREN IS NOT A PART OF THE CONTRACTED ACTIVITIES.***

***IF THIS CLAUSE IS NOT APPLICABLE, INSERT “NONE STATED” UNDER THE HEADING ANNEXURE 2 – SPECIAL CONDITIONS.]***

* + 1. If any part of the activities carried out by the Consultant under the Contract (including the Services) involves the Consultant employing or engaging a person (whether as an officer, employee, agent, subconsultant, or volunteer) that is required by State or Territory law to have a working with children check to undertake such activities or any part of such activities, the Consultant agrees:
       1. without limiting its other obligations under the Contract, 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 such activities, including mandatory reporting and working with children checks however described; and
       2. if requested, provide the Principal at the Consultant’s cost, a statement of compliance with this clause, in such form as may be specified by the Principal.
    2. When child safety obligations may be relevant to a subcontract made in connection with the Contract, the Consultant must ensure that any such subcontract entered into by the Consultant for the purposes of fulfilling the Consultant’s obligations under the Contract imposes on the subconsultant the same obligations regarding child safety that the Consultant has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subconsultant in any secondary subcontracts.