

**COMMONWEALTH OF AUSTRALIA**

**DEPARTMENT OF DEFENCE**

MEDIUM WORKS CONTRACT (AUSTRALIA)

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

**PROJECT NAME: *[INSERT PROJECT NAME]***

*[CONSTRUCT ONLY/DESIGN AND CONSTRUCT]*

*[Last amended: 21 February 2023 - 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 contractor set out in the Contract Particulars (Contractor)

The Principal and the Contractor 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 22.1 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 Authorised Signatory in full |
| Name of Witness in full |

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by the **Contractor** 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 **Contractor** |  |  | 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 **Contractor** |

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

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of the **Contractor** by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

***[THESE ARE EXAMPLE EXECUTION CLAUSES ONLY. INSERT APPROPRIATE EXECUTION CLAUSE FOR CONTRACTOR]***

CONDITIONS OF CONTRACT

1. COMMENCEMENT
   1. Contractor's Obligations

The Contractor must:

* + 1. give the Contract Administrator the prior written notice specified in the Contract Particulars of when it proposes to commence work on Site; and
    2. immediately commence to perform the Contractor's Activities and commence work on the Site by the date specified in the Contract Particulars.
  1. Principal's Obligations

The Principal must:

* + 1. after:
       1. the Contractor provides the Contract Administrator with evidence satisfactory to the Contract Administrator that each insurance policy required under clause 4.3(a) is current;
       2. the Site Management Plan, the Work Health and Safety Plan and the Environmental Management Plan have been finalised under clause 8.7; and
       3. the Contractor has satisfied the conditions precedent to access set out in the Contract Particulars,

give the Contractor sufficient access to the Site to allow it to commence work on Site provided that it will not be obliged to provide such access earlier than the date stated in the Contractor's notice under clause 1.1(a); and

* + 1. subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to perform its Contract obligations.
  1. Delayed Access

Failure by the Principal to give access as required by clause 1.2(a) will not be a breach of Contract but will entitle the Contractor to:

* + 1. claim an extension of time to the Date for Completion under clause 9.4 if it is delayed in achieving Completion by the Date for Completion; and
    2. be paid by the Principal any extra costs incurred by it arising from the Principal's delay in giving the Contractor access to the Site.

The Contractor's entitlement under paragraph (b) will be its only right to payment of money arising from the Principal's failure to give access as required by clause 1.2(a) and will be subject to the Contractor complying with clause 12.

1. PERSONNEL
   1. The Contract Administrator

The Contract Administrator will act as the agent of the Principal (not as a certifier) in discharging each of the functions of the Contract Administrator under the Contract.

Any act which may be, or is required by this Contract to be, done by the Principal may be done by the Contract Administrator on the Principal's behalf.

The Contractor must comply with any direction by the Contract Administrator given or purported to be given under a provision of the Contract.

* 1. The Contractor's Representative

The Contractor must ensure that the Contractor's Representative is present on the Site at all times.

A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

* 1. Key People

The Contractor must employ those people specified in the Contract Particulars in the jobs specified in the Contract Particulars. The Contractor must not replace them without the Contract Administrator's written approval unless any of them die, become seriously ill or resign from the employment of the Contractor in which case they will be replaced with persons of at least equivalent experience, ability and expertise approved by the Contract Administrator.

* 1. Removal of Persons

The Contract Administrator may by notice in writing direct the Contractor to remove any person from the Site and the Contractor's Activities. The Contractor must ensure that this person is not again employed in the Contractor's Activities.

1. SECURITY
   1. Form

The Contractor must provide Security as set out in the Contract Particulars to the Principal:

* + 1. in the case of Approved Security, within 14 days of the Award Date: or
    2. in the case of Retention Moneys, in accordance with clause 11.5(a).
  1. Release

The Principal must:

* + 1. release one-half of any Security held under this clause 3.2 when a Completion certificate has been issued for the Works or for every Section; and
    2. release the balance of the Security held under this clause 3.2 when:
       1. the last Defects Liability Period has expired; and
       2. the Contractor has complied with all its obligations under the Contract.
  1. Interest
     1. The Principal:
        1. is not obliged to pay the Contractor interest on:
           1. the Security; or
           2. subject to paragraph (b), the proceeds of Approved Security if it is converted into cash; and
           3. does not hold the Security or proceeds or money referred to in subparagraph (i) on trust for the Contractor.
     2. If the Principal makes a call upon any Security held under clause 3.1 and obtains cash as a consequence:
        1. the Principal will pay simple interest, at the rate applying to damages for the purpose of clause 11.11, on the amount of any cash obtained in excess of the sum to which the Principal is entitled at the time of such call; and
        2. the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to the Principal at the time such amounts become payable.

1. RISKS AND INSURANCE
   1. Risk of Works

Except to the extent that it arises from a Principal Risk, the Contractor will bear the risk of and indemnify the Principal against:

* + 1. any loss of or damage to:
       1. the Works or a Section;
       2. plant, equipment and temporary work; and
       3. unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities,

until:

* + - 1. in the case of loss of or damage to the Works or a Section, a Completion certificate is issued for the Works or the Section; and
      2. otherwise, a Completion certificate is issued for the Works or the last Section to reach Completion; and
    1. after the issue of a Completion certificate for the Works or a Section, any loss of or damage to the Works or the Section arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Completion certificate for the Works or the Section.
  1. Other Risks

Except to the extent that it arises from a Principal Risk, the Contractor will indemnify the Principal against:

* + 1. any loss of or damage to property of the Principal (other than property referred to in clause 4.1(a)); and
    2. any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in connection with, the Contractor's Activities or the Works provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Contract Administrator or an Other Contractor may have contributed to the loss, damage, injury or death.

* 1. Contractor Insurance Obligations

The Contractor must:

* + 1. from the Award Date effect and maintain the insurances described in the Contract Particulars, each of which is to be:
       1. for the amounts specified in the Contract Particulars;
       2. with reputable 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);
    2. in relation to the workers compensation 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 Contractor's employees; and
       2. each of its subcontractors legally required to do so, has workers compensation insurance covering the subcontractor in respect of its statutory and common law liability to employees, in the same manner as the Contractor is required to do so under paragraph (a);
    3. 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; and
    4. ensure that any subcontractors that perform any design work forming part of the Contractor's Activities also maintain professional indemnity insurance in the same manner and on the same terms as those required to be obtained by the Contractor under paragraph (a), for not less than the amount referred to in the Contract Particulars.

The obtaining of insurance as required under this clause 4.3 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the Contract or otherwise at law or in equity.

* 1. Failure to Insure

If the Contractor fails to provide evidence satisfactory to the Contract Administrator that a policy is current or fails to obtain insurance in accordance with clause 4.3, 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 Contractor to the Principal.

* 1. Period of Insurance

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

* + 1. in the case of construction risks insurance, until the Contractor ceases to bear the risk of loss of or damage to anything under clause 4.1;
    2. in the case of public liability and workers compensation insurance, until the latest of:
       1. the end of the last Defects Liability Period;
       2. the date upon which all defects and omissions in the Works have been rectified in accordance with the Contract; and
       3. the completion of the Contractor's Activities; and
    3. in the case of professional indemnity insurance, until the expiration of the period specified in the Contract Particulars following the latest of:
       1. the last date of Completion; and
       2. the completion of the Contractor's Activities.
  1. Cross Liability

This clause 4.6 does not apply to professional indemnity insurance or workers compensation insurance. Where the Contract requires insurance to provide cover to more than one insured, the Contractor 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. POST CONTRACT DOCUMENTS
   1. Design to be Prepared by Contractor
      1. The Contractor must:
         1. design the parts of the Works which the Design Documents expressly or impliedly require it to design;
         2. ensure that its design:
            1. complies with the Contract; and
            2. maximises the achievement of the WOL Objectives; and
         3. provide the design it prepares to the Contract Administrator for its permission to use the design.
      2. For the purposes of paragraph (a)(iii), the Contractor must provide its design in:
         1. hard copy; and
         2. electronic copy,

in accordance with the requirements in the Contract Particulars.

* 1. Contract Administrator to Give Permission to Use Design

The Contract Administrator must reject or give permission to use the design provided by the Contractor or any resubmitted design within 14 days of submission by the Contractor. Where the design is rejected the Contractor must submit an amended design to the Contract Administrator and must not commence construction of the part of the Works to which it applies until the Contract Administrator gives permission to use the design.

* 1. Contractor's Design Warranty

The Contractor warrants that any design which it prepares will be fit for its intended purpose.

* 1. No Duty to Review

The Contract Administrator owes no duty to the Contractor to review the design submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the design by the Contract Administrator will relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise.

* 1. Licence over Contract Material

The Contractor 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 Contract Material, including to use, re-use, reproduce, communicate to the public, modify and adapt the Contract Material with the exception of any Contract Material referred to in the Contract Particulars.

This licence:

* + 1. arises immediately upon the creation of any Contract Material;
    2. includes an unlimited right to sublicense;
    3. 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 Principal project; and
    4. survives the termination of this Contract on any basis.
  1. Intellectual Property
     1. The Contractor warrants that:
        1. the Contractor owns all Intellectual Property Rights in the Contract Material 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 Contract Material 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 Contract Material, 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 Contract Material in accordance with this Contract will not breach any laws (including any laws in respect of Intellectual Property Rights).
     2. The Contractor indemnifies the Principal against any claims against, or costs, losses, damages or liabilities 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.
  2. Access to Premises and Project Documents

The Contractor must:

* + 1. at the request of the Contract Administrator at any time during the execution of the Contractor's Activities and the period of 10 years following expiration of the last Defects Liability Period:
       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 subcontractors 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 subcontractor to comply with the Contractor's obligations under this clause 5.7 as if the subcontractor were the Contractor.
  1. Design Certification

Without limiting the Contractor's obligations, where the Contract requires the Contractor to design any part of the Works, the Contractor must, with each payment claim under clause 11.2 and as a condition precedent to Completion of the Works or a Section, provide the Contract Administrator with:

* + 1. a certificate in the form (satisfactory to the Contract Administrator) which certifies that (to the extent then applicable):
       1. the design carried out by it complies with:
          1. subject to clause 7.3(a), all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the Contract; and
       2. the Works comply or the Section complies with the design which has been the subject of the Contract Administrator's permission under clause 5.2; and
    2. a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form satisfactory to the Contract Administrator which certifies that (to the extent then applicable):
       1. all design carried out by that subcontractor complies with:
          1. subject to the subcontract, all Statutory Requirements (including the WHS Legislation); and
          2. the requirements of the subcontract; and
       2. the Works comply or the Section complies with the design carried out by that subcontractor,

except to the extent set out in such certificates.

* 1. Samples
     1. The Contractor must obtain each sample required by the Contract and submit the sample to the Contract Administrator in accordance with the program submitted to the Contract Administrator under clause 9.2, as updated under clause 9.2(a)(ii).
     2. The Contract Administrator must reject or give permission to use the sample provided by the Contractor or any resubmitted sample within 14 days of submission by the Contractor.
     3. Where the sample is rejected the Contractor must submit an amended or substituted sample to the Contract Administrator and must not commence construction of any part of the Works to which it applies until the Contract Administrator gives permission to use the sample.
     4. The Contract Administrator owes no duty to the Contractor to review the sample submitted by the Contractor for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the sample will relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise in law or in equity.

1. THE SITE
   1. Principal Right of Entry

The Contractor must:

* + 1. at all reasonable times give to the Contract Administrator and all persons authorised in writing by the Contract Administrator, access to the Site or any areas off-Site where work is being performed; and
    2. provide the Principal with every reasonable facility for the supervision, examination and testing of any work or materials.
  1. Setting Out

The Contractor must set out the Works in accordance with the requirements of the Contract and carry out any survey which may be necessary for this purpose.

* 1. Other Contractors

Without limiting clause 8.9(a)(i)C, the Contractor must:

* + 1. co‑operate with any Other Contractors engaged by the Principal to perform other works on or in the vicinity of the Site or the Works;
    2. co‑ordinate the Contractor's Activities with the work of those Other Contractors; and
    3. use its best endeavours to facilitate the execution of the work of those Other Contractors.
  1. Site Information

The Principal does not warrant, guarantee or make any representation about the accuracy or adequacy of any information or data made available to the Contractor as to the existing conditions at the Site. Such information or data does not form part of the Contract.

The Contractor warrants that it has not placed any reliance upon the accuracy or adequacy of such information or data and acknowledges that it is aware that the Principal entered the Contract relying upon this warranty.

Unless clause 6.5 applies, the Contractor releases and indemnifies the Principal from and against all claims, whether under the Contract or (insofar as is permitted by law) any other principle of law, which it now or in the future may have against the Principal arising out of or in connection with such information or data.

* 1. Latent Conditions

If the Contractor considers it has encountered a Latent Condition it must immediately give the Contract Administrator notice in writing.

The Contract Administrator must, within 14 days of receipt of the Contractor's notice:

* + 1. notify the Contractor and the Principal of its determination whether a Latent Condition has been encountered or found; and
    2. instruct the Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Latent Condition.

If the Contract Administrator determines that a Latent Condition has been encountered the Contractor will be entitled to:

* + 1. claim an extension of time to the Date for Completion under clause 9.4 if it is delayed in achieving Completion by the Date for Completion; and
    2. be paid by the Principal any extra costs incurred by the Contractor after the giving of a notice under this clause 6.5 arising from the Latent Condition, valued by the Contract Administrator as a Variation.

The Contractor's entitlement under paragraph (d) will be its only right to payment of money arising from the Latent Condition and will be subject to the Contractor complying with clause 12.

* 1. Cleaning Up

The Contractor must keep the Site, the Works and the Environment clean and tidy.

* 1. Urgent Protection

The Principal may take any action necessary to protect the Works, other property, the Environment or to prevent or minimise risks to the health and safety of persons if:

* + 1. this is necessary and it is not practicable to have the Contractor take the action; or
    2. it was action which the Contractor should have taken but did not.

Where the Principal takes action under this clause 6.7:

* + 1. in the case of paragraph (a), the reasonable costs incurred by the Principal will be a debt due from the Contractor to the Principal; or
    2. in the case of paragraph (b), all costs incurred by the Principal will be a debt due from the Contractor to the Principal.
  1. Valuable Objects found on Site

Any valuable, archaeological or special interest items found on or in the Site will, as between the parties, be the property of the Principal. Where such an item is found the Contractor must:

* + 1. immediately notify the Contract Administrator;
    2. protect it and not disturb it further; and
    3. comply with any directions of the Contract Administrator in relation to the item.

Subject to the Contractor complying with clause 12, the Principal will pay the Contractor the reasonable extra costs incurred by it in complying with the Contract Administrator's directions.

* 1. The Environment

The Contractor must:

* + 1. ensure that in carrying out the Contractor's Activities:
       1. 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;
       2. it does not cause any Environmental Incident;
       3. without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
       4. it immediately notifies the Contract Administrator of:
          1. any non-compliance with the requirements of this clause 6.9;
          2. a breach of any Statutory Requirement for the protection of the Environment;
          3. any Environmental Incident; or
          4. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
       5. its subcontractors comply with the requirements in this clause 6.9; and
    2. clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of, or in connection with, the Contractor's Activities, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment.
  1. Salvaged Materials

Subject to clause 6.8, unless expressly stated to the contrary in the Contract or directed by the Contract Administrator, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Works are the property of the Contractor.

* 1. Project Signboards

This clause 6.11 only applies if the Contract Particulars state that it applies.

* + 1. The Contractor must provide the number of project signboards specified in the Contract Particulars, each of which must:
       1. be in the dimensions specified in the Contract Particulars;
       2. set out:
          1. the name of the project;
          2. the names of the parties to the Contract;
          3. the name of the Contract Administrator;
          4. a general description of the Works;
          5. a contact name and phone number (including after hours number) for the principal contractor pursuant to the WHS Legislation;
          6. the Date for Completion;
          7. the location of the Site office (if any);
          8. an 'Acknowledgement of Country' in accordance with the requirements set out in the website specified in the Contract Particulars; and
          9. any other information specified in the Contract Particulars.
    2. The Contractor must, within 14 days of the commencement of the Contractor's Activities on Site, submit the proposed layout, location and content of the project signboards to the Contract Administrator for approval.
    3. Once approved by the Contract Administrator, the Contractor must:
       1. fix the project signboards in the locations approved by the Contract Administrator;
       2. maintain the project signboards until the last date of Completion; and
       3. dismantle and remove the project signboards within 7 days of the last date of Completion.
  1. Measurements and Dimensions

Without limiting clause 6.2:

* + 1. the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
    2. the layout of plant, equipment, ductwork, pipework and cabling shown in the Design Documents (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
    3. the Principal will not be liable upon any claim by the Contractor resulting from the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by this clause 6.12.

1. CONSTRUCTION
   1. Description of Works

The Contractor must construct the Works only in accordance with:

* + 1. the Design Documents;
    2. any design prepared by the Contractor and for which the Contract Administrator has given permission to use under clause 5.2;
    3. any direction of the Contract Administrator, including a Variation directed by the Contract Administrator by a written document titled "Variation Order"; and
    4. any other requirement of the Contract.

The Contractor must, without adjustment of the Contract Price, provide all work or materials necessary for the Contractor's Activities and which a prudent, competent and experienced contractor should have realised would have been required whether or not expressly mentioned in the Design Documents or the design prepared by the Contractor which the Contract Administrator has given permission to use under clause 5.2.

* 1. Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract the order of precedence in the Contract Particulars will apply.

If the Contractor or the Contract Administrator considers there is any ambiguity, discrepancy or inconsistency in any documents which form part of the Contract, it must give notice to the other.

The Contract Administrator must direct the Contractor as to the course it must adopt within 14 days of this notice.

If the Contractor believes this direction constitutes a Variation it must give notice to the Contract Administrator under clause 10.4 before it complies with this direction.

* 1. Authority Requirements

The Contractor must:

* + 1. perform the Contractor's Activities so that the Contractor's Activities at all times and the Works (on Completion) comply with the:
       1. National Construction Code except to the extent otherwise specified in the Contract Particulars or notified in writing to the Contractor by the Contract Administrator;
       2. Statutory Requirements; and
       3. other requirements set out in the Contract Particulars or notified in writing to the Contractor by the Contract Administrator;
    2. apply for all Approvals, give all notices and pay all fees necessary to perform its Contract obligations; and
    3. give the Principal copies of all relevant Approvals.

If the requirements with which the Contractor must comply under this clause 7.3 change after the Award Date, the Contractor must give written notice to the Contract Administrator seeking instructions. Any instruction issued by the Contract Administrator that requires the Contractor to do more work than could reasonably have been anticipated at the Award Date will, subject to the Contractor complying with clause 12, entitle the Contractor to payment for the extra work as a Variation.

* 1. Subcontracting
     1. No part of the Contractor's Activities may be subcontracted without the prior written approval of the Contract Administrator, except to a subcontractor or subconsultant named in the Contract Particulars.
     2. Where the Contractor receives approval in accordance with paragraph (a) or where Provisional Sum Work is to be performed under clause 7.5, it must ensure that each subcontract contains provisions as required by this Contract.
     3. The Contractor remains fully responsible for the Contractor's Activities notwithstanding the Contractor has subcontracted the performance of any part of the Contractor's Activities.
     4. The Contractor must, prior to Completion, procure and provide the Principal with the warranties described in the Contract Particulars from the relevant subcontractor. These warranties must be in favour of the Principal and in the form of the Collateral Warranty.
     5. No Collateral Warranty will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor under the Contract or otherwise.
     6. If the Contractor is unable to or fails for any reason to provide any Collateral Warranty required by this Contract:
        1. the Contractor is deemed to have provided the Collateral Warranty itself on like terms;
        2. the Principal will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
        3. for the purposes of subparagraph (ii), the Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.
     7. No assignment under this clause 7.4 will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor under the Contract or otherwise at law or in equity.
     8. The Contractor must obtain and hold satisfactory and valid STRs of any subcontractor or subconsultant referred to in paragraph (a) where the subcontract price is valued (or estimated) to be over $4 million (inclusive of GST). For the purposes of this paragraph (h), a reference to “satisfactory” and “valid” has the meaning given in clause 17.14(f).
  2. Provisional Sum Work

Provisional Sum Work must be performed under subcontracts entered into by the Contractor.

The Contractor must enter into these subcontracts as follows:

* + 1. after the Contract Administrator provides the Design Documents for the Provisional Sum Work or gives permission under clause 5.2 to use the design prepared by the Contractor for the Provisional Sum Work, it must invite tenders from the number of persons directed by the Contract Administrator, each of whom must be approved by the Contract Administrator;
    2. it must give copies of each tender to the Contract Administrator; and
    3. it must enter into a subcontract with a tenderer on the basis of value for money as directed by the Contract Administrator.

After the Contractor is directed to enter into a subcontract for Provisional Sum Work:

* + 1. the Contract Price will, if the amount tendered by the tenderer with whom the Contractor is directed to enter into a subcontract is more or less than the amount allowed in the Contract Particulars for the Provisional Sum Work, be increased or decreased (as the case may be) by the amount of the difference (with no margin); and
    2. any Variation to that work will be dealt with under clause 10.
  1. Pandemic Adjustment Event
     1. If either party considers that there has been a Pandemic Adjustment Event, then the party discovering it must promptly give the Contract Administrator and the other party notice in writing, together with detailed particulars of the relevant event and such other information as the Contract Administrator may require.
     2. The Contract Administrator must, within 14 days of receipt of a notice under paragraph (a), notify the Contractor and the Principal of its determination whether a Pandemic Adjustment Event has occurred.
     3. 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 Contractor as to the course it must adopt insofar as the Contractor's Activities are affected by the Pandemic Adjustment Event.
     4. If a Pandemic Adjustment Event occurs:
        1. subject to paragraph (f), the Contractor will be entitled to:
           1. an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 9.5; and
           2. have the Contract Price increased by the extra costs reasonably incurred by the Contractor 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), as determined by the Contract Administrator;
        2. subject to paragraph (f), the Contract Price will be decreased by any savings made (or which would have been made if the Contractor had taken all reasonable steps to maximise savings) by the Contractor which arise directly from the Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), as determined by the Contract Administrator; and
        3. the Contractor must:
           1. comply with any direction of the Contract Administrator in relation to the Pandemic Adjustment Event; and
           2. update the Pandemic Management Plan on account of the Pandemic Adjustment Event in accordance with clause 8.7.
     5. 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 7.6; and
        2. without limiting subparagraph (i), the Contractor 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 a Pandemic Adjustment Event or any instruction of the Contract Administrator under paragraph (c), other than under paragraph (d)(i).
     6. The Contract Administrator:
        1. will reduce any entitlement the Contractor would have otherwise had under paragraph (d)(i)B to the extent that the Contractor has failed to take all reasonable steps to:
           1. avoid or overcome any adverse effects of the Pandemic Adjustment Event (including by implementing and complying with its Pandemic Management Plan and its other obligations under the Contract); or
           2. minimise any additional cost to the Principal in respect of the Pandemic Adjustment Event;
        2. will take into account, for the purposes of paragraph (d)(ii), the extent that the Contractor has failed to take all reasonable steps to maximise any savings to the Principal in respect of the Pandemic Adjustment Event; and
        3. may, for the purposes of assessing the Contractor's entitlement under paragraph (d)(i)B or the adjustment under paragraph (d)(ii), take into account:
           1. any breakdown of the Contract Price submitted by the Contractor in its tender for the Contractor's Activities; and
           2. the Local Industry Capability Plan and Pandemic Management Plan as finalised under clause 8.7.

1. QUALITY
   1. Construction

The Contractor must, in performing the Contractor's Activities:

* + 1. use workmanship of the highest standard which is fit for its intended purpose;
    2. use first quality new materials which comply with the requirements of the Contract or, if not fully described in the Contract, are fit for their intended purpose and consistent with the nature and character of the Works;
    3. comply with the requirements of the Contract and, to the extent they are not inconsistent with the Contract requirements, with all relevant:
       1. standards of Standards Australia (except to the extent either set out in the Contract Particulars or otherwise notified in writing to the Contractor by the Contract Administrator); and
       2. other standards either set out in the Contract Particulars or notified in writing to the Contractor by the Contract Administrator; and
    4. use metric scales and standards for all measurements and dimensions.
  1. Quality Assurance

The Contractor:

* + 1. must implement the quality assurance process, system or framework in its Quality Plan;
    2. without limiting clause 5.7, must allow the Contract Administrator or anyone else acting on behalf of the Principal access to the quality assurance process, system or framework of the Contractor and its subcontractors so as to enable auditing or other monitoring; and
    3. will not be relieved from compliance with any of its obligations under the Contract or otherwise at law or in equity 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 Contractor's quality assurance process, system or framework or its compliance or non‑compliance with the process, system or framework;
       3. any audit or other monitoring by the Contract Administrator or anyone else acting on behalf of the Principal of the Contractor's compliance with the quality assurance process, system or framework; or
       4. any failure by the Contract Administrator, or anyone else acting on behalf of the Principal, to detect any Contractor's Activities or aspects of the Works 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. Testing

The Contractor must carry out all tests directed by the Contract Administrator or which the Contract requires it to carry out.

If the Contract Administrator directs the Contractor to carry out a test which is not:

* + 1. otherwise required by the Contract; or
    2. upon work in respect of which the Contract Administrator gave a direction under clause 8.4,

and the results of the test show the work is in accordance with the Contract, the reasonable costs of carrying out the test will, subject to the Contractor complying with clause 12, be assessed by the Contractor Administrator and added to the Contract Price.

* 1. Non-Complying Activities Before Completion

If, before the date of Completion, in the opinion of the Contract Administrator any part of the Contractor's Activities is not in accordance with the Contract, it may give the Contractor a direction specifying the non-conformance and:

* + 1. requiring the Contractor to correct it or carry out a Variation, and specifying the time within which either must occur; or
    2. advising the Contractor that the Principal will accept the work despite the non-conformance.

If a direction is given under paragraph (a), the Contractor:

* + 1. must correct the non-conformance or carry out the Variation within the time specified in the Contract Administrator's direction; and
    2. will only be entitled to receive an extension of time or to have the Contract Price adjusted, for correcting the non-conformance or carrying out the Variation if:
       1. it complies with clauses 9.4, 10.4 and 12 (as the case may be); and
       2. the non-conformance is something for which the Contractor is not responsible.

If a direction is given under paragraph (b) and the Contractor is responsible for the non-conformance, the Contract Price will be reduced by the amount determined by the Contract Administrator which represents the cost of correcting the non-conformance.

* 1. Defects Liability Period

After the date of Completion the Contract Administrator may, in respect of any defect or omission in the Works or a Section which existed prior to the date of Completion or becomes apparent during a Defects Liability Period, give the Contractor a written direction specifying the defect or omission and:

* + 1. requiring the Contractor to correct it or to carry out a Variation, and specifying the time within which either must occur; or
    2. advising the Contractor that the Principal will accept the work despite the defect or omission.

If a direction is given under paragraph (a), the Contractor:

* + 1. must correct the defect or omission or carry out the Variation within the time specified in the Contract Administrator's direction, but at times and in a manner which cause as little inconvenience to the occupants of the Works or the Section as is reasonably possible; and
    2. will only be entitled to have the Contract Price adjusted for correcting the defect or omission or carrying out the Variation if it complies with clauses 10.4 and 12 and if the defect or omission is something for which the Contractor is not responsible.

If a direction is given under paragraph (b) and the Contractor is responsible for the defect or omission, the Contract Price will be reduced by the amount determined by the Contract Administrator which represents the cost of correcting the defect or omission.

* 1. Defects Liability Period Review and Report
     1. Without limiting clause 8.5, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all defects or omissions during the Defects Liability Period.
     2. Within 14 days of the end of the Defects Liability Period for the Works or a Section, the Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator which sets out:
        1. adequate records of all calls, attendances, recommendations and actions taken in respect of all defects or omissions;
        2. recommendations for the future maintenance of the Works;
        3. any matters in respect of work health and safety issues; and
        4. any other matters specified in the Contract Particulars or required by the Contract Administrator.
  2. Project Plans
     1. The Contractor:
        1. must carry out the Contractor's Activities 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 Contractor's Activities to be covered by the Project Plans, submitted by the Contractor in its tender for the Contractor's Activities 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 Contractor's Activities and in any event no later than the number of days set out in the Contract Particulars after the Award Date for each Project Plan;
           2. not commence any of the Contractor's Activities 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;
           3. if any draft Project Plan is rejected, submit an amended draft of the Project Plan to the Contract Administrator;
           4. in any event, finalise each Project Plan so as to ensure that there is no delay or disruption to the Contractor's Activities and in any event in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator;
           5. 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 Contractor) 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
           6. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
     2. The Contractor 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 Contractor's compliance or non‑compliance with a Project Plan;
        3. any audit or other monitoring by the Contract Administrator of the Contractor'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.
  3. Commissioning and Handover

Without limiting clause 8.9(a)(i)C or clause 13, the Contractor must:

* + 1. fully co-operate with any Commonwealth, State, Territory or local agencies or authorities and otherwise take all steps necessary to ensure:
       1. the timely, efficient and comprehensive commissioning of the Works; and
       2. the smooth handover of the Works to, and the initial occupation of the Works by, the occupants;
    2. without limiting paragraph (a):
       1. comply with its Commissioning and Handover Plan; and
       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 (if required);
    3. as a condition precedent to Completion, hand to the Contract Administrator or other person nominated by the Contract Administrator all Project Documents which are required for the use, operation and maintenance of the Works or the relevant Section; and
    4. 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 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. Work Health and Safety
     1. The Contractor must:
        1. ensure that in carrying out the Contractor's Activities:
           1. it complies with all Statutory Requirements and other requirements of the Contract for 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 Contractor 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:

assist an injured person or remove a deceased person;

make the area safe or to minimise the risk of a further notifiable incident; or

the relevant regulator/inspector has given permission to disturb the site;

* + - 1. without limiting the Contractor's obligations under this 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 other all work health and safety matters arising out of or in connection with the Contractor's Activities and the Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraph A or B), in a monthly report;
      2. for the purposes of paragraphs (a)(i)D and (ii) 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;
      3. if applicable, maintain accreditation under the WHS Accreditation Scheme at all times whilst carrying out the Contractor's Activities and comply with all conditions of the WHS Accreditation Scheme;
      4. if applicable, where the Contractor is a joint venture, ensure:
         1. the party holding the accreditation in accordance with the WHS Accreditation Scheme at the Award Date:

maintains accreditation at all times whilst carrying out the Contractor's Activities; and

complies with all conditions of the WHS Accreditation Scheme;

* + - * 1. any parties carrying out the Contractor's Activities (where those activities include building work as defined in the *Federal Safety Commissioner Act 2022* (Cth)) that do not hold accreditation in accordance with the WHS Accreditation Scheme comply with the written undertakings provided to the Federal Safety Commissioner and lodged as part of their tender;
      1. carry out the Contractor's Activities safely and in a manner that does not put the health and safety of persons at risk;
      2. carry out the Contractor's Activities in a manner that protects property;
      3. institute systems to:
         1. obtain regular written assurances from each Other Contractor and subcontractor about their ongoing compliance with the WHS Legislation; and
         2. provide, in a format specified by the Contract Administrator, the written assurances regarding the Contractor's ongoing compliance with the WHS Legislation:

on a quarterly basis (when requested by the Contract Administrator); and

as otherwise directed by the Contract Administrator;

* + - 1. provide the written assurances obtained under paragraph (viii), to the Contract Administrator in accordance with paragraph (viii);
      2. without limiting the Contractor'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. applicable WHS Legislation to the Contractor or subcontractor relating to work health and safety matters;
         2. all formal notices issued by a health and safety representative of the Contractor or subcontractor, under or in compliance with the applicable WHS Legislation; and
         3. all formal notices, written communications and written undertakings given by the Contractor or subcontractor 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 Contractor's Activities or the Works;

* + - 1. exercise a duty of the utmost good faith to the Principal in carrying out the Contractor's Activities 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 Contractor in this clause 8.9;
      3. ensure that, if any Statutory Requirement, requires that:
         1. a person:

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

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

* + - * 1. 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;
      1. not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any Statutory Requirement and paragraph (xiii) are met;
      2. 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;
      3. without limiting the Contractor's obligations under the Contract (including paragraph (iii) 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 Contractor or a subcontractor 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;
      4. 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 Contractor or any subcontractor commences such work;
      5. where the Contractor is a supplier, manufacturer, designer or importer for the purposes of the WHS Legislation, provide to the Contract Administrator as a condition precedent to Completion and before the expiry of the Defects Liability Period 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 A (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;
      6. ensure that any design prepared by the Contractor under clause 5.1 eliminates or minimises the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
      7. not use Asbestos or ACM in carrying out the Contractor's Activities;
      8. not use, install or incorporate Asbestos or ACM into the Works;
      9. provide a certificate to the Contract Administrator in a form satisfactory to the Contract Administrator as a condition precedent to Completion which states that:
         1. all materials, goods, products, equipment and plant (including any imported materials, goods, products, equipment and plant) used, installed or incorporated into the Works are entirely (meaning 100%) free of Asbestos and ACM; and
         2. the Contractor has otherwise complied with all Statutory Requirements in relation to Asbestos and ACM in carrying out the Contractor's Activities and the Works;
      10. without limiting paragraph (xxii), if any imported materials, goods, products, equipment and plant have or has been used, installed or incorporated into the Works, the Contractor must provide to the Contract Administrator as a condition precedent to Completion:
          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 which have or has been used, installed or incorporated into the Works; and

* + - 1. if the Contractor is a designer of a structure (or part of a structure) for the purposes of the WHS Legislation, the Contractor must provide to the Contract Administrator, with each submission of its design under clause 5.1, a written report that specifies the hazards relating to the design of the structure (or part) which, as far as the Contractor 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. In accordance with Regulation 293 of the *Work Health and Safety Regulation 2011* (Cth) and any corresponding WHS law (as defined in the WHS Legislation) including Regulation 333 of the *Occupational Health and Safety Regulations 2017* (Vic), if the Contractor carries out relevant construction work, the Principal engages and appoints (as relevant) the Contractor as the principal contractor for the construction project and the Contract and authorises the Contractor to have management or control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project and the Contract, pursuant to the *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth) and any corresponding WHS law. The Contractor accepts the engagement and appointment (as relevant) as principal contractor and will fulfil the obligations of principal contractor for the construction project and the Contract, unless relieved of that engagement or appointment (as relevant) by notice in writing given by the Principal or the Contract Administrator.

1. TIME
   1. Progress

The Contractor must progress the Contractor's Activities in a manner and at a rate of progress satisfactory to the Contract Administrator.

* 1. Programming
     1. The Contractor must:
        1. within 14 days of the Award Date prepare a program of the Contractor's Activities to contain such details as the Contract Administrator reasonably directs; and
        2. update the program from time to time to take account of changes to the program.
     2. The Contractor must give the Contract Administrator copies of all programs.
     3. Any review of or comments upon a program by the Contract Administrator will not:
        1. relieve the Contractor from or alter its obligations under the Contract, especially (without limitation) the obligation to achieve Completion by the Date for Completion;
        2. evidence or constitute a direction by the Contract Administrator to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
        3. affect the time for performance of the Principal's or Contract Administrator's Contract obligations, including oblige the Principal or Contract Administrator to do anything earlier than is necessary to enable the Contractor to achieve Completion by the Date for Completion.
  2. Time for Completion
     1. The Contractor must achieve Completion by the Date for Completion.
     2. The Contractor may, if it chooses, accelerate progress and reach Completion before the Date for Completion.
     3. If the Contractor chooses to accelerate progress neither the Principal, the Contract Administrator nor any other person will be obliged to do or not do anything to enable the Contractor to reach Completion before the Date for Completion and doing or failing to do anything is not an act or omission by the Principal, the Contract Administrator or a person for whom the Principal is responsible.
     4. The time for performance of the Principal's or Contract Administrator's obligations is not affected by the Contractor's decision to accelerate.
  3. Delay

If the Contractor is or will be delayed (prior to the Date for Completion) in reaching Completion of the Works or a Section by the Date for Completion or will be delayed (after the Date for Completion) in reaching Completion of the Works or a Section by:

* + 1. an act or omission (including breach of Contract) of the Principal, the Contract Administrator or an employee of the Principal;
    2. subject to clause 8.4(d), a Variation;
    3. Latent Conditions;
    4. proceedings being taken by adjacent or neighbouring owners or occupiers;
    5. statewide or national industrial disputation, or other industrial disputation caused by the Principal, which in neither case is caused or contributed to by the Contractor or any subcontractor of the Contractor;
    6. inclement weather at the Site (excluding the conditions resulting from inclement weather) which:
       1. is abnormal or unseasonal, having regard to the typical weather conditions prevailing at the location of the Site; and
       2. could not have been anticipated by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonable have done in preparing its tender;
    7. delay of any governmental authority in giving any Approval for the Works;
    8. paragraph (c), (d) or (e) of the Principal Risks;
    9. a change in the requirements of local or other authorities after the Award Date;
    10. a Pandemic Adjustment Event; or
    11. a bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Contractor’s Activities,

the Contractor may claim an extension of time to the Date for Completion.

To claim an extension of time to the Date for Completion the Contractor must submit a claim to the Contract Administrator:

* + 1. within 14 days of the commencement of the delay; and
    2. which gives detailed particulars of the delay and (if possible) states the number of days' extension of time claimed.
  1. Extension of Time

The Date for Completion will be extended:

* + 1. where the Contractor has made a claim in accordance with clause 9.4 and the Contractor will be delayed:
       1. prior to the Date for Completion, in achieving Completion by the Date for Completion; or
       2. after the Date for Completion, in achieving Completion,

by a reasonable period determined by the Contract Administrator and notified to the parties within 14 days after the later of the Contractor's notice under clause 9.4 or the end of the effects of the delay; and

* + 1. by any period specified in a notice to the Contractor by the Principal who may (in its absolute discretion) by such a notice unilaterally extend the Date for Completion.

The parties acknowledge that:

* + 1. the Principal is not required to exercise the Principal's discretion under paragraph (b) for the benefit of the Contractor;
    2. paragraph (b) does not give the Contractor any rights; and
    3. the exercise or failure to exercise the Principal's discretion under paragraph (b) is not capable of being the subject of a dispute or difference for the purposes of clause 15 or otherwise.
  1. Agreed Damages

Subject to complying with clause 12, the Contractor will be entitled to be paid the amount in the Contract Particulars for each day by which the Date for Completion is extended due to a breach of Contract by the Principal.

This amount:

* + 1. is the agreed damages which will be payable by the Principal in these circumstances; and
    2. will be a limitation upon the Principal's liability to the Contractor for any delay or disruption which:
       1. the Contractor encounters in performing the Contractor's Activities; and
       2. arises from a breach of Contract by the Principal.
  1. Suspension

The Contract Administrator may direct the Contractor to suspend and or to re-commence performance of all or a part of the Contractor's Activities.

Unless the suspension is the result of the Contractor's failure to perform its Contract obligations, a direction to suspend under this clause 9.7 will entitle the Contractor to:

* + 1. claim an extension of time to the Date for Completion under clause 9.4 if it is delayed as required by clause 9.5(a); and
    2. be paid by the Principal the extra costs incurred by it as a result of the suspension.

The Contractor's entitlement under paragraph (b) will be its only right to payment of money arising from a direction to suspend and will be subject to the Contractor complying with clause 12 and taking all steps possible to mitigate its extra costs.

1. VARIATIONS
   1. Variation Price Request

The Contract Administrator may, from time to time, and without limiting clause 8.5, issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering with respect to the Works or a Section.

Within 7 days of receipt of a "Variation Price Request" the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:

* + 1. the adjustment (if any) to the Contract Price 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 10.1, the Contract Administrator may direct the Contractor 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 Contract Price as set out in the Contractor's notice under clause 10.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
    2. any adjustment to the Contract Price will be determined under clauses 10.3(a) and 10.3(b).

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

Subject to clauses 8.4, 8.5, 10.4 and 12.3, the Contract Price will be adjusted for the value of all Variations carried out by the Contractor by:

* + 1. if there is a Table of Variation Rates and Prices, an amount determined by using any rates or prices in this which may be applicable to the Variation; or
    2. a reasonable amount to be agreed between the parties or, in default of such agreement, determined by the Contract Administrator.

In either case the value of the Variation must include any extra reasonable costs which will be incurred by the Contractor as a direct result of the Variation delaying the Contractor achieving Completion by the Date for Completion.

* 1. Notice of Variation

If the Contractor believes a direction by the Contract Administrator, other than a direction under clause 7.3 or a "Variation Order" under clause 10.2, constitutes or involves a Variation it must within 7 days of, and before complying with, the direction give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation.

If this notice is not given:

* + 1. the Contract Price will not be adjusted as a result of that direction; and
    2. the Principal will not be liable upon any claim by the Contractor arising out of or in connection with that direction, whether under the Contract or (insofar as is permitted by law) any other principle of law.

Despite that the Contractor considers that such a direction by the Contract Administrator constitutes or involves a Variation, the Contractor must continue to perform the Contractor's Activities 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 10.4.

1. PAYMENT
   1. Payment Obligation

Subject to clause 11.13 and to any other right to set-off which the Principal may have, the Principal will pay the Contractor the Contract Price and any other amounts which are payable by the Principal to the Contractor under the Contract.

* 1. Payment Claims

Subject to clause 11.3, the Contractor must give to the Contract Administrator claims for payment on account of the Contract Price and all other amounts then payable by the Principal to the Contractor under the Contract:

* + 1. at the times stated in the Contract Particulars until Completion or termination of the Contract (whichever is earlier);
    2. unless terminated earlier:
       1. after Completion, within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Completion certificate under clause 13.1; and
       2. after the Defects Liability Period, within the time required by clause 11.9;
    3. in a format approved by the Contract Administrator 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 this is relevant;
    5. which show separately the amounts (if any) claimed on account of the Contract Price and all other amounts then payable by the Principal to the Contractor 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 Contractor:
       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 Contractor 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 Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
  1. Conditions Precedent
     1. The Contractor's entitlement to submit a payment claim under clause 11.2 is conditional upon the Contractor having:
        1. provided the Principal with Approved Security for the amount (if any) required under clause 3.1;
        2. obtained the insurance required by clause 4.3 and (if requested) provided evidence of this to the Contract Administrator;
        3. complied with its programming obligations under clause 9.2;
        4. complied with clause 11.14;
        5. if clause 14.3(b) applies - complied with clause 14.3(b); and
        6. 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 Contractor 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 11.2;
        2. the Contract Administrator will not be obliged to include in any payment statement under clause 11.4 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 Contractor:
        1. submits a payment claim; and
        2. has failed to comply with the requirements of clause 11.2(f) in relation to any amount (or portion of any amount) in the payment claim,

then:

* + - 1. the Contractor will not be entitled to payment of;
      2. the Contract Administrator will not be obliged to include in any payment statement under clause 11.4; 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 Contractor has failed to comply with the requirements of clause 11.2(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 Contractor) issues a written notice to the Contractor identifying the documentation or information which the Contractor has failed to provide under clause 11.2(f); and
      2. the Contractor 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 11.2; or
    2. may, if the Contractor fails to submit any such claim in accordance with clause 11.2, at any time,

give the Contractor (with a copy to the Principal), on behalf of the Principal, a payment statement which is in the form approved by the Contract Administrator which states:

* + 1. the payment claim to which it relates (if any);
    2. the Contractor's total value of entitlement to payment under the Contract;
    3. the amount already paid to the Contractor;
    4. the amount (if any) which the Contract Administrator believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise in accordance with the Contract and which the Principal proposes to pay to the Contractor taking into account (if applicable) clause 11.5(a); 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 work nor will it be taken as an admission or evidence that the part of the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract; or
    2. a waiver of the requirements of clauses 11.2 and 11.3 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. If Security is by way of Retention Moneys, then the Principal may deduct the percentage stated in the Contract Particulars of every payment until it has accrued the percentage of the Contract Price stated in the Contract Particulars.
     2. Within 3 business days of the Contractor receiving a payment statement under clause 11.4, the Contractor 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 Contractor in the payment statement.
     3. Within the number of business days stated in the Contract Particulars of the Principal receiving a payment statement under clause 11.4, the Principal will pay the Contractor the amounts set out as then payable in the payment statement.
  2. Payment on Account

Any payment of moneys under clause 11.5 is not:

* + 1. evidence of the value of work or that work has 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 Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

* 1. Unfixed Goods and Materials

Unfixed goods or materials will not be included in the value of work in a payment statement under clause 11.4 unless:

* + 1. the Contract Administrator is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
    2. the Contractor gives the Contract Administrator with its payment claim under clause 11.2:
       1. additional Approved Security equal to the payment claimed for the unfixed goods and materials; and
       2. such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in the Principal upon payment;
    3. the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and
    4. the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.

Upon payment of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.

* 1. Release of Additional Approved Security

If the Contractor has given the Principal additional Approved Security for payment for unfixed goods and materials, the Principal must release it to the Contractor once those goods and materials are incorporated into the Works.

* 1. Completion Payment Claim and Notice

Within 28 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Completion certificate under clause 13.1 for the Works or a Section, the Contractor must give the Contract Administrator:

* + 1. a payment claim which complies with clause 11.2 and which must include all amounts which the Contractor claims from the Principal on account of all amounts payable under the Contract; and
    2. notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in connection with, the Contractor's Activities or the Contract which:

* + 1. in the case of the Works, occurred prior to the date of Completion of the Works; or
    2. in the case of a Section, occurred prior to the date of Completion of the Section, insofar as the fact, matter or thing relates to the Section.

The payment claim and notice required under this clause 11.9 are in addition to the other notices which the Contractor 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 Contractor cannot include in this payment claim or notice any claims which are barred by clause 12.3.

* 1. Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 11.9 has passed, the Contractor releases the Principal from any claim in respect of any fact, matter or thing arising out of, or in connection with, the Contractor's Activities or the Contract which:

* + 1. in the case of the Works, occurred prior to the date of Completion of the Works; or
    2. in the case of a Section, occurred prior to the date of Completion of the Section, insofar as the fact, matter or thing relates to the Section,

except for any claim included in a payment claim or notice under clause 11.9 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 11.9.

* 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 11.4, but which is not paid by the Principal within the time required by the Contract; and
    2. damages (excluding any agreed damages under clause 9.6).

This will be the Contractor'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, correct any error in any previous payment statement and 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 Contractor:
       1. any debt or other moneys due from the Contractor to the Principal; and
       2. any claim to money which the Principal may have against the Contractor whether for damages or otherwise,

under the Contract or otherwise at law or in equity relating to the Works or the Contractor's Activities; and

* + 1. without limiting paragraph (a), deduct any debt or claim referred to in paragraphs (a)(i) or (a)(ii) from any moneys which may be or thereafter become payable to the Contractor by the Principal in respect of any Variation the subject of a "Variation Order" under clause 10.2.
  1. Payment of Workers and Subcontractors - Option 1 (All Other States and Territories)

The Contractor must with each payment claim under clause 11.2 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 Contractor or, where the Contractor is a corporation, by a representative of the Contractor 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 subcontractors):
       1. all workers who have at any time been employed by the Contractor in connection with the Contractor's Activities 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 Contractor's Activities; and
       2. all subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities; 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 subcontractor have been paid all moneys due and payable to them in respect of their employment in connection with the Contractor's Activities.

The Principal is entitled to withhold from any payment which would otherwise be due to the Contractor under the Contract, the amount disclosed as unpaid under this clause 11.14.

11.14 Payment of Workers and Subcontractors - Option 2 (New South Wales Only)

The Contractor is not entitled to give the Contract Administrator a payment claim under clause 11.2 and the Principal is not obliged to make any payment under clause 11.5 unless the Contractor 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 5 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 4.3(b).

The Principal is entitled to withhold from any amount stated as then payable by the Principal in a payment statement under this clause 11.4 the amount disclosed as unpaid under this clause 11.14.

* 1. GST
     1. Subject to paragraph (b), where any supply occurs under or in connection with the Contract or the Works 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 Works 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 11.15 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 Contractor, the Contractor bears the risk of, and must pay, all Taxes (except to the extent of the GST under clause 11.15 or as otherwise set out in the Contract Particulars) incurred or imposed in connection with the:

* + 1. Works;
    2. Contractor's Activities;
    3. Contract; or
    4. Site.
  1. Security of Payment Legislation

The Contractor agrees with the Principal that:

* + 1. a payment claim submitted to the Contract Administrator under clause 11.2 which also purports to be (or is by 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 Contractor 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 clause 11.2(a) and 11.2(b) on which the Contractor has satisfied the requirements of clause 11.3(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. Payment Times Procurement Connected Policy

Clauses 11.18 to 11.23 do not apply unless the Contract Particulars state that they apply.

* 1. PT PCP Subcontracts
     1. The Contractor must comply with the Payment Times Procurement Connected Policy.
     2. If the Contractor enters into a PT PCP Subcontract, the Contractor must include in the PT PCP Subcontract:
        1. a requirement for the Contractor 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 Contractor 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 Principal 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 Contractor enters into a Reporting Entity Subcontract in anticipation of, or after, entering into the Contract, the Contractor 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 Contractor is not required to pay any interest in accordance with paragraph (b)(i)B if either:
        1. the Principal has failed to pay the Contractor 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 Contractor 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 Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 days of the request.

* 1. PT PCP Non-Compliance and Remediation
     1. If the Principal considers or becomes aware that the Contractor has not or may not have complied with:
        1. the requirements of clause 11.19; or
        2. the payment requirements of a PT PCP Subcontract,

the Principal may direct the Contractor 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 Contractor's compliance; or
      2. a properly completed PT PCP Remediation Plan.
    1. The Contractor 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 Contractor has failed to comply with any of its obligations under clauses 11.18 to 11.23, 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 Contractor'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 Contractor agrees that if it is the subject of a complaint in relation to its compliance with clause 11.19 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. PT PCP Consent
     1. For any PT PCP Purpose, the Contractor 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 Contractor 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 Contractor 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 11.22. The Contractor will provide evidence of such consents to the Principal on request.
  1. PT PCP Interpretation

A reference to the Principal in clauses 11.20, 11.21(a), 11.21(d)(ii) and 11.22 includes the PT PCP Policy Team.

1. NOTIFICATION OF CLAIMS
   1. Notices

If the Contractor wishes to make a claim against the Principal, other than a claim for an extension of time under clause 9.4 or a payment claim under clause 11.2 in respect of any fact, matter or thing arising out of or in connection with the Contractor's Activities or the Works, it must give the Contract Administrator the following:

* + 1. within 21 days of the occurrence of the events on which the claim is based, written notice:
       1. that it proposes to make the claim; and
       2. of the events upon which the claim will be based; and
    2. within 21 days of giving the notice under paragraph (a), a written claim setting out:
       1. detailed particulars of the events on which the claim is based;
       2. the legal basis for the claim;
       3. the facts relied upon in support of the claim; and
       4. details of the quantification of the amount claimed.
  1. Continuing Events

If the events upon which the claim is based or the consequences of the events are continuing, the Contractor must continue to give the information required under clause 12.1(b) every 28 days after the claim under clause 12.1(b) was given until after the events or the consequences have ceased.

* 1. Bar

If the Contractor fails to comply with clauses 12.1 and 12.2, the:

* + 1. Contract Price will not be adjusted as a result of; and
    2. Principal will not be liable upon any claim by the Contractor, whether under the Contract or otherwise in law or in equity arising out of or in connection with,

the relevant fact, matter or thing.

1. COMPLETION
   1. Completion Certificate

When the Contractor has achieved Completion, the Contractor must notify the Contract Administrator. The Contract Administrator must promptly inspect the Works or the Section, and if satisfied that Completion has been achieved issue a Completion certificate stating the date Completion was achieved.

* 1. Possession Upon Completion

Upon Completion the Principal may take possession of the Works or the Section.

* 1. Part of Works or Section

The Principal may use a part of the Works or a Section although the whole of the Works or the Section has not reached Completion.

Such use will not affect the Contractor's obligations under the Contract but the Principal must endeavour to use that part so as to not interfere with the Contractor's performance.

* 1. Effect of Completion Certificate

A Completion certificate is not acceptance by the Principal of the Contractor's performance of its Contract obligations.

* 1. Liquidated Damages

If the Contractor does not reach Completion by the Date for Completion, it must pay the Principal liquidated damages at the rate set out in the Contract Particulars for every day after the Date for Completion until it reaches Completion or the Contract is terminated, whichever is first.

This amount is an agreed genuine pre‑estimate of the Principal's damages if Completion occurs after the Date for Completion.

* 1. Incentive

This clause 13.6 does not apply unless the Contract Particulars state that it applies.

If Completion occurs before the date in the Contract Particulars, the Principal must pay the Contractor the incentive set out in the Contract Particulars. The date stated in the Contract Particulars for payment of the incentive will not be adjusted for any reason.

The Principal must pay the incentive for every day after Completion to (and including) the date in the Contract Particulars.

1. TERMINATION
   1. Notice of Default

If the Contractor is in breach of Contract in that it:

* + 1. fails to commence the Contractor's Activities in accordance with the requirements of the Contract;
    2. fails to proceed with the Contractor's Activities at a rate of progress satisfactory to the Contract Administrator;
    3. if option 2 for the Indigenous Procurement Policy is selected in the Contract Particulars, materially fails to:
       1. implement the Indigenous Participation Plan; or
       2. comply with a direction issued by the Contract Administrator under clause 17.2(f);
    4. refuses or neglects to comply with any direction of the Contract Administrator made in accordance with the Contract; or
    5. is otherwise in breach of the Contract,

the Principal may give a written notice to the Contractor requiring it to remedy the breach. This notice must state:

* + 1. that it is a notice under this clause 14.1;
    2. the failure or breach relied upon; and
    3. that the failure or breach must be remedied within 14 days of receipt of this notice.
  1. Termination

If:

* + 1. an Insolvency Event occurs to the Contractor, or where the Contractor comprises two or more persons, to any one of those persons;
    2. the Contractor fails to remedy a breach of Contract the subject of a notice under clause 14.1 within 14 days of receipt of the notice under clause 14.1; or
    3. the Contractor fails to comply with clause 17.15,

the Principal may, without prejudice to any other right which the Principal may have, terminate the Contract by notice in writing to the Contractor from the date stated in the notice.

* 1. Principal's Entitlements after Termination

If the Principal terminates the Contract under clause 14.2, or if the Contractor repudiates the Contract and the Principal otherwise terminates the Contract:

* + 1. the Principal will:
       1. be entitled to take over and use, or require the Contractor to remove from the Site, the plant, equipment and temporary work and all materials, equipment and other things intended for the Works;
       2. be entitled to require the Contractor to novate to the Principal or the Principal's nominee, any or all subcontracts between the Contractor and its subcontractors as required by the Principal;
       3. to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any amount the subject of a payment claim under clause 11.2 or a payment statement under clause 11.4; and
       4. be entitled to recover from the Contractor 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 Contractor must comply with clause 19.3 (including by handing over to the Contract Administrator copies of the Project Documents prepared by the Contractor to the date of termination (whether complete or not)).
    3. This clause 14.3 will survive the termination of the Contract.
  1. Repudiation by Principal

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

* + 1. be entitled to claim damages; and
    2. not be entitled to a quantum meruit.

Clause 14.4 will survive the termination of the Contract.

* 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 Contractor 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 Contractor; and
    2. thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging Other Contractors.
  1. Costs

If the Principal terminates the Contract under clause 14.5, the Contractor:

* + 1. will be entitled to payment of the following amounts as determined by the Contract Administrator:
       1. for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
       2. the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor 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
       3. the reasonable cost of removing from the Site all labour, plant, equipment and Work and other things used in the Contractor's Activities; and
    2. must:
       1. take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
       2. comply with clause 19.3 (including by handing over to the Contract Administrator copies of the Project Documents prepared by the Contractor to the date of termination (whether complete or not)).

The amount to which the Contractor is entitled under this clause 14.6 will be a limitation upon the Principal's liability to the Contractor arising out of, or in connection with, the termination of the Contract and the Contractor 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 14.6.

This clause 14.6 will survive the termination of the Contract by the Principal under clause 14.5 or by the Contractor following repudiation by the Principal.

1. DISPUTES
   1. Notice of Dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Contract Administrator in respect of any fact, matter or thing arising out of, or in connection with the Contractor's Activities, 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 15.

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 15.1 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 15.1; 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 or expert determination).

* 1. Arbitration Agreement

If, within:

* + 1. 21 days of the notice of dispute given under clause 15.1; 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 15.4 by a written notice by either party to the other party.

* 1. Arbitration
     1. Arbitration pursuant to this clause 15.4 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 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 15.4.
  2. Continuation of Contractor's Activities

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

* + 1. continue to carry out the Contractor's Activities; and
    2. otherwise comply with its obligations under the Contract.
  1. Proportional Liability

To the extent permitted 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 15.

1. NOTICES
   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 14 and 15 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 16.1 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 16.1 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 14 and 15, if the notice is sent by email as well as being delivered by hand or sent by prepaid express post in accordance with clause 16.1(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 Contractor 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 Contractwith a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
  1. Indigenous Procurement Policy - Option 1 (Non High Value Contract)
     1. The Contractor must use its reasonable endeavours to increase its:
        1. purchasing from Indigenous Enterprises; and
        2. employment of Indigenous Australians,

in carrying out the Contractor's Activities, in accordance with the Indigenous Procurement Policy.

* + 1. If at any time the Contract Price is $7.5 million or above, inclusive of GST (such that the Contract becomes a "High Value Contract" for the purposes of the Indigenous Procurement Policy), the Contractor must:
       1. within 14 days of a request from the Contract Administrator, prepare and submit an Indigenous Participation Plan in accordance with the Indigenous Procurement Policy (including any requirement that applies in respect of a Remote Area) to the Contract Administrator for approval; and
       2. once approved by the Contract Administrator:
          1. comply with the Indigenous Participation Plan; and
          2. submit a written report to the Principal via the Powering Indigenous Procurement reporting portal on its compliance with the Indigenous Participation Plan, as follows:

at least quarterly; and

within 7 days of the expiry of the last Defects Liability Period (**End of DLP Report**).

* + 1. The Contractor must set out in the End of DLP Report:
       1. whether the Contractor:
          1. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
          2. complied with the Indigenous Participation Plan; and
       2. if the Contractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
    2. Throughout the carrying out of the Contractor's Activities, the Contractor is responsible for managing the Contractor's access to the Powering Indigenous Procurement reporting portal including by managing the:
       1. enabling of its authorised personnel's access; and
       2. disabling of its authorised personnel's access,

and must promptly notify the Contract Administrator of such enabling and disabling and any other matters relating to access to the Powering Indigenous Procurement reporting portal.

* + 1. If the Contract Administrator considers, in its absolute discretion at any time during the carrying out of the Contractor's Activities, that it has concerns in relation to the Contractor's:
       1. compliance with the Indigenous Participation Plan; or
       2. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Contract Administrator may direct the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.

* + 1. The Contractor:
       1. must comply with all directions issued by the Contract Administrator in relation to the Contractor's implementation of the Indigenous Participation Plan; and
       2. will not be entitled to make (nor will the Commonwealth be liable upon) any claim arising out of or in connection with any direction of the Contract Administrator under subparagraph (i).
    2. Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that any reports it submits under paragraph (b)(ii)B:
       1. will be recorded in a central database accessible by the Commonwealth and may be made publically available;
       2. will not be Commercial-In-Confidence Information for the purposes of clause 18.2; and
       3. may be used by the Commonwealth for any purpose, including being taken into account for the evaluation of any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.

**17.2 Indigenous Procurement Policy - Option 2 (High Value Contract)**

* + 1. The Contractor must use its reasonable endeavours to increase its:
       1. purchasing from Indigenous Enterprises; and
       2. employment of Indigenous Australians,

in carrying out the Contractor's Activities, in accordance with the Indigenous Procurement Policy.

* + 1. The Contractor must:
       1. comply with the Indigenous Participation Plan; and
       2. submit a written report to the Commonwealth via the Powering Indigenous Procurement reporting portal on its compliance with the Indigenous Participation Plan, as follows:
          1. at least quarterly; and
          2. within 7 days of the expiry of the last Defects Liability Period (**End of DLP Report**).
    2. The Contractor must set out in the End of DLP Report:
       1. whether the Contractor:
          1. met the mandatory minimum requirements for the Indigenous Procurement Policy; and
          2. complied with the Indigenous Participation Plan; and
       2. if the Contractor did not comply with the Indigenous Participation Plan, an explanation for its non-compliance.
    3. Throughout the carrying out of the Contractor's Activities, the Contractor is responsible for managing the Contractor's access to the Powering Indigenous Procurement reporting portal including by managing the:
       1. enabling of its authorised personnel's access; and
       2. disabling of its authorised personnel's access,

and must promptly notify the Contract Administrator of such enabling and disabling and any other matters relating to access to the Powering Indigenous Procurement reporting portal.

* + 1. If the Contract Administrator considers, in its absolute discretion at any time during the carrying out of the Contractor's Activities, that it has concerns in relation to the Contractor's:
       1. compliance with the Indigenous Participation Plan; or
       2. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Contract Administrator may direct the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan.

* + 1. The Contractor:
       1. must comply with all directions issued by the Contract Administrator in relation to the Contractor's implementation of the Indigenous Participation Plan; and
       2. will not be entitled to make (nor will the Commonwealth be liable upon) any claim arising out of or in connection with any direction of the Contract Administrator under subparagraph (i).
    2. Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under subparagraph (b)(ii):
       1. will be recorded in a central database accessible by the Commonwealth and may be made publically available;
       2. will not be Commercial-In-Confidence Information for the purposes of clause 18.2; and
       3. may be used by the Commonwealth for any purpose, including being taken into account for evaluation of any registration of interest process, tender process or similar procurement process in connection with any other Commonwealth project.
  1. Privacy
     1. The Contractor 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, under, arising out of or in connection with this Contract, as if it were an agency as defined in the Privacy Act;
        3. use Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with this Contract only for the purposes of fulfilling its obligations under this Contract;
        4. not disclose Personal Information received, created or held by the Contractor for the purposes of, under, arising out of or in connection with this 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 Contractor for the purposes of, under, arising out of or in connection with this Contract, this 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 this Contract;
        7. ensure that any person whom the Contractor allows to access Personal Information which is received, created or held by the Contractor for the purposes of, under, arising out of or in connection with this 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 Contractor for the purposes of, under, arising out of or in connection with this Contract are, at the expiration or earlier termination of this 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 Contractor in reports by the Federal Privacy Commissioner;
        11. ensure that any subcontract made in connection with this Contract contains enforceable obligations requiring the subcontractor to comply with the Contractor's obligations arising out of this clause 17.3 as if the subcontractor were the Contractor;
        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 Contractor for the purposes of, under, arising out of or for, or relating to, any direct marketing purpose;
     2. The Contractor must immediately notify the Principal in writing if the Contractor:
        1. becomes aware of a breach of the obligations under this clause 17.3 by itself or by a subcontractor;
        2. becomes aware of a breach of a subcontractor'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 subcontractor has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
     3. The Contractor acknowledges that, in addition to the requirements of this clause 17.3, the Contractor 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 this clause 17.3 limits any of the Contractor's other obligations under the Contract or otherwise at law or in equity.
     5. In this clause 17.3, **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 Contractor 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

The Contractor must not assign its rights or liabilities under the Contract.

* 1. Publicity

Without limiting clause 22.3(f), the Contractor must:

* + 1. not furnish any information or issue any document or other written or printed material concerning the Contractor's Activities 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 Contractor's Activities or the Works to the Contract Administrator.
  1. Access Hours

Unless otherwise agreed by the Contract Administrator, the hours of access applicable to the Contractor's Activities to be carried out on Site are those set out in the Contract Particulars.

* 1. National Construction Code Certification

This clause 17.8 only applies if the Contract Particulars state that it applies.

Without limiting clause 7.3, the Contractor must provide to the Contract Administrator written certification from an Accredited Building Surveyor:

* + 1. at the time it submits any design to the Contract Administrator under clause 5.1(a)(iii) for any part of the Works or a Section - that the design submitted at that time complies with the National Construction Code; and
    2. as a condition precedent to the issue of a Completion certificate in respect of the Works or a Section - that the Works comply or the Section complies with the National Construction Code,

except to the extent of any dispensation granted by the ASEE and identified in the certification.

* 1. Applicable Standards
     1. The Contractor acknowledges that Annexure 2 identifies:
        1. the Australian standards which are applicable to the Contractor's Activities and the Works; or
        2. in the absence of an applicable Australian standard, the relevant international standards which are applicable to the Contractor's Activities and the Works,

(**Applicable Standards**).

* + 1. Subject to paragraph (c) and without limiting the Contractor's obligations under this Contract, the Contractor must comply with the Applicable Standards in performing the Contractor's Activities and executing the Works.
    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 Contractor provides:
       1. a certificate which certifies that the design or the Works or a Section complies with the Applicable Standards; and
       2. a corresponding certificate from each relevant subcontractor which certifies that (to the extent then applicable) all design carried out by that subcontractor or the Works or a Section executed by that subcontractor (as the case may be) complies with the Applicable Standards.
    4. The Contractor acknowledges that the Principal may exercise any of its rights under this Contract (including under clause 5.7) to carry out periodic auditing of the Contractor's compliance with clause 17.9.
  1. Principal may Act

The Principal may, either itself or by a third party, perform a Contract obligation which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by the Principal in so performing such a Contract obligation will be a debt due from the Contractor to the Principal.

* 1. Defence's Security Alert System
     1. Nothing that the Contractor is or may be required to do under this clause 17.11 will derogate from, or otherwise limit, the Contractor's obligations under the Contract.
     2. The Contractor must be, and must ensure that its subcontractors are, fully familiar with the requirements of Defence's Security Alert System.
     3. The Contractor must, and must ensure that its subcontractors:
        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 Contractor's Activities, the Contractor must, and must ensure that its subcontractors, 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 Contractor of the change to the level (or individual measure from a higher level to meet a specific threat or threats) and instruct the Contractor as to the course it is to adopt insofar as the Contractor's Activities 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 Contractor will be entitled to have the Contract Price increased by the extra costs reasonably incurred by the Contractor which arise directly from the change and the Contract Administrator's instruction under subparagraph (i), as determined by the Contract Administrator; or
        3. the Contract Price will be decreased by any saving made by the Contractor 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 Contractor 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 Contractor complying with this clause 17.
  2. Fraud Control
     1. Without limiting the Contractor's other obligations, the Contractor must:
        1. proactively take all necessary measures to prevent, detect and investigate any fraud in connection with the Contract or the Contractor's Activities (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 Contractor or any of its officers, employees, subcontractors 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 Contractor 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 Contractor will take under paragraph (a)(ii); and
        4. the proactive measures which the Contractor 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. Local Industry Capability

Without limiting clause 8.7, the Contractor must:

* + 1. comply with the Local Industry Capability Plan;
    2. report at least six monthly on the implementation of the Local Industry Capability Plan, including on:
       1. the matters set out in the Local Industry Capability Plan; and
       2. any other matters as may be required by the Contract Administrator,

in accordance with the form set out in the Local Industry Capability Plan, or if not specified, in a form required by the Contract Administrator; and

* + 1. notify the Contract Administrator in writing within 7 days of any change to the person specified as the Contractor's point of contact in the Local Industry Capability Plan.
  1. Shadow Economy Procurement Connected Policy
     1. Clause 17.14 does apply unless the Contract Particulars state that it does not apply.
     2. Without limiting the operation of clause 7.4, the Contractor must not enter into a subcontract with a subcontractor or subconsultant (or agree to a novation of a subcontract to a subcontractor or subconsultant) if the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST) unless the Contractor has obtained and holds any of the STRs referred to in the table below, as applicable to the relevant subcontractor or subconsultant.

|  |  |
| --- | --- |
| **If the subcontractor or 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 Contractor must obtain and hold additional STRs in the circumstances set out in the table below within 10 business days of the Contractor becoming aware of the circumstances arising:

|  |  |
| --- | --- |
| **If the Contractor or subcontractor 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 Contractor 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 Contractor:
       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 Contractor's Activities and the Works and, on request by the Contract Administrator, provide to the Contract Administrator a copy of any such STR;
       3. must ensure that any subcontractor, 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 subcontractor 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 19 or any other provision of the Contract, the Contractor:

* + 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 Contractor has failed to strictly comply with this clause 17.15 (including any direction or requirement of the Contract Administrator in relation to the DISP), the Principal may (in its absolute discretion):

(i) terminate the Contract under clause 14.2; or

(ii) 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 15.1 or otherwise subject to review.

* 1. Modern Slavery
     1. The Contractor 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 carrying out of the Contractor's Activities.
     2. The Contractor must ensure the Contractor's key people under clause 2.3 and other personnel responsible for managing the operations and supply chains used in the performance of the Contractor's Activities have undertaken suitable training to be able to identify and report Modern Slavery.
     3. If at any time the Contractor becomes aware of Modern Slavery practices arising in connection with the Contract, including in the operations and supply chains used in the carrying out of the Contractor's Activities, the Contractor 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 17.16, **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   1. General

The Contractor acknowledges that the Principal is and will 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

This clause 18.2 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 Contractor 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 Contractor to the Principal in its tender;
       2. the Principal agrees (in its absolute discretion) that such information is commercial-in-confidence information;
       3. the Contract Administrator notifies the Contractor in writing that the Principal agrees (in its absolute discretion), 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 Principal to any responsible Minister or any Ministerial adviser or assistant;
       4. disclosed by the Principal 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. Contractor's Warranty
      1. The Contractor 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 Contractor warrants that:
         1. on the Award Date and on the date of submitting each payment claim under clause 11.2, it is not aware of any breach of this clause 19 by the Contractor or any Recipient; and
         2. that each Recipient of Sensitive and Classified Information (or any part of it) involved in carrying out the Contractor's Activities and the Works 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 Contractor must strictly comply with (and ensure that all Recipients of Confidential Information strictly comply with):
         1. clause 19; 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).
      2. The Contractor 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 Contractor's Activities and achieving Completion of the Works. If the Contractor wishes to copy, reproduce, disclose, use or deal with the Sensitive and Classified Information for the purpose of carrying out the Contractor's Activities and the Works, 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 (c), the Contract Administrator will notify the Contractor 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 Contractor must strictly comply with any conditions under paragraph (c).
    3. The Contractor 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 Contractor (or Recipient) was issued with the Sensitive and Classified Information; and

at all times during the Contractor'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 Contractor (or Recipient) was issued with such caveated or compartmented information (or any part of it); and

at all times during the Contractor'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 14.2 or otherwise at law; or
        3. the expiry of the last Defects Liability Period,

the Contractor 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 Contractor 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 Contractor knows or ought to know:
         1. has not been securely and appropriately returned, destroyed or erased by the Contractor and all Recipients; and
         2. is beyond the Contractor'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 Contractor's quality assurance procedure, system or framework, the Contractor may keep one copy of the Confidential Information or Sensitive and Classified Information for its records subject to the Contractor:
       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 this clause 19.
    2. The Contractor acknowledges and agrees that the return, destruction or erasure of the Confidential Information or Sensitive and Classified Information does not affect the Contractor's obligations under clause 19.
  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 Contractor must:

* + 1. provide the Contract Administrator with:
       1. evidence of the Contractor's and all Recipients' compliance with clause 19, including all arrangements that the Contractor 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 Contractor's and all Recipients' compliance with clause 19,

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 Contractor's and all Recipients' premises, records, information technology environments and equipment to enable the Principal and the Contract Administrator to monitor and assess the Contractor's and all Recipients' compliance with this clause 19, by the time and date specified in the request.
  1. Acknowledgement, Release and Indemnity

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

* + 1. acknowledges and agrees that:
       1. the Principal has entered into the Contract and, if applicable, has made payments to the Contractor under clause 11.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in clause 19;
       2. without limiting any other right or remedy of the Principal (under the Contract or otherwise at law or in equity), if the Contractor:
          1. notifies the Contract Administrator under clause 19.2(e)(iii)B; or
          2. has failed to strictly comply with clause 19,

the Principal may (in its absolute discretion) terminate the Contract under clause 14.2; or

* + - 1. the exercise of any of the Principal's absolute discretions under clause 19 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Principal in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor 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 19; 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 Contractor’s failure to strictly comply with clause 19; or
       3. the exercise of any of the Principal's absolute discretions under clause 19.

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

Subject to clause 20.2, the Contractor warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2, it is not aware of any:

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

in relation to the Contractor.

* 1. Notice of Material Change or Strategic Interest Issue

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

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

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

* + 1. the Material Change or Strategic Interest Issue; and
    2. the steps which the Contractor 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 Contractor:

* + 1. acknowledges and agrees that:
       1. the Principal has entered into the Contract and, if applicable, has made payments to the Contractor under clause 11.5, strictly on the basis of, and in reliance upon, the obligations, warranties, releases and indemnities set out in this clause 20;
       2. without limiting any other right or remedy of the Principal (under the Contract or otherwise at law or in equity), if:
          1. the Contractor:

notifies the Contract Administrator under clause 20.2; or

has failed to strictly comply with clause 20; 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 Contractor,

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

* + - * 1. notify the Contractor 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 Contractor 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 Contractor under subsubparagraph C:

notify the Contractor that:

the Contractor may continue to perform the Contractor's Activities, whether with or without such conditions as the Principal thinks fit (in its absolute discretion) including the Contractor 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 14.2 and terminate the Contract under clause 14.2; or

* + - 1. the exercise of any of the Principal's absolute discretions under clause 20 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review;
    1. releases the Principal in respect of any costs, expenses, losses, damages or liabilities suffered or incurred by the Contractor 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 20; 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 Contractor's failure to strictly comply with clause 20; or
       3. the exercise of any of the Principal's absolute discretions under clause 20.

1. financial viability
   * 1. The Contractor:
        1. warrants that, on the Award Date and on the date of submitting each payment claim under clause 11.2:
           1. it has the financial viability necessary to perform the Contractor's Activities, achieve Completion of the Works or each Section and otherwise meet its obligations under the Contract (including the payment of all subcontractors (in accordance with paragraph (b)); and
           2. each subcontractor engaged in the Contractor's Activities, the Works or each Section 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 Contractor under clause 11.5, strictly on the basis of and in reliance upon the obligations and warranties set out in this clause 21.
     2. The Contractor must pay all subcontractors in accordance with the payments terms in all subcontracts.
     3. The Contractor must keep the Contract Administrator fully and regularly informed as to all financial viability matters which could adversely affect:
        1. the Contractor's ability to perform the Contractor's Activities, achieve Completion of the Works or each Section or otherwise meet its obligations under the Contract; and
        2. a subcontractor's ability to perform its activities in accordance with the relevant subcontract,

including any potential or actual change in:

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

which could adversely affect:

* + - 1. the Contractor's ability to perform the Contractor's Activities, achieve Completion of the Works or each Section or otherwise meet its obligations under the Contract; or
      2. a subcontractor's ability to perform its activities in accordance with the relevant subcontract,

the Contract Administrator may (in its absolute discretion) direct the Contractor to take such steps as the Principal considers necessary to secure the performance of the Contractor's Activities, the Completion of the Works or each Section and the meeting of its obligations under the Contract, including requiring the Contractor to:

* + - 1. provide additional Approved Security in the form and for an amount required by the Principal under clause 3.1;
      2. provide a deed of guarantee, undertaking and substitution in the form required by the Principal;
      3. establish a trust account for the payment of subcontractors on the terms (including any trust deed) required by the Principal;
      4. provide Subcontractor Deeds of Covenant or Consultant Deeds of Covenant; or
      5. provide Collateral Warranties.
    1. If the Contract Administrator gives a direction under paragraph (e), then the Contractor must take such steps as the Principal considers necessary to better secure a subcontractor's ability to perform its activities in accordance with the relevant subcontract, including any of the steps notified by the Principal.
    2. The Contractor acknowledges and agrees that:
       1. nothing in this clause 21 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 this clause 21 for the benefit of the Contractor (or any subcontractor);
       3. this clause 21 does not give the Contractor (or any subcontractor) any rights; and
       4. the exercise or failure to exercise a discretion under this clause 21 is not capable of being the subject of a dispute or difference for the purposes of clause 15.1 or otherwise subject to review.

The Contractor must ensure that each subcontract includes provisions equivalent to the obligations of the Contractor in this clause 21.

1. GLOSSARY OF TERMS AND INTERPRETATION
   1. Glossary of Terms

Unless the context otherwise indicates, whenever used in this Contract, each word or phrase in the headings in this clause 22.1 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).

Approval

1. Any licence, permit, consent, approval, determination, certificate, design certificate (where the Contractor is responsible for the design) 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 Contractor's Activities or under any other applicable Statutory Requirement, which must be obtained or satisfied to:
   1. carry out the Contractor's Activities; or
   2. occupy, use, maintain or operate the completed Works or a completed Section.

Approved Security

1. An unconditional undertaking (duly stamped) in the form:
   1. set out in the Schedule of Collateral Documents; or
   2. required by the Contract Administrator,

and otherwise on terms, and given by a financial institution, approved by the Principal.

Asbestos

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

Australian Privacy Principle

1. 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 Contractor; 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.

Change of Control

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

Collateral Warranty

1. A warranty in the form set out in the Schedule of Collateral Documents.

Commissioning and Handover Plan

1. The commissioning and handover plan prepared by the Contractor and finalised under clause 8.7 which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a commissioning and handover perspective to ensure:
   1. the timely, efficient and comprehensive commissioning of the Works (including the inspection and testing process);
   2. the smooth handover of the Works to the Principal; and
   3. that all required planned and unplanned maintenance is provided during the Defects Liability Period,

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 stage when in respect of the Works or a Section:
   1. they are complete except for minor omissions and minor defects which do not prevent them from being reasonably capable of being occupied, used, operated and maintained for their intended purpose; and
   2. the Contractor has done everything which the Contract requires it to do before Completion, including:
      1. those things described in Annexure 1 and in the Contract Particulars; and
      2. obtaining any building, occupation or other certificates from any State, Territory or local authority that may be required for the Works.

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 Contractor 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 Contractor's Activities or the Works which:
        1. by its nature is confidential;
        2. the Contractor 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 Contractor 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 Contractor 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 19; or
     3. has been independently developed or acquired by the Contractor.

Confidential Information Incident

1. A single breach or a series of breaches of clause 19, 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.

Confidential Information Security Event

1. 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.
2. **Consolidated Group**
3. 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).

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 paragraph (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 Design Documents; and
   6. 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 from time to time nominated by the Principal to replace that person.

Contract Material

1. Means the Project Documents and all material:
   1. created by, for or on behalf of the Contractor (including by subcontractors) in connection with this Contract;
   2. provided, or required to be provided, to the Principal in connection with the Contractor's Activities; or
   3. at any time derived (in connection with this Contract) from, or based on, the Project Documents or the material described in paragraphs (a) or (b).

Contract Particulars

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

Contract Price

1. The amount specified in the Contract Particulars as adjusted, from time to time, by any additions or deductions required to be made under the Contract.

Contractor

1. The person named in the Contract Particulars.

Contractor's Activities

1. All things or tasks which are necessary for the Contractor to do to comply with its Contract obligations.

Contractor's Representative

1. The person named in the Contract Particulars.

Control

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**

An invoice which 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 period or periods of time specified in the Contract Particulars as adjusted under the Contract.

Defects Liability Period

1. The period specified in the Contract Particulars which commences on the date of Completion.

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 Documents

1. Those:
   1. documents referred to in the Contract Particulars; and
   2. further drawings or specifications supplied to the Contractor by the Contract Administrator during the course of the Contract.

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. A policy of insurance covering the liability of the Contractor towards its employees at common law, for injuries arising out of or in the course of their employment, whether as an extension under 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 Contractor's Activities.

Environmental Management Plan

1. An environmental management plan prepared by the Contractor and finalised under clause 8.7, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from an environmental perspective and describe how the Contractor proposes to ensure the Contractor's Activities will be performed consistently with the:
   1. Statutory Requirements;
   2. ESD Principles; and
   3. 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 Contractor's Activities;
   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 subcontractors;
   9. ensure subcontractors implement the Environmental Management Plan;
   10. define how the management of the Environment during the Contractor's Activities 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 Contractor's Activities;
   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 and water conservation and efficiency;
   3. sustainable development and use of renewable and alternative energy and water 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. use, operation and maintenance practices that reduce or minimise harmful effects on people and the natural environment;
   12. maintaining the cultural, economic, physical and social wellbeing of people and communities; and
   13. the 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.

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 Contractor's Activities.
2. **GST Group**

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

GST Legislation

1. *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. An organisation that is 50% or more Indigenous owned that is operating a business.

Indigenous Participation Plan

1. The plan (if any) either:
   1. if option 1 of clause 17.2 applies - prepared by the Contractor in accordance with clause 17.2(b); or
   2. if option 2 of clause 17.2 applies - set out in Annexure 3.

Indigenous Procurement Policy

1. The Commonwealth's Indigenous Procurement Policy, as amended from time to time, 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 Contractor, 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 Contractor 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 Contractor 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.

Latent Conditions

1. Any ground conditions at the Site, excluding inclement weather conditions and the effects of such conditions at the Site or its surroundings resulting from inclement weather wherever occurring, which could not have been anticipated by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing its tender.

Local Industry Capability Plan

1. The plan prepared by the Contractor and finalised under clause 8.7, which must be based on the draft Local Industry Capability Plan prepared by the Contractor and submitted as part of its tender for the Works.

Material Change

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

NATA

1. National Association of Testing Authorities Australia.

National Construction Code

1. The National Construction Code that applies in the 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, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors.

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

Means any of the following events which arise as a direct result of the Pandemic and first occurs after the Award Date:

* 1. a change in Statutory Requirements (including a change in border requirements or quarantine requirements);
  2. a change in:
     1. the availability of local labour required for the Works; or
     2. the ability to transport unfixed goods and materials to the Site where such unfixed goods and materials are located outside of the State or Territory in which the Site is located;
  3. closure (or reopening) of a subcontractor's factory, or any other location where subcontracted activities are being carried out, in respect of the supply of goods or materials required for the Works; or
  4. such other events as may be specified in the Contract Particulars,

in each case which impacts the performance or progress of the Contractor's Activities at the Site.

1. **Pandemic Management Plan**

The plan prepared by the Contractor and finalised under clause 8.7, which must set out in adequate detail the procedures the Contractor will implement to avoid, mitigate, resolve and otherwise manage the effects of the Pandemic on the Contractor's Activities and the Works.

The Pandemic Management Plan must address, at a minimum:

* 1. as at the date of the preparation (or update) of the plan, the circumstances (if any) in respect of the Pandemic around which the supply of labour, equipment, materials or services required for the carrying out of the Contractor’s Activities will be undertaken;
  2. the Contractor's approach to compliance with all Statutory Requirements in respect of the Pandemic;
  3. the specific steps that the Contractor will take in respect of the planning and execution of the Contractor's Activities in response to the Pandemic including in respect of resourcing, programming and logistics;
  4. the risks that the Pandemic poses to the Contractor’s Activities, and identify the mitigation measures that have been, or will be, implemented to avoid, mitigate, resolve or otherwise manage those risks, together with possible alternative courses of action in the event that there is a Pandemic related disruption to the carrying out of the Contractor's Activities;
  5. strategies for maximising ongoing workforce and subcontractor availability;
  6. the procedure for identifying, monitoring and reporting on any possible or actual impact of the Pandemic on the Contractor's Activities and the Works (including any Pandemic Adjustment Event);
  7. the procedure for regularly reviewing, updating and amending the Pandemic Management Plan under clause 8.7 (including as a result of any Pandemic Adjustment Event);
  8. the additional matters specified in the Contract Particulars; and
  9. any other matters required by the:
     1. Contract; or
     2. Contract Administrator.

1. **Payment Times Procurement Connected Policy (or PT PCP)**
2. 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.
2. **Powering Indigenous Procurement reporting portal**
3. The online portal where contractors report on their progress against their mandatory minimum requirements under the Indigenous Procurement Policy.

Principal

1. The person named in the Contract Particulars.

Principal Risks

1. Means:
   1. faulty design carried out by persons other than the Contractor or persons for whom it is responsible;
   2. any negligent act or omission of the Principal or an employee of the Principal;
   3. war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority, except to the extent that any of those conditions:
      1. are existing conditions in the vicinity of the Site; or
      2. should have been anticipated as reasonably likely by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing its tender;
   4. the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
   5. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any subcontractor or any of their employees or agents, except to the extent that any of those conditions:
      1. are existing conditions in the vicinity of the Site; or
      2. should have been anticipated as reasonably likely by a prudent, competent and experienced contractor if it had done those things which such a contractor should reasonably have done in preparing its tender.

Privacy Act

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

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 Contractor, under, or in connection with the Contract, the Contractor's Activities or the Works, including any matters relating to the Contractor's compliance with the WHS Legislation.

Project Plans

1. The:
   1. Environmental Management Plan;
   2. Site Management Plan;
   3. Local Industry Capability Plan;
   4. Pandemic Management Plan;
   5. Commissioning and Handover Plan; and
   6. Work Health and Safety Plan,

as amended (if at all) with the written consent of the Contract Administrator.

Provisional Sum Work

The work or goods referred to in the Contract Particulars for which the sum of money referred to in the Contract Particulars has been included in the Contract Price.

PT PCP Evaluation Questionnaire

A questionnaire substantially in 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 Contractor's Activities and the Works;
  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.

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 subcontractors, suppliers and material suppliers.

Remote Area

1. An area identified on the map located at www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data, as updated from time to time.
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 Contractor 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.

Retention Moneys

1. The moneys retained by the Principal in accordance with clause 11.5(a) as security for the proper performance of the Contractor's Activities.

Schedule of Collateral Documents

1. The schedule of proforma contracts and other documents applicable to the Medium Works Contract posted on DEQMS (or any alternative location notified by the Principal), as amended from time to time by the Principal, which as at the Award Date includes the contracts and other documents referred to in the Contract Particulars.

Section

1. A section of the Works stated in the Contract Particulars.

Security

1. Means either:
   1. Approved Security; or
   2. Retention Moneys,

as specified 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 Contractor by the Commonwealth, the Contract Administrator or anyone on the Commonwealth's behalf, whether or not owned by the Commonwealth:
   1. marked as "sensitive information" or "for official use only";
   2. identified at the time of issue or communication as "Sensitive Information";
   3. marked with a national security classification or as "Classified Information";
   4. identified at the time of issue or communication as "Classified Information"; or
   5. the Contractor 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
   6. 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 19, 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 Contractor:
2. (a) has in place;
3. (b) will put in place; or
4. (c) is required to put in place under clause 20.3,
5. for the purpose of preventing, ending, avoiding, mitigating or otherwise managing any Material Change or Strategic Interest Issue or complying with clause 19.
6. **Shadow Economy Procurement Connected Policy**
7. 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 Contractor and finalised under clause 8.7, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities 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.

Statutory Requirements

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

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 Contractor with Australia’s national security requirements, in accordance with all Statutory Requirements (including the Information Security Requirements).

Table of Variation Rates and Prices

1. The table set out in or referred to in the Contract Particulars, which does not form part of the Contract and is only to be used for valuing Variations.

Tax or Taxes

1. Means 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. Means any:
   1. change including omissions (whether or not performed by the Principal or a third party) to the design or construction of the Works within the general scope of the Contract; and
   2. without limiting paragraph (a), acceleration of the Date for Completion or sequencing of the program for the Works as directed by the Principal under a written notice entitled "Acceleration Direction".

WHS Accreditation Scheme

1. The Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Federal Safety Commissioner Act 2022* (Cth).

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 and operating and maintaining the Works after Completion.

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.

Work Health and Safety Plan

1. The work health and safety plan prepared by the Contractor and finalised under clause 8.7, which can be either Contract specific or site specific, and must:
   1. set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
   2. describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with Statutory Requirements in relation to work health and safety; and
   3. address the matters specified in the Contract Particulars.

Works

1. The physical works which the Contractor must complete and hand over to the Principal.
   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 22.1, 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 11.5),

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 9.5 and 9.6:
       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 Contractor's program under clause 9.2 as working days;

* + 1. for the purposes of clauses 11.4, 11.5 and 17.14, "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 (m) 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 "subcontractor" will include subcontractors, suppliers and consultants and the word "subcontract" will include a contract with a subcontractor;
    6. derivatives of a word or expression which has been defined in clause 22.1 will have a corresponding meaning to that assigned to it in clause 22.1; 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 Design Documents is a reference to the edition last published prior to the submission of the design required by this Contract. If requested by the Contract Administrator, the Contractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Design Documents and any design required by this Contract 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 and the Project Documents are confidential. The Contractor must:
        1. not disclose any of the Contract or the Project Documents without the prior written consent of the Principal, except to the extent that the disclosure is required for the Contractor 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 subcontractor to comply with the Contractor's obligations arising under this paragraph 22.3(f) as if the subcontractor were the Contractor.
     7. The Contractor must indemnify the Principal against:
        1. any liability to or claim by a third party including a subcontractor or Other Contractor; and
        2. all costs, losses and damages suffered or incurred by the Principal,

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

* + 1. All obligations to indemnify under this Contract survive termination of the Contract.

CONTRACT PARTICULARS

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CLAUSE 1 - COMMENCEMENT |  | | | | |
| **Period of notice of when Site required:** (Clause 1.1(a)) |  | | | | |
| **Time for commencement of work on Site:** (Clause 1.1(b)) | Within ..................... weeks from the Award Date | | | | |
| **Other conditions precedent to Site access:** (Clause 1.2(a)(iii)) |  | | | | |
| CLAUSE 2 - PERSONNEL |  | | | | |
| **Contractor's key people:** (Clause 2.3) | **Person** | | | **Position** | |
|  |  | | |  | |
|  | | |  | |
| CLAUSE 3 - SECURITY |  | | | | |
| **Security:** (Clause 3.1) | ***[NOTE THAT THE FORM OF SECURITY MUST BE SPECIFIED. THE DEFAULT POSITION IS "RETENTION MONEYS" - DELETE WHICHEVER OPTION DOES NOT APPLY]***  **Approved Security**  $.................... or .......... % of the Contract Price (in the form of two Approved Securities, each for 50% of this amount)  ***[OR]***  Retention Moneys | | | | |
| To the extent that any part of the Contractor's Activities is to be carried out in Queensland, the following warning applies:  This Contract is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building and Construction Commission Act* *1991* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security is not to be more than 5% of the Contract Price of the Contract, unless the Contract expressly provides otherwise. Under this Contract, the parties agree that the amount of the security provided by the Contractor is governed by clause 3.  Initialled for and on behalf of the Contractor: ........................  Initialled for and on behalf of the Principal: .................  Despite any other provision of the Contract, the parties agree that where:  (a) section 67N of the *Queensland Building and Construction Commission Act 1991* (Qld) applies; and  (b) to the extent that the Contract provides that the total of all securities held by the Principal shall exceed 2.5% of the Contract Price after Completion,  the amount of the excess does not relate to the need to correct defects identified in the Defects Liability Period, but instead to the recovery by the Principal of any costs, damages, liabilities or other amounts which may become payable to the Principal by the Contractor under or in connection with the Contract, the Contractor’s performance of the Contract or any breach of Contract by the Contractor. | | | | |
| CLAUSE 4 - RISKS AND INSURANCE |  | | | | |
| **Insurance:** (Clause 4.3(a)) |  | | | | |
| **Professional Indemnity** | **Insurance Event:** | | **Amount of Cover:** | | |
| 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 Contractor or its subcontractors in carrying out the Contractor's Activities. | | $……. per claim and $…… in the aggregate, all claims during the period of insurance. | | |
| **Construction Risks** | A policy of insurance covering the respective rights, interests and liabilities of the Principal, the Contractor and all subcontractors arising out of or in connection with the works in progress and insuring at minimum all the things referred to in clause 4.1 for which the Contractor bears the risk of loss or damage resulting from any insurable event. | | (a) $........................ (the Contract Price if no amount is specified);  (b) $............... or .....% of the Contract Price to cover the costs of demolition and removal of debris;  (c) $............... or .....% of the Contract Price to cover the Principal's consultant fees;  (d) $............... for the value of materials or things to be supplied by the Principal; and  (e) .....% of the total of the amounts in (a) to (d) to cover escalation costs. | | |
| **Public Liability** | A policy of liability insurance covering the Principal, the Contractor, the Contract Administrator and all subcontractors for their respective liabilities:  (a) to third parties; and  (b) to each other,  for loss of or damage to property and death of or injury to any person, arising out of, or in connection with, the Contractor's Activities. This policy is not required to cover liabilities insured under construction risks insurance, workers compensation insurance, Employers Liability Insurance (as defined below) or professional indemnity insurance. | | $……..…………. in respect of any one occurrence and $...................... in the aggregate, all occurrences during the period of insurance. | | |
| **Workers Compensation** | A policy of insurance in the form prescribed by Statutory Requirements in each State and Territory in which the Contractor's Activities are to be performed or the Contractor's employees are employed or normally reside, to insure against liability for death of or injury to persons employed by the Contractor as required by the Statutory Requirements, and including Employers Liability Insurance, if applicable. | | The minimum amounts required by statute in each State and Territory in which the Contractor's Activities are to be performed or the Contractor's employees are employed or normally reside. | | |
| **Minimum amount of subcontractors' professional indemnity insurance:** (Clause 4.3(d)) | $……. per claim and $…… in the aggregate, all claims during the period of insurance. | | | | |
| **Period for maintenance of professional indemnity insurance:** (Clause 4.5) | Where any part of the Site is located in the Australian Capital Territory, New South Wales, Victoria, Tasmania, South Australia or the Northern Territory: 11 years.  Otherwise: 7 years. | | | | |
| CLAUSE 5 - POST CONTRACT DOCUMENTS | | | | | |
| **Exempted Contract Material:**  (Clause 5.5) | ................................................................................................  (unless otherwise stated there is no exempt Contract Material) | | | | |
| **Design hard copy requirements:** (Clause 5.1(b)(i)) | Compatible with Autocad14 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 electronic copy requirements:** (Clause 5.1(b)(ii)) | Compatible with Autocad14 or newer version in .dwg format on a CD‑ROM, or as determined by the Contract Administrator. | | | | |
| CLAUSE 6 - THE SITE |  | | | | |
| **Number of project signboards:** (Clause 6.11) |  | | | | |
| **Project signboard dimensions:** (Clause 6.11) |  | | | | |
| **Project signboard (Acknowledgement of Country):** (Clause 6.11(a)(ii)H) | ***[INSERT DEQMS WEB ADDRESS]*** | | | | |
| **Project signboard information (additional):** (Clause 6.11(a)(ii)I) |  | | | | |
| CLAUSE 7 - CONSTRUCTION |  | | | | |
| **Order of precedence of documents in the case of ambiguity, discrepancy or inconsistency:** (Clause 7.2) | 1. Formal Agreement or letter of acceptance (whichever is applicable)  2. Conditions of Contract  3. Special Conditions  4. Contract Particulars  5. Design Documents  6. Any other documents forming part of the Contract (as set out in the relevant item under clause 22.1 in these Contract Particulars)  7. Project Plans | | | | |
| **National Construction Code:**  (Clause 7.3(a)(i)) | The Contractor ***[IS/IS NOT]*** required to comply with the National Construction Code | | | | |
| **Authority requirements (additional):** (Clause 7.3(a)(iii)) | .....................................................................................................  ***[INSERT ANY ADDITIONAL REQUIREMENTS HERE. FOR INSTANCE, FOREIGN BUILDING REQUIREMENTS.]*** | | | | |
| **Collateral Warranties required to be procured by the Contractor from subcontractors and provided to the Principal:** (Clause 7.4) |  | | | | |
| **Contractor's Activities which may be let to one of the named subcontractors or subconsultants:**  (Clause 7.4(a)) | **Contractor's Activities** | | | **Subcontractor/ Subconsultant** | |
|  | .............................................. | | | ................................................ | |
| .............................................. | | | ................................................ | |
| CLAUSE 8 - QUALITY |  | | | | |
| **Standards Australia (excluded requirements):**  (Clause 8.1(c)(i)) | .................................................................................................... | | | | |
| **Other standards:**  (Clause 8.1(c)(ii)) | .................................................................................................... | | | | |
| **Quality Assurance:**  (Clause 8.2) | AS/ISO 9001:2000 unless otherwise stated in the Contract | | | | |
| **Number of days for submission of Project Plans:** (Clause 8.7(a)(ii)A) | Environmental Management Plan: | | | ...........days | |
| Local Industry Capability Plan: | | | 14 days | |
| Site Management Plan: | | | ...........days | |
| Commissioning and Handover Plan: | | | ...........days | |
| Work Health and Safety Plan: | | | ...........days | |
| Pandemic Management Plan: | | | ...........days | |
|  | | | | |
| **Number of days for review of Project** **Plans:** (Clause 8.7(a)(ii)B) | Environmental Management Plan: | | | ...........days | |
| Local Industry Capability Plan: | | | 14 days | |
| Site Management Plan: | | | ...........days | |
| Commissioning and Handover Plan: | | | ...........days | |
| Work Health and Safety Plan: | | | ...........days | |
| Pandemic Management Plan: | | | ...........days | |
| CLAUSE 9 - TIME |  | | | | |
| **Agreed Damages:** (Clause 9.6) | $........... for each day for which an extension of time is granted due to a breach of contract by the Principal | | | | |
| CLAUSE 11 - PAYMENT |  | | | | |
| **Times for submission of payment claims by the Contractor to the Contract Administrator:** (Clause 11.2) | Monthly on the .................day of each month.  ***[OR, IF THE SITE IS NOT IN NSW]***  on the completion of the following milestones:  ...................................................................................... | | | | |
| **Percentage of retention moneys:**  (Clause 11.5(a)) | .....................................................................................  (unless otherwise stated the following retention percentages apply: the Principal may deduct 10% from each payment until 5% of the Contract Price is retained as retention moneys) | | | | |
| **Email address for copy of tax invoice:**  (Clause 11.5(b)) | invoices@defence.gov.au | | | | |
| **Number of business days for payment:** (Clause 11.5(c)) | To the extent that the relevant part of the Contractor's Activities is carried out:  1. in Queensland or New South Wales: 5;  2. in any other Australian State or Territory: 10; or  3. outside Australia: 30. | | | | |
| **Interest:** (Clause 11.11) | 1. In the case of damages - the General Interest Charge Rate determined under section 8AAD of the *Taxation Administration Act 1953* 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 subcontractors**  (Clause 11.14) | ***[OPTION 1/ OPTION 2]*** applies.  (Option 1 applies unless otherwise stated) | | | | |
| **Taxes:**  (Clause 11.16) | ................................................................................................ | | | | |
| **Reporting Entity:**  (Clauses 11.18 to 11.23) | [To be inserted following selection of the successful Tenderer - noting that clauses 11.18 to 11.23 will only apply where the successful Tenderer is a Reporting Entity for the purposes of the Payment Times Procurement Connected Policy]  Clauses 11.18 to 11.23 ***[DO/DO NOT]*** apply. | | | | |
| CLAUSE 13 - COMPLETION |  | | | | |
| **Liquidated Damages:** (Clause 13.5) | For the Works is $............. per day | | | | |
| For each Section is (if applicable): | | | | |
| **Section** | | | **Liquidated Damages** | |
|  | | | $ per day  $ per day  $ per day  $ per day | |
| **Incentive:** (Clause 13.6) | Clause 13.6 ***[DOES/DOES NOT]*** apply. (Clause 13.6 does not apply unless otherwise stated) | | | | |
| **Date:** | | | ................................................ | |
| **Amount:** | | | ................................................ | |
| CLAUSE 16 - NOTICES |  | | | | |
| **Address and email address, for the giving or serving of notices, upon:** (Clause 16.1) | Principal**:** | | | | |
| Contract Administrator**:** | | | | |
| Contractor**:** | | | | |
| CLAUSE 17 - GENERAL |  | | | | |
| **Option for Indigenous Procurement Policy**  (Clause 17.2) | ***[OPTION 1/ OPTION 2]*** applies.  (Option 1 applies unless otherwise stated) | | | | |
| **Access hours:** (Clause 17.7) |  | | | | |
| **National Construction Code Certification:**  (Clause 17.8) | Clause 17.8 ***[DOES/DOES NOT]*** apply  (Clause 17.8 does apply unless otherwise stated) | | | | |
| **Defence's Security Alert System level:** (Clause 17.11(d)(i))) | ("Alert" if not otherwise specified) | | | | |
| **Shadow Economy Procurement Connected Policy:**  (Clause 17.14) | Clause 17.14 ***[DOES/DOES NOT]*** apply. (Clause 17.14 does apply unless otherwise stated) | | | | |
| **DISP Membership Levels:**  (Clause 17.15(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 18 - COMMERCIAL-IN-CONFIDENCE INFORMATION | | | | | |
| **Commercial-in-Confidence Information:** (Clause 18.2) | Clause 18.2 ***[DOES/DOES NOT]*** apply. (Clause 18.2 does not apply unless otherwise stated) | | | | |
| **Information which is Commercial-in-Confidence Information:** (Clause 18.2) | **Specific Information** | **Justification** | | | **Period of confidentiality** |
| ........................... | ........................... | | | .......................... |
| CLAUSE 19 - INFORMATION SECURITY | | | | | |
| Current security clearance level/s: (Clauses 19.1(b), 19.2(c)(i)) |  | | | | |
| Information technology environment accreditation or certification level/s: (Clause 19.2(e)(ii)D) |  | | | | |
| Information technology environment accreditation or certification level/s (caveated or compartmented information): (Clause 19.2(e)(ii)E) |  | | | | |
| CLAUSE 22 - GLOSSARY OF TERMS AND INTERPRETATION | | | | | |
| **Completion - additional conditions precedent to Completion:** (Clause 22.1) |  | | | | |
| **Contract - other documents forming part of the Contract:** (Clause 22.1) |  | | | | |
| **Contract Administrator:** (Clause 22.1) |  | | | | |
| **Contractor:** (Clause 22.1) |  | | | | |
| **Contractor's Representative:** (Clause 22.1) |  | | | | |
| **Contract Price:** (Clause 22.1) | A lump sum of $ | | | | |
| **Date for Completion:** (Clause 22.1) | For the Works is ................... weeks/days after the Award Date | | | | |
| For each Section is (if applicable): | | | | |
| Section | | | Date for Completion | |
| ............................................. | | | ................... weeks/days after the Award Date | |
| ............................................. | | | ................... weeks/days after the Award Date | |
| ............................................. | | | ................... weeks/days after the Award Date | |
| ............................................. | | | ................... weeks/days after the Award Date | |
| **Defects Liability Period:** (Clause 22.1) | ........................... weeks | | | | |
| **Design Documents:** (Clause 22.1) | **Design Brief:**  The Design Brief described as | | | | |
|  | **Drawings:** | | | | |
|  | **Specifications:** | | | | |
|  | **Others:** | | | | |
| **ESD Principles (additional):** (Clause 22.1) |  | | | | |
| **Executive Negotiators:** (Clause 22.1) | Principal**:** Commanding Officer, 19th Chief Engineer Works, Royal Australian Engineers  Contractor**:** | | | | |
| **Pandemic Adjustment Event (additional):** (Clause 22.1) |  | | | | |
| **Pandemic Management Plan (additional):** (Clause 22.1) |  | | | | |
| **Principal:** (Clause 22.1) | ................................................................................. | | | | |
| **Provisional Sum Work:** (Clauses 7.5 and 22.1) | **Work or Goods** | | | **Amount** | |
| ...................................... | | | $........................................ | |
| ...................................... | | | $........................................ | |
| ...................................... | | | $........................................ | |
| **Total:** | | | $........................................ | |
| **Schedule of Collateral Documents: (**Clause 22.1) | 1. Approved Security (Unconditional Undertaking)  2. Collateral Warranty  3. Payment Claim  4. Payment Statement | | | | |
| **Sections of the Works:** (Clause 22.1) |  | | | | |
| **Site:** (Clause 22.1) |  | | | | |
| **Site Management Plan:** (Clause 22.1) | Security procedures  Access to the Site by visitors, pedestrians and vehicles  Site induction procedures  Safety procedures  Emergency procedures  Waste management procedures  Site maintenance and cleaning procedures  Site establishment procedures  Dangerous, prohibited and hazardous materials and goods procedures  Approval procedures  User group and stakeholder procedures  Noise management procedures  Military expeditions and military exercises procedures  Vehicle and traffic management procedures | | | | |
| **Special Conditions:** (Clause 22.1) | As set out in Annexure 4 | | | | |
| **Statutory Requirements (additional):** (Clause 22.1) |  | | | | |
| **Table of Variation Rates and Prices:** (Clause 22.1) |  | | | | |
| **WOL Objectives (specific additional):** (Clause 22.1) |  | | | | |
| **Work Health and Safety Plan:** (Clause 22.1) | 1. Matters required to be covered in a Work Health and Safety Management Plan by the WHS Legislation, including:  a. 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 Contractor's Activities;  b. the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the Contractor's Activities are being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under the WHS Legislation;  c. 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;  d. any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;  e. the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace; and  f. ensuring that work health and safety is a compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Contract Administrator. | | | | |
|  | 2. If design forms part of the Contractor's Activities, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting Statutory Requirements regarding design and the process for addressing design changes relevant to work health and safety considerations. | | | | |
|  | 3. Management of work health and safety generally, 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, emergency procedures and use of emergency equipment), the process of communication, information-sharing and provision of assurances to the Contract Administrator under clause 8.9 of the Conditions of Contract, and dispute resolution on work health and safety matters. | | | | |
|  | 4. Provision of assurances to the Contract Administrator regarding compliance with any relevant or applicable requirements or standards (or codes of practice) in accordance with clause 8.1 of the Conditions of Contract relating to work health and safety management plans. | | | | |
|  | 5. Management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication, information-sharing and provision of assurances under clause 8.9 of the Conditions of Contract and the process for ensuring subcontractor compliance with the Work Health and Safety Plan. | | | | |
|  | 6. Management of project hazards and risks generally, including work involving:  a. fall hazards;  b. telecommunications towers;  c. demolition;  d. disturbance or removal of Asbestos;  e. structural alterations requiring temporary supports;  f. confined spaces;  g. excavation deeper than 1.5 metres;  h. tunnels;  i. use of explosives;  j. pressurised gas distribution mains and consumer piping;  k. chemical, fuel or refrigerant lines;  l. electrical work, including involving energised electrical installations and services;  m. hazardous atmospheres;  n. tilt-up and precast concrete;  o. roadways or railways used by road or rail traffic;  p. movement of powered mobile plant;  q. artificial extremes of temperature;  r. water or other liquids where there is a risk of drowning;  s. diving;  t. remote or isolated work;  u. above-standard exposure to noise;  v. other hazardous manual tasks;  w. exposure to falling objects;  x. abrasive blasting; and  y. hazardous chemicals. | | | | |
| **Agreed holidays:** (Clauses 22.2) |  | | | | |
| **Governing law:** (Clause 22.3(a)) | .....................................................................................................(The law in the State of Victoria applies unless otherwise stated) | | | | |
| ANNEXURE 1 - COMPLETION |  | | | | |
| **Number of copies of Final Operation and Maintenance Manuals:** (Clause 3(e)) |  | | | | |
| **Content of manuals (additional):** (Clause 3(h)(xii)) |  | | | | |
| **Number of persons to be trained:** (Clause 4(a)) |  | | | | |
| **Categories of persons:** (Clause 4(a)) |  | | | | |

ANNEXURE 1 - COMPLETION

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

Without limiting the definition of "Completion" in clause 22.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Section:

* + 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** |
| --- | --- | --- | --- | --- |
| (i) Wiring diagrams |  |  |  |  |
| (ii) Functional diagrams |  |  |  |  |
| (iii) "As-Constructed" drawings |  |  |  |  |
| (iv) "As-Constructed" lighting and power layout |  |  |  |  |
| (v) "As-Constructed" main switchboard layout |  |  |  |  |
| (vi) "As-Constructed" main switchboard schematic drawings |  |  |  |  |
| (vii) "As-Constructed" main switchboard circuit index |  |  |  |  |
| (viii) "As-Constructed" fire detector layout |  |  |  |  |
| (ix) Wiring diagram for the fire alarm control panel |  |  |  |  |
| (x) "As-Constructed" underground cabling layout |  |  |  |  |
| (xi) "As-Constructed" distribution board layout |  |  |  |  |
| (xii) "As-Constructed" distribution board circuit index |  |  |  |  |
| (xiii) "As-Constructed" sub mains cabling layout |  |  |  |  |
| (xiv) "As-Constructed" Site survey |  |  |  |  |
| (xv) ***[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 generally 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 Contractor and by its subcontractors.

1. **Warranties**
   * 1. Without limiting the definition of "Completion" in clause 22.1 and clauses 7.4(d) and 8.1 of the Conditions of Contract the Contractor must, as a condition precedent to Completion of the Works or a Section, provide the Contract Administrator with the following minimum warranties (in the form of the Collateral Warranty) for the following warranty periods:

| **Description** | **Warranty Period** |
| --- | --- |
| Mechanical Services | ***[INSERT]*** |
| Electrical Services | ***[INSERT]*** |
| Fire Services | ***[INSERT]*** |
| Security | ***[INSERT]*** |
| Plumbing | ***[INSERT]*** |
| Drainage | ***[INSERT]*** |
| Hardware | ***[INSERT]*** |
| Tiling | ***[INSERT]*** |
| Painting | ***[INSERT]*** |
| Carpet | ***[INSERT]*** |
| Access Floor | ***[INSERT]*** |
| Lifts | ***[INSERT]*** |
| Benches & Cupboards | ***[INSERT]*** |
| Windows & Glazing | ***[INSERT]*** |
| Metal Roof & Walling | ***INSERT]*** |
| Membrane Roofing & Tanking | ***[INSERT]*** |
| External Coating Systems | ***[INSERT]*** |
| Sun Control Louvres | ***[INSERT]*** |
| Toilet Partitions | ***[INSERT]*** |
| Partitions | ***[INSERT]*** |
| Resilient finishes, e.g. Vinyl | ***[INSERT]*** |
| Suspended Ceilings | ***[INSERT]*** |
| Doors | ***[INSERT]*** |
| Internal Signage | ***[INSERT]*** |
| External Signage (signwriting and lettering) | ***[INSERT]*** |
| External Signage (excluding signwriting and lettering) | ***[INSERT]*** |
| Façade | ***[INSERT]*** |
| ***[INSERT OTHER WARRANTIES. THE WARRANTIES REFERRED TO ABOVE ARE EXAMPLES ONLY]*** | ***[INSERT]*** |

1. **Operation and Maintenance Manuals**

Without limiting the definition of "Completion" in clause 22.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Section:

* + 1. compile specific operation and maintenance manuals for each aspect of the Works or the Section including obtaining and coordinating information provided by the Contractor and its subcontractors;
    2. prior to the commencement of commissioning of the Works or the Section, provide one copy of draft operation and maintenance manuals in respect of each aspect of the Works or the Section (**Draft Operation and Maintenance Manuals**) to the Contract Administrator for approval;
    3. within 14 days of the completion of the commissioning of the Works or the Section, provide one copy of all operation and maintenance manuals in respect of the Works or the Section 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;
    4. resubmit the Draft Operation and Maintenance Manuals and the Draft Amended Operation and Maintenance Manuals to the Contract Administrator as necessary; and
    5. 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 Section 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 Section; 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**

Without limiting the definition of "Completion" in clause 22.1 of the Conditions of Contract, the Contractor must, as a condition precedent to Completion of the Works or a Section:

* + 1. during commissioning of the Works or the Section, plan, manage and deliver a comprehensive training program in respect of all operational and maintenance aspects of the Works or the Section for the number of and each category of persons set out in the Contract Particulars; and
    2. carry out such training using:
       1. trained instructors, fully experienced in respect of all operational and maintenance aspects of the Works or the Section; and
       2. the Final Operation and Maintenance Manuals produced by the Contractor, with copies of such manuals to be made available during the training to all trainees.

ANNEXURE 2 - APPLICABLE STANDARDS

***[INSERT]***

ANNEXURE 3 - INDIGENOUS PARTICIPATION PLAN

***[IF OPTION 1 OF CLAUSE 17.2 APPLIES, INSERT "NOT USED". IF OPTION 2 OF CLAUSE 17.2 APPLIES, TO BE ATTACHED BEFORE EXECUTION OF CONTRACT]***

ANNEXURE 4 - SPECIAL CONDITIONS

1. CHILD SAFETY

***[THIS CLAUSE IS TO BE USED IN CIRCUMSTANCES WHERE THE CONTRACTOR AND ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS OR VOLUNTEERS WILL OR MAY INTERACT WITH CHILDREN DURING THE TERM OF THE CONTRACT IN AN INCIDENTAL WAY. FOR EXAMPLE, IF THE CONTRACTOR 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 4 – SPECIAL CONDITIONS.]***

* + 1. If any part of the Contractor’s Activities involves the Contractor employing or engaging a person (whether as an officer, employee, agent, subcontractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Contractor’s Activities or any part of the Contractor’s Activities, the Contractor 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 the Contractor’s Activities, including mandatory reporting and working with children checks however described; and
       2. if requested, provide the Principal at the Contractor’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 Contractor must ensure that any such subcontract entered into by the Contractor for the purposes of fulfilling the Contractor’s obligations under the Contract imposes on the subcontractor the same obligations regarding child safety that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

1. INDEXATION OF PORTION OF CONTRACT PRICE

***[THIS CLAUSE IS GENERALLY ONLY TO BE USED WHERE IT IS ANTICIPATED THAT COMPLETION OF THE WORKS WILL OCCUR AT LEAST 12 MONTHS AFTER THE AWARD DATE.]***

* + 1. The parties acknowledge and agree that:
       1. the Labour Component and the Materials Component will be adjusted for indexation on the basis as set out in this clause; and
       2. other than as set out in this clause, and to the extent permitted by law, the Contractor 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) for any indexation of the Contract Price or the other amounts payable under the Contract, including in respect of the period prior to the Initial Adjustment Date.
    2. The Labour Component and the Materials Component will be adjusted on and from the Initial Adjustment Date for each Adjustment Period in accordance with the following formula:

Where:

|  |  |
| --- | --- |
| IA = | Indexation Amount. |
| CIL = | The index number for labour applicable to the last month of the relevant Adjustment Period, as set out in the “Wage Price Index” (Australian Bureau of Statistics (**ABS**) Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction). |
| BIL = | Base index number for labour, being the “Wage Price Index” (ABS Catalogue 6345.0, Table 5b, Total Hourly Rates of Pay Excluding Bonuses, Original (Quarterly Index Numbers), Private; Construction) applicable as at the Award Date. |
| LC = | In respect of an Adjustment Period, the aggregate of the amount the Contractor was paid, or entitled to be paid, by the Principal in respect of that Adjustment Period for the applicable portion of the Labour Component. |
| CIM = | The index number for materials applicable to the last month of the relevant Adjustment Period, as set out in the “Producer Price Indexes, Australia” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction Australia). |
| BIM = | Base index number for materials, being the “Producer Price Indexes, Australia” (ABS Catalogue 6427.0, Table 17, Output of the Construction Industries, Subdivision and Class Index Numbers, Heavy and Civil Engineering Construction Australia) as at the Award Date. |
| MC = | In respect of an Adjustment Period, the aggregate of the amount the Contractor was paid, or entitled to be paid, by the Principal in respect of that Adjustment Period for the applicable portion of the Materials Component. |

* + 1. The Contractor may claim the Indexation Amount for an Adjustment Period in the payment claim submitted by the Contractor in accordance with clause 11.2 of the Conditions of Contract in the later of the month immediately after:
       1. the month in which the CIL and CIM applicable to that Adjustment Period have been published; and
       2. the expiry of the applicable Adjustment Period,

and the Contract Price will be increased by each Indexation Amount.

* + 1. If, in respect of an Adjustment Period, there is a negative amount determined from the above formula, then there will be no adjustment in respect of that Adjustment Period.
    2. If an index is discontinued or the basis on which an index is calculated is altered, then an index referred to in paragraph (b) will be replaced by an index that most closely corresponds with that original index as agreed between the parties or, failing agreement, as determined by the Contract Administrator.
    3. For the purposes of this clause 2:
       1. a term defined in the table in paragraph (b) has the meaning given to it in that table;
       2. **Adjustment Period** means:
          1. the period from the Initial Adjustment Date until the end of the Quarter in which the Initial Adjustment Date occurred, provided that the first Adjustment Period may have a duration of less than a full Quarter; and
          2. thereafter, each subsequent Quarter until all of the Works have reached Completion or earlier termination of the Contract, provided that the last Adjustment Period may have a duration of less than a full Quarter;
       3. **Indexation Amount** means, in respect of an Adjustment Period, the amount calculated in accordance with paragraph (b), rounded to two decimal places;
       4. **Initial Adjustment Date** means the date that is 12 months from the Award Date;
       5. **Labour Component** means an amount equal to the sum of the following:
          1. ***[INSERT]***% of the original Contract Price specified in the Contract Particulars; and ***[NOTE: THIS PERCENTAGE MUST BE INSERTED BEFORE GOING TO TENDER. THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE CONTRACT PRICE ATTRIBUTABLE TO LABOUR SET OUT IN THE FORECAST PROVIDED BY THE COST PLANNER / QUANTITY SURVEYOR*** ***(IF ANY) OR AS DETERMINED BY THE CONTRACT ADMINISTRATOR]***
          2. ***[INSERT]***% of the Variation Adjustments; ***[NOTE: THIS PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]***
       6. **Materials Component** means an amount equal to the sum of the following:
          1. ***[INSERT]***% of the original Contract Price specified in the Contract Particulars; and ***[NOTE: THIS PERCENTAGE MUST BE INSERTED BEFORE GOING TO TENDER. THE PERCENTAGE TO BE INSERTED IS THE PERCENTAGE OF THE CONTRACT PRICE ATTRIBUTABLE TO MATERIALS SET OUT IN THE FORECAST PROVIDED BY THE COST PLANNER / QUANTITY SURVEYOR (IF ANY) OR AS DETERMINED BY THE CONTRACT ADMINISTRATOR]***
          2. ***[INSERT]***% of the Variation Adjustments; ***[NOTE: THIS PERCENTAGE MUST BE THE SAME AS THE PERCENTAGE IN SUBSUBPARAGRAPH A]***
       7. **Quarter** means a calendar quarter commencing on 1 January, 1 April, 1 July and 1 October in each year; and
       8. **Variation Adjustment** means the aggregate of all adjustments to the Contract Price in respect of all Variations agreed or determined under clause 10.3 of the Conditions of Contract, excluding any adjustment to the Contract Price referable to any Contractor's Activities carried out before the Initial Adjustment Date.