

COMMONWEALTH OF AUSTRALIA

DEPARTMENT OF DEFENCE

MINOR WORKS CONTRACT (AUSTRALIA)

CONDITIONS OF CONTRACT

PROJECT NUMBER: *[INSERT PROJECT NUMBER]*

PROJECT NAME: *[INSERT PROJECT NAME]*

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

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| 1. CONTRACT |  | | |  | | | | | |  | |  | |
| The Contract Administrator receives and evaluates the Tenders. |  | | | When the Contract Administrator signs this document at Part 2 of the Signing Page and one copy is returned to the Tenderer/Contractor (**Award** **Date**) this is written acceptance of the Tender for the performance of the Works for a Lump Sum of:  $ [TENDERER TO INSERT FOR REVIEW BY PRINCIPAL] | | | | | | No | | No Contract exists. | |
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|  |  | | | An entire Contract exists between the Principal and the Contractor comprising the:  (a) Conditions of Tender;  (b) Conditions of Contract; and  (c) documents described in clause 1.1 of the Conditions of Tender. | | | | | |  | | If the Contractor finds any discrepancy, error or ambiguity in or between the documents comprising the Contract it is to inform the Contract Administrator and follow the instructions given by the Contract Administrator. | |
| 1. DESIGN |  | |  | | | | | |  | | |  |
|  |  | | If the Contractor is to undertake design it is to develop the design and submit the design (comprising drawings, specifications, calculations and any engineering certificates required) to the Contract Administrator for permission to use. | | | | | | Yes | | | The Contractor's design is to comply with the Contract and be fit for its intended purpose. |
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| Permission to use by the Contract Administrator does not relieve the Contractor of its responsibility to design in accordance with the Contract and the Contractor acknowledges that the Principal is relying on its skill and judgement in undertaking design. | Yes | | The Contract Administrator is to give permission to use the design within ***[INSERT NUMBER OF DAYS]*** days of receipt if it is in accordance with the Contract and the Contractor is to construct the Works in accordance with that permitted design. | | | | | | No | | | The Contractor is to resubmit the design until given permission by the Contract Administrator to use and cannot commence construction until permission to use is given. |
| 1. RISK AND INSURANCE |  | |  | | | | | |  | | |  |
| The Principal is responsible for:  (a) loss or damage to the Works caused by faulty design carried out by persons other than the Contractor or persons for whom it is responsible;  (b) injury, death, loss or damage to persons and property caused by the negligent act or omission of the Principal or persons for whom it is responsible; and  (c) risks commonly excluded from construction risks insurance and public liability insurance policies. |  | | Except for the responsibilities allocated to the Principal, the Contractor is responsible for and is to effect and maintain insurances on terms and with an insurer approved by the Principal (such approval not to be unreasonably withheld) to cover the risk of:  (a) loss or damage to the Works until Completion to be insured for the amount of the Lump Sum;  (b) injury, death, loss or damage to persons or property, including property of the Principal other than the Works, caused by the performance of the Works, to be insured to the value of ***[INSERT VALUE]***; and  (c) injury, death, loss or damage to its employees caused by or resulting from the performance of the Works to be insured under workers compensation legislation and to the full extent of common law liability. | | | | | |  | | | The Contractor is to indemnify and keep the Principal indemnified against any loss or damage to the property of the Principal (including the Works and existing property in, about or adjacent to the Works) and against any legal liability, loss, claim or proceedings for personal injury, death, or loss of or damage to property arising from the performance of the Works. |
| 1. SITE AND POSSESSION | |  |  | | | | |  |  | | | | |
| The Principal is to give the Contractor sufficient possession to allow it to perform the Works but is not to give the Contractor sole or uninterrupted possession of or access to the Site of the Works. | |  | The Contract Administrator is to give the Contractor possession of the Site of the Works on whichever is the later of:  (a) ***[INSERT NUMBER OF DAYS]*** days after Contract Administrator accepts the Tender; or  (b) ***[INSERT NUMBER OF DAYS]*** days after the Contract Administrator is given satisfactory evidence of insurances. | | | | |  | The Contractor is to give the Contract Administrator reasonable access to the Site of the Works for supervision, testing and examination of the Works. The Contractor is to make good the Site of the Works and its surroundings on completion of its work to the satisfaction of the Contract Administrator. | | | | |
| 1. COMMENCEMENT ON SITE | | |  | | | | |  |  | | | | |
| The Contract Administrator may instruct the Contractor not to begin or to suspend the Works. | |  | The Contractor is to commence to construct the Works within ***[INSERT NUMBER OF DAYS]***  daysof being given possession of the Site of the Works. | | | | |  | If the Contractor discovers that the conditions on, about or below the Site of the Works differ from what it ought to have reasonably anticipated at Tender time, it is to inform the Contract Administrator and follow the instructions given by the Contract Administrator. | | | | |
|  | |  |  | | | | |  | The Contractor and the Contract Administrator are to agree the reasonable extra costs incurred by the Contractor because of the different conditions, excluding delay costs (if any) which are to be compensated under clause 6 below, and if unable to agree, the Contract Administrator is to determine the costs. | | | | |
| 1. COMPLETION AND DELAY | | |  | | | | |  |  | | | | |
| If the Contractor does not Complete the Works by the Date for Completion then the Contractor is to pay the Principal liquidated damages at the rate of  $ ***[INSERT AMOUNT]*** per day from the Date for Completion until the Works are Completed. | |  | The Contractor is to Complete the Works within ***[INSERT TIME]***of the Award Date or such extended time as may be agreed or determined (**Date for Completion**). | | | | |  | If the Contractor is delayed then it is to meet with the Contract Administrator and determine the cause of the delay. Where the delay is caused by:  (a) an instruction (except a direction under clause 7 below) given by the Contract Administrator;  (b) a breach of the Contract by the Principal; or | | | | |
|  | |  |  | | | | |  | (c) any event beyond the control of the Contractor,  the Contract Administrator and the Contractor are to agree an extension of time within which the Works can be Completed and if unable to agree within 14 days of the meeting to determine the cause of delay, the Contract Administrator is to determine a reasonable extension of time. The Contract Administrator may for any reason and at any time extend the Date for Completion. | | | | |
|  | |  |  | | | | |  | Where an extension of time is agreed or determined for delay caused by paragraph (a) or (b) above then the Principal is to pay the Contractor agreed compensation (which is the only and total compensation recoverable by the Contractor for any delay and disruption) at the rate of:  $ ***[INSERT RATE]***  for each day of the agreed or determined extension of time. | | | | |
| 1. QUALITY AND NON-CONFORMING WORK | | | | | |  |  | | | | |  | |
| The Contract Administrator may direct the Contractor to remove, replace or correct any non-conforming part of the Works during the Defects Liability Period and specify the time within which the Contractor is to comply with the direction.    The Contractor fixes non-conforming work within the time specified by the Contract Administrator.  No  The Contract Administrator is to determine the costs of having the non-conforming work corrected by another contractor and the Contractor is to pay the Principal the costs so determined. | |  | | The Contractor is to supply materials (which are new, free from defects and suitable for their purpose) and standards of workmanship which are in conformity with the Contract, the National Construction Code (unless otherwise notified in writing to the Contractor by the Contract Administrator), relevant Australian Standards (unless notified otherwise in writing to the Contractor by the Contract Administrator)and all lawful requirements of Commonwealth, State, Territory or other local legislation and subordinate regulations, ordinances, bylaws, orders and proclamations. | | | | | |  | | The Contractor is to comply with any direction of the Contract Administrator to:  (a) uncover and recover work; or  (b) carry out testing, additional testing or re-testing.    Compliance with the direction is at the Contractor's cost *unless* the work uncovered, recovered, tested or re-tested is in conformity with the Contract in which case the Contract Administrator is to agree with the Contractor the reasonable extra costs or if unable to agree determine the Contractor's costs in uncovering, recovering, testing or re-testing. | |
| 1. VARIATIONS | |  | |  | | | | | |  | |  | |
| A variation is any change to the form, quality and extent of the Works instructed by the Contract Administrator (including an omission). | |  | | The Contract Administrator may instruct the Contractor to vary the Works by changing the form, quality and extent of the Works and the Contractor is to carry out the instruction. | | | | | | Yes | | The Contract Administrator and Contractor are to meet to agree the reasonable cost of the variation, excluding the delay costs (if any) to be compensated under clause 6 above, and if unable to agree the Contract Administrator is to determine the cost. | |
| 1. COMPLETION | | | | | | | | | |  | |  | |
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|  | |  | | The Contractor is to inform the Contract Administrator when, in its opinion:  (a) a Stage for payment (if any) has been reached; and  (b) the Works have reached Completion.  If the Contract Administrator agrees with the Contractor's opinion, the Contract Administrator is to:  (c) determine when the Stage for payment was reached and when the Works reached Completion; and  (d) notify the Contractor of its determination. | | | | | |  | | The Works have reached Completion when:  (a) the Works are capable of use for their intended purpose; and  (b) the Works are finished except for minor defects which do not affect the use of the Works and which can be rectified without affecting the use of the Works. | |

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| 1. PAYMENT AND SECURITY | | |  |  |
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| The Principal must pay the Contractor the amounts (if any) stated in the Payment Statement within 10 business days (or within 5 business days if the Works are in New South Wales or Queensland) of the issue of the Payment Statement to the Contractor. |  | The Principal is to pay the Contractor the Lump Sum (*less*, if no unconditional undertaking has been provided by the Contractor in accordance with clause 19 below, money retained against satisfactory performance of the Contract in the amount of ***[INSERT PERCENTAGE]***% of the Lump Sum) (*less* any costs or amounts the Contractor is to pay the Principal under the Contract) at the stages and in the amounts set out below:  Stage Amount        *plus* when the Works are Completed the Principal is to pay the Contractor:  (a) any other costs the Contract Administrator has agreed or determined are payable to the Contractor under the Contract; and  (b) any other amounts the Principal is to pay the Contractor under the Contract. |  | The Contractor is to give the Contract Administrator an Invoice, with a copy sent to invoices@defence.gov.au, on the last day of each month (or as otherwise agreed between the Contractor and the Principal) claiming any part of the Lump Sum which is payable under this clause 10. The Invoice is to show the Purchase Order Number, the Stage, the Amount against the Stage, and any additional payments, moneys previously paid and total claimed on the Invoice.  Within 10 business days of receiving the Contractor's Invoice, the Contract Administrator must issue a Payment Statement stating the amounts (if any) due and payable to the Contractor. |
| 1. DEFECTS LIABILITY PERIOD | |  |  |  |
| The Contract Administrator may direct the Contractor to remove, replace or correct any non-conforming part of the Works during the Defects Liability Period and specify the time within which the Contractor is to comply with the direction.  Yes  The Contractor fixes the non-conforming part of the Works within the time specified in the direction given by the Contract Administrator.  No  The Contract Administrator is to determine the costs of having the non-conforming part of the Works fixed by another contractor and the Contractor is to pay the Principal the costs so determined. |  | The Contractor is to make good any part of the Works which is not in conformity with the Contract either at the Date of Completion or that becomes apparent during a Defects Liability Period of ***[INSERT LIABILITY PERIOD]*** from the time when the Works reached Completion as determined by the Contract Administrator and notified to the Contractor. |  | At the end of the Defects Liability Period the Principal is to pay the Contractor retention moneys or return the unconditional undertaking provided by the Contractor in accordance with clause 19 below, *less* any amounts the Contractor is to pay the Principal. |

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| 1. DISPUTES |  |  |  |  |
| A dispute is any disagreement the Contractor may have with any instruction, direction or determination of the Contract Administrator and any other dispute or difference between the Principal and the Contractor arising out of or in connection with the Contract or the Works. |  | If a dispute arises at any time, the party raising the dispute is to notify the other party in writing of the nature of the dispute and give adequate particulars to identify the dispute. Within 21 days of the giving of a written notice the Contractor and Contract Administrator are to meet to attempt to resolve the dispute or to agree on an alternative process to resolve the dispute (whether expert determination, executive negotiation, mediation or otherwise). |  | Despite the existence of a dispute or difference between the parties the Contractor must:  (a) continue to carry out the Works; and  (b) otherwise comply with its obligations under the Contract. |
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| Arbitration under this clause will be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (**ICC Rules**) current at the time of the reference to arbitration.  The seat of the arbitration will be Melbourne, Australia and the proper law of the arbitration shall be Victoria. |  | All disputes not resolved within 21 days (or such other time agreed in writing) of the giving of a written notice are referred to arbitration. |  |  |
| 1. DEFAULT AND INSOLVENCY | |  |  |  |
| If the Contractor:  (a) is wound up or declared insolvent;  (b) fails to carry out an instruction or direction of the Contract Administrator within the time specified or if no time is specified, within a reasonable time;  (c) is not progressing the execution of the Works at a rate of progress satisfactory to the Contract Administrator; or  (d) fails to comply with any of its obligations under the contract, *then* |  |  |  | The Principal through the Contract Administrator may: (a) notify the Contractor in writing that the Contract is terminated;  (b) to the extent permitted by law, suspend payments due or to become due under clause 10 above; and (c) assess the costs of Completing the Works by another contractor.  Yes |
| If the calculation results in **(A)** being greater than **(B)** the Contractor is to pay the difference to the Principal within seven days of written demand for payment. |  | Shortfall |  | The Contract Administrator is to calculate the difference between **(A)** the costs of Completing the Works by another contractor; and **(B)** the amount of suspended payments, plus if no unconditional undertaking has been provided by the Contractor in accordance with clause 19 below, retention moneys.  Excess  If the calculation results in **(B)** being greater than **(A)** the Principal is to pay the difference to the Contractor. |

1. GST AND TAXES
   * 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**) may 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 is to 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 is to 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. 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 this clause 14) incurred or imposed in connection with the Works, the Contract or the Site.
     6. In this clause 14:
        1. **GST** means the tax payable on Taxable Supplies under the GST Legislation;
        2. **GST Legislation** means *A New Tax System (Goods and Services Tax) Act* *1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
        3. **Tax** or **Taxes** 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; and
        4. terms defined in GST Legislation have the meaning given to them in GST Legislation.
2. 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 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 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 15 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 in connection with this Contract for, or in any way 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 15 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 15, 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. In this clause 15:
        1. **Australian Privacy Principle** has the meaning given in the Privacy Act;
        2. **Personal Information** has the meaning given in the Privacy Act;
        3. **Privacy Act** means the *Privacy Act 1988* (Cth); and
        4. **received** includes collected.
3. WORKPLACE GENDER EQUALITY

The Contractor must:

* + 1. comply with its obligations under the *Workplace Gender Equality Act* *2012* (Cth) (**WGE Act**); and
    2. not enter into a subcontract under this Contract with a subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.

1. COMMERCIAL-IN-CONFIDENCE INFORMATION
   * 1. 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 A$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 A$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.
     2. Subject to paragraph (c), the Principal must keep confidential any information provided to the Principal by the Contractor as set out below:

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| **Commercial-in-Confidence Information** | **Justification** |
| **[TENDERER TO INSERT FOR REVIEW BY THE PRINCIPAL]** | **[TENDERER TO INSERT FOR REVIEW BY THE PRINCIPAL]** |

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

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

1. FREEDOM OF INFORMATION
   * 1. 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.
     2. 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.
2. UNCONDITIONAL UNDERTAKING
   * 1. The Principal may, in its sole and absolute discretion, request the Contractor by notice in writing to provide security to the Principal:
        1. in the form of an unconditional undertaking (duly stamped) in a form and otherwise terms and given by a financial institution approved by the Principal;
        2. in the following amounts:

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| --- |
| $***[INSERT AMOUNT]*** or ***[INSERT PERCENTAGE]***% of the Lump Sum. |
| To the extent that any part of the Works is in Queensland, the following warning applies:  This [Contract](#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](#Section) 67K(2) implies a condition into building contracts that the total value of security is not to be more than 5% of the Lump Sum of the [Contract](#Contract), unless the [Contract](#Contract) expressly provides otherwise. Under this [Contract](#Contract), the parties agree that the amount of the security provided by the [Contractor](#Contractor) is governed by clause 10 above or this clause 19 (as the case may be).  Initialled for and on behalf of the [Contractor](#Contractor): ........................  Initialled for and on behalf of the [Principal](#Commonwealth): ................. |

* + - 1. within ***[INSERT NUMBER OF DAYS]*** days of the notice being given under this paragraph (a).
    1. The Principal is not obliged to pay the Contractor interest on:
       1. the unconditional undertaking; or
       2. subject to paragraph (c), the proceeds of the unconditional undertaking if it is converted into cash,

and does not hold the proceeds or money referred to in this paragraph (b) on trust for the Contractor.

* + 1. If the [Principal](#Commonwealth) makes a call upon the unconditional undertaking held under this clause 19 and obtains cash as a consequence:
       1. the [Principal](#Commonwealth) will pay simple interest, on the amount of any cash obtained in excess of the sum to which the [Principal](#Commonwealth) is entitled at the time of such call; and
       2. the sum attracting interest under 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](#Contractor) to the [Principal](#Commonwealth) at the time such amounts become payable.

1. CONFIDENTIAL INFORMATION
   * 1. The Contractor must not disclose any Principal Confidential Information to any third party without the prior written consent of the Principal. The Contractor will not be in breach of this clause in circumstances where it is required by law to disclose any Principal Confidential Information.
     2. In this clause 20, **Principal Confidential Information** means any information provided by the Principal to the Contractor or which comes into the possession of the Contractor in connection with the Works which the Principal has identified as confidential or the Contractor ought reasonably to know is confidential.
2. CLASSIFIED INFORMATION
   * 1. At the request of the Principal, the Contractor must:
        1. comply with the Commonwealth's security clearance process;
        2. obtain the level of security clearance requested by the Principal; and
        3. comply with all security policies and procedures notified by the Principal from time to time.
     2. The Contractor must not disclose any Classified Information unless the disclosure:
        1. is strictly in accordance with the provisions of the Defence Security Principles Framework; and
        2. has first been approved in writing by the Principal.
     3. In giving any approval to the Contractor under paragraph (b), the Principal may impose such conditions as the Principal thinks fit, including conditions requiring any recipient of Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to the Principal.
     4. The Contractor must handle and store any Classified Information in its possession or control strictly in accordance with the provisions of the Defence Security Principles Framework.
     5. In this clause 21:
        1. **Classified Information** includes:
           1. any Commonwealth document marked with a national security classification; and
           2. any information or document that the Contractor knows or ought to know is subject to, or ought to be treated in accordance with, the provisions of the Defence Security Principles Framework; and
        2. **Defence Security Principles Framework** is a reference to the Defence Security Principles Framework dated 31 July 2020 available at https://www.defence.gov.au/security, as amended from time to time.
3. INDIGENOUS PROCUREMENT POLICY
   * 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 Works, in accordance with the Indigenous Procurement Policy.

* + 1. For the purposes of the Contract:
       1. **Indigenous Enterprise** means an organisation that is 50% or more Indigenous owned that is operating a business.
       2. **Indigenous Procurement Policy** means the Commonwealth's Indigenous Procurement Policy, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp.

1. Work HEALTH and SAFETY
   * 1. The Contractor must:
        1. ensure that in carrying out the Works it complies:
           1. with all laws and other requirements of the Contract in respect of work health and safety, including the applicable WHS Legislation;
           2. with the duty contained in the Commonwealth WHS Legislation, where the applicable WHS Legislation does not prescribe a duty referred to in this Contract as one the Contractor must comply;
           3. 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. 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. 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. undertake all things necessary to ensure that the Works are carried out safely and in a manner that does not put the health and safety of persons at risk and protect property, including all Principal and Contractor personnel and the Principal's property;
      2. comply with all Statutory Requirements (including WHS Legislation) in the State or Territory in which the Works are carried out, and other requirements of the Contract for work health and safety management;
      3. must prepare a Work Health and Safety Plan and must regularly review and update its Work Health and Safety Plan;
      4. notify the Contract Administrator:
         1. in respect of notifiable incidents within the meaning of the WHS Legislation, immediately; and
         2. in respect of all other work health and safety matters arising out of or in connection with the Works, including the occurrence of any other incident or accident (not required to be reported in accordance with subparagraph A) in a monthly report to the Contract Administrator;
      5. for the purposes of subparagraphs (a)(i)D and (v) 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;
      6. if applicable, comply with all requirements of and maintain accreditation under the Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Federal Safety Commissioner Act 2022* (Cth);
      7. provide written assurances and institute systems to obtain regular written assurances from its subcontractors and each other contractor or consultant or other person engaged to do work by the Principal about ongoing compliance with the WHS Legislation in a format specified by the Contract Administrator and provide the written assurances to the Contract Administrator upon request;
      8. 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;
      9. without limiting the Contractor's obligations under the Contract, within 10 days of receipt provide to the Contract Administrator copies of:
         1. all formal notices and written communications issued by a regulator or agent of the regulator under or in compliance with the applicable WHS Legislation to the Contractor or a subcontractor relating to work health and safety matters;
         2. all formal notices issued by a health and safety representative of the Contractor or a 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 a 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 Works;

* + - 1. 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;
      2. not use Asbestos or ACM in carrying out the Works;
      3. not install or incorporate Asbestos or ACM into the Works; and
      4. ensure that all subcontractors comply with the requirements in this clause 23.
    1. The Contract Administrator may direct the Contractor to take specific measures that the Contract Administrator or the Principal considers reasonably necessary to deal with a circumstance / event which has, or is likely to have, an adverse effect on the health or safety of persons connected with the provision of the Works and the Contractor must comply with this direction, to the extent reasonably practicable.
    2. The Contractor must implement and maintain for the duration of the Contract a thorough safety induction process for all persons engaged in performing the Works.
    3. For the purposes of this Contract:
       1. **ACM** has meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011 (Cth).
       2. **Asbestos** has the meaning given in subregulation 5(1) of the *Work Health and Safety Regulations* 2011 (Cth).
       3. **Statutory Requirements** means:
          1. any law applicable to the carrying out of the activities performed by the Contractor or the Works;
          2. any approvals or requirement of any national, regional or local authority or organisation which must be obtained to carry out the relevant activities or in relation to the Works;
          3. national, regional or local government requirements including policies or guidelines that are or will be applicable to the Site, Works or activities performed by the Contractor; or
          4. any other requirement as notified by the Contract Administrator to the Contractor.
       4. **WHS Legislation** 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).
       5. **Work Health and Safety Plan** means the Work Health and Safety Plan prepared by the Contractor which has been and reviewed and not rejected by the Contract Administrator and which must address the following matters:
          1. the roles and responsibilities of key persons with work health and safety positions;
          2. arrangements in place or to be implemented for:

consultation, cooperation and coordination of activities for the purposes of compliance with the WHS Legislation;

managing and reporting of work health and safety incidents and procedures; and

any site specific health and safety rules, including induction and notification requirements;

* + - * 1. management of work health and safety generally, including document and record keeping and information sharing;
        2. provision of written assurances in compliance with paragraph (a)(viii);
        3. management of subcontractors; and
        4. any other matter necessary for the Contractor's compliance with clause 23 or any other information in relation to work health and safety as requested by the Contract Administrator.
    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, under 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 (or appointment as relevant) by notice in writing given by the Principal or the Contract Administrator.

1. PAYMENT OF WORKERS AND SUBCONSULTANTS
   * 1. To the extent that the Works are in any State or Territory of Australia (other than New South Wales), the Contractor must with each Invoice under clause 10 above 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 Works 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 Works; and
           2. all subcontractors have been paid all moneys due and payable to them in respect of the Works; 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 Invoice, all workers who have been employed by a subcontractor have been paid all moneys due and payable to them in connection with their employment in connection with the Works.
     2. To the extent that the Works are in New South Wales, the Contractor is not entitled to give the Contract Administrator an Invoice under clause 10 and the Principal is not obliged to make any payment under clause 10 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. copies of all relevant certificates of currency in respect of its workers compensation insurance which the [Contractor](#Contractor) has in place in connection with the Works.
     3. The [Principal](#Commonwealth) is entitled to withhold from any payment which would otherwise be due to the [Contractor](#Contractor) under the [Contract](#Contract) the amount disclosed as unpaid under this clause 24.
2. Access to project documents
   * 1. The Contractor must:
        1. maintain the Project Documents until the end of the Defects Liability Period; and
        2. at the request of the Contract Administrator at any time during the execution of the Works or the Defects Liability Period:
           1. make the Project Documents available for inspection and copying by the Contractor 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 may require, in such formats as may be required; and
           3. ensure that any subcontract made in connection with this contract contains enforceable obligations requirement the subcontractor to comply with the Contractor's obligations arising under this clause 25 as if the subcontractor were the Contractor.
     2. For the purposes of the Contract, **Project Document** includes all material provided, or required to be provided, to the Principal or the Contract Administrator by the Contractor, under or in connection with the Contract or the Works.
3. INTEREST for late payment
   * 1. If the Principal fails to pay any amount stated in a Payment Statement issued under clause 10 within:
        1. 30 days of receiving the Contractor's Invoice under clause 10, to which the Payment Statement relates, the Principal must pay interest in accordance with paragraph (b) following the receipt of a separate Invoice and the subsequent issue of a Payment Statement under clause 10 for the amount of interest due; and
        2. notwithstanding subparagraph (i), 60 days of receiving the Contractor's Invoice under clause 10 to which the Payment Statement relates, the Principal must pay interest in accordance with paragraph (b), whether or not the Contractor has given an Invoice and the Contract Administrator has subsequently issued a Payment Statement under clause 10 for the amount of interest due.
     2. Interest payable under this clause 26 is calculated in accordance with the following formula:

Interest payment = P x I% x n

Where:

I% = the General Interest Charge rate determined under section 8AAD of the *Taxation Administration Act* *1953* (Cth) current at the due date of payment expressed as a decimal rate per day;

P = the amount of the late payment; and

n = the number of days from the day after payment was due to and including the day that payment is made.

* + 1. If interest is payable under paragraph (a)(ii), the Principal must pay the amount of interest calculated under paragraph (b) within 30 days after payment of the Contractor's Invoice in respect of which the interest is payable.
    2. Interest will only be payable in accordance with subparagraphs 26(a)(i) or (ii) if the amount of interest due exceeds A$10.
    3. This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the costs of borrowing, money.

1. TERMINATION FOR CONVENIENCE
   * 1. The Principal may at any time, for its sole convenience, terminate the Contract by notifying the Contractor in writing.
     2. If the Principal issues such a notice, the Contractor must stop work in accordance with the notice, comply with any directions given by the Principal and mitigate all costs (including the cost of compliance with any directions by the Principal) and losses arising out of or in connection with the termination, including those arising from any affected subcontracts.
     3. The Principal will only be liable for payments to the Contractor for Works carried out or completed in accordance with the Contract before the date of the termination notice and any reasonable costs incurred by the Contractor that are directly attributable to the termination (subject to the Contractor demonstrating these costs to the Principal's satisfaction on a fully open book, cost-transparent basis).
2. Defence's security alert SYSTEM
   * 1. This clause 28 applies insofar as the Contractor performs Works at a Department of Defence site.
     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 its subcontractors:
        1. attend any security briefing requested by the Principal from time to time; and
        2. participate in a rehearsal of Defence's Security Alert System as directed by the Principal from time to time.
     4. In carrying out the Works, the Contractor must, and must ensure that its subcontractors, comply with the requirements of Defence's Security Alert System at the 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 a change to Defence's Security Alert System level specified in paragraph (d) or any individual measure to meet a specific threat or threats) applicable to the Site from time to time after the date of this Contract, the Principal will notify the Contractor of the change to Defence's Security Alert System level (or any individual measure to meet a specific threat or threats) and instruct the Contractor as to the course it is to adopt insofar as the Works are affected by the change to Defence's Security Alert System level (or any individual measure to meet a specific threat or threats).
3. 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 performance of the Works (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, consultants, 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. SHADOW ECONOMY PROCUREMENT CONNECTED POLICY
   * 1. Clause 30 ***[APPLIES / DOES NOT APPLY - THIS CLAUSE WILL APPLY IF THE PROCUREMENT HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE).]***
     2. 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 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) within 5 business days after a written request by the Principal.
    2. If the Contractor intends to enter into a subcontract with a subcontractor where the total value of all work under the subcontract is expected to exceed $4 million (inclusive of GST), the Contractor must comply with the requirements of the Shadow Economy Procurement Connected Policy in relation to the procurement of the subcontract.
    3. 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 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.

1. SUBCONTRACTING

Without limiting the Contractor’s other obligations under the Contract, the Contractor must obtain and hold satisfactory and valid STRs of any subcontractor (in relation to a subcontract made in connection with this Contract) where the subcontract price is valued (or estimated) to be over $4 million (inclusive of GST).

1. CHILD SAFETY
   * 1. Clause 32 ***[does apply/does not apply - 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.]***
     2. If any part of the activities carried out by the Contractor under the Contract 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 such activities or any part of such 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 such 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.

(b) 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. Defence Industry Security Program
   * 1. Clause 33 ***[DOES/DOES NOT]*** apply. ***[DELETE THE FOLLOWING IF THIS CLAUSE DOES NOT APPLY]***.
     2. Without limiting clause 21 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 below in accordance with Control 16.1 of the Defence Security Principles Framework dated 31 July 2020 (as amended from time to time):

|  |  |
| --- | --- |
| **DISP Membership / Security Domain** | **Level** |
| DISP Membership | ***[INSERT LEVEL, WHICH MUST EQUAL THE HIGHEST DISP MEMBERSHIP REQUIRED FOR THE 4 DOMAINS BELOW.]*** |
| 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)]*** |

* + - 1. must comply with any other direction or requirement of the Contract Administrator in relation to the DISP; and
      2. acknowledges and agrees that if the Contractor has failed to strictly comply with this clause 33 (including any direction or requirement of the Contract Administrator in relation to the DISP), the Principal may (in its absolute discretion):
         1. terminate the Contract under clause 13; or
         2. take such failure into account in any registration of interest process, tender process or similar procurement process in connection with any other Principal project,

and the exercise of any of the Principal's absolute discretions under this paragraph is not capable of being the subject of a dispute or difference for the purposes of clause 12 or otherwise subject to review.

* + 1. For the purpose of this Contract, **DISP** means the Defence Industry Security Program more particularly described at http://www.defence.gov.au/dsvs/industry.

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 Works.
     2. The Contractor must ensure the Contractor's key people employed in connection with the Works and other personnel responsible for managing the operations and supply chains used in the performance of the Works 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 Works, 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 34, **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
2. PAYMENT TIMES PROCUREMENT CONNECTED POLICY

Clause 35 ***[APPLIES / DOES NOT APPLY - THIS CLAUSE WILL APPLY IF THE PROCUREMENT HAS AN ESTIMATED VALUE OVER $4 MILLION (GST INCLUSIVE) AND THE CONTRACTOR HAS IDENTIFIED IN ITS TENDER THAT IT IS A REPORTING ENTITY FOR THE PURPOSES OF THE PT PCP.]***

* 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. 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 35.1; 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 this clause 35, without limiting the Principal 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 35.1 or the associated payment requirements of a PT PCP Subcontract:
       1. it will not take any prejudicial action against the PT PCP Subcontractor due to the complaint or any investigation or inquiry in relation to the complaint; and
       2. it will cooperate in good faith with the Principal in connection with any investigation or inquiry and any attempt to resolve the complaint.
  1. Consent
     1. For any PT PCP Purpose, the 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 35.4. The Contractor will provide evidence of such consents to the Principal on request.
  1. Interpretation

For the purposes of this clause 35:

* + 1. a reference to the Principal in clauses 35.2, 35.3(a), 35.3(d)(ii) and 35.4 includes the PT PCP Policy Team.
    2. **Correctly Rendered Invoice** means 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;
    3. **Payment Times Procurement Connected Policy** **(or PT PCP)** means the Payment Times Procurement Connected Policy available at https://treasury.gov.au/publication/p2021-183909, as amended from time to time;
    4. **PT PCP Evaluation Questionnaire** means a questionnaire in substantially the form set out in Appendix C of the Payment Times Procurement Connected Policy;
    5. **PT PCP Policy Team** means the relevant Minister, department or authority that administers or otherwise deals with the Payment Times Procurement Connected Policy on the relevant day;
    6. **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;
    7. **PT PCP Remediation Plan** means a written remediation plan substantially in the form set out in Appendix D of the Payment Times Procurement Connected Policy;
    8. **PT PCP Subcontract** means 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 for 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;
    1. **PT PCP Subcontractor** means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract;
    2. **PTR Act** means 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;
    3. **Reporting Entity** has the meaning given in the PTR Act; and
    4. **Reporting Entity Subcontractor** means 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),

and **Reporting Entity Subcontract** has a corresponding meaning.

SIGNING PAGE

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| 1 CONTRACTOR | | | | | | |  | 2 CONTRACT ADMINISTRATOR | | | | | |
| Name: | |  | | | | |  | Name: | |  | | | |
| A.C.N.: | |  | | | | |  | Position: | |  | | | |
| Address: | |  | | | | |  | Address: | |  | | | |
|  | |  | | | | |  |  | |  | | | |
| Phone No: | |  | | | | |  | Phone No: | |  | | | |
| Builders Registration Licence No: | | | | | |  |  | Purchase Order No: | | | |  | |
|  | | | | | | |  |  | | | | | |
| Signed by, or for and on behalf of Tenderer/Contractor by its duly authorised signatory: | | | | | | |  | The Contract Administrator acts as agent of the Principal in administering all provisions of the Contract. | | | | | |
|  | | | | | | |  |  | | | | | |
|  | | | | | | |  | The Contractor must not comply with any purported direction of a person associated with the Works or the Contract other than a direction of the Contract Administrator. | | | | | |
| Witnessed by: | | | | | | |  |  | | | | | |
|  | | | | | | |  |  | | | | | |
|  | | | | | | |  |  | | | | | |
|  | | | | | | |  |  | | | | | |
| (Full name and address of Witness) | | | | | | |  |  | | | | | |
|  | | | | | | |  |  | | | | | |
|  | | | | | | |  | Signed by the Contract Administrator for and on behalf of the Principal: | | | | | |
|  |  | |  |  | | |  |  | | | | | |
|  | | | | | | |  |  | | | | | |
|  |  | |  | |  | |  |  | | | | | |
| On this |  | | day of | |  | |  | On this |  | | day of | |  |